

ORDINANCE NO. 747-1999

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BARSTOW
RELATING TO SURFACE MINING AND AMENDING TITLE 15 (BUILDINGS
AND CONSTRUCTION) OF THE BARSTOW MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF BARSTOW DOES ORDAIN AS FOLLOWS:

SECTION ONE:

Code Amendment.

Title 15 (Buildings and Construction) of the Barstow Municipal Code is hereby amended by adding a new Chapter 15.28 to read as follows:

Chapter 15.28

SURFACE MINING

ARTICLE I. GENERAL PROVISIONS

15.28.010 Title.

This chapter shall be known as the "Surface Mining Ordinance of the City of Barstow."

15.28.020 Purpose.

The purpose of this chapter is to regulate surface mining operations in accordance with the requirements of the Surface Mining and Reclamation Act of 1975, the regulations adopted thereunder, and Public Resources Code Section 2207. This chapter is further intended to secure the continued availability of important mineral resources while also ensuring that: (i) adverse environmental effects are prevented or mitigated; and (ii) mined lands are reclaimed to a usable condition readily adaptable for alternative land uses.

15.28.030 Incorporation by reference.

The provisions of the Surface Mining and Reclamation Act of 1975, the regulations adopted thereunder, and Public Resources Code Section 2207, 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 and fully set out herein. Notwithstanding the preceding, when the provisions of this chapter are more restrictive than correlative State provisions, then the provisions of this chapter shall prevail.

15.28.040 Requirements for surface mining operations.

Except as provided in Section 15.28.050, no person shall conduct a surface mining operation on public or private property without first obtaining approval of all of the following: (i) a surface mining permit; (ii) a reclamation plan; and (iii) financial assurances.

15.28.050 Exemptions.

This chapter shall not apply to the following activities:

A. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster.

B. Onsite excavation and onsite earthmoving activities that are both: (i) an integral and necessary part of a construction project; and (ii) undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site. This exemption shall not be applicable unless all of the following conditions are satisfied:

1. All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, CEQA.

2. Approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to CEQA.

3. The approved construction project is consistent with the General Plan designation and zoning of the site.

4. Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

C. Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials. This exemption shall include the onsite stockpiling and onsite recovery of mined materials. This exemption shall not be applicable unless all of the following conditions are satisfied:

1. The plant site is located on lands designated for industrial or commercial uses in the General Plan.
 2. The plant site is located on lands zoned industrial or commercial.
 3. None of the minerals being processed are being extracted onsite.
 4. All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.
- D. Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.
- E. 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.
- F. 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.
- G. The solar evaporation of sea water or bay water for the production of salt and related minerals.
- H. Emergency excavations or grading conducted by the State Department of Water Resources or the State Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.
- I. Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads. This exemption is available only if: (i) slope stability and erosion are controlled in accordance with state regulations; and (ii) upon closure of the site, where necessary, revegetation measures and postclosure uses are implemented in consultation with the State Department of Forestry and Fire Protection. This exemption does not apply to onsite excavation or grading that occurs within one hundred feet of a Class One watercourse or within seventy-five feet of a Class Two watercourse. This exemption also does not apply to excavations for materials that are, or have been, sold for commercial purposes.

J. Excavations, grading or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas. This exemption shall not be applicable unless all of the following conditions are satisfied:

1. The operations are being conducted in accordance with Division 3 of the Public Resources Code (commencing with Section 3000).
2. The operations are consistent with the General Plan designation and zoning for the site.
3. The earthmoving activities are within oil or gas field properties under a common owner or operator.
4. No excavated materials are sold for commercial purposes.

15.28.060. Vested rights.

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a surface mining permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, the regulations promulgated thereunder, and this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. The reclamation plan and the financial assurances requirements of this chapter shall apply to operations conducted after January 1, 1976. In those cases where an overlap exists (in the horizontal or vertical sense) between pre- and post-SMARA mining, the reclamation plan shall call for reclamation proportional to that disturbance caused after January 1, 1976.

ARTICLE II. DEFINITIONS

15.28.070 Backfilling.

"Backfilling" means to replace material removed during mining with earth, overburden, mine waste or imported material.

15.28.080 Borrow pitting.

"Borrow pitting" means to create an excavation by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

15.28.090 CEQA.

"CEQA" means the California Environmental Quality Act, located at Public Resources Code Section 21000 et seq. (as amended).

