

**ASHLAND COUNTY ZONING ORDINANCE REGARDING  
METALLIC MINERAL MINING AND RECLAMATION**

**Recitals:**

WHEREAS, zoning is one of the most essential functions performed by local government since it allows a municipality to protect its citizens' quality of life, and

WHEREAS, special uses enjoy acceptance as valid and successful tools of municipal planning to cope with situations where a use may create special problems or hazards if allowed to develop as a matter of right, and

WHEREAS, a special use permit is a flexibility device which allows a property owner to put property to a use the ordinance expressly permits if certain conditions are met, and

WHEREAS, metallic mineral mines pose special challenges since:

- Metallic mineral mining, unlike many other activities, may only be developed at the location an ore body exists and cannot be moved to a less problematic location, and
- Few land use activities have as much potential to substantially adversely affect public health, safety, convenience and welfare, and
- Metallic mineral mining may harm and cause serious damage to not only a neighborhood but a vast area, and
- The adverse effects of metallic mineral mining may not be limited to the years a mine is in operation but may substantially impact future generations, and

WHEREAS, rather than withdraw the County's power to act or pre-empt County zoning ordinances, §295.443(1m) Wisconsin Statutes recognizes the County's authority to require an operator to obtain an approval or permit under a zoning or land use ordinance, and

WHEREAS, considering that the line between permissible zoning and impermissible zoning is not always readily ascertainable, a court which may consider the validity of provisions of this Ordinance is urged to utilize the severance provision of this Ordinance, if it is ever necessary to do so, so that the County and its residents have the benefit of the provisions of this Ordinance which are valid,

NOW, THEREFORE,

The County Board of Supervisors for the County of Ashland does ordain as follows:

**Purpose:**

The purpose of this Ordinance is to:

Require a person or entity that desires to engage in metallic mineral mining activity in the County to first obtain a Special Use Permit from the County and subsequently act and operate in accordance with the conditions on such Permit so the County can, to the extent of the County's zoning authority in this area, promote the public health, safety, convenience and general welfare, and

Encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to encourage the protection of surface and groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of the landscape and physical features; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds.

**1.0 Special Use Permit Required.**

- a) Metallic mineral mining is permitted in Ashland County only as a special use and only after a Special Use Permit is issued by the County in accordance with this Ordinance.
- b) A Special Use Permit issued pursuant to this Ordinance will permit metallic mineral mining at the permitted location, provided the conditions set forth in such Permit are met.
- c) A Special Use Permit is a flexibility device designed to cope with situations, problems, and hazards which may result from the specific metallic mineral mining project under consideration.
- d) Conditions placed on a Special Use Permit by the County are to be crafted and tailored to address existing and anticipated conditions and circumstances pertinent to the metallic mineral mining project which is the subject of the Application. Conditions on a Special Use Permit are to be consistent with the purposes of this Ordinance.
- e) The conditions on a Special Use Permit shall not be arbitrary or unreasonable; such conditions shall have a substantial relation to public health, safety, convenience and/or general welfare.

- f) Since Wisconsin has enacted mining laws, when determining what conditions to place on a Special Use Permit issued pursuant to this Ordinance, the County Zoning Committee shall be mindful of the provisions of State Mining Law so such conditions compliment State legislation and do not exceed the County's zoning authority.
- g) In addition to a Special Use Permit issued pursuant to this Ordinance, a local agreement may be entered into which may include the matters listed in §295.443(1m) Wisconsin Statutes.
- h) Given the perplexity and uniqueness of each proposed metallic mineral mining project and the many issues and concerns such a project poses, the parties are required to enter into a local agreement which can hopefully address each side's concerns. Provisions of this Ordinance may be changed by a local agreement. Other persons may be parties to a local agreement. A local agreement shall be binding on the County only when approved by the County Board of Supervisors.
- i) This Ordinance is not intended to logically conflict with, defeat the purpose of or violate the spirit of state mining legislation. This Ordinance shall be interpreted and applied in a manner that compliments state legislation and not in a manner that logically conflicts with, defeats the purpose of or violates the spirit of State Law.

1.1 Statutory Authority. This Ordinance is adopted pursuant to Sections 59.01-59.04, 59.51, 59.54, 59.62-59.70, 92.07, 92.11, 293.41, 293.43(4) and 295.443(1m) Wisconsin Statutes.

1.2 Applicability. This Ordinance applies to the use of land situated in unincorporated areas of Ashland County involved in metallic mineral mining, as defined herein, regardless of the date when such use commenced. A Special Use Permit is a type of zoning designation, not a piece of property.

However, a Special Use Permit is not required to engage in any of the following activities in the County:

- "Exploration", as defined in §295.44(1)(h) Wisconsin Statutes,
- "Exploring", as defined in §293.01(5) Wisconsin Statutes,
- "Prospecting", as defined in §293.01(8) Wisconsin Statutes, or
- "Bulk sampling", as defined in §295.41(7) Wisconsin Statutes,

insofar as metallic mineral mining is concerned, as such activities are less likely to be hazardous to public health, safety, convenience or general welfare.

1.3 County's Concerns. The Wisconsin Department of Natural Resources is the unit of government that is responsible for attempting to minimize the adverse impact of mining and reclamation on the air, lands, water, plants, fish and wildlife in the State.

The County enacts this Ordinance to further the purposes stated above, which include, but are not limited to, the protection of persons on neighboring properties in the County, their domestic animals, structures, businesses and human endeavors and activities situated thereon, as well as the protection of their health, safety, convenience and general welfare from the adverse effects from metallic mineral mining including, but not limited to:

- a) Sounds, noise, earth movement, shock, vibrations, cracks in structures and interference with the peace, quiet and enjoyment of life on neighboring properties resulting from mining activities.
- b) Smells, odors, dust and particulates entering upon neighboring properties. The department is responsible for minimizing the adverse impact of mining on air. The County does not, by this Ordinance, regulate air, but seeks to protect neighboring properties and persons and activities thereon from the adverse effects of these things coming upon such properties, whether transported or moved to neighboring properties by gravity, vehicles, persons, wind, weather, climatic condition or other forces.
- c) Light and light pollution entering upon neighboring properties from a mine site.
- d) Impairment or reduction of neighboring property values due to such property's proximity to a mine.
- e) Damage to the property tax base due to proximity to a mine.
- f) Damage to or destruction of public roads, public highways and bridges from vehicles and equipment used in mining.
- g) Adverse effects on educational, recreational and business facilities on neighboring properties.
- h) Adverse effects on agricultural, forestry, industry and business future growth on neighboring properties from mining activity.
- i) Adverse effects on uses of neighboring land in accordance with their character and adaptability.
- j) Adverse effects on the beauty and amenities of the neighboring landscape and physical features.
- k) Adverse effects on healthy surroundings for family life on neighboring properties.
- l) Adverse impact on the ability of municipalities to efficiently and economically use public funds.

