

FINAL VERSION

ORDINANCE No. 2013-06

**AN ORDINANCE RELATING TO TOWN ROAD WEIGHT LIMITS  
AND HEAVY VEHICLE OPERATOR'S PERMITS**

The Town Board of the Town of Lucas, Dunn County Wisconsin, do ordain as follows:

**SECTION I. REPEAL AND RECREATION OF PROVISIONS.**

Section 10-1-11 of the Town of Lucas Code of Ordinances is repealed and recreated to read as follows:

**Sec. 10-1-11 Vehicle Weight Limits.**

- (a) **Authority.** In the interest of public safety on Town roads, the roads and streets, or portions thereof, of the Town of Lucas are hereby declared to have weight limitations set forth herein. In the absence of such limitations, there is a significant likelihood that Town roads and streets would be seriously damaged or destroyed due to heavy vehicle use. The Town Board of the Town of Lucas has statutory authority, powers, and duties, pursuant to the specific statutory sections noted in this Section and/or by its adoption of village powers under Section 60.10, Wis. Stats., to establish, regulate, control, and enforce road and street weight limits in the Town. Such limitations are adopted pursuant to Section 349.16, Wis. Stats., which is hereby adopted by reference and made a part of this Section.
- (b) **Weight Restrictions; Exceptions.**
  - (1) Every operator of a vehicle with a gross vehicle weight of sixteen thousand (16,000) pounds or greater shall be prohibited from traveling or operating on or using any Town roads and streets within the Town of Lucas, as prescribed by Section 349.16(1), Wis. Stats., when posted permanently or seasonally. This Section permanently places such weight restrictions on all Town roads and streets throughout the year.

- (2) The general weight limitations set forth for all Town roads and streets do not apply in the following circumstances:
  - a. Government vehicles engaged in official duties, milk trucks, fuel trucks, school buses, livestock trucks, and garbage/recycling trucks contracted or permitted by the Town shall be exempt from the general weight restrictions of the Town.
  - b. When use is necessary for the purpose of leaving or returning an empty vehicle to the place where the vehicle is garaged; however, such operator shall leave such road and re-enter roads not subject to such weight limitation at the closest to its immediate destination and shall take the most direct route to his/her destination.
  - c. When infrequent use is necessary for the purpose of delivering and/or moving supplies or other necessary commodities to or from any farm, place of business, or residence fronting on any such Town roads or streets.
  - d. When a Town heavy vehicle operator permit has been issued pursuant to Section 10-1-12 of the Town of Lucas Code of Ordinances for heavy vehicle use on designated Town roads and haul routes.
  - e. Other appropriate limited-time situations authorized by the Town Chairperson, or designee. The Chairperson, or designee, may require the payment of a fee, deposit or other financial assurance adequate to address any potential damage to Town roads and streets resulting from such use exception.
- (c) **Notice; Signage.** Appropriate weight limitation signs shall be erected on Town roads and streets. Such signage may include notice of the general weight limitations set forth herein as well as special or seasonal weight limitations. For example, the Town may erect proper signage to warn drivers of this Section's requirements, such as "No Through Trucks Over 8 Tons per Town Ordinance" or "Weight Limits Enforced for Vehicles Over 8 Tons. Permit Required per Town Ordinance." Flags or other markings may be used to draw attention to signage, particularly for seasonal or special signage.
- (d) **Special or Seasonal Weight Limitations.**
  - (1) In addition to the permanent weight limitations placed on Town roads and streets by this Section, the Town may impose special or seasonal limitations on any Town road or street, or portion thereof, in accordance with Sections 348.17 and 349.16, Wis. Stats., which are adopted by reference and made a part of this Section.
  - (2) When such special or seasonal limitations are in effect, the general delivery exceptions of Subsection (b)(2)c above shall not apply but all other exemptions in Subsection (b)(2) shall remain applicable.
- (e) **Enforcement.** This Section shall be enforced in accordance with the provisions of Sections 345.20 through 345.53 and Ch. 800, Wis. Stats., which are hereby adopted by reference and made a part of this Section.

(f) **Penalties.**

- (1) The penalty for violation of any provision of this Section shall be a forfeiture, together with mandatory fees and the costs of prosecution, as permitted by law.
- (2) The forfeiture for a first violation of any provision of this Section shall be not less than Two Hundred and Fifty Dollars (\$250.00). The forfeiture for a second offense by the same owner or operator shall not be less than Five Hundred Dollars (\$500.00). The forfeiture for third or subsequent offenses by the same owner or operator shall not be less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) per violation.
- (3) For purposes of this Section, a violation by an owner or operator of a vehicle under a common plan of operation or contract shall be considered in determining whether the violation is a subsequent offense.

