

CITY OF MONTAGUE

ORDINANCE NO. 95-01

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MONTAGUE
REGULATING SURFACE AND MINING AND RECLAMATION

The City Council of the City of Montague hereby ordains as follows:

SECTION ONE:

The City Council of the City of Montague hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the City of Montague and that it is the purpose and intent of this ordinance to regulate all surface Mining operations within the City Limits of Montague as authorized by the California Surface Mining and Reclamation Act of 1975 (Public Resources Code, Section 2710 et seq.) to ensure that:

- a. The reclamation of mined lands will be carried out in such a way that the continued mining of minerals will be permitted; and
- b. The adverse effects of surface mining operations will be prevented or minimized and that mined lands will be reclaimed to a useable condition which is readily adaptable for alternative land use; and
- c. The production and conservation of minerals will be encouraged while giving consideration to valued relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment, and the residual hazards to the public health and safety will be eliminated.

SECTION TWO:

The provisions of this ordinance do not apply to:

- a. Excavation or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster.
- b. 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.
- c. Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.
- d. Such other surface mining operations which the State Mining and Geology Board finds are exempt from the provisions of the California Surface Mining and Reclamation Act of 1975 because they are of an infrequent nature and involve only minor surface disturbances.

SECTION THREE:

Unless exempted by the provisions of Section 2 or Section 12, no person, firm, corporation or private association shall conduct surface mining operations in the city limits of Montague without first obtaining a permit to do so.

SECTION FOUR:

- a. All applications for a permit shall include a mining plan, a reclamation plan and proposed financial assurances in draft form including an estimate of reclamation costs; shall be on forms provided by the Planning Department; shall be accompanied by the appropriate filing fee.; and shall be filed with the Planning Department. The application shall provide all information and data required by Section 2772 and 2773 of the Public Resources Code and such additional information as may be reasonably required by the City Clerk. No application shall be accepted as completed for filing and the time limitations for processing a permit shall not begin to run until all procedures under the California Environmental Quality Act and the City of Montague rules to implement CEQA have been completed.

- b. The City Clerk shall notify the Director of the Department of Conservation of the filing of each application for a permit within the time period required by Section 2774 (e) of the Public Resources Code and shall submit each proposed mining and reclamation plan and proposed financial assurances in draft form including an estimate of reclamation costs or modification to an approved reclamation plan to the Director of the Department of Conservation for review and comment.

- c. Upon completion of all procedures for review of an application, including but not limited to notification to the Director of the Department of Conservation, a public hearing will be held before

the City Council as hereinafter provided.

SECTION FIVE:

The mining plan shall, to the extent practicable, contain at least the following:

- a. Indication the progression of all operations of the facility indicating time frames for each phase and the estimated life of the operation;
- b. Show the location of equipment, offices, stockpiles, settling ponds, interim drainage, machinery and wastedumps, parking and areas to be mined;
- c. Indicate the progression of stripping and excavating through the use of cross sections, elevations and topographic maps;
- d. Indicate the time lag between mining and reclamation and equipment siting and removal and/or relocation;
- e. Discuss the method of handling simultaneous excavation and reclamation if applicable;
- f. Show the location of all streams, roads, railroads, sewage disposal systems, waterwells, and utility facilities within 500 feet of the site and the location
- g. Indicate the type of and amount of mineral commodities to be removed, the amount of mining waste to be retained on the site

and the amount of mining waste to be disposed off site including the method and location of disposal of said mining waste.

SECTION SIX:

The reclamation plan shall, in addition to all other requirements:

- a. Indicate the methods to be used to reclaim the land including a detailed schedule of the sequence and timing of all stages of the reclamation.
- b. Describe the physical condition of the site upon the completion of all reclamation including the proposed uses or potential uses of the reclaimed site.
- c. Contain a map which will delineate through the use of cross sections and elevations the physical characteristics of the land upon the conclusion of reclamation. A topographic map shall also be provided with the location of the reclaimed land clearly indicated on said map.
- d. Describe the manner in which derelict machinery, mining waste and scraps will be removed from the reclaimed site and how contaminants will be controlled.
- e. Describe the methods to be used to ensure that the site will contain stable waste piles and slopes.
- f. Describe how reclamation of this site may affect the future use of

the area for mining purposes.