#### 1.4 Definitions.

When used herein, the following words are defined as follows:

- A. “Adjoining land” shall mean any portion of any parcel of real estate or land which is within two (2) miles of any portion of the mining site or the proposed mine site regardless of whether there is a residence or other structure on the landowner’s property.
- B. “Applicant” shall mean a person(s) that has applied for a Special Use Permit from Ashland County pursuant to this Ordinance.
- C. “Application” shall mean and refer to an Application filed or to be filed with Ashland County by which the Applicant applies for a Special Use Permit pursuant to this Ordinance.
- D. “Blasting” shall mean the practice or act of using dynamite or another substance or material to cause an explosion to assist in mining.
- E. “Committee” or “Zoning Committee” shall mean the Zoning and Land Committee of the Board of Supervisors of Ashland County, Wisconsin.
- F. “County” shall mean the County of Ashland in the State of Wisconsin.
- G. “Corp of Engineers” shall mean the U.S. Army Corp of Engineers.
- H. “Department” shall mean the State of Wisconsin Department of Natural Resources.
- I. “Landowner” means a person who holds an interest in land situated in Ashland County, Wisconsin.
- J. “Metal” shall mean any of a class of chemical elements, such as iron, copper, gold, silver, aluminum, etc., as generally characterized by ductility, malleability, luster and conductivity of heat and electricity; these elements form bases with the hydroxyl radical and can replace the hydrogen of an acid to form a salt.
- K. “Metallic mining” or “metallic mineral mining” shall mean mining for any metal or metals, including ferrous.
- L. “Mine” shall mean an excavation in the earth from which metallic ores or other materials are removed.
- M. “Mine Operator” shall refer to the person operating a metallic mineral mine.
- N. A “mine site” or “site” shall mean land from which mineral aggregates or metallic and/or nonmetallic minerals will be or are extracted by the Operator or on behalf of the Operator, including all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing or screening facilities, private roads or haulage

ways associated with a mining operation; and all contiguous lands to the mining operation under common ownership or control of the owner or Operator.

- O. "Mining" shall mean any or all of the following:
- a. The act, process, business or work of removing or extracting metallic ores or other materials from the earth.
  - b. Extraction from the earth of mineral aggregates or minerals for off-site use or sale, including drilling and blasting, as well as associated activities such as excavation, grading and dredging of such materials.
  - c. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation or blending of the mineral aggregates or metallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
  - d. Manufacturing processes aimed at producing metallic or nonmetallic products for sale or use by the operator.
  - e. Stockpiling or storage of metallic or nonmetallic products for sale or use off-site and stockpiling of waste materials.
  - f. Transport of the extracted metallic or nonmetallic materials, finished products or waste materials to or from the extraction site.
  - g. Disposal of waste materials.
  - h. Reclamation of the extraction site.

Prospecting or exploring for metallic minerals is not mining under the terms of this Ordinance.

- P. "Mining operation" or "mining activity" shall mean or refer to all or any part of the process or activities involved in mining.
- Q. "Neighboring property" or "neighboring properties" means and refers to real property or land, improved or unimproved, situated in Ashland County which is in close enough physical or geographic proximity to a metallic mineral mine or metallic mineral mining activities to be adversely affected by the same.
- R. "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.
- S. "Operator" means any person who is engaged in, who has applied for or who holds a permit to engage in metallic mineral mining. "Operator" may be synonymous with "Permittee".
- T. "Permit" shall mean a Special Use Permit issued pursuant to this Ordinance permitting metallic mining in the County.

- U. “Permittee” shall mean and refer to a person or other entity which holds a Special Use Permit issued pursuant to this Ordinance. “Permittee” may refer to “Operator”.
- V. “Person” shall mean an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency or another entity.
- W. “Restoration plan” shall mean a written plan for the restoration of an exploration site or mining site.
- X. “WDNR” shall mean the Wisconsin Department of Natural Resources.
- Y. “Special Use Permit” or “Permit” shall mean a Permit to mine metallic minerals that is duly issued by Ashland County in accordance with this Ordinance.
- Z. “Waste Material” means tailings, over burden and any other non-marketable by-products that result from mining activity or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.
- AA. “Zoning Administrator” shall mean the Zoning Administrator of Ashland County, Wisconsin.
- BB. Other Words Defined. Words which are not defined in this Ordinance shall have the meaning provided for in Wisconsin Statutes unless such a definition is inconsistent with a definition provided for herein.

#### 1.5 Application Form.

- a) This Ordinance requires the Applicant to provide the County with the documents and information set forth herein, which the County and the public need to receive to make an informed decision in regard to the Application and what conditions should be placed on any Permit which may be issued pursuant to this Ordinance.
- b) The Committee is directed and authorized to develop, approve and revise, from time to time as it deems necessary, an Application form for the Applicant to use to apply to the County for a Permit under this Ordinance as well as any other form it deems useful in implementing this Ordinance.

1.6 Physical Prohibitions. Unless a written exception is obtained from the County, no component of any metallic mineral mine may be constructed, operated or maintained within any of the following areas in the County:

- a) Within 400’ of the centerline of a public highway or public road.
- b) Within 500’ of the boundary of any village or city.

- c) Within 500' of any hospital, church, school, public park or cemetery.
- d) Within 500' of any public well or any private well which is not on the mine site.
- e) Within 500' of any residence or farm building which is not on the mine site.
- f) Within a 400' wide buffer zone around the exterior of the mine project and along the sides of a public highway or public road adjacent to or through a mine site. Within the 400' wide buffer zone, vegetation shall not be disturbed, except dead, diseased or over mature trees may be removed for the benefit of the forest and/or public safety.