15.28.100 Commission.

"Commission" means the Planning Commission of the City of Barstow.

15.28.110 Critical gradient.

"Critical gradient" means the maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

15.28.120 Department.

"Department" means the Community Development Department of the City of Barstow.

15.28.130 Director.

"Director" means the Community Development Director of the City of Barstow or the designee thereof.

15.28.140 Financial assurances.

"Financial assurances" means security posted by the owner or operator of a surface mining operation to guarantee satisfactory performance of a reclamation plan.

15.28.150 Grading.

"Grading" means to bring an existing surface to a designed form by cutting, filling and smoothing operations.

15.28.160 Idle.

"Idle" means to curtail a surface mining operation for a period of one year or more by more than ninety percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

15.28.170 Interim management plan.

"Interim management plan" means a report setting forth the measures that will be implemented to maintain the site of an idle surface mining operation in compliance with this chapter.

15.28.180 Mined lands.

"Mined lands" 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 result from, or are used in, surface mining operations are located.

15.28.190 Minerals.

"Minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock. "Minerals" shall not include geothermal resources, natural gas, and petroleum.

15.28.200 Operator.

"Operator" means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his or her behalf, except a person who is engaged in surface mining operations as an employee with wages as his or her sole compensation.

15.28.210 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.

15.28.220 Reclamation.

"Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects 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 lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

15.28.230 Reclamation plan.

"Reclamation plan" means a completed and approved plan for reclaiming the lands impacted by a surface mining operation conducted after January 1, 1976.

15.28.240 Resoiling.

"Resoiling" means the process of artificially building or reconstructing a soil profile.

15.28.250 SMARA.

"SMARA" means the Surface Mining and Reclamation Act of 1975, located at Public Resources Code Section 2710 et seq. (as amended).

15.28.260 Stream bed skimming.

"Stream bed skimming" means excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

15.28.270 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 operation includes, but is not limited to, inplace distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities, borrow pitting, stream bed skimming, and segregation and stockpiling of mined materials (and recovery of same).

ARTICLE III. SURFACE MINING PERMITS

15.28.280 Application.

Applications for a surface mining permit shall be filed with the Department on a form provided by the Director. The application shall include all environmental review forms and information required by the Director, and shall be accompanied by a fee in an amount established by resolution of the City Council.

15.28.290 Notification of filing.

A. No later than thirty days after acceptance of a surface mining permit application as complete, the Director shall notify the State Department of Conservation of the filing of the application.

B. No later than thirty days after acceptance of a surface mining permit application as complete, the Director shall notify the State Department of Transportation of the filing of the application if both of the following conditions are satisfied:

1. The proposed mining operations are in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency; and
2. The proposed mining operations are within one mile, upstream or downstream, of any state highway bridge.

15.28.300 Approval or denial of surface mining permit.

A. The Commission shall approve or deny an application for a surface mining permit after conducting a public hearing. If notification of the application filing has been given pursuant to Section 15.28.290(B), then such hearing shall not be held until the State Department of Transportation submits its comments or until forty-five days from the date the application was accepted as complete, whichever occurs first.

B. The Commission may approve a surface mining permit application upon making the following findings:

1. The proposed surface mining operation will not be detrimental to the public health, safety and welfare.

2. The proposed surface mining operation is consistent with the requirements of SMARA, the regulations promulgated thereunder, and this chapter.

C. The Commission may impose such conditions as deemed reasonably necessary when approving a surface mining permit.

D. The Director shall send a copy of each approved surface mining permit, and any conditions imposed on such permit, to the Department of Conservation.

15.28.310 Expansion of surface mining operation.

A. No expansion of a surface mining operation for which a surface mining permit has been issued shall occur without the prior approval of a modification of such permit. For purpose of this section, the following definitions shall apply:

1. "Expansion" shall mean an increase in the land area on which a surface mining operation is conducted.

2. "Minor expansion" shall mean an increase in the land area on which a surface mining operation is conducted by an amount that does not result in the total land area of such operation exceeding the land area originally approved for such operation by more than twenty-five percent.