- g. Show that the proposed site in its final form shall be, to the extent reasonable and practical, revegetated for soil stabilization, free of drainage and erosion problems, coordinated with present and anticipated future land use, and compatible with the topography and general environment of surrounding property.

SECTION SEVEN:

A public hearing to consider the granting, suspension or revocation of a permit; an operator's financial capability of performing reclamation; or abandonment of a surface mining operation without commencing reclamation shall be in accordance with the following procedures:

- a. Notice of the time, date and place of the public hearing, including a general description of the area and mining operation being considered, shall be given at least 10 days prior to the hearing by all of the following procedures:
 - 1. Mailing to all owners of real property which is located within 600 feet of the exterior boundaries of the proposed project, as such owners are shown on the last equalized assessment roll.
 - 2. Publication once in a newspaper of general circulation in the City.
 - 3. The City Clerk may require additional notice be given by

posting in conspicuous places close to the property affected and may require notification to property owners along proposed local transportation routes.

- b. At the public hearing the City Council/Planning Commission shall hear relevant testimony from interested persons and, within a reasonable time after the close of the hearing, make its decision; provided, however, that an application for a permit shall not be granted unless that permit is expressly subject to such conditions as are necessary to protect the health, safety or general welfare of the community. The decision of the Planning Commission/City Council and the reasons for the decision shall be reduced to writing and shall be filed by the City Clerk of the City Council together with a report of the proceedings, not more than 15 days after the decision. A copy of the notice of the decision shall be mailed to the applicant and to any person who has made a written request for a copy of the decision. If the City Council/Planning Commission is unable to make a decision, that fact shall be filed with the City Clerk in the same manner for reporting decisions and shall be considered as notice of denial of the application. The City Clerk shall place the notice of the decision on the next agenda of the City Council held 5 or more days after the decision.

- c. The decision of the City Council/Planning Commission is considered final and no action by the City Council is required unless, within 10 days after the notice of decision appears on the Council's agenda, the applicant or an interested person files an appeal, accompanied by the appropriate filing fee, with the City Clerk or unless the Appeal's Board assumes jurisdiction by

ordering the matter set for public hearing. If a timely appeal is filed or the Appeals Board assumes jurisdiction, the City Clerk shall set the matter for public hearing before the Appeals Board not less than 13 nor more than 60 days thereafter, and shall give notice of the time and place of the hearing in the same manner as notice was given of the hearing before the City Council/Planning Commission.

- d. At the hearing before the Appeal's Board, the Board shall hear the matter de novo; however, the documents and the minutes of the hearing before the City Council/Planning Commission shall be part of the Board's record at its hearing on the matter. The Board shall hear relevant testimony from interested persons and, within a reasonable time after the close of the hearing, make its decision sustaining, reversing or modifying the decision of the City Council/Planning Commission.

SECTION EIGHT:

As a condition of each permit, annual inspections and reports of mining and reclamation activities shall be required of the operator as follows:

- a. Concurrently with submission of the operator's report submitted pursuant to Section 2207 of the Public Resources Code, the Maintenance Department Supervisor shall cause an inspection to be conducted within 6 months of receipt of said operator's report to determine whether the surface mining operation is in compliance with the approved mining plan, the approval reclamation plan, the approved financial assurances, any permit conditions of approval

and in the case of an idle mine, the approved interim management plan. Said inspection may be conducted under the supervision of a qualified, State-registered civil engineer, State-licensed landscape architect, State-registered geologist, or State-registered forester. All inspections shall be conducted using a form approved by the State Mining and Geology Board. After completion of the inspection, the Maintenance Supervisor shall notify the Director of the Department of Conservation that the inspection has been conducted in accordance with Section 2774 (b) of the Public Resource Code. A copy of the notice and any supporting documentation shall also be provided to the operator.

- b. Each operator shall apply for a Special Inspection Permit from the Maintenance Supervisor at least once in each year, provided, however, that this subsection shall not be construed to require more than one inspection per year per permit. An application for a special inspection permit shall be submitted and the special inspection permit fee shall be paid concurrently with the operator's report submitted pursuant to Section 2207 of the Public Resources Code by July 1st of each year.