1.7 Exemptions from Physical Prohibitions. The County may, in appropriate circumstances, grant an exemption, in whole or in part, from the physical prohibitions in Section 1.6. If an Application for a Permit seeks an exemption from any of the general prohibitions in Section 1.6, the Application for a Permit shall:

- a) Identify which general prohibition the Applicant seeks an exemption from.
- b) State specifically the Applicant's proposal is in regard to such individual prohibition.
- c) Each reason and/or basis for the exemption sought.
- d) What specifically the Applicant proposes to do to prevent, reduce, limit or minimize any harmful effects of the Applicant's activities if the general prohibition is revised or relaxed.
- e) Any other relevant facts or circumstances relating to the requested exemption from the prohibition.
- f) When considering a request for an exemption from the physical prohibitions in Section 1.6, the Zoning Committee shall consider what the general prohibition is intended to accomplish, the effect of the general prohibition on the Applicant and the public, the probable effect of granting the exemption and whether there are other reasonable means or measures that the Applicant can undertake to accomplish the same or approximately the same goal. The Zoning Committee is authorized to deny or grant an exemption to a general prohibition. Any such grant may be conditioned upon the Applicant undertaking and complying with specific measures.

1.8 Limitations for Public Welfare and Benefit.

- a) The level of noise from mining activities on neighboring property not owned, leased or otherwise controlled by the Operator shall never exceed 100 decibels.

- b) The level of noise from mining activities on neighboring property not owned, leased or otherwise controlled by the Operator between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed 70 decibels.
- c) The Operator shall take measures reasonably necessary to prevent smells, odors and particulates from the mine site from entering upon the neighboring property of others not owned by, leased by or controlled by the Operator.
- d) The Operator shall install and maintain light shields on fixed and unfixed lighting on the mine site and on mine vehicles and equipment used during hours of darkness to prevent light from entering onto the properties of others not owned by, leased by or controlled by the Operator.
- e) The Operator shall undertake measures reasonably necessary to prevent or minimize:
  - i. Impairment of the value of neighboring property which is not owned, leased or controlled by the Operator.
  - ii. Damage to the property tax base on neighboring property resulting from metallic mineral mining activities.
- f) The Operator shall undertake measures reasonably necessary to prevent/reduce/limit/minimize adverse effects from mining activities that are identified by the Zoning Committee or by persons at the public hearing which may be addressed in a condition on the Special Use Permit.

1.9 Metallic mining activity in the County covered by this Ordinance shall be conducted in accordance with the standards of the County, as reflected by this Ordinance and other County ordinances, to the extent such Ordinances are not pre-empted by or inconsistent with State Law.

1.10 Permit Requirements.

Financial Assurances – The Applicant will provide financial assurances, adequate in kinds and amounts to the County's satisfaction, of the Applicant's ability to undertake and complete the requirements of this Ordinance and the conditions on a Special Use Permit issued pursuant to this Ordinance. Until the scope and details of a proposed mining project are ascertained, the Committee is not in a position to determine what financial assurance is appropriate under the circumstances. Any such determination by the Committee will be based upon relevant criteria. Such financial assurances may be a condition on a Special Use Permit.

1.11 Special Use Permit Required. Except for the activities identified in Section 1.2 of this Ordinance, prior to engaging in any metallic mineral mining activity in any unincorporated area of the County, a person shall obtain from the County the Special Use Permit provided for in this Ordinance.

An Application form for a Special Use Permit to engage in metallic mining in the County may be obtained from the office of the Zoning Administrator. A properly completed Application for Special Use Permit to engage in metallic mining activities in Ashland County, along with the required fee, shall be filed in the office of the Zoning Administrator along with the materials and information provided for herein. The Applicant/Permittee shall be responsible for any acts or omissions of the operator if they are not the same person.

The Application for Special Use Permit shall be signed by the Applicant, notarized and include the following:

- a) The Applicant's name, address, telephone number and a fax number or e-mail address.
- b) If the Applicant is not an individual person but is a corporation, limited liability company or other entity, the type of entity shall be stated, with the state or location of incorporation or organization along with the title of the person signing the Application on behalf of the Applicant.
- c) If the Applicant is not an individual but is a corporation, limited liability company or other entity:
  - i. The name and address of each director of the Applicant, and
  - ii. The name and address and position held by each officer or managing member of the Applicant.
  - iii. The name and address of the operator, if the Applicant is not the operator of the proposed mine.
- d) As to each parcel of real estate which is to be a part of the mining project:
  - i. The legal description of the parcel.
  - ii. The name, address and telephone number of each owner of an interest in the parcel along with a statement of the interest in that parcel held by that owner.
  - iii. The tax parcel identification number of the parcel.
  - iv. A statement as to what structures, improvements and roadways will be situated on such parcel.
  - v. How such parcel will be used.
  - vi. If the parcel is subject to a lease, the parties to such lease should be identified and a summary of its terms should be stated.
- e) Approximate dates that mine construction is expected to begin and when mining will end.
- f) The Applicant's best estimate and explanation of the life expectancy of the mine project.
- g) A list of all minerals and materials to be extracted from the mine. This should include but not be limited to amounts of non-metallic and metallic materials to be extracted.
- h) A list of the Applicant's experience in mine projects, a list of current mine projects and

the status of compliance at each project site.

- i) A statement that all documents and information which is set forth in or accompanies the Application is true, correct, accurate and complete to the best of the Applicant's knowledge.
- j) A statement that the Applicant, while engaged in metallic mining activities and in reclamation activities, agrees to abide by all of the provisions and requirements of this Ordinance and other applicable County ordinances.
- l) The Application will contain a statement from the Applicant which represents to the County that there will be no disposal of tailings, over burden or other waste materials in the County from mining activity outside the County.
- m) The Application will contain a statement from the Applicant to the County indicating that Applicant's representations and statements made in the Application shall continue to exist and survive after a Permit is issued to the Applicant by the County.
- n) A detailed statement of each condition requirement which the State has placed on any mining Permit issued to the Applicant for the project.

