

Section 10.0 MINING:

Section 10.01. Findings, Purpose and Authority

- (1) Findings. Mining constitutes a permissible activity in the State's economy and has the potential to both beneficially or adversely impact Town residents, environments and economies. Mining may provide employment opportunities, needed industrial materials and significant economic benefits to local communities. Mining operations, however, have the potential to create nuisance conditions, negatively impact property values and present health and safety impacts to Town residents if not properly designed and operated. While many aspects of mining operations are subject to state or federal regulation, some are not.
- (2) Purpose. The purpose of this Ordinance is to establish local minimum standards for Mining Operations conducted within the Town, and a process by which to systematically consider mineral licenses in a manner that promotes the health, safety, welfare, and convenience of the Town and its residents. The general intent of this Ordinance is to minimize or prevent any adverse on- or off-site impacts flowing from and as a result of mining operations. The objectives of this Ordinance are to set forth rules and procedures to govern mining within the Town, establish procedures for the administration and enforcement of this Ordinance, and provide penalties for its violation.
- (3) Authority. This Ordinance is adopted by the powers granted to the Town of Merrimac by the Town's adoption of village powers under Wis. Stat. §§ 60.10, 60.22(3) and 61.34, its authority under § 66.0415, and other authority granted to it under the statutes.

Section 10.02. Definitions

- (1) Any term not expressly defined in this Ordinance shall have the meaning set forth in Wis. Stat. Ch. 293 and if not defined therein then as defined in Wisconsin Administrative Code Ch. NR 132, and if not defined therein then as defined in Wisconsin Administrative Code Ch. Chapter 182.
- (2) "Buffer" means an undisturbed vegetated area measured from the property line of the Mining Site into the Mining Site, in which no Mining Operations, structures or roads can occur or be constructed except for the construction and maintenance of a vegetated berm.
- (3) "Dwelling" means a structure or part of a structure that is used or intended to be used and occupied for human habitation as a home or residence by one or more persons.
- (4) "Mining" or "Mining Operation" means all or part of the process involved in the mining of nonferrous minerals, other than for exploration, bulk sampling, or prospecting, including, but not limited to, commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden and the production of refuse.
- (5) "Mining License" means a license issued by the Town which is required of all Mining Operations as a condition precedent to commencing Mining at a Mining Site.
- (6) "Mining Site" means the surface area disturbed by a mining operation, including, but not limited to, the surface area from which the nonferrous minerals or refuse or both have been removed, the surface area covered by the refuse, all lands disturbed by the construction or improvement of haulageways, and any surface areas in which processing facilities, structures, equipment, materials and any other things used in the Mining Operation are situated, operated,

conducted or otherwise utilized.

- (7) “Person” means any person, individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.
- (8) “Operator” means any person who is engaged in, or who has applied for and been granted a Mining License to engage in Mining, whether individually, jointly or through subsidiaries, agents, employees or contractors.
- (9) “Ordinance” means this mining ordinance.
- (10) “Retained expert” means professional consultants, including, but not limited to, engineers, attorneys, planners, environmental specialists, and other consultants with skills relevant to reviewing, processing and acting upon applications for an Mining License or to issues associated with the inspection, monitoring and enforcing of approvals arising under this Ordinance.
- (11) “Town” means the Town of Merrimac.
- (12) “Town Board” means the Town Board of the Town of Merrimac.

Section 10.03. Applicability, Exemptions, Interpretation, and Effective Date

- (1) Applicability. This Ordinance shall apply to the use and proposed use of land within the Town for the purpose of mining and any proposed Mining Operation regardless of when such use is commenced and regardless of where such use is proposed within the Town.
- (2) Exemptions. This Ordinance does not apply to:
 - (a) Exploration, bulk sampling or prospecting activities as defined under Wis. Stat. § 293.01.
 - (b) The lawful use of a building, structure or lot for Mining Operations which existed at the time this Ordinance, or an applicable amendment to this Ordinance that took effect and which is not in conformity with the provisions of this Ordinance, subject to the following conditions: (1) if a preexisting use is discontinued for 12 consecutive months, any future use of the building, structure or property shall conform to this Ordinance; (2) uses which are nuisances shall not be permitted to continue.
 - (c) Mining Operations where the Town has entered into a local agreement with the Operator under Wis. Stat. § 293.41, and the local agreement specifically states that this Ordinance, or any portion of this Ordinance, is inapplicable to that particular Mining Operation.
- (3) Interpretation. The provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Town. This Ordinance is not intended to repeal, abrogate, annul, impair or interfere with any existing laws, regulations, ordinances, rules, standards or permits that are not specific to mining previously adopted pursuant to other Wisconsin law.¹

- (4) Effective Date. Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication as provided by Wis. Stat. § 60.80.