SECTION NINE:

As a condition of each permit, financial assurances to ensure reclamation is performed in accordance with the approved reclamation plan shall be required of the operator as follows:

- a. Prior to the commencement of the surface mining operation, the operator shall post with the City Clerk a financial assurance. The

financial assurance shall be: (1) a bond or bonds by one or more duly authorized corporate securities; (2) an irrevocable letter of credit from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the approved reclamation plan are on deposit and guaranteed for payment; (3) a cash deposit to be deposited into a trust fund; or (4) any other financial assurance specified by the State Mining and Geology Board pursuant to Section 2773.1 (e) of the Public Resource code. The amount of the financial assurance shall be adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan and shall be adjusted annually to account for new lands disturbed, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. Said adjustment shall be based upon an independent estimate derived from a survey by a qualified professional paid for by the operator. In addition, all financial assurances shall be made to the City of Montague and the Department of Conservation and shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

- b. If the City Council, following a public hearing in accordance with the procedures set forth in Section 7 of this ordinance, determines that the permittee is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without commencing reclamation, the Maintenance Supervisor shall:

1. Notify the operator by personal service or certified mail that

the City intends to take appropriate action to forfeit the financial assurance and specify the reasons for so doing.

2. All the operator 60 days after notification to commence or cause the commencement of reclamation plan and require the reclamation be completed within the time limits specified in the approved reclamation plan or some other time mutually agreed upon by the Maintenance Supervisor and the operator.
 3. Proceed to take appropriate action to require forfeiture of the financial assurance if the operator does not substantially comply with the provisions of paragraph (2).
 4. Use the proceeds from the forfeited financial assurance to conduct and complete reclamation in accordance with the approved reclamation plan. The operator shall be responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurance.
- c. Upon completion of reclamation in accordance with the approved reclamation plan, the financial assurance shall be released. Written notification of the release shall be provided to the operator and Director of the Department of Conservation.

SECTION TEN:

- a. If after, conducting the annual inspection required by Section 8 or other wise confirmed by an inspection of the mining operation, the Maintenance Supervisor finds that the surface mining operation is not in compliance with he approved mining plan, the approved reclamation plan, any permit conditions imposed by the City, the provisions of this ordinance, or the California Surface Mining and Reclamation Act of 1975, the Maintenance Supervisor may notify the operator and the owner of the subject property of that violation, by personal service or certified mail. If the violation continues beyond 30 days after the date of issuance of the Maintenance Supervisor's notice of violation, the Maintenance Supervisor may notify the City Clerk of the fact. Thereupon, the City Clerk may issue an order by personal service or certified mail requiring compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities. Said order shall specify which aspects of the surface mine's activities or operations are inconsistent with the approved mining plan, approved reclamation plan, permit conditions, the provisions of this ordinance, or the California Surface Mining and Reclamation Act of 1975; shall specify a time for compliance which the City Clerk determines is reasonable, given the seriousness of the violation and any good faith efforts to comply with applicable requirements; shall set a date for a public hearing before the City Council no sooner than 30 days after the date of issuance of the order; and shall not take effect until the operator has been provided a public hearing concerning the violation..

- b. At the hearing, the City council shall determine whether or not the operator is complying with the approved mining plan, the approved reclamation plan, the permit conditions or the provisions of this ordinance and may affirm, modify or set aside the order issued by the City Clerk. The City Council may also revoke or suspend the operator's permit in accordance with the procedures set forth in Section 7 of this ordinance. The decision of the City Council may be appealed to the Appeal Board.

- c. Any operator who fails to comply with an order issued by the City Clerk after the order's effective day, or who fails to submit a report to the Director of the department of Conservation or City as required by Section 2207 of the Public Resource Code, shall be subject to an order by the City Clerk imposing an administrative penalty of not more than five thousand dollars (\$5,000.00) per day, assessed from the original date of the Maintenance Supervisor's notice of violation or non-compliance with Section 2207. In determining the amount of the administrative penalty, the City Clerk shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degrees of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. A order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the City within 30 days, unless the operator petitions the City Council for review of the order. Said order shall be served by personal service or by certified mail upon the operator.