1.12 Project Description. The Application for Special Use Permit shall include, as a part of the project description, a written narrative description of the project in sufficient detail to allow the County and the public to understand and assess the size and scope of the project and probable and possible impacts of the proposed mine on public health, safety, convenience and general well being within the County. This is intended to provide the information necessary to determine what conditions should be placed on the Special Use Permit. The project description shall include all significant aspects of the proposed mining operation including, but not limited to, the following:

- a) A summary of planned facilities for excavating, extracting, mining, milling, ore-processing, transportation, tailings disposal, other waste disposal, sedimentation, settling, retention and detention ponds, office buildings and other structures, roads, railroad lines and utilities and the proposed location of each.
- b) Maps showing the maximum lateral extent and minimum and maximum depth of underground or open pit workings and the location of primary shafts, tunnels and other primary underground workings. Any map submitted to satisfy this requirement shall be updated on an annual basis.
- c) Hours of operation.
- d) An estimate of the maximum number of people directly employed at the mine site during each phase and an estimated breakdown by job classification of all such employees where such employees will park their vehicles, eat and what facilities are available for their use.

- e) Types of mining and processing equipment to be used.
- f) Chemical reagents, if any, to be used in mine operation and ore processing and how they will be handled.
- g) Plans for visual screening of mining activities around the perimeter of the mine site and on the sides of any public highway.
- h) Plans for lighting on site and measures to limit light pollution.
- i) Radiation levels anticipated in waste rock.
- j) Methods for preventing access to all underground mine workings after mine closure.

### 1.13 Compliance With State Standards.

To the extent the following apply, the completed Application for Special Use Permit for metallic mineral mining in the County shall demonstrate that the proposed metallic mineral mine will be located, designed, constructed and operated in such a manner that it does not:

- A. Result in a violation of a provision of any of the following chapters of Wisconsin Statutes:
  - 1) Chapter 30 Navigable Waters,
  - 2) Chapter 31 Dams and Bridges,
  - 3) Chapter 280 Pure Drinking Water,
  - 4) Chapter 281 Water and Sewage,
  - 5) Chapter 283 Pollution Discharge Elimination.
  
- B. Result in a violation of a provision in any of the following chapters of Wisconsin Administrative Code:
  - 1) NR 100 Environmental Protection,
  - 2) NR 101 Reports and Fees for Wastewater Discharges,
  - 3) NR 102 Water Quality for Wisconsin Surface Waters,
  - 4) NR 103 Water Quality Standards for Wetlands,
  - 5) NR 104 Uses and Designated Standards and Secondary Values,
  - 6) NR 105 Surface Water Quality Criteria for Toxic Substances,
  - 7) NR 142 Wisconsin Water Management and Construction,
  - 8) NR 151 Runoff Management,
  - 9) NR 820 Groundwater Quantity Protection,
  - 10) NR 207 Water Quality Antidegradation,
  - 11) NR 270 Ore Mining and Dressing,
  - 12) NR 333 Dam Design and Construction,
  - 13) NR 341 Grading on the Bank of Navigable Waters,
  - 14) NR 343 Ponds and Artificial Waterways.

C. Result in a violation of any provision in Chapter 285 Wisconsin Statutes entitled “Air Pollution”.

D. Result in a violation of a provision in any of the following chapters of Wisconsin Administrative Code:

- 1) NR 415 Control of Particulate Emissions,
- 2) NR 407 Operation Permits,
- 3) NR 400 Air Pollution Control Definitions,
- 4) NR 429 Malodorous Emissions,
- 5) NR 405 Prevention of Significant Deterioration,
- 6) NR 433 Protection of Visibility by Application of Best Available Retrofit Technology,
- 7) NR 431 Control of Visible Emissions,
- 8) NR 440 Standards of Performance for New Stationary Sources,
- 9) NR 438 Air Contaminant Emission Inventory Reporting Requirements,
- 10) NR 445 Control of Hazardous Pollutants,
- 11) NR 460 Emission Standards for Hazardous Air Pollutants for Source Categories-General Provisions,
- 12) NR 463 National Emission Standards for Hazardous Air Pollutants for Metals Treating and Processing,
- 13) NR 439 Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements.

E. Result in a violation of a provision in any of the following chapters of Wisconsin Statutes:

- 1) Chapter 283 entitled “Pollution Discharge Elimination”,
- 2) Chapter 291 entitled “Hazardous Waste Management”.

F. Result in a violation of a provision of any of the following chapters of Wisconsin Administrative Code:

- 1) NR 660 Hazardous Waste Management,
- 2) NR 662 Hazardous Waste Generation Standards,
- 3) NR 663 Hazardous Waste Transporter Standards.

G. Result in a violation of a provision in any of the following chapters of Wisconsin Administrative Code:

- 1) Chapter SPS 307 entitled “Blasting Notification Schedule and Explosives”.
- 2) Chapter Trans 326 entitled “Motor Carrier Safety Requirements for Transportation of Hazardous Materials”.

H. Result in a violation of a provision in any of the following chapters of Wisconsin

Statutes:

- 1) Chapter 293 entitled “Nonferrous Metallic Mining”,
  - 2) Chapter 295, Subchapter III entitled “Ferrous Metallic Mining”.
- I. Result in a violation of a provision in any of the following chapters of Wisconsin Administrative Code:
- 1) NR 132 Metallic Mineral Mining,
  - 2) NR 182 Metallic Mining Waste,
  - 3) NR 270 Ore Mining and Dressing.
- J. Result in a violation of a provision in Chapter NR 123 of the Wisconsin Administrative Code entitled “Well Compensation Program”.