Section 10.04. Mining License Required

- (1) License Requirement. No person may commence construction of a Mining Site or engage in any Mining Operations in the Town except in conformance with a valid Mining License issued by the Town pursuant to this Ordinance or as otherwise authorized by a mining agreement as set forth in the Ordinance in accordance with Wis. Stat. §295.47, or a local agreement under Wis. Stat. § 293.41, whichever is applicable.
- (2) Compliance. Conditions established by any Mining License pursuant to this Ordinance must be met at all times or the Operator may be found in violation and subject to enforcement, fines, penalties and Mining License revocation as provided in this Ordinance.
- (3) Effective Date. Except as provided in this Ordinance, a Mining License issued pursuant to this Ordinance shall become valid on the date the Operator is awarded a State of Wisconsin Mineral Mining Permit for the same mining site.
- (4) Duration of License. The Mining License issued in accordance with this Ordinance shall last through operation and reclamation of the Mining Site provided the Operator complies with all conditions of the Mining License, all provisions of this Ordinance, all required state and local licenses, permits, approvals and financial assurances are maintained, and suspension or revocation of the Mining License does not occur pursuant to this Ordinance.
- (5) Major License Modifications. If a Mining License has been issued, both the Town and the Operator may pursue an amendment to that Mining License during the Mining License term pursuant to this section.
- (a) The Town reserves the right to reopen and modify any Mining License if it is determined by the Town Board, upon the basis of newly discovered evidence, including, but not limited to, evidence presented by governmental or other regulatory bodies for the same Mining Operation, such mining activity pursuant to the Mining License would, without further conditions placed on the Mining License, substantially endanger the environment, public health, safety or welfare of the community. Any action to reopen a Mining License shall be done by hearing with at least 30 days' notice to the Operator. In order to reopen the Mining License and modify any terms and conditions, the Town Board must determine that there is reasonable cause to believe that the newly discovered evidence demonstrates a substantial threat to the environment, public health, safety or welfare.
- (b) The Town reserves the right to reopen and modify any Mining License if newly discovered evidence shows that there is new science or technology that would substantially decrease the impact of the Mining Operations on human health, safety, welfare or the environment or would substantially and cost-effectively allow the required outcome of the planned reclamation to be accomplished in less time or with greater certainty. Any action to reopen a Mining License shall be done by hearing with at least 30 days' notice to the Operator. In order to reopen the Mining License and modify any terms and conditions under this section, the Town Board must determine that there is reasonable cause to believe that the newly discovered science or technology

substantially decreases the impact of the Mining Operations on human health, safety, welfare or the environment or would substantially and cost-effectively allow the planned reclamation to be accomplished in significantly less time or with greater certainty.

- (c) For the Town to reopen a Mining License, the Town Board shall identify the specific terms of the Mining License subject to reopening and shall hold a public hearing and issue a report that considers the specific reason(s) for reopening the license before voting on the proposed modification. The Town Board shall consider the report's findings and vote to either reopen or not to reopen the Mining License based on the report's findings and in accordance with the procedures established by this Ordinance. A decision to reopen and modify a Mining License must be adopted by a vote of two-thirds of the entire membership of the Town Board.
 - (d) Should the Operator desire to modify the Mining License in any way, it may request modification by submitting a written application and evidence supporting such modification to the Town Clerk. Such application shall be in substantially the same form as the original application for the Mining License, with the same level and substance of information required, although it shall be permissible to incorporate by reference any portions of the original Mining License application that still pertain to the re-opening request. Upon receipt of the application to modify the Mining License, the Town Clerk and Town Board shall follow the procedures outlined in this Ordinance for review of an application for a Mining License.
- (6) Minor License Modifications. The Town Board has the discretion to determine that a proposed Mining License modification is so inconsequential in scope or limited in proposed duration that the Mining License modification procedures outlined under Section 1.04(5) of this Ordinance are unnecessary and therefore inapplicable. If such a determination is made, the Town Board may act on the proposed minor Mining License modification at a properly noticed Town Board meeting following the procedure set forth in (b) below. If a modification is approved, the Town Clerk shall issue written notice of the modification to the Operator within 30 days of approval.
- (a) If the Operator is requesting a Mining License modification that it believes is minor in nature, the Operator may file a written request describing the proposed minor Mining License modification with the Town Clerk. Within 45 days of receipt of such a written request, the Town Board shall grant the request in whole or in part, deny the request in whole or in part, or notify the Operator in writing that, in its determination, the requested modification is not minor in nature and the procedures to be used for requesting a major Mining License modification as outlined under Section 1.04(5) must be followed.
 - (b) If the Town is proposing the minor Mining License modification, the Town Clerk shall provide the Operator with the following at least 30 days prior to the Town Board meeting at which the modification will be considered: (1) a written explanation of the proposed modification which shall include a description of the Town Board's rationale for determining that the proposed modification is warranted; and (2) written notice of the time, date, and location of the Town Board meeting at which the modification will be considered.
- (7) Transfer of License. When one entity succeeds to the interest of another in a Mining Site, the Town shall release the current Operator of the responsibilities imposed by the Mining License

only if the following conditions are met, pursuant to the Town's reasonable discretion:

- (a) Both the Operator and the successor Operator are in compliance with the requirements and standards of this Ordinance and all other applicable State, Federal and local laws, requirements, regulations, permits, and licenses.
- (b) The successor Operator assumes the responsibility of the current Operator in writing and agrees to operate, complete, and reclaim the Mining Operations in accordance with the Mining License and all other applicable laws, requirements, regulations, permits, and approvals.
- (c) The successor Operator shows proof of financial responsibility in substantially the same manner and amount as the current Operator and the successor Operator agrees to maintain any instrument of financial assurance at the same level as the current Operator.
- (d) The Town Board makes a written finding that all conditions of the existing Mining License will be complied with by the successor Operator.

