

ORDINANCE 97-**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN MARCOS AMENDING CHAPTER 20.124 OF TITLE 20
OF THE SAN MARCOS MUNICIPAL CODE.
TA 97-37**

The City Council of San Marcos DOES ORDAIN as follows:

SECTION I:

Title 20, Chapter 20.124 of the Zoning Ordinance of the San Marcos Municipal Code is hereby amended as follows:

Chapter 20.124**SURFACE MINING AND RECLAMATION ORDINANCE****Sections:**

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20.124.010 PURPOSE AND INTENT.

- A. This article is adopted pursuant to the California Surface Mining and Reclamation Act of 1975 (as amended "date"). Division 2, Chapter 9, Sections 2710 et. seq., Public Resources Code.
- B. The Council hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the City and to the region and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment, to protect the public health, safety and welfare and to promote achievement of the goals and objectives of the San Marcos General Plan.
- C. The Council further declares that the purpose of this article is to regulate all surface mining operations authorized by the City Zoning Ordinance and by the California Surface Mining and Reclamation Act of 1975 to ensure that:
1. The continued mining of minerals will be permitted in a manner which will ensure that residual hazards to the public health and safety are eliminated and provide for the protection and subsequent beneficial use of mined and reclaimed land; and
 2. The possible adverse effects of surface mining operations on the environment, including air pollution, impedance of ground water movement, water quality degradation, damage to aquatic or wildlife habitat, flooding, erosion and sedimentation, will be prevented or minimized; and
 3. The production and conservation of minerals are encouraged while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

20.124.020 DEFINITIONS. Whenever the following words are used in this division, they have the meaning(s) set forth in this section:

- A. **Act.** The California Surface Mining and Reclamation Act of 1975.
- B. **Angle of Repose.** The maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material. The angle is generally a few degrees less than the angle of internal friction of the same material. The angle of repose should not be less than 1½ to 1 unless a slope stability study has been prepared that finds steeper slopes to be acceptable.

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- C. **Backfill.** Earth, overburden, mine waste or imported material used to replace material removed during mining.
- D. **Bench.** A flat surface from which a pit or quarry is worked. The height of the slope between benches is the bench interval. The benches that are left on a final cut are generally termed retaining benches, and serve to retain or limit rock falls from the surface above.
- E. **Borrow Pit.** Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere, construction or other uses for purpose of this article.
- F. **Cut slope.** A bank or slope that has been created by removing material below the preexisting ground surface.
- G. **Critical Gradient.** The maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.
- H. **Exploration or Prospecting.** The search for minerals by geological, geophysical, geochemical or other techniques including, but not limited to, sampling, assaying, drilling or any surface or underground work needed to determine the type, extent or quantity of minerals present.
- I. **Fill Slope.** A bank or slope that has been built up by the placing of material on top of the existing ground surface.
- J. **Grading.** To bring an existing surface by cutting, filling, and/or smoothing operations to a designed form.
- K. **Idle.** Surface mining operations curtailed for a period of one year or more, by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.
- L. **Mined lands.** 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 area used in, surface mining operations, are located.

- M. Minerals. Any naturally occurring chemical element or compounds, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.
- N. Mining. The extracting of minerals from the earth, including the ordinary treatment and processes normally applied by mine owners to obtain a commercially marketable mineral product.
- O. Mining Waste. The residual soil, rock, mineral, liquid, vegetation, mill trailing, equipment, machines, tools or other materials or property directly resulting from, or displaced by, surface mining operations.
- P. On-site Construction. ~~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.~~ On-site excavation and on-site earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping or other land improvements, including the related excavation, grading, compaction, or the creation of hills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions: (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, Division 13 (commencing with Section 21000); (2) The lead agency's approval of the construction project included consideration of the on-site excavation and on-site earthmoving activities pursuant to Division 13 (commencing with Section 21000); (3) The approved construction project is consistent with the general plan or 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.

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- Q. Operator. Any person who is engaged in surface mining operations, or who contracts with other to conduct operations on his/her behalf, except a person who is engage in surface mining operations as an employee with wages as his sole compensation.
- S. Overburden. 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.
- T. Permit. Any formal authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations. This shall take the form of a Conditional Use Permit.
- U. Person. Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.
- V. Reclamation. 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 and safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization or other measures.
- W. Reclamation Plan. The applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after July 1, 1976, as called for in Section 2772 of Article 5 of the Act.
- X. Resoiling. The process of artificially building or reconstructing a soil profile.
- Y. Setback. A term used to designate the distance from a property line, road or other limiting feature, to an excavation or to the toe of a fill to protect property, road, or other feature.
- Z. Slope Ratio. The ratio between the horizontal and vertical component of a slope face. It is usually expressed at 1:1, 2:1, etc.
- AA. State Board. The State Mining and Geology Board, in the Department of Conservation, State of California.

- BB. State Geologist.** The individual or person holding office as structures in Section 677 of Article 3, Chapter 2 of Division 1 of the Public Resources Code.
- CC. Streambed Skimming.** Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.
- DD. Subsoil.** That part of the soil below the topsoil.
- EE. Surface Mining Operations.** 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 shall include but are not limited to:
- (1) In-place distillation or retorting or leaching.
 - (2) The production and disposal of mining waste.
 - (3) Prospecting and exploratory activities.
 - (4) Borrow Pitting.
 - (5) Streambed Skimming.
 - (6) Segregation and stockpiling of mined materials (and recovery of same) would be deemed to be surface mining operations unless specifically excluded elsewhere in this article.
- FF. Swell.** A term which designates the increase in volume of soil or rock resulting from excavation and placement in a less compact state. It is expressed as a percentage of the soil or rock volume in place. A negative value of swell is termed shrinkage.
- GG. Topsoil.** The upper part of the soil profile that is relatively rich in humus, which in the field of agronomy is known as the A-horizon of the soil profile.
- HH. Toxic substance.** Any organic compound, certain metal cations, certain anions, and other inorganic substances including biostimulants, create a condition that will inhibit or destroy the growth or function of any living organism.