1.14 Written Plans. The Application for Special Use Permit shall be accompanied by the following written plans which are a part of the Application:

- a) Erosion Plan. An erosion plan which describes in detail what the Operator will do to prevent material from the mine site from eroding, migrating or moving onto neighboring properties.
- b) Plan to Control Particles. A plan which describes in detail what the Operator will do to prevent/limit/minimize the volume of particles entering onto neighboring properties from the mine site and from vehicles and equipment engaged in the mine operation.
- c) Noise Plan. A noise plan which describes in detail what the Operator will do to keep the noise from mining operations below the decibel limits in this Ordinance.
- d) Blasting. A blasting plan which describes under what circumstances blasting will be used, what type and volume of explosives which will be used, with what frequency blasting will occur, between what hours blasting will occur and what steps the Operator will undertake to minimize the effects of the noise and vibration from blasting on neighboring properties. How many decibels of noise the blasting activities will have on adjoining property shall be set forth in the blasting plan.
- e) Tailings and Waste Products. A plan which sets forth what projected volume of tailings or other waste products or materials will be generated each year, an indication of on what parcels of land such tailings and waste materials will be situated, how the tailings and waste products will be moved and what steps the Operator will undertake to minimize the amount of particulate matter entering on neighboring properties. This plan shall address specifically what Operator will do if Operator’s mining activities encounter radioactive materials, radon or other hazardous substances or materials.
- f) Utilities. A utilities plan which sets forth the public utility and public service requirements for the mining operation and describes the manner in which all utility

services will be provided at the site and the potential system upgrades which the mining operation may require.

- g) **Roadway and Traffic Analysis.** An analysis of all reasonably foreseeable roadway needs arising in the County from operation of the proposed mine and reasonably foreseeable secondary impacts of the mining operation which may result in the demand for additional roadway improvements. With respect to roads in the County, the analysis shall identify and describe the anticipated needs for roadway modifications resulting from the likely mine-related traffic impacts, including both primary and secondary impacts and shall fully describe the existing reasonably foreseeable mine-related changes to traffic patterns, traffic volume, the class of roadways associated with those patterns, and any load-related needs and restrictions. Such analysis shall set forth in detail exactly what Applicant will do if Applicant causes damage to or destroys public roads, highways and bridges, as well as private roads and bridges.
- h) **Fencing Plan.** A fencing plan with a diagram depicting and describing where perimeter fencing will be installed and maintained to prevent injury to persons and animals from entry onto the mine site.
- i) **Community Impact Summary.** A community impact summary report which summarizes the anticipated positive and negative impacts on the health, safety, convenience and welfare and the economic well being of residents and others in the County, based on the potential environmental and socio-economic impacts of the proposed mining operation. The report shall include a life-of-mine analysis of mining impacts upon social and environmental baseline parameters through completion of reclamation, and shall address such phenomenon as the boom/bust cycle.

1.15 Confidentiality. If any materials or information required to be provided by this Ordinance are confidential under State Law, such confidential materials and/or information, when provided to the County, shall be so labeled and the County shall maintain such confidentiality in accordance with State Law provided the materials and/or information are, in fact, confidential under State Law.

1.16 Consent to Entry. The Application for Special Use Permit shall contain a written statement granting the County, its officers, employees, agents, consultants, contractors and representatives the Applicant's consent and permission to enter, from time to time, upon the real property and physical structures and improvements included in the mining project for the purpose of inspecting, measuring, testing, gathering, sampling, photographing, assessing, monitoring and determining whether:

- a) The representations in the Application for Special Use Permit are accurate and are being complied with.
- b) The mine and its improvements are being constructed, maintained and operated in accordance with the Application, this Ordinance and any Permit issued pursuant to this Ordinance.

- c) What impact the mining operations are having on neighboring properties and their occupants.
- d) Whether the mine property is being reclaimed or restored in accordance with the Application, this Ordinance or any Permit issued pursuant to it.

1.17 Application. Application Fee. The Application for Special Use Permit shall be accompanied by a one-time non-refundable fee of One Hundred Thousand Dollars (\$100,000.00) for the County Special Use Permit.

The amount of the application fee of One Hundred Thousand Dollars (\$100,000.00) provided for in this Section, which was established in calendar year 2013, shall be adjusted annually to reflect the percentage change in the Consumer Price Index for all urban consumers (CPI-U) for the U.S. Average Price Data for all items, as published by the United States Department of Labor, Bureau of Labor Statistics, or the equivalent if such index ceases to be published.

1.18 Administrative Fee Deposit. To properly evaluate and process an Application for a Permit under this Ordinance and to determine what conditions should be placed on a Special Use Permit and/or administer, monitor, inspect and/or enforce activities under a Permit issued pursuant to this Ordinance, it may be reasonably necessary for the County to hire, retain or consult with persons and/or entities having expert skills, knowledge, education, training, expertise and/or experience not possessed by the County's officers and employees to assist the County in regard to such activities. In addition, the County may need to employ, hire or retain persons or entities from time to time or on a more permanent basis, depending on the facts and circumstances, to carry out the County's duties, obligations and responsibilities under the terms of this Ordinance or in connection with a Permit issued pursuant to this Ordinance. This Section 1.18 is not intended to generate excess revenues for the County's use for unrelated purposes but the County, and hence its taxpayers, should not be required to bear the financial burden and obligations associated with the costs and expenses the County incurs in connection with its aforesaid activities, which are referred to as "permit activities". To that end, this Section of this Ordinance places the responsibility for reimbursement of the costs and expenses of Permit activities on the Applicant/Operator.

The Applicant/Operator shall reimburse the County for the costs and expenses the County incurs which are related to, associated with or arise from Permit activities pertaining to an Application for Special Use Permit to engage in metallic mineral mining in the County including, but not limited to: the fees, costs and expenses charged by consultants, investigators, other experts, attorneys, court reporters and publication expenses. The compensation and employee benefit expense of employees, officers and supervisors of the County and the costs and expenses associated with the operation of their offices and vehicles are intended to be covered by the application fee.

However, in the event the compensation and employee benefit expenses of the employees, officers and supervisors of the County and the costs and expenses associated with the

operation of their offices and vehicles reaches the point where the application fee which has been paid is inadequate, the County may obtain reimbursement for such excess expenses from the administrative fee account provided for herein.

At the time an Application for Special Use Permit for metallic mineral mining in the County is filed with the Zoning Administrator, the Applicant shall initially deposit One Hundred Thousand Dollars (\$100,000.00) with the County to be deposited in an administrative fee account for that project so such funds are available to be withdrawn by the County and used to reimburse the County for the costs and expenses the County incurs in connection with Permit activities.