Section 10.05. Procedures For Applying For a Mining License

- (1) Application. An application for a Town of Merrimac License shall be filed with the Town Clerk and shall include an electronic copy and 15 paper copies of the Mining License application requirements. The Application shall include the information set forth in Section 1.06 and as otherwise reasonably required by the Town.
- (2) Reimbursement of Fees and Costs.
 - (a) At the time an application for approval of a Mining License is filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and provide adequate security guaranteeing payment of the cost of the investigation, review and processing of the application, including, but not limited to, any Retained Experts and Town staff administrative costs. The agreement and the security shall be in form and substance acceptable to the Town. The Town shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the Town. The Town may accept an initial deposit to begin license processing and to provide an estimate to the applicant of anticipated costs, but it shall not be required to incur any processing costs beyond that for which a deposit or other security has been approved.
 - (b) The fees provided by an applicant when submitting a Mining License application, and for deposit upon being granted a Mining License and other administrative fee deposits received from the applicant or Operator shall be placed by the Town in an assigned account, for which statements shall be issued at least annually, and shall be used as necessary to pay the Town's reasonable administrative expenses associated with the evaluation of the Mining License application, including, but not limited to, Retained Expert fees, legal fees and administrative costs and expenses for holding required hearings, and other matters compelled by the need to review and respond to the application for Mining License as provided by this Ordinance, including environmental monitoring. At the request of an applicant or Operator that is attempting to transfer its interest in any application or Mining License, upon any such transfer any monies on deposit in the assigned account shall be held and applied for the benefit of the

transferee, provided the transferee meets all requirements of this Ordinance and further provided that if Town approval is required for the applicant or Operator to transfer such interest then such transfer must first meet with the Town's approval and satisfaction.

(3) Preliminary Review by Plan Commission.

- (a) Notice and Preliminary Review. Within fifteen (15) days after receiving a complete Mining License application, the Town Clerk shall forward the Mining License application to the Plan Commission for initial review to determine if additional information or expertise is necessary to properly evaluate the application. Within 30 days of receipt of the application, the Town Clerk shall also publish or post a class 2 notice under Chapter 985 of the Wisconsin Statutes indicating that a mining application has been filed and transmitted to the Plan Commission. A copy of the application shall be made available for public review.
- (b) Additional Information. The Plan Commission may request the applicant to submit additional information if the Plan Commission determines that the application is incomplete, or if the Plan Commission determines that additional information is needed to determine whether the proposed Mining Operation will meet the standards of this Ordinance. The Plan Commission may also retain the services of Retained Experts to review the application and report to the Plan Commission whether additional information is required for review of the application and to determine whether the application meets the standards of this Ordinance. The Plan Commission shall make a determination regarding the need for additional information or expertise within 90 days after receiving the initial application. If no additional information or expertise is deemed necessary the Plan Commission shall proceed to schedule a final review.
- (c) Retained Expert Reports. Any Retained Experts shall report to the Plan Commission on whether the application meets the requirements of this Ordinance within 90 days of the Retained Expert's receipt of a complete Mining License application. A complete Mining License application shall include the following:
 - (1) the initial application which shall contain all of the information required by Section 11.06;
 - (2) any applicable fees; and
 - (3) any additional information that is provided by the Operator during the application process to assist the Retained Experts with reviewing the application.
- (d) Recommendation to the Town Board. Within 45 days of receipt of any Retained Expert reports, or if there are no such reports, within 120 days of receipt of the complete Mining License application, applicable fees and any additional information, the Plan Commission shall make findings of fact and either recommend that the Town Board grant the applicant a license to operate a mine with or without conditions, or recommend that the Town Board deny the application.

(4) Decision by the Town Board.

- (a) Notice and Hearing. Upon Recommendation by the Town Plan Commission, the Town Clerk shall place the Plan Commission's recommendation on the agenda for the next regular meeting of the Town Board, provided it can be practically done. At that

meeting, the Town Board shall set a date for a public hearing. At least 15 days prior to the public hearing, the Town Clerk shall publish or post a class 1 notice under Chapter 985 of the Wisconsin Statutes and shall provide written notice of the hearing via U.S. Mail to all landowners immediately adjacent to the proposed Mining Site. At the public hearing, the Town Board shall take public comment on the proposed Mining Operation and Mining License.

- (b) Town Board Decision. Within 30 days following the public hearing, the Town Chairperson shall set a date for a Town Board meeting to consider a final decision on the Mining License application. At that meeting, the Town Board shall review the complete application, any Retained Experts' reports, and public comments made and information provided at the public hearing. The Town Board shall grant the Mining License if it determines that the Operator and Mining Operation will adhere to and comply with the minimum standards and purposes of this Ordinance and with all conditions, requirements and terms set forth in the Mining License.
- (c) Remedies on Denial. If the Town Board denies the Mining License request, the applicant may request a hearing before the Town Board by filing a written request for a hearing with the Town Clerk within 30 days of denial. Following the hearing, the Town Board may, in its discretion, reconsider its previous decision on the application. In addition, the applicant may re-submit its Mining License application in accordance with this Ordinance, and re-submittal shall constitute a new application in conformance with all provisions of this Ordinance, provided that any differences between the original Mining License application and the new Mining License application shall be summarized by the applicant in a document entitled "Explanation of Reasons for Re-Submittal." A Mining License application received by re-submittal may be denied for any reason that any original Mining License application may be denied.