B. Applications for modification of a surface mining permit shall be processed in the same manner as applications for a surface mining permit; provided, however, that applications related to minor expansions shall be approved or denied by the Director without a public hearing.

C. The Commission or the Director may approve an application for modification of a surface mining permit upon making the following findings:

1. The proposed expansion of the surface mining operation will not be detrimental to the public health, safety and welfare.

2. The proposed expansion of the surface mining operation is consistent with the requirements of SMARA, the regulations promulgated thereunder, and this chapter.

D. The Commission or the Director may impose such conditions as deemed reasonably necessary when approving a modification of a surface mining permit.

E. The Director shall send a copy of each approved modification of a surface mining permit, and any conditions imposed in conjunction with such approval, to the Department of Conservation.

ARTICLE IV. RECLAMATION PLANS

15.28.320 General requirements.

A. Reclamation plans shall contain all of the information and elements required by SMARA and the regulations promulgated thereunder.

B. An item of information or document required pursuant to paragraph A of this section that has already been prepared as part of the application for a surface mining permit, or as part of an environmental document prepared pursuant to CEQA, may be included in the reclamation plan by reference, if that item of information is attached to the reclamation plan.

15.28.330 Application.

A proposed reclamation plan shall be filed with the Department. Applicants shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the reclamation plan. Applications for reclamation plan approval shall include all environmental review forms and information required by the Director. All documentation for the reclamation plan shall be submitted at one time. The proposed reclamation plan shall be accompanied by a fee in an amount established by resolution

of the City Council.

15.28.340 Transmittal of copies.

Within thirty days of receipt of a complete reclamation plan, the Director shall submit copies of all of the following to the State Department of Conservation:

1. The reclamation plan.
2. Information from any related document prepared, adopted or certified pursuant to CEQA.
3. Any other pertinent information.

In conjunction with such submission, the Director shall certify to the State Department of Conservation that the reclamation plan is in compliance with the applicable requirements of Public Resources Code Sections 2772 and 2773 and Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time.

15.28.350 Evaluation of comments.

A. The State Department of Conservation shall have thirty days from its receipt of a reclamation plan to prepare comments if it so chooses. The Director shall prepare a written response to any comments received from the State Department of Conservation. Such written response shall describe the disposition of the major issues raised by the State Department of Conservation. Additionally, if the Director's position is at variance with any of the recommendations made or objections raised in the State Department of Conservation's comments, then the written response shall address, in detail, why specific comments and suggestions were not accepted.

B. The Director shall forward to the operator copies of any written responses received from the State Department of Conservation, as well as the responses prepared by the Director.

15.28.360 Approval or denial of reclamation plan.

A. The Commission shall approve or deny an application for a proposed reclamation plan after conducting a public hearing. At the public hearing, the Commission shall consider any comments received from the State Department of Conservation.

B. The Commission may approve a reclamation plan upon making the following findings:

1. The reclamation plan complies with SMARA, the regulations promulgated thereunder and this chapter.

2. The reclamation plan and potential use of reclaimed land pursuant to such plan are consistent with this chapter, the general plan and any applicable resource plan or element.

3. The reclamation plan has been reviewed pursuant to CEQA and the City's environmental review guidelines, and all significant adverse impacts from reclamation of the mined lands are mitigated to the maximum extent feasible.

4. Either: (i) the land and resources to be reclaimed (e.g. water bodies) will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography and other resources; or (ii) suitable off-site development will compensate for related disturbance to resource values.

5. The reclamation plan will ensure that the mined lands are restored to a useable condition that is readily adaptable for alternative land uses consistent with the General Plan and any applicable resource plan or element.

6. Section 15.28.340 has been satisfied.

C. If the Commission does not approve a reclamation plan, the Director shall return the plan to the applicant within sixty days. The applicant shall have sixty days from the date on which the reclamation plan is returned to revise the plan to address identified deficiencies.

D. The Director shall send a copy of each approved reclamation plan to the Department of Conservation.

15.28.370 Performance of reclamation.

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 from mining activity. Reclamation may be performed on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the Director.

ARTICLE V. FINANCIAL ASSURANCES

15.28.380 General requirements.

A. Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms specified by the State Department of Conservation, which the Director reasonably determines are adequate to perform reclamation in accordance with the operator's approved reclamation plan. The financial assurances shall be made payable to the City and the State Department of Conservation.

