

CHAPTER XVII.

QUARRIES

SECTION 17.00. Definitions.

(a) "Quarry" as used herein shall mean any place where materials, consisting in whole or in part of rock or stone, are removed from their natural state by cutting, blasting, digging or pushing, or by any other method whether herein specified or not, and sold or held for sale.

(b) "Gravel pits" and "sand pits" as used herein shall mean any place where gravel, sand or dirt, or any combination thereof, is removed from its natural state of deposit by digging, pushing or any other method whether herein specified or not and sold or held for sale.

(c) "Asphalt and tar paving mix plants" as used herein are defined as plants wherein asphalt, tar, or other petroleum products or by-products are prepared or mixed, either alone or with other ingredients, as a material for paving or surfacing.

(d) "Concrete ready mix plants" as used herein are defined as plants where water, gravel, sand, crushed stone, or other aggregate is mixed with cement and placed within a truck or trucks for the purpose of mixing such ingredients and to create and manufacture concrete thereby while such truck is in transit to its ultimate point of delivery.

(e) "Target ranges" as used herein are defined as any place where fixed or movable targets are set up and arranged for the purposes of being shot at for practice or marksmanship by more than two persons discharging firearms at about the same time.

(f) "Dump" as used herein means the use and maintenance of lands for the dropping down or deposit of garbage, junk, refuse or other waste materials.

SECTION 17.10. Operator's Permit Required. No person, firm, corporation or municipality shall operate a quarry, a gravel pit, a sand pit, an asphalt or tar paving mix plant, a concrete ready mix plant, a target range or a dump within the Town without first obtaining a permit to do so from the Town Board of the Town as hereinafter provided.

SECTION 17.20. Owner's Permit Required. No owner of land shall permit any person, firm, corporation or municipality to operate a quarry, a gravel pit, a sand pit, an asphalt or tar paving mix plant, a concrete ready mix plant, a target range or a dump within the Town without first

obtaining a permit to do so from the Town Board of the Town as hereinafter provided.

SECTION 17.30. Operator's Permit Application; Fee.

(a) Applications for permits to operate a quarry, gravel pit, sand pit, asphalt or tar paving mix plant, concrete ready mix plant, target range, or dump within the Town shall be submitted in writing to the Town Board and shall set forth the following:

1. Name, residence or office address of applicant.
2. Description of the premises to be used and zoning of site.
3. Statement of the nature of the proposed operation including a description of the machinery to be used; the type and amount of explosives to be used or stored, if any; the type and size of buildings to be constructed; the smoke and dust control devices to be utilized, if any; the highways to be used for the truck traffic to and from the location; proposed devices for muffling of noise, if any; the employment of safety devices to protect the public from danger inherent to the proposed use; deodorants or odor control devices; if any; method of concealing unsightly deposits, if any; and any other pertinent data which the applicant deems material.
4. Hours of intended operation.
5. The method and manner of draining surface water and accumulated water from the licensed premises.
6. The method and manner of restoring the area of the operation after the cessation of operation to a condition of practical usefulness and reasonable physical attractiveness and written estimates as to the cost thereof.
7. A description of the surrounding property and its use.
8. Name, residence or office address of owner and date on which owner's permit was issued.

(b) The application shall be accompanied by a fee of \$500.00 to defray the cost of publication, investigation, engineering and public hearings, if any.

SECTION 17.40. Owner's Permit Application; Fees.

(a) Applications for owner's permits shall be submitted in writing to the Town Board and shall set forth the following:

1. Name, residence, or office address of applicant.
2. Description of the premises to be used.
3. Zoning of the premises to be used.
4. Statement of the nature of the proposed operation.
5. The method and manner of restoring the area of the operation after the cessation of operation to a condition of practical usefulness and reasonable physical attractiveness and written estimates as to the cost thereof.
6. A description of the surrounding property and its use.

(b) The application shall be accompanied by a fee of \$500.00 to defray the cost of publication, investigation, engineering and public hearings, if any.

SECTION 17.50. Public Hearing.