Section 10.06. Mining License Application Requirements

- (1) General Requirements. All applicants for a Mining License shall submit the information required in this Section 11.06. The applicant may provide this information by reference to other documents submitted to other governmental agencies, but in such cases shall provide a copy of the referenced document and a specific cross reference identifying where the information required by this Section 11.06 is located in any referenced material.
- (2) Ownership Information.
 - (a) The name, address, phone number, and email address of the Operator.
 - (b) The name, address, phone number, and email address of all owners or lessors of the land on which the Mining Operation will occur.

- (c) If the Operator does not own the proposed mine Site, a copy of a fully executed lease and/or agreement between the landowner and the Operator who will engage in Mining Operations on the proposed Mining Site.
 - (d) Proof that all local taxes, special charges, special assessments, fees, and forfeitures (and any interest or penalties thereon) owed by the landowner and/or Operator of the proposed Mining Site are current.
- (3) Site Information and Maps.
- (a) Survey maps and parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the Mining Operation will be located and any additional contiguous parcels on which the landowner/lessor has secured a right of first refusal.
 - (b) An aerial photo of the proposed site at a scale of not less than 1 inch equals 660 feet.
 - (c) A topographic map of the Mining Site extending one mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.
 - (d) A site plan for the Mining Site showing the location of all existing and proposed buildings and other structures, equipment, stockpiles, storage and parking areas, road access points, driveways, and buffer areas along bordering properties and public roads.
 - (e) A plan for staking or marking the borders of the entire Mining Site and for securing the site by appropriate measures, which may include fencing or alternative measures consistent with mine safety and security and in accordance with all applicable laws and regulations.
 - (f) A map on which all residential, agricultural and municipal wells within one mile of the boundaries of the Mining Site in all directions are marked and given a numerical identification of the location.
 - (g) The location and name of all surface waters, including, but not limited to, lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns, and other water features on the site and within one mile of the Mining Site.
 - (h) The applicant shall place sufficient test wells to verify the groundwater elevations, gradient and depth of the groundwater on the Mining Site. In addition, the applicant shall install sufficient wells to conduct adequate pump tests to determine the amount of drawdown estimated to occur from the mining operation. Results of any testing described in this paragraph shall be provided to the Town Board within 30 days.
 - (i) A description of the distribution, depth and type of topsoil for the Mining Site. The description shall include the geological composition, depth and width of the deposit and the location of slopes greater than 20% and highly erodible soils.
 - (j) A map identifying the location of all other non-contiguous sites within the Town or adjacent towns, cities, or villages, if any, that will contribute material to the Mining Operation for which the applicant seeks a Mining License.

(4) Operation Plan.

- (a) Dates of the planned commencement and cessation of the operation of the mine.
- (b) Description of hours of operation of the Mining Site, including all times when any vehicles will enter or leave any portion of the Mine Site.
- (c) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
- (d) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
- (e) Identification of all proposed off-site trucking routes, if any, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the Mining Site; a description of the types of vehicles to be used on town roads and their respective weights, lengths, widths, axle numbers and spacing, and ESAL ratings both when empty and legally loaded; an assessment, which shall include core sampling, of the adequacy of roads within proposed off-site trucking routes and a description of any proposed alterations or improvements to such roads, and a description of any traffic control or other measures needed to protect public safety.
- (f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water used or falling on the Mining Site, including, but not limited to, methods used for infiltration and control of run-off.
- (g) A listing of any hazardous materials, including, but not limited to, stored or operational fuel supplies that will be used or located on the Mining Site and a description of measures to be used for securing and storing these materials. The operation plan shall also include a written plan for the use of any hazardous materials at the Mining Site and procedures for responding to spills of these materials and fuels on the site and the frequency of regular drills for responding to spills on the site.

(5) Town Impact Summary. The Mining License application shall include a Town impact summary report, which shall include a thorough narrative description of the Mining project in sufficient detail to allow the Town to assess probable physical, environmental and developmental impacts of the proposed mine and assess and summarize the potential and estimated impacts on the human health, safety and welfare of residents of the Town, based on the potential environmental, socioeconomic and other impacts of the proposed Mining Operation. The report shall include, but shall not be limited to, the likely and potential impacts of the proposed Mining Operations with respect to each of the following baselines:

- (a) A life-of-Mine analysis of impacts upon social and environmental baseline parameters through completion of reclamation, including any impact market conditions may have on the operation of the Mine.
- (b) A traffic impact analysis that discusses all reasonably foreseeable roadway construction and maintenance needs arising in the Town from the proposed Mining Operation and reasonably

foreseeable secondary impacts of the Mining Operation that may result in the demand for additional roadway or other infrastructure improvements, repairs or additional maintenance needed as a result of the Mining Operations, including a description of the anticipated needs for roadway modifications resulting from the likely Mine-related traffic impacts, both primary and secondary, 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.

