



## Legislation Text

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**File #:** 44739, **Version:** 3

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### **Fiscal Note**

The proposed ordinance has no fiscal impact.

### **Title**

2nd SUBSTITUTE Creating Sections 28.100 and amending Sections 28.151 and 28.211 of the Madison General Ordinances to add Nonmetallic Mineral Extraction District (ME) as a Special District.

### **Body**

**DRAFTER'S ANALYSIS:** The City of Madison zoning code does not permit mining in the city. Yet, the City currently contains mines that operate as legal nonconforming uses because they were operating legally when they were annexed into the City. These mines may continue operating as nonconforming uses until the mine's resources are exhausted or the operator decides to transition the mine to a different use.

Additionally, most mine operators own additional property, often adjacent to the nonconforming mine, that they cannot mine because it was not part of the original legal nonconforming use. Some of these operators have approached the City about the ability to mine these additional properties.

Thus, the City currently contains active mines over which it has no zoning regulations, and mine operators own additional property they cannot mine because the city zoning code does not permit it.

Wis. Stat. § 62.23(7)(am) grants cities the power to regulate mining through zoning. This ordinance recognizes that the City contains active nonconforming quarries and that the City benefits from the close proximity of quarry resources for local road and other construction projects. The ordinance also recognizes that quarrying operations near the city present potential health and welfare concerns to neighboring property owners and that these concerns may be attenuated through a cohesive set of quarrying regulations enforceable by the City through zoning. Accordingly, this ordinance creates a new Special District under the zoning code called the nonmetallic mineral extraction district (ME).

Under this ordinance, mining operators may apply to rezone their property to combine any legal nonconforming use with other adjacent property to create a ME district. Applications to rezone as a ME district would go through the normal rezoning process and be subject to the usual standards for rezoning under Sec. 28.181, MGO. Any property rezoned ME would be subject to the supplemental regulations contained in this ordinance. Additionally, blasting in a ME District would require conditional use approval that must be renewed every five years.

The 1<sup>st</sup> substitute of this proposed ordinance amends the original version of this ordinance as a result of two amendments recommended by the Plan Commission. The Plan Commission's first amendment resulted in a change in sub. (q) that makes it clear that any additional conditions the Plan Commission places on a blasting conditional use approval may not impose regulations or restrictions that are more stringent than state blasting regulations. The Plan Commission's second amendment, found in sub. (q) 11., relates to the blasting conditional use renewal process: it states that if an operator applies for the renewal of a blasting conditional use and shows that in the previous five (5) years the Nonmetallic Mining Site has operated in compliance with the blasting conditions listed in sub. (q) 1.-10. and any additional blasting conditions imposed by the Plan Commission, then there shall be a presumption that the standards for conditional use approval are met and that the Plan Commission will grant renewal of the conditional use approval. These amendments were recommended after testimony from mining operators requesting more certainty in the blasting conditional use process.

This second substitute contains all of the changes included in the first substitute, and addresses three additional concerns regarding extraction of materials adjacent to a freeway, rail corridor, or property zoned for industrial use. This second substitute also clarifies how the \$5,000,000 insurance may be constituted and adds language addressing blasting when the weather conditions include fog or clouds.

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The Common Council of the City of Madison do hereby ordain as follows:  
Please see "2nd Substitute" in Attachments.