**SECTION II. ADOPTION OF PROVISIONS; SECTION RENUMBERED.**

Section 10-1-12 of the Town of Lucas Code of Ordinances is renumbered to Section 10-1-13 and a new Section 10-1-12 is created to read as follows:

**Sec. 10-1-12 Heavy Vehicle Operator Permits.**

(g) **Statutory Authority; Findings and Purpose.**

- (1) **Statutory Authority.** This Section is adopted by the powers granted to the Town of Lucas by the Town's adoption of village powers pursuant to Sections 60.10 and 61.34, Wis. Stats., its authority under Section 66.0415, Wis. Stats., and other authority under the Wisconsin Statutes. Any amendments, repeals or recreations of the Wisconsin Statutes relating to this Section made after the effective date of this Section are incorporated into this Section by reference on the effective date of the amendment, repeal or recreation.
- (2) **Findings.**
  - a. Nonmetallic mining operations engaged in industrial sand mining typically require repeated, sustained heavy vehicle (truck) traffic; while an important component in the state and local economies, such industrial activity in a rural setting can have both direct and indirect adverse impacts. The nature of heavy vehicular traffic that can be generated by nonmetallic mining operations engaged in industrial sand mining, or similar exceptional industries, typically exceeds the normal and estimated design capacities of the public roadways constructed to a rural, town-road design standard.
  - b. The life expectancy of roadways within the Town of Lucas can reasonably be expected to decrease significantly with sustained

heavy vehicular traffic regularly using such Town roads. Heavy equipment loads produce, particularly at high travel frequency levels, greater amounts of road deterioration and distress given the original rural design and construction standards of such roads. Exceptional road distress can significantly increase overall road maintenance, oversight, repair, and replacement costs to the Town, which has limited financial resources. Such use(s) of Town roads can reasonably be expected to cause significant distress to the Town's roadways as a direct result of the frequency of their specific operations and the weight of loads carried; such distress may be immediate or it may be gradual, causing greater than ordinary wear and tear and damage to the Town's roadways.

- c. Heavy vehicular traffic can generate other non-infrastructure impacts such as safety concerns to children and other users of such roads and residents adjoining the roads being so used.
- d. While certain aspects of heavy vehicle traffic are subject to federal and/or state regulations, there are no comprehensive state or federal regulations that would sufficiently limit or condition these types of exceptional uses such that, left unregulated, there would be no adverse impacts to the public health, safety, and welfare. As a result, the Town elects to implement a heavy vehicle operator's permit process as set forth in this Section to ensure that necessary safeguards, information disclosure, and precautions are in place.
- e. Proper protection of the public health, safety, and welfare in regard to exceptional use of Town roadways can be complicated by the fact that operators of a licensed nonmetallic industrial sand mining operation, or similar exceptional use, may utilize third-party companies, independent contractors, subsidiaries, limited liability corporate entities, and/or agents to provide heavy trucking services, to construct the site, or to provide service/support services with heavy vehicles not directly involved in the hauling of natural resource products or other heavy loads.
- f. Adoption of this Section, and adherence thereto by operators, in no way or manner supercedes or nullifies requirements for compliance with other Town of Lucas ordinances, including, but not limited to, Town road weight limits imposed by Sec. 10-1-11 and Title 7, Chapter 9 governing the licensing and regulation of nonmetallic mining sites and operations, including the use of designated Town road haul routes, and other applicable Town ordinances. This Section is intended to compliment, not supplant, those Town ordinances.

(3) **Purpose.**

- a. The purpose of this Section is to provide additional needed safeguards to protect the public health, safety and welfare through regulations and conditions for repeated heavy vehicle traffic on

Town roadways through a permitting process for heavy vehicle operators engaged in servicing nonmetallic industrial sand mining operations.

- b. While the Town's licensing requirements for nonmetallic mining operations in Title 7, Chapter 9 of the Town of Lucas Code of Ordinances provide a comprehensive framework of standards to be complied with, this Section is necessary to ensure accountability with necessary safeguards regulating heavy vehicles engaged in servicing a nonmetallic industrial sand mining operation. Areas of particular concern, but not limited to, are requirements for heavy vehicle insurance coverage, possession of a valid State of Wisconsin commercial driver's license, and financial assurance to the Town for damage to Town roads in the event of a failure to do so by a licensee under Title 7, Chapter 9.