(a) Upon receipt of an application submitted as provided, the Town Board shall inspect the site for which a permit is requested and shall review the proposed structures, neighboring land and water uses, driveway locations, highway access, traffic generation and circulation drainage, waste disposal, water supply system, effect of the proposed use and operation upon use of surrounding lands, natural beauty, soil erosion, water quality, wildlife habitat and shoreland cover and method, manner and practicality of restoration of the area after cessation of use. The Town Board shall set a date for public hearing upon such application, which said date shall be not more than forty-five (45) days after the receipt of the application by the Town Board. A public hearing shall be held by the Town Board at its regular meeting place and a notice of said meeting shall be forwarded by mail to the applicant and all persons owning property lying within 300 feet of the site designated in the application. In addition, the Town Clerk shall publish a notice of said meeting at least ten (10) days before the date of said public hearing. As an alternative to publishing said notice, notice of said hearing may be posted in three public places within the said Town not less than five (5) days prior to the date of said hearing. At such public hearing, the Town Board shall hear all persons interested in granting or denying of said permit and may, if it deems fit, take testimony relative to the applications.

(b) Where the permit applied for relates to the renewal of a permit previously granted, the Town Board shall have the option to require a public hearing, but in absence of such requirement, no public hearing need be held.

Uses. SECTION 17.60. Pre-existing Operator's Licenses and Nonconforming

(a) Any person operating under a license which antedates the effective date of this ordinance or by reason of any nonconforming use shall be subject to the provisions of this ordinance with respect to annual application and payment of annual fee. However, no application by a person operating under a pre-existing license of nonconforming use shall be denied unless it is established that the existing operation constitutes a public nuisance. No publication shall be required and no public hearing shall be held. No additional agreement for restoration and no additional bond shall be required of such applicant.

(b) Every person operating under a pre-existing license or a nonconforming use shall make application for an operator's license not later than January 1, 1975; and any operation not licensed by February 1, 1975, shall be deemed to be in violation of this ordinance.

SECTION 17.70. Variance Between Application and License.

(a) At any time prior to the determination by the Town Board, any applicant may request that his application be amended to reduce the area of land, the term of the license, or the intended use of the premises, and the Town Board may act on such amended application without requiring further publication or public hearing.

(b) If, at any time, it is apparent that an error has been made in the legal description of the land to be licensed, and the Town Board is satisfied that amendment of such legal description will work no hardship on any other person, it may direct that the Town Clerk amend the application or the license, if already issued, to set forth the proper legal description of the licensed premises.

SECTION 17.80. Determination by Town Board.

(a) Within sixty (60) days after the public hearing, if required, and otherwise within thirty (30) days of receipt of application, the Town Board shall make a determination as to whether or not the proposed use described in the application will be detrimental to the health, safety and welfare of the public of the Town of Wheatland. Such determination shall be made on the basis of the information contained in the application, together with the evidence presented at the public hearing, and a personal inspection of the premises by the members of the Town Board.

(b) The Town Board, as a condition to the issuance of a permit may require conditions as to type of construction; construction commencement and completion dates; landscaping; fencing;

location, size and number of signs; water supply facilities; waste disposal systems; floodproofing; street dedication; operational control; houses of operation; parking areas; repair of public roads use; highway access restrictions; deed restrictions; traffic control and sureties to insure performance of such conditions in form determined by the Town Board upon the Town Board finding that such condition or conditions are proper for protection of health, safety and/or welfare of the public.

(c) The Town Board shall, as a condition to the issuance of an operator's license, demand an agreement with the applicant whereby the applicant agrees to restore the premises in accordance with the representations contained in the application. The Town Board shall demand that a performance bond, written by a licensed surety company in an amount sufficient to secure the performance of the restoration agreement, be furnished to the Town. The amount of such bond shall be not less than \$500.00 for each acre of land included in the application.

SECTION 17.90. Hours of Operation. No licensee shall operate his business except between the hours of 6:00 a.m. and 6:00 p.m. A temporary variance for a period not in excess of thirty (30) days may be granted upon application to the Town Board.

SECTION 17.100. Term of Permit.

(a) Any owner's or operator's permit issued hereunder shall be for a period not to exceed two (2) years and may be renewed upon application for successive periods of not more than two (2) years each. Modifications or additional conditions may be imposed upon application for renewal and the procedure for renewal shall be the same as that in application for an original permit. In any event, such permit shall terminate:

1. Upon change of ownership of the site for which the permit is issued (Owner's Permit); or upon change of ownership of the firm, company, corporation or municipality operating the licensed business (Operator's Permit).

2. In the event the use for which the permit was issued is discontinued for more than one (1) year after the same is granted by the Town Board.

