ORDINANCE 113.2

TOWN OF CROSS PLAINS

AN ORDINANCE CREATING CHAPTER 113 OF THE GENERAL CODE OF

ORDINANCES TO REGULATE BLASTING

WITHIN THE TOWN OF CROSS PLAINS

The Town Board of the Town of Cross Plains, Dane County, Wisconsin does ordain that Chapter 113 of the General Code of Ordinances entitled "Town of Cross Plains Blasting Permitting Ordinance" be and the same is hereby created to read as follows:

Section I: Title

This ordinance shall be cited as the "Town of Cross Plains Blasting Permitting Ordinance" and hereinafter referred to as "this ordinance".

Section II: Authority

This ordinance is adopted to protect the public health, safety and welfare of residents of the Town of Cross Plains. This ordinance is authorized by the powers granted to the Town of Cross Plains by the Town's adoption of Village powers under sec. 60.10(2)(c), Wis. Stats., and is in accord with sec. 61.34 (1), Wis. Stats., and Wis. Admin. Code SPS 307, NR 135 and 415.

Section III: Purpose and Intent

The purpose of this ordinance is to regulate the use of explosives in non-metallic mining operations and in demolition of structures that require, at a minimum, a class 3 blaster's license under Wis. Admin. Code SPS 305.20 and issued by the Wisconsin Department of Safety and Professional Services. This ordinance is intended to limit the adverse effects of blasting on persons or property outside any controlled blasting site area. It is also intended to exercise the Town's police powers to create certain regulations on the operation of non-metallic mining operations.

Section IV: INCORPORATION BY REFERENCE AND APPLICABILITY

(1) REFERENCES

(a) Except as otherwise specified herein, the provisions of Wis. Admin. Code Ch. COMM 7 - Explosive Materials, are hereby adopted and made a part of this ordinance with the full force and effect as if they were fully reprinted herein; with the exception of any penalty provisions. Municipal penalties are limited to those specified in (10).

(b) All applicable regulations of the Wisconsin Department of Commerce (DCOMM); Wisconsin department of natural resources (DNR); and the US department of labor's, mine safety and health administration (MSHA) and occupational safety and health administration (OSHA) are hereby adopted and made a part of this ordinance with the same force and effect as if they were fully reprinted herein; with the exception of any penalty provision. Municipal penalties are limited to those specified in (10).

(2) APPLICABILITY OF ORDINANCE AND STANDARDS

(a) The provisions of this ordinance shall apply to all blasting operations, and any other use of explosives within the town limits; other than the display of fireworks.

(b) No person may use any amount of explosives regulated under ch. COMM 7, within the town limits without first obtaining a blasting permit from the town clerk. The clerk shall only issue a permit in accordance with the provisions of (8).

(c) The financial assurance requirements specified in (3) do not apply to blasting operations conducted by the state or a municipality.

(3) FINANCIAL ASSURANCE A blasting permit shall not be issued until the permittee provides the town with a bond or certificate of insurance in the amount of $5,000,000; naming the Town of Cross Plains as an additional insured.

(4) FEES A fee, set by resolution of the Town Board, shall accompany each application for a blasting permit. The fee shall be paid to the Town treasurer in US currency, money order or check payable to: the Town of Cross Plains. An itemized receipt shall be provided for all currency received.

(5) PUBLIC HEARING A public hearing on the application for a blasting permit shall be scheduled within 30 days following the receipt of the documents specified in (8)(b).

(6) REVOCATION, SUSPENSION, REFUSAL TO ISSUE

(a) No permit shall be granted to any individual by the clerk; until an application has been submitted to, and approved by, the town board.

(b) No permit shall be granted for blasting on any site for which taxes, assessments, or other claims of the town are delinquent and unpaid; or to any individual delinquent in payment of such claims to the town.

(c) Whenever the holder of any blasting permit violates any provision of this ordinance, proceedings for the revocation of such permit shall be instituted.

(d) Any blasting permit issued under the provisions of this ordinance shall be revoked without further proceedings, upon the conviction of the permittee for a second or subsequent offense of any provision of any town ordinance within a 12 month period; or for a violation of ch. COMM 7; or of any other applicable county, state, or federal regulation; or of a felony.

(e) Whenever a permit is revoked for cause, there shall be at least a 6 month waiting period before another permit may be granted for the same site; and a 12 month period shall elapse before another permit may be granted to the individual whose permit was revoked.

(7) PERMIT PERIOD

(a) Long term permits shall be valid for a maximum of 180 days from the date of issuance.

(b) Short term permits shall be valid for a maximum of 7 days from the date and time of issuance; and shall be conditional upon the following:

1. Only one short term permit may be issued within a 6 month period; unless the permittee was unable to blast during the initial 7 day period because of weather conditions or other uncontrollable factors.

2. Short term permits may not be issued to a nonmetallic mining operation.

(8) BLASTING PERMIT REQUIREMENTS

(a) Application shall be made to the town clerk a minimum of 30 working days prior to the proposed effective date of the permit; using the town of Cross Plains blasting permit application form. A current copy of this form is attached as Appendix 18-A; with the same force and effect as if it were fully reprinted herein.

(b) An application for a blasting permit will not be processed until the appropriate fee, set by resolution of the Town Board, has been paid to the treasurer and the properly completed permit application has been received by the clerk.