- d. If the operator petitions the City Council for review of the order

imposing an administrative penalty, the operator shall be notified by personal service or certified mail as to whether the City Council will review the order and if so when the matter has been set for public hearing. The City Council may affirm, modify, or set aside, in whole or in part, by its own order, any order of the City Clerk imposing an administrative penalty. Any order of the City council shall become effective upon issuance thereof and shall be served by personal service or certified mail upon the operator. Payment of any administrative penalty specified in the City Council's order shall be made to the City within 30 days of service of the order.

SECTION ELEVEN:

Any permit that is granted shall be used within five years from the effective date thereof, or within the time limit that is set in the conditions of approval; otherwise, such permit shall be null and void. The term "use" shall mean the beginning of a substantial surface mining operation that is authorized, which mining operation must thereafter be diligently to completion.

SECTION TWELVE:

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this ordinance as long as such vested right continues and no substantial change is made in that operation. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he had, in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment

of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. Any substantial change in the surface mining operation subsequent to January 1, 1976, shall require the granting of a permit pursuant to this ordinance. A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall submit to the City Clerk's Office for approval by the City Clerk, a reclamation plan for vested operations that are conducted after January 1, 1976, and shall apply for a Special Inspection permit from the Maintenance Supervisor in the same manner and with the same frequency as those mining operators required to obtain a permit pursuant to this ordinance before commencing or expanding their operation. If a reclamation plan application is not on file and approved by the City Clerk, the continuation of the surface mining operation shall be prohibited until a reclamation plan is submitted and approved. Nothing in this ordinance shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to, but not after, January 1, 1976. All reclamation plans submitted to City Hall for vested operations that are conducted after January 1, 1976, shall be accompanied by the appropriate fee.

SECTION THIRTEEN:

A request for approval of a modification to any approved surface mining permit or reclamation plan shall be made in accordance with the provisions of this section. A modification under this section means a request for a Revised Permit or a determination of Substantial Conformance as further defined herein.

- a. **APPLICATIONS:** Applications for Substantial Conformance or a Revised Permit shall be filed in writing with the City Clerk and shall include the following.

1. All information required under this ordinance for the filing of a new application for the permit or reclamation plan sought to be modified, unless the requirement is waived by the City Clerk
 2. A statement explaining the proposed modification and the reason the modification has been requested.
 3. If the application requires a public hearing, a list of names and addresses of all owners of real property located within 600 feet of the exterior boundaries of the property to be considered and such additional names and addresses required in order to conform with the notification requirements for processing a new surface mining permit or reclamation plan, as shown on the last equalized assessment roll and any date issued by the County Assessor.
 4. Should additional information as shall be required by the City Clerk.
- b. Substantial Conformance means a request for a non-substantial modification of an approved permit or reclamation plan which does not change the original approval or the effect of the approval on surrounding property. Substantial Conformance may include, but is not limited to, modifications for upgrading facilities, modifications for compliance with the requirement of other public agencies, modifications necessary to comply with final conditions of approval or modifications to lighting, parking, fencing or landscaping

requirements provided should modifications as determined by the City Clerk will have no adverse effect upon public health, safety or welfare.

- c. Revised Permit means a modification of a permit or reclamation plan which does not change the basic concept or use allowed by the original approval. A Revised Permit may include, but is not limited to, a significant increase in plant capacity, changes resulting in significant adverse effects, expansion in the permitted mining area, changes to the original conditions of approval including extensions to the overall life of the permitted use, and changes in the intensity of use as determined by the City Clerk.
- d. Actions on applications for Substantial Conformance or Revised Permits shall be in accordance with the following procedures:
 1. **Substantial Conformance:** The City Clerk shall approve, conditionally approve or disapprove an application for Substantial Conformance within 30 days after accepting a completed application and give notice by mail of the decision, including any additional conditions of approval, to the applicant and any other person who has filed a written request for notice. The City Clerk's determination shall be based upon the standards of this section and those standards set forth in this ordinance for the approval of an original application. An application for Substantial Conformance shall not require a public hearing.
 2. **REVISED PERMIT:** An application for a Revised Permit

shall be approved, conditionally approved or disapproved in accordance with the procedures for processing an original permit or reclamation plan, including any requirements for public hearing, notice of hearing, and all rights of appeal. A Revised Permit shall be subject to the development standards applicable to a new surface mining permit or reclamation plan.

