

ORDINANCE NO. 3943

**AN ORDINANCE AMENDMENT TO CHAPTERS 17.04, 17.42, 17.44 AND 17.62 RELATING TO THE ADMINISTRATIVE PROCESS FOR REVIEWING SURFACE MINING AND RECLAMATION PROJECTS.**

**WHEREAS**, the City of Bakersfield initiated a proposal to amend Title 17 of the Bakersfield Municipal Code; specifically, adding definitions to Chapter 17.04, rescinding in Chapters 17.42 and 17.44, and revising Chapter 17.62 relating to the administrative process for reviewing surface mining and reclamation projects; and

**WHEREAS**, the Planning Commission through its Secretary set Thursday, October 21, 1999 at the hour of 5:30 p.m. in the Council Chambers of City Hall, 1501 Truxtun Avenue, Bakersfield, California, as the time and place for a public hearing before said Commission on said ordinance, and notice of the public hearing was given in the manner prescribed in the Municipal Code and the California Government Code; and

**WHEREAS**, the Planning Commission adopted Resolution No. 181-99 recommending approval of the proposed ordinance amendments and forwarded its recommendation to the City Council; and

**WHEREAS**, the City Council through its City Clerk set Wednesday, November 17, 1999 at the hour of 7:00 p.m. in the Council Chambers of City Hall, 1501 Truxtun Avenue, Bakersfield, California, as the time and place to consider said ordinance; and

**WHEREAS**, the ordinance was found to be exempt from the provisions of CEQA and the law and regulations as set forth in CEQA and the City of Bakersfield's CEQA Implementation Procedures have been duly followed by city staff and this Council; and

**WHEREAS**, the City Council, at said public meeting, considered the ordinance, all relevant facts, and public testimony, and the Council adopted the findings made by the Planning Commission as contained in the Commission's Resolution No.



**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Bakersfield as follows:

**SECTION 1.**

Section 17.04.465 is hereby added to Chapter 17.04 to read as follows:

**17.04.465 Mined land.**

"Mined Land" means the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools or other materials or property which results from, or are used in, surface mining operations are located.

**SECTION 2.**

Section 17.04.491 is hereby added to Chapter 17.04 to read as follows:

**17.04.491 Overburden.**

"Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

**SECTION 3.**

Section 17.04.495 is hereby added to Chapter 17.04 to read as follows:

**17.04.495 Reclamation.**

"Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

**SECTION 4.**

Section 17.04.604 is hereby added to Chapter 17.04 to read as follows:

**17.04.604 Surface Mining Operation.**

"Surface Mining Operation" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method,



dredging and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to, in place distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities, borrow pitting, streambed skimming, and segregation and stockpiling of mined materials (and recovery of same).

## **SECTION 5.**

Chapter 17.62 is hereby amended to read as follows:

### **Chapter 17.62**

#### **SURFACE MINING AND RECLAMATION**

##### **Sections:**

- 17.62.010 Purpose and intent.**
- 17.62.020 Incorporation by reference of State regulations.**
- 17.62.030 Applicability.**
- 17.62.040 Vested rights.**
- 17.62.050 Permit review procedure.**
- 17.62.060 Reclamation plan.**
- 17.62.070 Financial assurance.**
- 17.62.080 Idle operations - interim management plan.**
- 17.62.090 Annual report.**
- 17.62.100 Violations.**
- 17.62.110 Fees.**

##### **17.62.010 Purpose and intent.**

The City of Bakersfield recognizes that the extraction of minerals is essential to the continued economic well-being of the City and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect health and safety. The City also recognizes that the reclamation of mined lands will provide for the protection and subsequent beneficial use of the land. Since surface mining operations may take place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different, reclamation operations may also vary accordingly.

The purpose and intent of this chapter is to safeguard the continued availability of important mineral resources while regulating surface mining operations as required by the California Surface Mining and Reclamation Act of 1975 (SMARA). These regulations will assure that:

- A. Adverse environmental effects are prevented or minimized, and that mined lands are reclaimed to a usable condition which is readily adaptable for



alternative land uses.

- B. The production and conservation of minerals are encouraged while giving consideration to value relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
- C. Residual hazards to the public health and safety are eliminated.