(h) **Applicability and Scope.**

(1) **Applicability.** This Section shall apply to the operation of heavy vehicles on Town of Lucas roads, except as set forth in Subsection (b) below.

(2) **Exceptions.** This Section shall not apply to the following heavy vehicle traffic:

- a. Occasional operation of heavy vehicles by a person solely for that person's own personal use, household use, business use, or farm use at that person's residence, business, or farm.
- b. Occasional heavy vehicle operation for the construction, reconstruction, maintenance or repair of a highway, roadway, railroad, or any other transportation infrastructure where the excavation or grading is entirely within the property boundaries or rights-of-way of the highway, railroad, or other transportation facility.
- c. Occasional heavy vehicle operation conducted for preparing a building site or restoring land following a flood or other natural disaster.
- d. Occasional heavy vehicle operation for residential or agricultural building construction purposes conducted to and from a particular building site.
- e. Occasional heavy vehicle operation from a nonmetallic mining site other than one whose primary purpose is serving an industrial sand mining site.
- f. Operation of heavy farm or agriculture-related vehicles and/or equipment on Town roads, including, but not limited to, fertilizer trucks, farm equipment delivery trucks, farm-to-farm hauling of manure, etc.
- g. Milk trucks on a regularly established route that will result in no more than two (2) trips per day over any portion of a Town road.

(i) **Definitions.** The following definitions shall be applicable in this Section:

- (1) **Heavy Vehicle.** Any vehicle over forty-eight thousand (48,000) pounds, empty or loaded, regularly operating or proposing to operate on a Town road.
  - (2) **Industrial Sand Mining.** Shall have the meaning established in Section 7-9-3(b) of the Town of Lucas Code of Ordinances.
  - (3) **Occasional.** Not more than three (3) trips per day for the same vehicle using the same portion of any Town road.
  - (4) **Operator.** Any person or entity who is engaged in heavy vehicle operation, based on vehicle ownership or leasing arrangement, or who has applied for a heavy vehicle operator's permit. During the permit application phase, may also be referred to as "applicant."
  - (5) **Operator Permit (Permit).** The permit required of operators of heavy vehicles on Town roads under this Section.
  - (6) **Town.** The Town of Lucas, Dunn County, Wisconsin.
  - (7) **Town Board.** The Town Board of the Town of Lucas, Dunn County, Wisconsin.
  - (8) **Town Road(s).** Any roadway owned by the Town or subject to its control, regulation, and/or maintenance.
- (j) **Heavy Vehicle Operator Permit Requirement.**
- (1) **Operator Permit Required.** Unless exempt under Subsection (b)(2) above, no person shall operate a heavy vehicle within the scope of this Section in the Town of Lucas without first obtaining a heavy vehicle operator permit from the Town Board.
  - (2) **Permit Term.**
    - a. Except for the first year of operation under this Section, a heavy vehicle operator permit shall be granted for a period of one (1) year commencing on June 1 and ending on May 31 of the following calendar year. For the first year of operation under this Section, the heavy vehicle operator permit will be valid from the date of issuance until the first May 31st after twelve (12) months of operations have been completed.
    - b. A heavy vehicle operator permit may be renewed as set forth in Subsection (i) below, except that a temporary heavy vehicle operator permit may not be renewed.
  - (3) **Amendment of a Permit.** If the Town has issued a heavy vehicle operator permit, the operator may request an amendment to that permit during the term of the permit, using the same process as the original permit application.
  - (4) **Permit Revocation.** A heavy vehicle operator permit may be revoked under the procedures in Subsection (j) below.
- (k) **Permit Application Procedures.**
- (1) **Application Submittal.** The applicant shall submit three (3) copies of a permit application request and all required documentation under Subsection (f) to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Section in Section 1-3-1. The application shall

be signed by the applicant. An applicant/operator owning or leasing multiple heavy vehicles may submit a joint application, provided individual vehicle/driver and insurance information is provided and required fees are paid on a per vehicle basis.