B. The amount of required financial assurances shall be based upon the following criteria:

1. The estimated costs of reclamation for the years or phases stipulated in the approved reclamation plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year.

2. An analysis of physical activities necessary to implement the approved reclamation plan, the unit costs for these activities, the number of units of each of these activities, and the actual administrative costs.

3. Financial assurances 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 on cost estimates that include, but are not limited to, labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the operator.

4. A contingency factor of ten percent.

15.28.390 Application.

A financial assurances proposal shall be filed with the Department prior to the securing of financial assurances. Such proposal shall be prepared by a California registered professional engineer approved by the Director. The financial assurances proposal shall be accompanied by a fee in an amount established by resolution of the City Council.

15.28.400 Transmittal of copies.

Within thirty days of receipt of a complete financial assurances proposal, the Director shall forward a copy of the proposal, together with any documentation supporting the proposal, to the State Department of Conservation for review.

15.28.410 Evaluation of comments.

A. The State Department of Conservation shall have forty-five days from its receipt of a financial assurances proposal to prepare comments if it so chooses. The Director shall prepare a written response to any comments received from the State Department of Conservation. Such written response shall describe the disposition of the major issues raised by the State Department of Conservation. Additionally, if the Director's position is at variance with any of the recommendations made or objections raised in the State Department of Conservation's comments, then the written response shall address, in detail, why specific comments and suggestions were not accepted.

B. The Director shall forward to the operator copies of any written responses received from the State Department of Conservation, as well as the responses prepared by the Director.

C. If the State Department of Conservation does not comment within forty-five days of receipt of the financial assurances proposal, the Director shall assume that the cost estimates contained within the proposal are adequate unless there is reason to determine that additional costs may be incurred.

15.28.420 Approval or denial of financial assurances proposal.

A. The Commission shall approve or deny a financial assurances proposal after conducting a public hearing. At the public hearing, the Commission shall consider any comments received from the State Department of Conservation.

B. The Commission may approve a financial assurances proposal upon making the following findings:

1. The financial assurances proposal complies with SMARA, the regulations promulgated thereunder and this chapter.

2. The financial assurances proposal is sufficient to fund reclamation of lands remaining disturbed by the surface mining operation.

C. If the Commission does not approve a financial assurances proposal, the Director shall return the proposal to the applicant within sixty days. The applicant shall have sixty days from the date on which the financial assurances proposal is returned to revise the proposal to address identified deficiencies.

D. The Director shall send a copy of each approved financial assurances proposal to the Department of Conservation.

15.28.430 Securing and maintenance of financial assurances.

Financial assurances shall be secured in accordance with the approved financial assurances proposal prior to conducting surface mining operations. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

15.28.440 Revision.

Each year, no later than forty-five days prior to the anniversary date of the approval of the financial assurances proposal, the operator shall submit any revisions to the financial assurances to the Director. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

15.28.450 Annual adjustment.

The Director shall annually adjust the amount of financial assurances required for a surface mining operation for any one year to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

15.28.460 New ownership.

If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force until new financial assurances are secured from the new owner and have been approved in accordance with this chapter.

15.28.470 Forfeiture.

If the Director determines that an operator is financially incapable of performing reclamation in accordance with the approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, the Director shall do the following:

- A. Notify the operator by personal service or certified mail that the City intends to take appropriate action to forfeit the financial assurances. Such notification shall specify the reasons for forfeiting the financial assurances.
- B. Allow the operator sixty days to commence or cause the commencement of reclamation in accordance with the approved reclamation plan. Reclamation shall be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the Director and the operator.
- C. Take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph B.

D. Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator shall be responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan that are in excess of the proceeds from the forfeited financial assurances.

15.28.480 Release.

Upon determining that reclamation has been completed in accordance with the approved reclamation plan, the Director shall release financial assurances for that surface mining operation. The Director shall give written notice of the release of the financial assurances to the operator and to the State Department of Conservation.

ARTICLE VI. INTERIM MANAGEMENT PLANS

15.28.490 Application.

Within ninety days of a surface mining operation becoming idle, the operator shall file with the Department an interim management plan for review and approval. The interim management plan shall provide measures the operator will implement to maintain the surface mining operation site in compliance with this chapter including, but not limited to, all permit conditions. The interim management plan shall be accompanied by a fee in an amount established by resolution of the City Council.