**17.62.020 Incorporation by reference of State regulations.**

The provisions of SMARA (Public Resources Code §2710 et seq.), Public Resources Code §2207 (relating to annual reporting requirements), and the California Code of Regulations (Title 14, Division 2, Section 8, Subchapter 1, §3500 et seq.), as those provisions and regulations may be amended from time to time, are made a part of this chapter by reference with the same force and effect as if they were specifically contained in this chapter. Whenever the provisions of this chapter are more restrictive than correlative State provisions, this chapter shall prevail.

**17.62.030 Applicability.**

- A. Except as provided in this chapter, no person shall conduct a surface mining operation unless a conditional use permit, reclamation plan, and financial assurance for reclamation have first been approved by the City. Any applicable exemption from this requirement or other provisions of this chapter does not automatically exempt a project or activity from adhering to other regulations, ordinances or policies of the City or State, including but not limited to, the application of the California Environmental Quality Act (CEQA), other permits, the payment of development impact fees, or the imposition of other dedications and exactions as may be permitted under the law. The provisions of this chapter shall apply to all lands within the City, public and private.
- B. This chapter shall not apply to any of the following activities:
  - 1. Excavations or grading conducted for farming, or for the purpose of restoring land following a flood or natural disaster.
  - 2. Onsite excavation and onsite earthmoving activities which are an integral and necessary part of a development that is undertaken to prepare a site for construction of structures, streets, landscaping, or other land improvements, including related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site. These development related improvements must have been approved by the City in accordance with applicable provisions of State law, locally adopted plans and ordinances, and CEQA.



3. Operation of an industrial site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials. This site must be located on lands approved such uses consistent with the City's general plan and zoning ordinance, none of the minerals being processed are being extracted onsite, and all reclamation work, if any was necessary, has been completed according to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.
4. Surface mining operations where a total of 1,000 cubic yards or less of the minerals and/or overburden is removed or involve an area of 1 acre or less in any one location.
5. Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.
6. The solar evaporation of water for the production of salt and related minerals.
7. Emergency excavations or grading conducted by or under direction of the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.
8. Surface mining operations conducted by, under contract with, or under direction of the State Department of Water Resources or the Reclamation Board for the State Water Resources Development System or flood control meeting the requirements for review and approval of the State Department of Conservation in accordance with PRC §2714(i).
9. Any other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbances.

**17.62.040 Vested rights.**

Any person with an existing surface mining operation who obtained a vested right to conduct such activity prior to January 1, 1976, shall not be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have occurred to the operation. Where a person with vested rights has continued surface mining in the same area after January 1, 1976, he or she shall obtain City approval of a reclamation plan covering any new mined lands disturbed since that date. In those cases where an overlap of the physical disturbance exists in the horizontal and/or vertical sense between pre- and post-Act mining, the

reclamation plan shall call for reclamation proportional to the disturbance caused by mining after the effective date of the Act (January 1, 1976). All other requirements of State law and this chapter shall apply to vested surface mining operations.

**17.62.050 Permit review procedure.**

- A. Application. A conditional use permit shall be required for all applications for a surface mining operation or land reclamation project, including any reclamation plan and financial assurance. The application for the permit shall be filed with the Planning Director on forms provided by the Director, and shall include all information as necessary to meet city ordinances, CEQA, SMARA, and any other information that the Director finds necessary to ensure that the project can be adequately evaluated.
- B. Authority. The Board of Zoning Adjustment (BZA) shall have the authority to grant or deny, subject to appeal to the City Council, the following:
  - 1. A conditional use permit to conduct surface mining operation.
  - 2. A reclamation plan.
  - 3. Financial assurance for reclamation of mined lands.
  - 4. Amendments to any term, condition or other consideration regarding a surface mining operation, reclamation plan or financial assurance.
  - 5. An interim management plan as defined in SMARA for idle surface mining operations.
  - 6. Environmental determinations concerning the conditional use permit for surface mining operations.
  - 7. Revocation of the conditional use permit.
- C. Review process. The procedures contained in Chapter 17.64 of the Bakersfield Municipal Code relating to processing a conditional use permit, including but not limited to, notice, public hearings, permit rights and restrictions, extensions, and appeals shall apply to any project regulated by this chapter.
- D. Additional notice. In addition to the notice required under the conditional use procedure and CEQA, notice shall also be provided as follows:
  - 1. Within 30 days of acceptance of an application as complete, the Planning Director shall notify the State Department of Conservation of the filing of the application.
  - 2. If mining operations are proposed in the 100-year flood plain of any



watercourse as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within 1 mile, upstream or downstream, of any state highway bridge, the Planning Director shall notify the State Department of Transportation that the application has been received.