(2) **Town Board Initial Review.**

- a. Upon receipt of the application, the Town Board shall conduct an initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary, the Town Board shall schedule the application for a determination.
- b. The Town Board may request the applicant to submit additional information if the Town Board determines that the application is incomplete.
- c. All applications shall be referred to the Sheriff's Department or other investigating authority to determine whether the applicant has complied with all regulations, ordinances and laws applicable thereto. The investigating authority shall conduct an investigation of the applicant's record including, but not limited to, requesting information from the State of Wisconsin, other local governments or other regulatory bodies concerning the applicant's driving record, current validity of a State of Wisconsin-issued commercial driver's license (CDL), and any violations of other regulations pertinent to fitness for a heavy truck operator permit. Based upon such investigation, the investigating authority shall forward its findings to the Town.
- d. The Town Board may also retain the services of an engineer or other qualified consultant to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Section.
- e. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of a qualified consultant and shall give written notice to the operator applicant of the additional administrative fee to cover the cost of the services of any such consultant. The additional fee shall be paid by the applicant before the additional review is undertaken.
- f. Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the qualified consultant shall report to the Town Board on whether the application meets the requirements of this Section.

(3) **Town Board Determination.**

- a. Once the application is complete and any report by a qualified consultant and/or investigating authority has been completed, the Town Clerk shall place the application on the agenda for action at the next regular meeting of the Town Board. If a special meeting

is warranted, the applicant shall pay the additional fees incurred for the special meeting.

- b. The Town Board may take action at that time or set a different date for the meeting at which time the Town Board shall make a final decision on the heavy vehicle operator permit application. If a special meeting is requested and granted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall review the consultant's and investigating authority's report as well as any public comments. The Town Board may grant the heavy vehicle operator permit if the Board determines that the heavy vehicle operation will be consistent with the minimum standards of this Section. If the Town Board denies the application, the applicant may request a hearing under the provisions of Subsection (j).

- (l) **Required Permit Application Information.** All applicants applying for a heavy vehicle operator permit shall submit the following information:

- (1) ***Ownership Information.***

- a. The name, address, telephone numbers (landline, cellphone, fax), and email address(es) of the operator of the heavy vehicles by ownership or lease.
- b. The name, address, telephone numbers (landline, cellphone, fax), and email address(es) of all owners and lessors of the truck that will be operated to service the site (if different than the applicant) and of all owners and lessors of the land to and or from which the heavy vehicle operation will occur.
- c. The name, address, telephone numbers (landline, cellphone, fax), and email address(es) of each heavy truck driver, a copy of each driver's valid Wisconsin-issued commercial driver's license (CDL), and in-force vehicle insurance policy meeting the minimum coverage levels of Section 7-9-14 of the Town of Lucas Code of Ordinances.
- d. A description of the heavy truck being operated by make, model, year, color, design capacity, and license number.
- e. The route(s) proposed to be traveled which are Town roads, together with estimated mileage of roadway to be covered and weight, type and number of heavy vehicles anticipated to be operating on Town roads.

- (2) ***Site Information and Maps.*** A plat map identifying the relevant Town road locations or Town haul routes that are proposed to be used for heavy vehicle operations.

- (3) ***Specific Operations Plans.***

- a. Dates of the planned commencement and cessation of hauling operations.
- b. Identification of all proposed off-site trucking routes, together with the frequency of traffic and the general schedule of travel to be used; where town road haul routes have been designated pursuant



to Sec. 7-9-8(b)(10) of the Town of Lucas Code of Ordinances, information shall be provided showing compliance with such requirements.

(4) **Information Demonstrating Compliance with Minimum Standards.**

The operator shall provide with his/her application the information necessary to demonstrate that his/her heavy vehicle operations will comply with the minimum standards in Subsection (g) below.

(m) **Minimum Standards for Permit Consideration and Post-Permit Operation.** The Town Board may grant a heavy vehicle operator permit if the applicant/operator can demonstrate that the following minimum standards of operation will be met:

(1) **General Standards.** As a condition of permit issuance:

- a. The heavy vehicle operator shall comply with all requirements of this Section and applicable requirements of Title 7, Chapter 9 of the Town of Lucas Code of Ordinances, specifically, but not limited to:
  1. Section 7-9-8(a)(5): Compliance with equipment backup alarm requirements.
  2. Section 7-9-8(a)(6): Compliance with restrictions on use of engine compression brakes per Section 10-1-41.
  3. Section 7-9-8(b)(4): Hours of operation.
  4. Section 7-9-8(b)(5)a: Coordination with local school bus route schedules.
  5. Section 7-9-8(b)(5)b: Passing of farm equipment prohibited.
  6. Section 7-9-8(b)(10): Compliance with Town haul route requirements.
  7. Section 7-9-8(b)(11): Weight limits on Town roads.
  8. Section 7-9-14(a)(1)b, (2) and (4), (b)(2): Vehicle insurance and worker's compensation insurance requirements; Indemnification.
- b. The operator shall demonstrate that all other applicable federal, state and local permits and approvals required have been obtained prior to commencement of operation.
- c. The operator shall provide written information to the Town of any citations, notices of violation, or other enforcement actions taken by any other governmental body against the operator within two (2) business days of their occurrence.
- d. The operator shall comply with the financial assurance standards of Subsection (k) if required by the Town Board.
- e. The operator shall at all times maintain insurance at the level required by Section 7-9-14. Certificates of insurance evidencing compliance with the insurance requirements of this Section shall be provided to the Town Clerk at the time of permit application. The operator shall provide written notice to the Town in the event there is a lapse in insurance coverage, and the operator shall cease vehicle operations on Town roads until required insurance is again in force. All policies,

other than worker's compensation policies, shall be written on an occurrence and not on a claims made basis.

- (2) **Standards Regarding Off-Site Impacts.**
  - a. The operator shall limit use of Town roads to the hours specified in Section 7-9-8(b)(4) of the Town of Lucas Code of Ordinances or in a mining agreement with the Town.
  - b. The operator shall ensure that the operator's heavy vehicles operation shall not interfere with the safety of children being taken or returned from school, or the safety of residents, agricultural equipment users on Town roads, and commuters. Section 7-9-8(b)(5)a.
- (3) **Additional Requirements.** The Town Board may impose requirements in addition to or exceeding the minimum standards if it concludes that the public health, safety, and welfare will not be adequately protected without the imposition of additional measures.
- (n) **Annual Report.** Not later than February 1st of each calendar year, the heavy vehicle operator permitholder shall submit an annual report to the Town Board for all active and intermittent heavy vehicle operations for which the operator has a heavy vehicle operator permit from the Town. The operator's annual report shall include the following information:
  - (1) **Identification of Operator(s).** Identification of each individual operator.
  - (2) **Road Use Description.** A map, drawing or other description accurately showing the Town roads being used.
  - (3) **Annual Operations Summary.** A description of all heavy vehicle activities and operations in the Town during the previous calendar year.
  - (4) **Compliance/Noncompliance Report.** A written report demonstrating how the heavy vehicle operator has been in compliance or noncompliance with any and all terms and conditions of its permit and this Section. For areas of noncompliance, the heavy vehicle operator shall provide a summary of all areas of noncompliance and a plan for bringing non-compliant areas into compliance.
- (o) **Heavy Vehicle Operator Permit Renewal.**
  - (1) **Renewal Requests.** The heavy vehicle operator shall make written request to the Town Clerk for a renewal of the permit to operate no later than March 1st of the year in which the permit will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Section in amounts set forth in Sec. 1-3-1.
  - (2) **Annual Report to be Incouded.** The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of Subsection (h) above.
  - (3) **Staff Review.** Town staff and/or consultants shall review the renewal application within thirty (30) days of its receipt to determine whether the application is complete, and upon a determination that it is complete shall forward it to the Town Board with a report.
  - (4) **Town Board/Expert Consultant Review.** The Town Board shall review the application to determine if additional information or expertise is

necessary to properly evaluate the application. The Town may retain an engineer or other qualified person with appropriate expertise to inspect the Town road(s) affected. If no additional information or expertise is deemed necessary, the Town Board shall schedule the application for a decision.