3. In the event the use specified in the permit is not carried on in accordance with the representations contained in the application or conditions required by the Town Board as precedent to granting the permit.

(b) In the event of the occurrence of 1, 2, or 3 above, another permit shall be applied for and obtained by the permittee as a condition precedent to the continued operation of the permitted

business, the operation of a new business, or the resumption of the discontinued business.

(c) In the event of application for a permit pursuant to subsection (b) hereof, the Town Board may consider the same without the necessity of holding a public hearing.

(d) Any permit issued pursuant to subsection (b) hereof shall be deemed an original permit and the permitted operator shall be bound by the terms thereof.

SECTION 17.200. Revocation of Operator's Permit. The following acts shall constitute grounds for revocation of license:

(a) Failure to discharge or drain surface water or accumulated water from the licensed premises in such method and manner as will not interfere with the use of lands, drains, and ditches or other persons, firms or corporations, municipally owned or otherwise.

(b) Any change in the manner of operation specified in the application as approved by the Town Board in granting the original license.

(c) Failure during and after excavation to provide adequate lateral support to roadways or to the lands of abutting property owners. No excavating whatsoever shall take place within two hundred (200) feet of any roadway or property line, and the licensee shall excavate such further distance away from such roadway or property line as is necessary to provide lateral support.

SECTION 17.300. Revocation of Owner's Permit. An owner's permit may be revoked for any of the reasons enumerated in Section 17.80 of this chapter. Revocation of an owner's permit shall be deemed an automatic revocation of any operator's permit covering the same premises.

SECTION 17.400. Revocation Procedures. Any proceeding to revoke a license shall be instituted by the Town Board by the mailing of a notice of hearing on revocation to the licensee. such notice shall be mailed at least ten (10) days prior to the date of hearing. At such hearing, the licensee may appear personally and by his attorney and present his defense to the proposed revocation. The Town Board shall have three (3) days after such hearing to make a determination of whether grounds of revocation exist. If such Board shall find that any of the conditions specified in the ordinance as grounds for revocation exist, the Town Board shall forthwith revoke such license and notify the licensee by letter addressed to the licensee at the address shown on the application. The holder of the operator's permit shall thereafter cease and desist forthwith from the operation of the licensed premises.

SECTION 17.500. Denial of License. In the event a permit is denied for any business enumerated herein with respect to any particular parcel of realty, no application for the same business on the same parcel of land, or any part thereof may be filed within one (1) year from the date of such denial. In the event, however, that a new application shall reveal a material difference in any of the items specified in Section 17.30 or Section 17.40 hereof, the Town Board may, upon a finding that the new application does include such material difference, proceed to hear and determine such new application within said year.

SECTION 17.600. Exemption from Licensing. No owner's or operator's permit shall be required for operations which do not produce a commercial benefit to the owner of the property affected. "Commercial benefit" is defined as any economic consideration from the operator to the owner. A certificate of exemption shall be obtained from the Town Building Inspector before the commencement of any work, and the request and certificate forms shall be as prescribed by the Building Inspector and accompanied by a fee of \$10.00. Any request for a certificate of exemption shall be acted upon by the Building Inspector within five (5) days from the date it is received by him and failure to act within such time shall be deemed a denial of the certificate. If any request for a certificate of exception is denied by the Building Inspector, an appeal may be made in writing to the Town Board within five (5) days of the date of notification of denial is received, and the Town Board shall render a final written decision within ten (10) days of receipt of the appeal.

SECTION 17.700. Penalty.

(a) Any person, firm, corporation or municipality who violates, disobeys, neglects, omits or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance shall forfeit not less than \$50.00 nor more than \$200.00, together with the costs of prosecution, and in default of payment thereof, by imprisonment in the County Jail of Kenosha County for a term of not more than thirty (30) days, or until judgment is paid, in the case of an individual, and every day of violation shall constitute a separate offense.

(b) In case any premises are used as a quarry, gravel pit, sand pit, asphalt or tar paving mix plant, concrete ready mix plant, target range or dump in violation of this section, an action in the name of the Town may be instituted to enjoin such violation or intended violation, and this remedy shall be in addition to other remedies set forth in this section.

SECTION 17.800. Validity. Should any subsection, clause or provision of this chapter be declared by courts to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof, other than the part so declared to be invalid.