3. The above notifications may be combined with any other notice or consultation necessary to meet CEQA requirements.
- E. Agency consultation and comments. In addition to the consultation and comment period required by City ordinance and CEQA, the State Department of Conservation shall be given 30 days to review and comment on a reclamation plan and 45 days to review and comment on a financial assurance (PRC §2774(d)). The BZA shall consider all written comments received, if any, from the State Department of Conservation and any other person or agency during the comment period.
- F. Required findings. In addition to any findings required by Chapter 17.64 for conditional use permits, an approval for a surface mining operation, reclamation plan and financial assurance shall include findings that the project complies with the provisions of SMARA and related State regulations.
- G. Distribution of final decision. In addition to the final decision being distributed to interested persons and/or agencies as may be required by City ordinance and CEQA, a copy of each approved and/or amended conditional use permit for a surface mining operation, reclamation plan, and/or financial assurance shall also be forwarded to the State Department of Conservation.
- H. Amendments. Amendments to any approved surface mining operation, reclamation plan, and/or financial assurance, shall be processed in the same manner as a new application.

**17.62.060 Reclamation plan.**

- A. All reclamation plans shall comply with the provisions of SMARA (§2772 and §2773) and State regulations (CCR §3500-3505). Reclamation plans approved after January 15, 1993, reclamation plans for proposed new mining operations, and any substantial amendments to previously approved reclamation plans, shall also comply with the requirements for reclamation performance standards (CCR §3700-3713).
- B. The City may impose additional performance standards as developed either in review of individual projects through the conditional use permit process, as warranted, or through the formulation and adoption of citywide performance standards.
- C. Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance.



Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or upon completion of all excavation, removal, or fill, as approved by the City. Each phase of reclamation shall be specifically described in the reclamation plan and shall include the beginning and expected ending dates for each phase, all reclamation activities anticipated, and estimated costs for completion of each phase of reclamation.

- D. The reclamation plan shall remain in effect until all components are satisfied. It shall be binding to any new operator or owner that may assume control of the surface mining operation.

**17.62.070 Financial assurance.**

- A. To ensure that reclamation will proceed in accordance with the approved reclamation plan, the City shall require, as a condition of approval, security which will be released upon satisfactory performance of reclaiming mined land. The applicant may pose security in the form of a surety bond, trust fund, an irrevocable letter of credit from an accredited financial institution, or other method acceptable to the City and the State Department of Mining and Geology Board as specified in regulation, and which the City reasonably determines is adequate to perform reclamation in accordance with the reclamation plan. Financial assurance shall be made payable to both the city of Bakersfield and the State Department of Conservation.
- B. Financial assurance shall be required to ensure compliance with elements of the reclamation plan, including but not limited to, revegetation and landscaping requirements, restoration of aquatic or wildlife habitats, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures as may be appropriate by the BZA.
- C. Cost estimates for the financial assurance shall be submitted to the Planning Director as part of the initial application for the surface mining operation. The Planning Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State does not comment within the required review period, it shall be assumed that the cost estimates are adequate. The BZA shall have the discretion to approve the financial assurance if it meets the requirements of this chapter, SMARA, and related State regulations.
- D. The amount of the financial assurance shall be based upon the estimated costs of reclamation for the years or phases stipulated in the reclamation plan, including any maintenance of reclaimed areas as may be required. Cost estimates shall be prepared by qualified professional retained by the operator that has been approved by the Planning Director. The estimated





amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the reclamation plan, including administrative costs. Financial assurance to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved reclamation plan shall be based upon cost estimates that include but may not be limited to labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permittee. A contingency factor of 10% shall be added to the cost of financial assurances.

- E. In projecting the costs of financial assurance, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the City may need to contract with a third party commercial company for reclamation of the site.
- F. The financial assurance shall remain in effect for the duration of the surface mining operation.