- e. The approval of an application for Substantial Conformance or Revised Permit shall be valid until the expiration of the original permit, unless an extension of time has been granted by an approved Revised Permit.
- f. Notwithstanding any provision herein to the contrary, an application for Substantial Conformance may be approved only if the proposed modification is exempt from the provisions of the California Environmental Quality Act.

SECTION FOURTEEN

- a. Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1 of the Public Resource Code, the operator shall file an application for an interim management plan with the City Clerk in accordance with the provisions of this ordinance. Said application shall include:
 - 1. All information required under this ordinance for the filing of a new application for a permit, unless the requirement is waived by the City Clerk.

2. A statement explaining that the surface mining operation is idle as defined in Section 2727.1 of the Public Resources Code.
 3. An interim management plan which includes measures the operator will implement to maintain the site in accordance with the approved mining plan, the approved reclamation plan and the permit conditions.
 4. A filing fee for review of the interim management plan which shall be the same amount as the filing fees for a reclamation plan submitted for vested operations conducted after January 1, 1976, as set forth.
 5. Such additional information as shall be required by the City Clerk.
- b. Within 60 days of the receipt of a completed application for an interim management plan, the City Clerk shall review and approve the application provided the interim management plan complies with the requirement specified in subsection a. and give notice by mail of the approval to the operator and any other person who has filed a written request for notice. Otherwise, the City Clerk shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the City Clerk, to submit a revised plan. The City Clerk shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the City Clerk denies approval of the revised interim management plan, the

operator may appeal that action to the City Council , which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the City Council. An application for an interim management plan shall not require a public hearing.

- c. The interim management plan may remain in effect for a period not to exceed 5 years. at which time the City Clerk shall do one of the following:
 - 1. Renew approval of the interim management plan for another period not to exceed 5 years, if the City Clerk finds that the operator has fully complied with the provisions of the interim management plan.
 - 2. Require the operator to commence reclamation in accordance with its approved reclamation plan.

The determination by the City Clerk to extend the term of the interim management plan or to require reclamation shall not require a public hearing. If the surface mining operation is still idle after expiration of its interim management plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.

- d. Any financial assurance required in conjunction with approval of the permit shall remain in effect during the period the surface mining operation is idle and until such time as reclamation is completed.

- e. Unless review of an interim management plan is pending before the City Clerk, or an appeal is pending before the City Council, a surface mining operation which remains idle for over 1 year after becoming idle as defined in Section 2727.1 of the Public Resource Code, without obtaining approval of an interim management plan, shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

SECTION FIFTEEN:

Whenever any surface mining operation or portion of an operation subject to this ordinance is sold, assigned, conveyed, exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of this ordinance and shall notify the City Hall and the Maintenance Department in writing of such transfer of ownership. Any existing financial assurances shall remain in force and shall not be released until new financial assurances are secured from the new successor in interest and approved in accordance with Section 2770 of the Public Resources Code and Section 9 of this ordinance.

SECTION SIXTEEN:

If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not effect the validity or constitutionality of the remaining portions of this ordinance, it being expressly declared that this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

SECTION SEVENTEEN:

This ordinance shall take effect thirty (30) days after its adoption.

The following ordinance was adopted at a regular meeting of the City Council, City of Montague, State of California, held on the 7th day of December by the following vote:

AYES : CITY COUNCIL MEMBERS: Lane, Meigs, Moser, Ramey, & West.

NOES : CITY COUNCIL MEMBERS: None

ABSENT : CITY COUNCIL MEMBERS: None

ABSTAIN : CITY COUNCIL MEMBERS: None



JUEL L. WEST. MAYOR

ATTEST:



GLORIA JEAN JONES, CITY CLERK