After the initial deposit of One Hundred Thousand Dollars (\$100,000.00), any time the remaining balance in the administrative fee account for the project falls below Fifty Thousand Dollars (\$50,000.00), the County will notify the Operator and the Operator will make an additional deposit into such administrative fee account within fifteen (15) days of receipt of such notice so that the remaining balance in the administrative fee account never remains below Fifty Thousand Dollars (\$50,000.00) for more than fifteen (15) days.

The Operator is entitled to receive any interest which is earned on funds deposited in the administrative fee account. The County will issue a statement at least annually to the Operator setting forth the deposits, disbursements and balance in the administrative fee account for that Operator.

The amount of the One Hundred Thousand Dollar (\$100,000.00) initial payment and the amount of the Fifty Thousand Dollar (\$50,000.00) minimum balance provided for in this Section, which was established in calendar year 2013, shall be adjusted annually to reflect the percentage change in the Consumer Price Index for all urban consumers (CPI-U) for the U.S. Average Price Data for all items, as published by the United States Department of Labor, Bureau of Labor Statistics, or the equivalent if such index ceases to be published.

1.19 Permit Application Review Process. When the Zoning Administrator receives a completed Application for a metallic mineral mining permit in the County, the County Zoning Administrator will:

- a) Within ten (10) days send a written notice of the receipt of such Application to:
  1. The Chair of any town in which all or any part of the proposed mining project is to be situated, and
  2. The Secretary of the Wisconsin Department of Natural Resources, and
  3. The Chair of the Bad River Band of the Lake Superior Tribe of Chippewa Indians, if it may be affected by the proposed mining project, and
  4. The Chair of the County Zoning Committee, and
- b) Within fifteen (15) days begin publishing a written notice of the receipt of such Application as a Class 2 notice under Chapter 985 Wisconsin Statutes, thereby notifying the public, and

- c) Schedule a meeting of the County Zoning Committee to be held within thirty (30) days of the receipt of the Application to review the procedures that will be followed in regard to reviewing and processing the Application.

The Zoning Administrator, with the assistance of those he/she determines are necessary to assist, is responsible for the preliminary review of any Application for a Special Use Permit for metallic mineral mining.

If the Zoning Administrator, after review of an Application for a Special Use Permit for metallic mineral mining, determines the Application is incomplete, insufficient, unclear or deficient in any respect, the Zoning Administrator will notify the Applicant accordingly so the Applicant can cure such problem and again submit the Application to the Zoning Administrator for processing.

When the Zoning Administrator, after review, concludes that the Application is complete, the Zoning Administrator will refer the completed Application to the Committee.

The Committee, with the assistance of the Zoning Administrator and others deemed necessary, will tentatively recommend whether such Application should be approved or denied and, if approved, what conditions should be placed on a Conditional Use Permit to be issued to such Applicant.

Thereafter, a public hearing shall be held by the Committee. A Class 2 Legal Notice under Chapter 985 Wisconsin Statutes will be published by the Zoning Administrator announcing the date, time and location of a public hearing regarding the Application for a metallic mineral mining permit. Notice shall be mailed to all owners of real property within 1000' of any part of the proposed metallic mineral mine.

Such public notice will include a general statement as to what the Committee is proposing to recommend in regard to approving or denying the Application for a Special Use Permit and, if the Committee proposes to approve such Application for a Special Use Permit, a summary of what conditions the Committee proposes be placed on the Special Use Permit to be issued.

At the public hearing, the public is afforded an opportunity to provide input in regard to whether the Application should be approved or denied and, if approved, what conditions should be placed on the Special Use Permit in order to comply with the terms of this Ordinance.

After the conclusion of such public hearing, on the same date or on another date, the Committee will meet and consider what occurred at the public hearing and determine whether the Special Use Permit Application should be approved or denied and, if approved, what conditions should be placed on such Special Use Permit.

Given the significant impact a metallic mineral mine in Ashland County is likely to have, at least four of the five members of the County Zoning Committee shall be in attendance at any meeting where an Application for a Special Use Permit under this Ordinance is approved or

denied.

When the Committee acts on an Application, it shall consider the following when it makes its decision: all zoning ordinances and applicable laws; consistency with town comprehensive plan; consideration of Town Board recommendation; consistency with County comprehensive and land use plan; relevant public input; consideration of the Zoning Administrator's report and recommendations and file contents; maintenance of safe and healthful conditions; prevention or minimization of nuisances; general welfare of the community; economic impacts of the proposal; location of site with respect to existing or future access roads; demand for public services, potential impact of proposed mine on other properties and activities and State mining law.

#### 1.20 Permit Approval.

- a) A Special Use Permit for metallic mining will be issued by the County Zoning Administrator when approved by the Zoning Committee. Such Special Use Permit will contain such conditions as the Zoning Committee determines are reasonably necessary for such activities to comply with the purposes of this Ordinance.
- b) A Permittee issued a Special Use Permit pursuant to this Ordinance holds such Permit on an ongoing basis provided the Permittee:
  1. Remains in compliance with this Ordinance, and
  2. Remains in compliance with each of the conditions, terms and provisions of the Special Use Permit issued pursuant to this Ordinance.
- c) Each Special Use Permit for metallic mineral mining in the County shall contain the legal description of the property covered by such Permit.

#### 1.21 Permit Denial.

1. Denial Allowed. Even if the Zoning Committee approves the Application for a Permit, a Permit may be denied if the Applicant is not in good standing with respect to its payment to the County of the application fee or any administrative fees required under this Ordinance or if any of the following situations occurs:
  - a) Any documents or instance in which the Applicant provides false or misleading information in any material respect which obstructs, impairs or limits the County's ability to properly consider all relevant information.
  - b) Any instance in which the Applicant, after opportunity to make corrections or revisions or to supplement the record, fails to provide to the County with an adequate permit application, fee deposit, evidence of financial assurance or any other submittal required by this chapter.

- c) Any other facts or circumstances which lead the County to conclude that the proposed Permit would be contrary to public health, safety, convenience or welfare. Any such determination requires specific factual findings as to a particular factor and a particular harm.
2. Denial Will Be in Writing. Any denial under this chapter will be in writing and will contain reasons for denial.
3. Re-Submittal. If the County denies a Permit after the submission of an Application pursuant to this Ordinance, the Applicant may re-submit its Application in accordance with this Ordinance. Re-submittal shall constitute a new Application in conformance with all provisions of this chapter, provided that any differences between the original Application and the new Application shall be summarized by the Applicant in a document entitled "Explanation of Reasons for Re-Submittal."