**17.62.080 Idle operations - interim management plan.**

- A. Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Director a proposed interim management plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA and the approved conditional use permit, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be processed as an amendment to the reclamation plan. IMPs shall not be considered a project for the purposes of environmental review as specified under SMARA.
- B. Financial assurances for idle operations shall be maintained as though the operation were active.
- C. The IMP may remain in effect for a period not to exceed five years, at which time the BZA may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with the approved reclamation plan.

**17.62.090 Annual report.**

- A. Report submittal. Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the Planning Director on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation within 30 days of permit approval, or before commencement of operations, whichever is sooner. Any applicable fees, together with a copy of the annual inspection report, shall be



forwarded to the State Department of Conservation at the time of filing the annual surface mining report.

- B. Inspections. The Planning Director, or his/her designee, shall inspect a surface mining operation within six months of receipt of the annual report to determine whether the surface mining operation is in compliance with the approved conditional use permit, reclamation plan, financial assurance, and State regulations. In no event shall less than one inspection be conducted in any calendar year. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

**17.62.100 Violations.**

If the Planning Director, based upon an annual inspection or otherwise confirmed by an inspection of the surface mining operation, determines that it is not in compliance with this Chapter, the approved conditional use permit or reclamation plan, the City shall follow the procedures set forth in SMARA concerning violations and penalties, as well as those provisions of Chapter 17.64 concerning revocation of the conditional use permit which are not preempted by SMARA.

**17.62.110 Fees.**

The applicant, operator or owner shall pay all fees not to exceed the reasonable costs incurred in implementing this chapter and State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance as set forth in Chapter 3.70.

**SECTION 6.**

Section 17.42.044 is hereby rescinded.

**SECTION 7.**

Section 17.42.050 is hereby rescinded.

**SECTION 8.**

Section 17.44.045 is hereby rescinded.

**SECTION 9.**

Section 17.44.050 is hereby rescinded.



**SECTION 10.**

The reference to the authority of the Board of Zoning Adjustment regarding conditional use permits is hereby amended to refer to the appropriate section as follows:

**17.44.060** - change the reference from Subsection B. of Section 17.64.030 to Subsection B. of Section 17.64.020.

**SECTION 11.**

Section 17.44.080 is hereby rescinded.

**SECTION 12.**

This ordinance shall be posted in accordance with the Bakersfield Municipal Code and shall become effective thirty (30) days from and after the date of its passage.

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I **HEREBY CERTIFY** that the foregoing Ordinance was passed and adopted by the Council of the City of Bakersfield at a regular meeting thereof held on DEC 15 1999, by the following vote:

AYES: COUNCILMEMBER CARSON, COUCH, DEMOND, MAGGARD, ROWLES, SALVAGGIO, SULLIVAN  
NOES: COUNCILMEMBER NONE  
ABSTAIN: COUNCILMEMBER NONE  
ABSENT: COUNCILMEMBER NONE

**CITY CLERK and EX OFFICIO** of the Council of the City of Bakersfield

Amela A. McCarthy

APPROVED: DEC 15 1999

Bob Price  
**BOB PRICE, MAYOR**  
**CITY OF BAKERSFIELD**

APPROVED AS TO FORM:  
**BART J. THILTGEN, CITY ATTORNEY**

By: Alan Dale Daniel



**AFFIDAVIT OF POSTING DOCUMENTS**

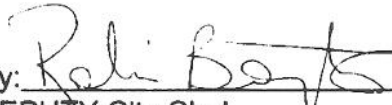
STATE OF CALIFORNIA)  
  ) ss.  
County of Kern                              )

PAMELA A. McCARTHY, being duly sworn, deposes and says:

That she is the duly appointed, acting and qualified City Clerk of the City of Bakersfield;  
and that on the 16th day of December, 1999 she posted on the Bulletin Board at  
City Hall, a full, true and correct copy of the following: Ordinance No. 3943, passed by  
the Bakersfield City Council at a meeting held on the 15th day of December 1999  
and entitled:

An ordinance amendment to chapters 17.04, 17.42, 17.44 &  
17.62 relating to the administrative process for reviewing surface  
mining and reclamation projects.

\_\_\_\_\_  
/s/ PAMELA A. McCARTHY  
City Clerk of the City of Bakersfield

By:   
DEPUTY City Clerk

S:\DOCUMENTA\POSTING  
December 16, 1999