- (c) The impacts of the mine on employment, economic activity and tax base within the Town.
 - (d) The impacts of the mine on the Town's population and housing stock, including the availability of such housing stock.
 - (e) The impacts of the mine on the need for additional government services, including, but not limited to, infrastructure, utilities, schools, fire protection, emergency medical services, and sheriff.
 - (f) The expected changes in land use within the Town, including the percentage of lands devoted to each use currently and in the future.
 - (g) The impacts of the mine on air quality within the Town.
 - (h) A description of the current environmental characteristics of the Mining Site, including wildlife, vegetation and physical parameters of groundwater quality and quantity, and surface water quality and quantity, including wetlands as compared to the same environmental characteristics after the mine becomes operational.
 - (i) A description of the environmental characteristics within the Town, including, but not limited to, air, groundwater, surface water and acres of disposal facilities for any waste as compared to the same environmental characteristics after the mine becomes operational.
 - (j) A description of the topographical and aesthetic features of the proposed Mining Site, including other geographical vegetative conditions.
 - (k) A description of the cultural features of the proposed Mining Site, including, but not limited to, an inventory and analysis of all historical and cultural sites and landmarks.
 - (l) A description and analysis of the ambient noise audible in half-mile increments within a five (5) mile radius of the proposed mining site.
- (6) Information Demonstrating Compliance with Minimum Standards. The Operator shall provide such additional information the Town deems necessary to determine whether the mining operation will comply with the minimum standards in Section 11.07.
- (7) Compliance with all Applicable Laws and Regulations. The Mining License application shall include a description of all other governmental or other regulatory permits, licenses, approvals, or other approvals necessary for the Mining Operation. The Mining License application shall also include a timeline of dates when such approvals were granted, or the expected date of approvals.

Section 10.07. Minimum Operational Standards

(1) General Standards.

- (a) The borders of the entire Mining Site will be appropriately staked or marked, and the Mining Site will be secured by appropriate measures which may include fencing or other alternative measures consistent with mine safety and security as set forth by governmental or other regulatory authorities.
- (b) The Mining Operation will comply with all applicable Town Ordinances.
- (c) The Operator shall demonstrate, to the sole satisfaction of the Town, that all other applicable and required federal, state and local permits and approvals required for the Mining Operation have been or will be obtained prior to commencement of any Mining Operation. The applicant shall further demonstrate compliance with this sub-section by submitting a copy of all permits, approvals, or waivers of permits to the Town prior to commencing operations.
- (d) The Operator shall provide proof that it has provided the financial assurances as required under Wis. Stat. Chapter 293 or any other applicable codes or regulations.
- (e) The Operator shall agree to comply with all other applicable federal, state and local permits and approvals once issued.

(2) Buffer Areas. The Operator shall provide a buffer area from the boundaries of the Mining Site, to protect bordering properties from noise, dust, lighting, odors, blasting, and other adverse impacts of the operation, along bordering property lines and public roadways.

- (a) The buffer area shall provide a setback of $\frac{1}{4}$ mile from the mining site to the property line of an adjacent property owner unless the landowner consents to a lesser distance, but not less than 50 feet. If consent is provided for a lesser distance, a copy of such consent agreement shall be recorded against the property at the register of deeds office for the county in which the land is located and a copy of the agreement shall be provided to the Town Clerk.
- (b) The buffer area shall provide a setback of $\frac{1}{2}$ mile from the Mining Site to any school, medical facility, nursing home, or community based residential facility.
- (c) The Operator shall screen the mining operations from public view to the maximum extent practicable. Screening may be achieved through the use of berms, additional setbacks or other measures deemed adequate by the Town Board. Screening activities, such as construction of a vegetated berm or installation of a fence, may occur in the buffer area.

(3) Hours of Operation. The Operator shall limit normal hours of operations at the Mining Site to 12 hours a day Monday through Friday not earlier than 6:00 a.m. and not later than 9:00 p.m. and on Saturday not earlier than 6:00 a.m. and not later than noon, to avoid substantial or undue impacts on neighboring properties and town residents.² Operations on-site shall not occur on Sundays or legal holidays.

(4) Control of Light. The Operator shall limit night lighting on the Mining Site, to that which is minimally necessary for security and worker safety. Every effort consistent with the legal

requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. At a minimum, such measures shall include the following:

- (a) The use of full cutoff shrouds on all lights.
- (b) Portable lighting shall be used only as necessary to illuminate temporary work areas.
- (c) The use of berms of sufficient height coupled with other methods of visual screening to block light from the Mining Site to neighboring properties.
- (d) The design and location of access roads, driveways and other access points to the Mining Site to minimize lights from traffic and operations to neighboring properties.
- (e) Lighting from any and all sources within the mining property shall not be designed nor maintained to exceed 0.5 footcandles when measured at ground level. A lighting photometric plan shall be prepared for any and all exterior lighting fixtures, which depicting lighting candles (in footcandles) assuming all exterior fixtures are illuminated. Spot levels shall be provided every ten feet, and the 0.5 candles isometric line shall be depicted wherever present on the subject property.

(5) Control of Noise.

(a) The Operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to neighboring landowners. The noise levels at the boundaries of the mining or processing site shall not exceed 65 dB. The noise levels at the boundaries of any school, medical facility, nursing home, or community based residential facility shall not exceed 60 dB. Decibels shall be based on dbA, which is the unit of sound level expressed in decibels (db) and A-weighted as described in ANSI § 1.4. 1983 and shall be measured in accordance with accepted protocols.