1.22 Special Use Permit is Conditional. A Permit issued pursuant to this Ordinance is conditioned upon:

- a) The Operator's continued compliance with the conditions, terms and provisions of the Permit, this Ordinance and any other County ordinances. The terms, provisions and conditions of this Ordinance are incorporated into any Permit issued pursuant to this Ordinance, and
- b) The Operator continuing to hold a valid license or permit for such mining activity issued to the Operator for that site by the State of Wisconsin.

Except for activities identified in Section 1.2 of this Ordinance, the Operator shall not engage in any mining activities in any unincorporated area of the County unless the Operator holds a valid mining license or permit issued for that site by the State.

1.23 Citation Authority. The Zoning Administrator, Assistant Zoning Administrator, County Sheriff and Sheriff's Deputies are authorized and empowered to, on behalf of the County, issue citations and/or complaints to enforce the terms and provisions of this Ordinance. The procedures applicable to other ordinance violations in Ashland County apply to citations and complaints issued to enforce this Ordinance.

1.24 Investigative Notice. If the Zoning Administrator has reason to believe that a term or provision of this Ordinance or a term, provision or condition of a Permit issued pursuant to this Ordinance has been violated, may have been violated, may be being violated now or that an imminent threat of a violation is present, the Zoning Administrator, at the Zoning Administrator's option, may provide the operator with a written investigative notice to that effect and request the Operator to provide the Zoning Administrator, within thirty (30) days, with a written response to such notice together with pertinent documents and information which the Operator has which

supports or corroborates the Operator's response.

If an Operator receives an investigative notice such as is set forth above, the Operator may provide the Zoning Administrator with a written response to such written notice within thirty (30) days from the Operator's receipt of such investigative notice together with such information and documents which the Operator has which supports or corroborates the Operator's response.

If the Zoning Administrator provides the Operator with a written investigative notice and the Operator provides the Zoning Administrator with a timely written response to such investigative notice which complies with this section:

- a) If the Zoning Administrator is satisfied with the response from the Operator and concludes no violation of this Ordinance or of a term, provision or condition of a Permit issued pursuant to this Ordinance has occurred, is occurring or is imminent, that no further action is necessary or appropriate, for any reason, or that the issue is otherwise resolved, the matter may go no further.
- b) If the Zoning Administrator believes that a violation of this Ordinance or a violation of a term, provision or condition of a Permit issued pursuant to this Ordinance has occurred, is occurring or is imminent, the Zoning Administrator may schedule a meeting with the Operator and attempt to resolve the matter and if an agreement is reached the matter can be resolved as agreed.
- c) If the Zoning Administrator is not satisfied with the Operator's response or if the matter is not being addressed or resolved to the Zoning Administrator's satisfaction, the Zoning Administrator may issue a citation or citations or may direct a citation or citations to be issued or may commence proceedings to change the conditions on the Permit or to suspend or revoke the Permit.

Once a Special Use Permit is issued pursuant to this Ordinance, a goal of the County is to have the Operator's activities in the County continue to be conducted in a manner that complies with each of the conditions, terms and provisions of the Special Use Permit and this Ordinance.

This investigative notice provision is included in this Ordinance to provide the Zoning Administrator with flexibility and an optional means to address a potential, possible or actual violation of a term or provision of this Ordinance or a term or provision of a Permit issued pursuant to this Ordinance without the necessity of issuing a citation to the Operator or commencing a proceeding to change conditions, add conditions, suspend or revoke the Special Use Permit. This provision may be used to initiate dialog and avoid issues or problems becoming more serious. The Zoning Administrator is not required to utilize this investigative notice provision. Whether or not the Zoning Administrator utilizes this investigative notice provision, the Zoning Administrator remains free to pursue any other remedy provided for in this Ordinance at any time.

1.25 Proceedings to Suspend, Add Conditions To, Amend Conditions On or Revoke Permit. If

the Zoning Administrator has reason to believe that an Operator has violated or is violating a condition, term or provision of a Permit or a term or provision of this Ordinance or another County Ordinance, the Zoning Administrator may commence a proceeding pursuant to this Section 1.25, seeking to:

- a. Suspend the Permit for a stated period of time or until certain events occur, or
- b. Add conditions to the Permit, or
- c. Amend conditions on the Permit, or
- d. Obtain a combination of two or more of the aforesaid remedies, or
- e. Revoke the Permit.

If the Zoning Administrator has reason to believe that a term or provision of a Permit issued pursuant to this Ordinance has been violated or is being violated or that a term or provision of this Ordinance or another County ordinance has been violated or is being violated, the Zoning Administrator is authorized to sign and file an affidavit which commences a proceeding under this Section 1.25.

A circumstance such as enumerated in Section 1.21.1 of this Ordinance may also result in the Zoning Administrator taking action under Section 1.24 or Section 1.25 of this Ordinance.

If the Zoning Administrator files an affidavit which sets forth one of the alternatives which is provided for in this Section 1.25 above, the Zoning Administrator may submit a proposed order to show cause form to the Chair of the Zoning Committee to complete and sign to schedule an order to show cause hearing before the Committee on the matters set forth in such affidavit.

The initial appearance on such order to show cause shall be held at the County Courthouse or at such other convenient public location in the County as determined by the Chair of the County Zoning Committee.

The Chair of the County Zoning Committee will sign the order to show cause setting forth the time and date the Operator is to appear before the County Zoning Committee for an initial appearance.

The original copy of the affidavit and the original copy of order to show cause will be filed at the location in the Ashland County Courthouse or elsewhere where the Committee customarily files its records and minutes.

The Operator shall be served with a copy of the order to show cause and supporting affidavit at least twenty (20) days prior to the Operator's initial appearance before the Committee. Service on the Operator may be in person or by certified or registered mail, return receipt requested.