15.28.500 Transmittal of copies.

Within thirty days of acceptance of an interim management plan for filing, the Director shall forward a copy of the interim management plan to the State Department of Conservation for review.

15.28.510 Approval or denial of interim management plan.

A. The Commission shall approve or deny a proposed interim management plan within sixty days of the acceptance of a proposed plan for filing, unless the operator consents to a longer period. Such decision shall not be made before the State Department of Conservation has had thirty days to review the proposed interim management plan. The Commission shall approve a proposed interim management plan upon making a finding, based on substantial evidence, that the interim management plan is consistent with the requirements of SMARA, the regulations promulgated thereunder, and this chapter.

B. If the Commission denies a proposed interim management plan, the Director shall notify the operator in writing of any deficiencies in the plan. The operator shall have thirty days from such notice, or any longer period mutually agreed upon by the Director and the operator, to submit a revised plan.

C. The Commission shall approve or deny approval of a revised interim management plan within sixty days of receipt.

15.28.520 Duration.

The interim management plan shall remain in effect for a period not to exceed five years.

15.28.530 Expiration.

Upon expiration of an interim management plan, the Director shall take one of the following actions:

A. Renew the interim management plan for another period not to exceed five years. An interim management plan shall not be renewed if the operator has not fully complied with the plan.

B. Require the operator to commence reclamation in accordance with the approved reclamation plan.

15.28.540 Maintenance of financial assurances.

Financial assurances required by this chapter shall remain in effect during the period that a surface mining operation is idle.

ARTICLE VII. MISCELLANEOUS PROVISIONS

15.28.550 Appeals.

A. The applicant, the City Council, or any interested party may appeal to the City Council any decision approving or denying a surface mining permit, modification of a surface mining permit, a reclamation plan, financial assurances or an interim management plan. No appeal shall be processed unless filed in accordance with this section.

B. An appeal shall be made within five days of the date of the decision being appealed by filing an application of appeal with the Director. The application shall state all of the grounds for the appeal. An appeal filed by the City Council shall not require a statement of the grounds for the appeal. Upon receipt of a timely appeal, the Director shall transmit to the City Clerk the application of appeal and all other documents

constituting the record upon which the decision was made.

C. An appeal shall be accompanied by a fee established by resolution of the City Council to cover the cost of processing the appeal. An appeal by the City Council shall not be subject to the payment of a fee.

D. The effectiveness of any decision approving or denying a surface mining permit, modification of a surface mining permit, a reclamation plan, financial assurances or an interim management plan shall be stayed during: (1) the appeal period set forth in this section; and (2) the pendency of any appeal.

E. Within forty-five days of the filing of a timely appeal, the City Council shall adopt a resolution affirming, reversing or modifying the decision being appealed. The City Council shall hold at least one public hearing on the appeal prior to making a decision.

15.28.560 Annual operations report.

The owner or operator shall file with the Department an annual operations report as required by Public Resources Code Section 2207(b).

15.28.570 Inspection.

A. The Director shall arrange for inspection of a surface mining operation within six months of receipt of the annual operations report required by this chapter in order to determine whether the surface mining operation is in compliance with the provisions of this chapter and State regulations. In no event shall less than one inspection be conducted in any calendar year. The Director may cause such inspections to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous twelve months.

B. All inspections shall be conducted using the form provided by the State.

C. The operator shall be solely responsible for the reasonable cost of the inspection.

D. The Director shall notify the State Department of Conservation within thirty days of completion of the inspection that said inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with SMARA, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operation, if any, are inconsistent with that statute. If the operator has a review of its reclamation plan, financial assurances, or an interim management plan pending before the State Department of Conservation or the Commission, the notice shall so indicate. The Director shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

15.28.580 Abandonment.

Unless review of an interim management plan is pending before the Commission, or an appeal is pending before the City Council, a surface mining operation that remains idle for over one year after becoming idle without obtaining approval of an interim management plan shall be considered abandoned. The owner of a surface mining operation which has been deemed abandoned pursuant to this section shall commence and complete reclamation in accordance with the approved reclamation plan.

15.28.590 Notice of change of address.

Every operator shall notify the Director of each change of address. Notice shall be given no more than seven days after the change is effective and shall be given on a form provided by the Department.

