

## Memo on Moratorium Authority for Towns

To: Frac Sand Mining Conference Participants

From: Richard J. Stadelman, Attorney and Executive Director  
Wisconsin Towns Association

Re: Cover memo on Sample Moratorium Ordinance for Nonmetallic Mining

Date: December 1, 2011

Attached is a sample moratorium ordinance for towns. There are some important points that all town officers should know before considering adopting this ordinance:

1. There is no state statute that specifically authorizes towns, villages, cities, or counties to adopt a moratorium ordinance of any type.
2. In my legal opinion, towns with village powers (which are granted to the town boards by town electors at an annual or special town meeting of the electors) may adopt a moratorium ordinance to “freeze” things in place pending a reasonable time to research, study, and discuss adopting ordinances (such as zoning or licensing).
3. The attached sample ordinance does not shut down any existing nonmetallic mining operation, but limits those operations to the physical dimensions of the existing operations.
4. A moratorium ordinance should be limited to a reasonable time period and for the purpose of research, studying, and discussing possible adoption of regulatory ordinances. A moratorium can not be used to permanently or indefinitely delay the creation or expansion of a nonmetallic mining operation.
5. In my legal opinion, a reasonable time for a town to impose a moratorium on nonmetallic mining is six months to not more than one year. Any time greater than one year could be argued to be unreasonable and arbitrary and possibly a “taking of property rights.”
6. A U.S. Supreme Court case, *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, [535 U.S. 302](#) (2002), held that a moratorium that was for a reasonable time (in this case three years pending the adoption of a comprehensive plan) was not a constitutional taking.
7. A Wisconsin Court of Appeals case, *Wis. Realtor Assn. V. Town of West Point*, **2008 Wi. App 40, 309 Wis. 2d, 747 N.W. 2d 681**, held that a town moratorium for land divisions was authorized under Sec. 236.45 of Wis. Statutes for a two year period of time pending adoption of a comprehensive plan. This case emphasized the importance of a reasonable time for a legitimate purpose.
8. The attached sample moratorium ordinance provides that a penalty and injunctive relief can be sought for any violation of the moratorium. Therefore the ordinance must be published as a Class I Notice in a newspaper, pursuant to Sec. 60.80(2) of Wis. Statutes to be effective.