At the initial appearance before the County Zoning Committee on such order to show cause, the Operator shall be informed of the Zoning Administrator's allegations and the relief being sought by the County Zoning Administrator. If the Operator fails to appear, the matter may proceed as a default wherein the Operator does not contest or participate in the proceeding or the Committee's decision. The Operator may admit or deny whether the Zoning Administrator is entitled to the relief sought. If the Operator appears but does not deny the relief sought by the Zoning Administrator, the Committee may proceed to determine what order is appropriate under the circumstances.

If the Operator agrees with the relief being sought by the Zoning Administrator, the Zoning Committee may order the same without the necessity of an evidentiary hearing.

If the Operator denies the Zoning Administrator's allegations and/or denies that the relief sought by the Zoning Administrator should be ordered, the County Zoning Committee Chair will schedule an evidentiary hearing before the County Zoning Committee on such matter. Such hearing is to be held within sixty (60) days unless both the Zoning Administrator and the Operator agree to a later date which is acceptable to the County Zoning Committee Chair.

The Zoning Administrator's affidavit may be amended provided the Operator is notified of such amendment at least ten (10) days before the hearing.

At the evidentiary hearing on the order to show cause, each side may make an opening statement at the beginning of the proceeding, with the Zoning Administrator going first. The Zoning Administrator may present sworn testimony and other evidence in support of the Zoning Administrator's position. The Operator may present sworn testimony and other evidence in support of the Operator's position. Witnesses testifying shall be under oath and be subject to being cross-examined by the opposing side. The Zoning Administrator and the Operator may be represented by legal counsel.

The evidentiary hearing may be rescheduled to a different time and place in the discretion of the Zoning Committee Chair. If a member of the Committee has a conflict of interest, such member may voluntarily step down from being involved in the hearing or may be asked to step down by a majority vote of the Committee. If a member is sick or absent or a vacancy exists for any reason, the Zoning Committee Chair may appoint another County Board member to fill the vacancy on the Zoning Committee for the purpose of the hearing. If the Chair of the Zoning Committee is not available, the Vice-Chair of the Zoning Committee may act in place of the Chair and if neither the Chair nor the Vice-Chair of the Zoning Committee is available, another member of the County Zoning Committee may act in his/her place and stead. The proceedings of the evidentiary hearing on an order to show cause pursuant to this section are to be recorded by tape recorder or such other means as the Zoning Committee Chair determines is appropriate so such record is available to be reviewed.

Documents and other exhibits which are admitted at the hearing are to be marked and maintained as a part of the record.

Except as specifically set forth herein, the procedures provided for the Board of Adjustment proceedings in §59.694 Wisconsin Statutes shall apply to an evidentiary hearing on an order to show cause before the County Zoning Committee.

At the close of evidence, both sides have an opportunity to make a closing argument, with the Zoning Administrator going first and being permitted to rebut after the Operator's argument. At the evidentiary hearing, the burden is on the Zoning Administrator to satisfy a majority of the members of the Zoning Committee by a preponderance of the evidence.

After all evidence has been presented and closing arguments have been made, the Zoning Committee may meet on the same date the hearing is concluded or at such other time and date as is publically announced to deliberate and make its decision. The Zoning Committee will deliberate and make its decision in open session.

The County Zoning Committee will make its decision within thirty (30) days after the order to show cause hearing is concluded unless good cause exists for the Zoning Committee to delay its decision, in which event, such time period may be extended by the Zoning Committee Chair. The Zoning Committee will reduce its decision to writing within thirty (30) days after it makes its decision.

If the Zoning Committee determines that no term or provision of the Ordinance has been violated and no term or provision of a permit issued pursuant to this Ordinance has been violated, the Zoning Committee will dismiss the order to show cause proceeding.

If the Zoning Committee determines that:

- a) A term or provision of a permit issued pursuant to this Ordinance has been violated or is being violated, or
- b) An Operator is in violation or has violated a term or provision of this Ordinance or a Permit issued pursuant to this Ordinance,

the Committee shall then determine what relief is appropriate under the circumstances and may enter an order accordingly.

In the event a violation of this Ordinance or a violation of a condition on a Permit issued pursuant to this Ordinance has been committed or is occurring, the Zoning Committee may:

1. Add an additional condition or conditions to the Permit and/or amend conditions on the Permit, and/or
2. Suspend the Permit until certain stated requirements are complied with or certain stated acts are accomplished, and/or
3. Suspend the Permit for a certain stated period of time, or

4. Revoke the Permit, or
5. Enter such other order as may be just, equitable and proper.

The Zoning Committee's written decision will be provided to the Operator by personal delivery or by certified or registered mail, return receipt requested unless another method of delivery is agreed upon between the parties. Upon delivery or mailing, the person who acts as clerk or secretary for the Zoning Committee shall prepare an affidavit specifying the date when the notice of decision was delivered or mailed to the Operator.

Any person aggrieved by a decision by the Zoning Committee may, within sixty (60) days after the filing of the Zoning Committee's decision, appeal to the Ashland County Board of Adjustment, as per §59.694(4) Wisconsin Statutes.

1.26 In the event a mine which was once operating ceases operation for more than six (6) successive months, the County shall have the right to amend the terms, provisions and conditions of any Special Use Permit issued under this Ordinance.

1.27 Interpretation. The provisions of this Ordinance shall be liberally construed in favor of the County. When two or more alternative interpretations or requirements are possible, the more restrictive requirement or interpretation shall apply.

1.28 Severability. The provisions of this Ordinance are severable. If any provision of this Ordinance is invalid or if the Application of a provision of this Ordinance to any person or circumstance is invalid, such invalidity shall not affect the other provisions or applications which can be given effect without the invalid provision or application.

1.29 Violations. A person who violates this Ordinance is subject to a forfeiture of up to \$2,500.00 per violation plus court costs. Ashland County is entitled to be reimbursed for its actual reasonable attorney fees, costs and disbursements associated with its enforcement of this Ordinance. Each day a violation occurs is a separate offense. Upon failure to pay the forfeiture, costs and fees assessed, the violator may be imprisoned for up to ninety (90) days.

1.30 Injunctive Relief. Injunctive relief is available to the County to enforce this Ordinance. The County is authorized to seek an injunction enjoining the violation of this Ordinance without the County being required to show irreparable harm or injury.

1.31 Effective Date. This Ordinance shall be effective on the first date following its publication.

Dated this \_\_\_\_\_ day of June, 2013.

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