(b) Noise levels shall be monitored at the Mining Site's property boundary by an independent testing company. The tests shall occur for a 10-day period at least once per quarter. The results shall be reported to the Town within 30 days of the last test result.

(6) Well Monitoring and Impact on Groundwater Quality. For a period of one year prior to commencement of construction of any portion of the Mining Site or commencement of any Mining Operation, and during the period of the Mining Operation, and continuing for no less than three years after the completion of the Mine reclamation, the Operator shall monitor all private and public wells (to the extent access can be secured), at the Operator's sole cost and expense, located within two miles of the perimeter of the Mining Site in order to provide baseline data concerning quantity and quality of water. The wells shall be monitored quarterly for lead, arsenic, turbidity, total dissolved solids, chlorides, nitrates, specific conductivity and any toxic substance that may reasonably be believed to be present in the ore deposit proposed to be mined. Well monitoring required under this Ordinance shall be performed by an independent consultant agreeable to both the Town and the Operator. All test and monitoring results shall be reported to the Town within 30 days of completion. Mining Operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code Ch. NR 140 or as otherwise may be set forth in applicable law.

(7) Fugitive Dust Control.

- (a) In addition to any ambient air monitoring required by the Wisconsin Department of Natural Resources, the Operator shall be required to comply with best management practices for control of off-site fugitive dust, including, but not limited to, use of truck covers, watering roads and equipment, and stabilizing stock piles.

Section 10.08. Reporting

(1) **Ongoing Reporting Requirements.**

- (a) The Operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any other governmental or regulatory authority against the mining operation. The Operator shall provide notice to the Town of such actions within 15 days after receiving such notice from the governmental or regulatory authority.
- (b) All monitoring data, sampling results and any other test results required by this Ordinance shall be undertaken at the Operator's expense and provided to the Town Clerk. Unless otherwise specified in this Ordinance, all monitoring data, sampling results and any other test results shall be provided to the Town Clerk within 30 days of receipt of the results by the Operator.

(2) **Annual Report.**

- (a) No later than October 1 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent Mining Sites and Mining Operations for which the Operator has a Mining License in the Town of Merrimac. At its own discretion, the Town Board may also require that the Operator appear at a Town Board meeting to present the annual report and answer questions from the Town Board. The reporting period shall be from the date of the issuance of the first Operator's Mining License to August 31, and thereafter from September 1 to August 31.
- (b) The annual report shall include the following information:
 - 1. An identification of the Operator and location of the Mining Site.
 - 2. A map or drawing accurately showing the area of excavation, the unclaimed area and the reclaimed area, including a calculation of the number of acres for each type.
 - 3. A description of activities, including ore extraction and waste material production and operations on the Mining Site for the previous calendar year, including the cubic yards each of material extracted, processed, and waste material produced.
 - 4. A description of activities and operations on the Mining Site, including ore extraction and waste material production or processing anticipated for the following calendar year.
 - 5. A written report demonstrating how the Operator has been in compliance with all terms and conditions of its Mining License and this Ordinance. The report

shall include all groundwater, surface water and other monitoring results, as well as a copy of all annual reports submitted to all other governmental or other regulatory authorities.

6. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.
7. A signed certification by the Operator to the effect that: "I certify that this information is true and accurate, and except as expressly set forth herein the mineral mining site and operations described herein and for which the town issued the mining license dated _____ complies with all conditions of the applicable Town license, the Ordinance, all other Town ordinances and codes, and all other governmental or other regulatory authority requirements, laws, regulations, and requirements and is in compliance with any applicable permits, licenses and approvals required for operation of the mineral mining site and operations described herein and for which the town issued the mining license dated _____."

(c) Quarterly Inspection Summary. The Operator shall submit to the Town Clerk, within 30 days following the close of each calendar quarter, a report summarizing the results of the following inspections.

1. Daily Inspections. The Operator shall inspect any tailings ponds and any other waste lagoons on a daily basis for evidence and indications of any phenomenon, activity or process which might affect the integrity of any tailings pond or dike.
2. Monthly Inspections. The Operator shall designate one or more qualified senior personnel to inspect any tailings ponds and any other waste lagoons on a monthly basis and prepare, sign and date a report. If the person or persons making the monthly inspections is not a Wisconsin registered professional engineer, then the Operator shall also provide for quarterly inspections as required herein by a registered professional engineer.
3. Natural Event Inspections. The Operator shall inspect any tailings ponds and any other waste lagoons after any unusual natural occurrence, including, but not limited to, the following: earthquake, tornado, flood, storm event exceeding the 100-year storm threshold or any other natural event which the Operator should reasonably expect could affect the integrity of the tailings pond, dike, or other areas of the Mining Site.

(d) Inspection Logs. All daily, monthly and quarterly inspection observations shall be recorded in a log and maintained on the premises of the Mining Site and be made available for inspection by Town officials during regular business hours. The Operator shall submit copies of inspection logs to the Town upon request.