- (5) **Expert Consultant Costs.** If the Town Board determines that additional expertise is required, the Town Board shall authorize the use of an expert consultant(s) to advise the Town and shall give written notice to the operator of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of additional review by the expert consultant(s). The additional fee shall be paid before the additional review is undertaken.
  - (6) **Expert Consultant's Report.** Once the heavy vehicle operator has submitted any additional information and has paid the additional administrative fee in the amount charged, the expert consultant shall report to the Town Board on whether the renewal application meets the requirements of this Section. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license.
  - (7) **Determination on Renewals.** The Town Board may grant the request for renewal if it finds:
    - a. There have been no material violations of the Section or the permit which have not been appropriately remedied;
    - b. The operator has not received a citation(s) or orders for violations of the heavy vehicle operator permit, this Section and/or traffic laws and ordinances; and
    - c. All applicable fees have been paid and financial responsibility requirements have been met, if required.
  - (8) **Denial of Renewals.** If the Town Board denies the request for renewal, the Town Board shall notify the operator and provide the operator with an opportunity for a hearing.
- (p) **Inspection, Enforcement, Procedures, and Penalties.**
- (1) **Inspection.** The Town Board, or other authorized Town representative, may make inspections to determine the condition of Town roads in order to safeguard the health and safety of the public and determine compliance with the minimum standards.
  - (2) **Violations.** The following are violations under this Section:
    - a. Operating a heavy vehicle on a Town road without a heavy vehicle operator permit required by this Section.
    - b. Failure to comply with the minimum standards and other terms of this Section.
    - c. Making an incorrect or false statement in the information and documentation submitted during the permitting process or during inspection by the Town or its duly authorized representative.
    - d. Failure to timely file required reports under this Section.

- (3) **Hearings.**
- a. Any person affected by a notice and order issued in connection with the enforcement of this Section, or upon denial of an application for a heavy vehicle operator permit or renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk a written petition requesting the hearing and setting forth the heavy vehicle operator's name, address, telephone numbers (landline, cellphone, fax), and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty (30) days of the date on which the notice and order are provided or within thirty (30) days after denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
  - b. After the hearing, the Town Board, by a majority vote, shall sustain, modify, or withdraw the notice, or grant or deny the heavy vehicle operator permit or renewal, depending on its findings as to whether the provisions of this Section have been complied with, and the petitioner shall be notified within ten (10) days in writing of such findings.
  - c. 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 with the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.
- (4) **Remedies.** The Town Board may take any appropriate action or proceeding against any person or entity in violation of this Section, including, but not limited to, the following:
- a. Issue a cease and desist order.
  - b. Issue a notice of violation and order that specifies the action to be taken to remedy the situation.
  - c. Issue a citation in accordance with any Town ordinance.
  - d. Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties as provided for below and for injunctive relief.
  - e. Suspend or revoke the heavy vehicle operator permit per Subsection (j)(5) below.
- (5) **Suspension or Revocation.** After giving notice and a hearing, the Town Board may suspend or revoke a heavy vehicle operator permit for a violation of this Section.
- (6) **Penalties.**
- a. Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than Two Hundred and Fifty Dollars (\$250.00) per violation nor more than Five Thousand Dollars (\$5,000.00) per

- violation and/or shall be subject to injunctive relief. Each day a violation exists is a separate violation.
- b. Any person or entity adjudicated for violation of this Section shall pay all court costs and reasonable attorney's fees.
  - c. The remedies provided herein shall not be exclusive of other remedies.
- (7) **Non-Waiver of Rights.** A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's rights to take action on any present violation(s).
- (q) **Financial Assurance.**
- (1) **Condition of Permit Approval.**
    - a. In the event the Town Board determines that the financial assurance commitments required of operators of nonmetallic mining operations to ensure proper road maintenance and/or reconstruction is insufficient or significant reasons exist to conclude that the mining operator will be unable to fulfill such obligation, the Town Board may require that such financial assurance be provided by the holder of a heavy vehicle operator permit. In such an event, the financial assurance required under Section 7-9-11 pertaining to road repairs and reconstruction shall be provided to the Town as a condition of heavy vehicle operator permit approval in an amount necessary for the repair and maintenance of Town roads used for heavy vehicle operations by that party.
    - b. Under any circumstances, the holder of a heavy vehicle operator permit shall be jointly and severally liable for all road repair and maintenance costs caused by the hauling operations serving the mining site at which the permittee is engaged in the event the nonmetallic mining operator fails or is unable to meet its obligations under Section 7-9-11 of the Town of Lucas Code of Ordinances.
  - (2) **Form.** The form of financial assurance made to the Town shall be in that form agreed to by the Town Board and may include periodic payments, performance bonds, irrevocable letters of credit, or other measures agreed upon by the Town Board.
  - (3) **Additional Financial Assurance Amounts.** In the event the Town Board determines that the amount of financial assurance must be increased to meet specific road repair needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The heavy vehicle operator shall have thirty (30) days to provide the increased amount.

### **SECTION III. SEVERABILITY.**

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or

unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

**SECTION IV. EFFECTIVE DATE.**

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

TOWN OF LUCAS, WISCONSIN

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Town Clerk

Published and/or Posted: \_\_\_\_\_