15.28.600 Notice of change of ownership of property.

Any person who owns real property on which a surface mining operation is being conducted for which a surface mining permit has been issued shall file a certified report with the Department within thirty days of encumbering, selling, transferring or conveying the property or part thereof or permitting the property or part thereof to be encumbered, sold, transferred or conveyed. The report shall be made on a form provided by the Director. The Director shall transmit a copy of the report to the State Department of Conservation and shall file a copy with the County Clerk within five business days of its receipt.

15.28.610 Annual update report.

By July 1 of each year, for each active and idle surface mining operation, the Director shall submit to the State Department of Conservation either of the following: (i) a copy of any amendments to the surface mining permit and reclamation plan for such operation; or (ii) a statement that there have been no amendments during the previous year.

15.28.620 Notice of public hearing.

Notice of all public hearings required by this chapter shall be given in accordance with the provisions of Section 19.68.010.

15.28.630 Fees.

The City Council may establish by resolution such fees as it deems necessary to cover the reasonable costs incurred in implementing this chapter.

15.28.640 Regulations nonexclusive.

The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other applicable provisions of the Barstow Code or other law.

15.28.650 Failure to comply.

A. Upon determining that a surface mining operation is not in compliance with SMARA or this chapter, the Director may notify the operator of the violation by personal service or certified mail.

B. If the violation extends beyond thirty days after the notification given pursuant to paragraph A, then the Director may issue an order by personal service or certified mail requiring compliance; provided, however, that such order may require cessation of further mining activities if the operator does not have an approved reclamation plan or financial assurances. The order shall specify the violations, a time for compliance and shall set a date for a hearing before the Commission. In setting a compliance date, the Director shall take into account the seriousness of the violation and any good faith efforts to comply made by the operator. The date of the Commission hearing shall not be sooner than thirty days after the date of the order. The order shall not take effect until the operator has been provided a hearing before the Commission.

C. The Director may impose an administrative penalty of not more than five thousand dollars per day on any operator that violates or fails to comply with an order issued under paragraph B after the order's effective date. Such penalty shall be imposed by means of an order to the operator that is served by personal service or certified mail. The penalty shall be assessed from the original date of noncompliance. In determining the amount of the administrative penalty, the Director shall consider the following factors: (i) the nature, circumstances, extent and gravity of the violation; (ii) any prior history of violations; (iii) the degree of culpability; (iv) any economic savings resulting from the violation; and (v) any other matters justice may require. Administrative penalty orders shall be effective upon issuance. The operator shall make payment for an administrative penalty within thirty days unless a petition for

review has been filed pursuant to paragraph D.

D. Within thirty days of the issuance an administrative penalty order pursuant to paragraph C, the operator may petition the City Council for review of the order. The City Council shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. The City Council may affirm, modify, or set aside, in whole or in part, any order setting administrative penalties that it reviews. The decision of the City Council shall be by resolution, shall be effective upon issuance and shall be served on the operator by personal service or certified mail. The operator shall make payment for the administrative penalty ordered by the City Council within thirty days of service of the order.

E. Any operator aggrieved by decision of the City Council pursuant to paragraph D may obtain judicial review in accordance with Public Resources Code Section 2774.2(e). Payment of the administrative penalty shall be held in an interest bearing impound account pending the resolution of a duly filed petition for judicial review.

SECTION TWO.

Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION THREE:

Publication.

The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

PASSED, APPROVED and ADOPTED this 19th day of April, 1999.

Katy Yslas-Yent
MAYOR

ATTEST:

Anna L. Morace, Deputy
CITY CLERK

I, *JoAnne V. Cousino*, City Clerk of the City of Barstow and ex-officio clerk of the City Council, **DO HEREBY CERTIFY UNDER PENALTY OF PERJURY**, that the foregoing is a true and correct copy of **Ordinance No. 747_-1999** of the City which was introduced at a regular meeting of the City Council held April 5, 1999 and adopted at a regular meeting of the Council held April 19, 1999 by the following vote:

AYES: COUNCILMEMBERS: DARLING, RUNYON, MUNCY, RODRIGUEZ, AND MAYOR: YSLAS-YENT

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Anna L. Morace, Deputy
CITY CLERK