Section 10.09. Changes in Operation

- (1) Expansion. Expansion of the Mining Site or any Mining Operation that is not specifically allowed by or is inconsistent with any limitation or parameters of the Mining License is prohibited and is a violation of this Ordinance. Performance of activities not described in, or activities not

expressly allowed by, the Mining License application or the Mining License shall be considered an unlawful expansion and a violation of this Ordinance. The movement of any waste, ore or concentrate to a Mining Site from a location outside the boundary of that Mining Site shall be deemed an unlawful expansion of Mining Operation unless such movement is specifically and expressly authorized in a Mining License issued pursuant to this Ordinance.

(2) Suspension or Termination of Mining.

- (a) An Operator must provide notice to the Town as soon as possible of any temporary halt of mining operations lasting more than 180 days, including, but not limited to, a statement showing projected loss of employment. Notice shall include the reason for the temporary suspension as well as plans to ensure continued compliance of all applicable laws and regulations throughout the suspension period.
- (b) The Operator must provide notice of its intent to permanently terminate any or all activity at the Mining Site no later than one year before the proposed Mining Operation, or any portion of the Mining Operation, is terminated. The Operator must provide notice by the end of each calendar year of any significant change in the anticipated timing of each major phase of the Mining Operation as originally detailed in the plan of operation submitted as part of the Mining License application pursuant to this Ordinance, and explain any reasonably foreseeable changes to the overall Mining Operation lifetime based on such changes.
- (c) Upon receipt of a notice of temporary halt in mining or upon a cessation lasting more than 180 days, whichever is sooner, the Town Board may require that the Operator take additional measures to ensure that public health, safety and welfare are protected during the temporary cessation of mining operations, including, but not limited to, a temporary cap on tailing facilities, additional security measures, additional erosion control measures, and other site stabilization measures.
- (d) A suspension longer than two years shall be considered a permanent abandonment and require the Operator to commence closure and reclamation. The Operator may request the Town Board re-evaluate this requirement based on exceptional circumstances. The Town Board shall not be obligated to grant the request for re-evaluation. The Town Board's determination of the Operator's request for re-evaluation is not subject to appeal or other additional review.
- (e) Any action ordered by the Town Board pursuant to Section 11.09(2) shall not be deemed a Mining License Modification pursuant to Section 11.04(5).

(3) Commencement of Reclamation. Reclamation of any mine shall begin within one year after cessation of mining activities, whether temporary or permanent, in accordance with the Reclamation Plan as set forth in Wis. Stat. Chapter 293 or Wis. Stat. 295, whichever is applicable.

Section 10.10. Inspection, Enforcement, and Penalties

(1) Inspection.

- (a) Compliance Inspections. Upon issuance of a Mining License, the Operator is deemed as a condition of licensure to have consented to allow inspections of the

mining site and all mining operations by the Town Board or its designee(s) for the purpose of determining compliance with the provisions of this Ordinance and the terms and conditions of the Mining License. Inspections may occur pursuant to

this section upon showing of proper identification, with or without advance notice to the Operator.

- (b) Records Review. All required records to demonstrate lawful operation of the Mining Operation shall be maintained by the Operator at the Mining Site and made available within a reasonable time to the Town Board or its designee(s) to assist the Town Board to determine compliance with the provisions of this Ordinance.
 - (c) Investigation of Complaints. The Operator shall provide access to the Mining Site to allow the Town Board or its designee(s) to inspect for the purpose of investigating any complaint against the Operator alleging a condition that negatively impacts the public health, safety or welfare.
 - (d) Retained Experts. If, as a result of any inspections or investigations, the Town Board determines that a Retained Expert should undertake any further inspections or investigations, the Town may hire a Retained Expert, the expense of which shall be paid by the Operator. If the Operator fails to provide access for the inspections or investigations, or provide payment of the Town's expenses, the Town may take enforcement action under Section 11.10(1).
- (2) Violations. In addition to failure to comply with any provision of this Ordinance, the following are specific violations under this Ordinance:
- (a) Engaging in any mining or any activities associated with mining, without a Mining License granted by the Town Board pursuant to this Ordinance.
 - (b) Failure to comply with the applicable minimum standards and other terms of this Ordinance, all other Town ordinances and codes, and all other governmental or other regulatory authority requirements, laws, regulations, and requirements, or failure to comply with any applicable permits, licenses and approvals required for Mining Operation.
 - (c) Making an incorrect or false statement in the information and documentation submitted during the Mining License application process or during inspection of the Mining Operation by the Town or its designees or other duly appointed representative.
 - (d) Failure to timely file the annual operational report under Section 1.08 of this Ordinance.
 - (e) Failure to comply with any conditions of approving the Mining License application, or any agreements entered into as a condition of approving the Mining License application.
 - (f) Failure to provide or maintain any financial assurance required as a condition of approving the Mining License application.
 - (g) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance or other order issued by the Town.
- (3) Remedies. The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance or in violation of the terms of the Mining License, including, but not limited to, the following:

- (a) Issue a stop work order for all Mining Operations. Any Operator issued a stop work order shall be provided with a notice of violation under Section 11.10(4) by the Town Clerk within 10 days.
 - (b) Issue a notice of violation and order that specifies the action to be taken to remedy a violation under Section 11.10(4).
 - (c) Issue a citation in accordance with the Town's citation ordinance or pursuant to other Town authority.
 - (d) Refer the matter to legal counsel for consideration and commencement of legal action, including, but not limited to, the assessment of forfeitures under Section 11.10(6) and injunctive relief.
 - (e) Suspend or terminate the Mining License under Section 11.10(5).
- (4) Notice of Violation. The Town Board or its designee may issue a notice of violation and order for curing the violation upon a violation of any term of this Ordinance or upon a violation of any agreement entered into between the Town and the Operator for the Mining Operations pursuant to the following provisions.
- (a) The Town shall serve a notice of violation upon the Operator within thirty days of the Town's obtaining knowledge of the violation. The notice of violation may include a proposed work plan or other remediating steps to cure the violation. The
 - (b) Operator shall have thirty days from the Operator's receipt of the notice of violation and order to complete all necessary work to cure the violations to the Town's satisfaction.
 - (c) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 11.10(4) may request and shall be granted a hearing on the notice of violation and order before the Town Board, provided such person shall file with the Town Clerk a written petition requesting the hearing and setting forth the person's name, address, telephone number and a brief statement of the grounds for the hearing, the requested relief, or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served upon the Operator. Upon receipt of the petition for hearing, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof. In the event the petitioner is not the Operator, the Town shall provide notice of the hearing to the Operator.

- (d) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under Section 11.10(3), or modify the order, depending on the Town Board's findings, as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within ten days of the Town Board's issuance of its findings and any modification of the order. In the event the petitioner is not the Operator, the Town shall provide a copy of the Town Board's findings of fact and any modification of the Town's order to the Operator.
- (e) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

(5) Mining License Suspension or Revocation.

- (a) After service of any notice of violation on an Operator and after any requested hearing has been held on such notice pursuant to Section 11.10(4), the Town Board may consider suspension or revocation of a Mining License for any violation of this Ordinance or the terms of the Mining License. A Mining License may also be revoked if it is determined that there has been an abandonment of mining as defined under Wis. Stat. § 293.61, or under Wis. Stat. § 295.97, whichever is applicable.
 - (b) The Town Board shall provide the Operator with a hearing on any proposed Mining License suspension or revocation. The Town Clerk shall provide the Operator with notice of the hearing at least 15 days in advance. Following the hearing, if the Town Board determines there is reasonable cause to conclude that the Operator has failed to correct or cure a violation it may suspend or revoke the license.
 - (c) Revocation of any Mining License awarded pursuant to this Ordinance shall terminate the Operator's right and authority to continue Mining Operations pursuant to this Ordinance, but shall not affect the Operator's obligation to comply with any continuing obligations of the Operator under the terms of the Mining License or any agreement to which the Town is a party.
 - (d) In the event of any violation that is not corrected pursuant to any conditions of correction established by the Town Board and to the satisfaction of the Town Board the Town Board shall, at one or more open meetings, establish and levy an appropriate forfeiture and order an appropriate compliance schedule consistent with the intent of this Ordinance, the violation of which shall constitute a separate violation of this Ordinance.
- (6) Penalties. Any person or Operator who violates this Ordinance or any of the provisions contained herein shall forfeit not less than \$10 nor more than \$10,000 for each violation. Each day of violation is a separate offense.

(a) The Town Board shall, promptly after verifying any violation of any provision of a Mining License or agreement to which the Town is a party, notify the Operator in writing of such violation and require the Operator to report to the Town Clerk within 10 days.

(b) The Town shall be entitled to recover from the violator the reasonable and necessary

expenses associated with prosecution of the violation.

- (c) All funds recovered pursuant to this section will be placed in an assigned account established by the Town and used at the Town Board's sole discretion consistent with achieving the intent of this Ordinance.
 - (d) The remedies provided herein shall not be exclusive of other remedies.
- (7) Non-Waiver. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

Section 10.11. Setbacks

- (8) No person shall establish, construct, operate or maintain the use of property for any mining related buildings, roads, ponds, or other construction within the residential district, or areas designated for residential development in the town's development plan, or any of the following areas:
- (a) Within 1,000 feet of any navigable or non-navigable lake, pond or flowage;
 - (b) Within 1,000 feet of any navigable or non-navigable waterbody or wetland;
 - (c) Within 100 feet of adjoining property lines;
 - (d) Within 100 feet from the base, or top, of a bluff, which means the line delineating the bottom or top of a slope connecting the points at which the slope becomes 18 percent or greater;
 - (e) Within 1,000 feet of any existing occupied structures not owned by the operator or owner;
 - (f) Within 500 feet of any contiguous property subdivided into residential lots;
 - (g) Within a floodplain; or
 - (h) Within 1,000 feet of the nearest edge of the right-of-way of any of the following: any state trunk highway, interstate or federal primary highway; the boundary of a state public park; the boundary of a scenic easement purchased by the department of transportation; the boundary of a designated scenic or wild river; a scenic overlook designated by the department by rule; or a bike or hiking trail designated by the United States Congress or state legislature.

Section 10.12. Severability

Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional, invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, including, but not limited to, all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.

Ordinance adopted November 10, 1992

Approved by the Sauk County Board of Supervisors January 19, 1993

Effective January 19, 1993

Section 10 Repealed and Replaced; Approved by the Merrimac Town Board on May 1, 2019

Approved by the Sauk County Board of Supervisors May 18, 2019