(c) Blasting permits are not transferable; and shall be issued only to individuals, not corporations, partnerships, or other entities. The permittee shall be the "responsible party" who shall ensure compliance with, and be held liable for violations of, the provisions of this ordinance.

(9) USE AND HANDLING OF EXPLOSIVES

(a) Except for fireworks displays, no person may use any amount of explosives regulated under COMM 7, other than between the hours of 8:00 AM and 4:00 PM, Monday through Friday. No blasting shall take place on any designated state holiday.

(b) At least 24, but no more than 72, hours prior to any blast; the blaster shall notify all residents, and owners of any dwelling or other structure, within a ¼ mile radius of the blast site, or a distance as specified in ch. COMM 7.61, whichever is greater; of the date and time of the blast. This notification shall be in addition to the notification required under ch. COMM 7.35(3) and 7.61.

(c) No blasting shall be conducted within the town limits, without first obtaining specific written approval from the town board; within 200 feet of any of the following:

1. The property line of the parcel on which the blasting will occur.

2. Any highway right-of-way.

3. Any underground utility.

4. Any structure.

5. Any well.

6. Any septic system.

The terms of any specific approval granted, shall be documented on an attachment to the blasting permit**.**

(10) CONTROL OF ADVERSE EFFECTS

(a) Blasting shall be conducted so as to prevent injury and unreasonable annoyance to persons, and damage to property outside the controlled blast site area. Airblasts, flyrock, and ground vibrations resulting from any blasting within the town limits; shall not exceed the standards specified in ch. COMM 7.64.

(b) Upon notification specified in (9)(b); any affected person may request that a preblasting survey be conducted. The following shall apply to all such requests:

1. Any affected person should immediately contact the blaster AND the town clerk to request the preblasting survey; due to the limited time between the required notification and scheduled blast.

2. Failure to request a preblasting survey, shall not be considered grounds for dismissal of any damage claim raised following the blast.

3. Failure of a timely request, shall not be considered adequate grounds to delay the scheduled blast.

Costs normally associated with a preblasting inspection, shall be the responsibility of the blaster. Extraordinary costs shall be the responsibility of the person requesting the inspection; unless the costs incurred can be negotiated between the parties involved.

(c) All blasts shall be monitored by the blaster, with the results of each blast fired recorded on a blasting log. The blasting log shall include the seismographic and airblast records specified in ch. COMM 7.37(3)(q). A certified copy of the blasting log shall be provided to the town clerk upon request and shall be retained as specified in ch. COMM 7.37(2).

(11) PENALTY FOR VIOLATION In addition to, and separate from, the possible liability from a failure to comply with any DCOMM, DNR, MSHA, or OSHA regulation; violations of this ordinance shall be punishable as class D forfeitures, under s. TCG 25.04.

SECTION V – PRE-BLASTING SURVEY

A. Prior to obtaining a blasting permit, the applicant shall notify, in writing, all residents or owners of buildings or other structures (including, but not limited to, wells) located within 1,000 feet from the blasting site that the applicant intends to apply for a blasting permit from the Town of Cross Plains. The

written notification shall include a statement indicating that, upon the written request, the applicant will perform a pre-blasting survey, which would provide a baseline record of the pre-existing condition of buildings or structures against which the effects of blasting can be assessed, and which would include both the interior and exterior of the buildings. The notice shall indicate that no survey will be done unless the resident or owner makes a written request for the pre-blast survey and a water quality test for existing wells. The resident or owner shall make any request for a pre-blast survey or water quality test to the applicant, in writing. The applicant shall conduct a pre-blast survey only of requested dwellings or structures and conduct water quality testing for existing wells at the applicant’s expense.

B. If the resident or owner requests a copy of the well test, then, within two business days of the request, the operator shall provide the copy.

C. The Town reserves the right to require a baseline well pre-blast test and/or any post-blast well testing at any well being used, not owned by the operator, within 1,000 feet of the blast site.

D. Any pre-blast water quality and sediment testing shall be conducted by an independent survey company and a laboratory approved by the State of Wisconsin or an organization selected by the applicant and acceptable to the Town. Reasonable and reasonably related costs of such independent survey shall be the sole responsibility of the Operator. A pre-blasting well test conducted after a period of at least 180 days with no blasting shall establish a baseline for well test values.

Section V:Severability and Interpretation

1. Should any section, clause, provision or portion of this ordinance be adjudged unconstitutional

or invalid, unlawful or unenforceable by a final order of a court of competent jurisdiction, including all applicable appeals, the remainder of this ordinance shall remain in full force and effect.

(B) The provisions of this ordinance shall be liberally construed in favor of the Town of Cross Plains and shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town of Cross Plains.

Section VI: No Liability for Damages

This ordinance shall not be construed as an assumption of liability by the Town of Cross Plains for damages because of injuries sustained or property destroyed by any person's failure to comply with the requirements set forth herein.

Section VII: Effective Date

This ordinance is effective on publication.

The Town Clerk shall properly publish a summary of this ordinance as required under Sec. 60.80 (2) of Wis. Statutes as a Class I Notice in a newspaper.

Adopted this \_\_\_8th\_\_\_\_\_\_\_ day of \_February\_\_\_\_\_\_, 2016\_\_.

Signatures of Town Board:

Town Board Chair\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 1\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 2\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 3\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town Supervisor 4\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Posted Date:\_\_2/10/16\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest: Town Clerk\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_