20.124.030 Incorporation by Reference

The provision of SMARA (PRC §2710 et seq.), PRC Section 2207, and State regulations CCR §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 the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.

20.124.040 Scope

Except as provided in this Chapter, no persons shall conduct surface mining operations unless a conditional use permit, Reclamation Plan, and financial assurances for reclamation have first been approved by the City. Any applicable exemption from this requirement does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the City, including, but not limited to, the application of CEQA, the requirement of a Conditional Use Permit, 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 public and private lands within the City.

- A. The provisions of this article shall apply to the incorporated areas of the City of San Marcos.
- B. This Chapter shall not apply to the following activities, subject to the above-referenced exceptions:
1. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster.
 2. On-site excavation and on-site earthmoving activities which are an integral and necessary part of a construction project that are 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, subject to all of the following conditions:
 - (a) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provision of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act ("CEQA", Public Resources Code, Division 13, §21000 et seq.).

- (b) The City's approval of the construction project included consideration of the on-site excavation and on-site earthmoving activities pursuant to CEQA.
 - (c) The approved construction project is consistent with the general plan or zoning of the site.
 - (d) 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.
- 3. Prospecting and exploration for minerals of commercial value where less than one thousand (1,000) cubic yards of overburden is removed in any one location of one acre or less.
 - 4. Any surface mining operation that does not involve either the removal of a total of more than one thousand (1,000) cubic yards of minerals, ores, and overburden, or involve more than one acre 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. Emergency excavations or grading conducted by the Department of Water Resources, 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.
 - ~~7. 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.~~

20.124.050 Process

- A. Applications for a Conditional Use Permit or Reclamation Plan for surface mining or land reclamation projects shall be made on forms provided by the Planning Division. Said application shall be filed in accord with this Chapter and procedures established by the City. The forms for Reclamation Plan application shall require, at a minimum, each of the elements required by SMARA (§2772-2773) and State regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the

- proposed Reclamation Plan, to be established at the discretion of the Planning Director. As many copies of the Conditional Use Permit application as may be required by the Planning Director shall be submitted to the Planning Division.
- B. As many copies of a Reclamation Plan application as may be required shall be submitted in conjunction with all applications for a Conditional Use Permit for surface mining operations. For surface mining operations that are exempt from a Conditional Use Permit pursuant to this Chapter, the Reclamation Plan application shall include information concerning the mining operation that is required for processing the Reclamation Plan. All documentation for the Reclamation Plan shall be submitted to the City at one time.
- C. Applications shall include all required environmental review forms and information prescribed by the City.
- D. Upon completion of the environmental review procedure and filing of all documents required by the City, consideration of the Conditional Use Permit or Reclamation Plan for the proposed or existing surface mine shall be completed pursuant to the City Municipal Code at a public hearing before the Planning Commission, and pursuant to Section 2774 of the Public Resources Code.
- E. The Planning Division shall process the application(s) through environmental review pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and with the provisions of the City's Environmental Guidelines (SMEG). The environmental review process shall be completed and a Negative Declaration granted, or when determined necessary, an Environmental Impact Report (EIR) prepared and certified prior to initiating or in conjunction with a public review and hearing on a surface mining use permit and/or a reclamation plan application(s).
- F. Within thirty (30) days of acceptance of an application for a Conditional Use Permit for surface mining operations, the Planning Division shall notify the State Department of Conservation of the filing of the application(s). Whenever mining operations are proposed 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 within one mile, upstream or downstream, of any state highway bridge, the Planning Division

shall also notify the State Department of Transportation that the application has been received.

- G. Subsequent to the appropriate environmental review, the Planning Division shall prepare a staff report with recommendations for consideration by the Planning Commission.
- H. The Director of Planning shall coordinate the review of the Conditional Use Permit and reclamation plan applications with concerned City departments and other public agencies and shall schedule a public hearing within ninety (90) days of the completion of the environmental review process. Said public hearing shall be held by the Planning Commission in accord with the provisions of Chapter 20.96 herein, governing Conditional Use Permits for the purpose of consideration of the issuance of a CUP for a proposed surface mining operation and reclamation plan approval.
- I. Prior to final approval of a Reclamation Plan, financial assurances (as provided in this Chapter), or any amendments to the Reclamation Plan or existing financial assurances, the Planning Commission shall certify that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan, assurance, or amendments to the State Department of Conservation for review. The Planning Commission may conceptually approve the Reclamation Plan and financial assurance before submittal to the State Department of Conservation. If a Conditional Use Permit is being processed concurrently with the Reclamation Plan, the Planning Commission may simultaneously also conceptually approve the Conditional Use Permit. However, the Planning Commission may defer action on the Conditional Use Permit until taking final action on the Reclamation Plan and financial assurances. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the Conditional Use Permit with the condition that the City shall not issue any grading permits for the mining operations until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the Reclamation Plan and financial assurances.

Pursuant to PRC §2774(d), the State Department of Conservation shall be given 30 days to review and comment on the Reclamation Plan and 45 days to review and comment on the financial assurance. The Planning Commission shall evaluate written comments

received, if any, from the State Department of Conservation during the comment periods. Staff shall prepare a written response describing the disposition of the major issues raised by the State for the Planning Commission's approval. In particular, when the Planning Commission's position is at variance with the recommendations and objections raised in the State's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the operator/applicant.

- J. The Planning Commission shall then take action to approve, conditionally approve, or deny the Conditional Use Permit and/or Reclamation Plan, and to approve the financial assurances pursuant to PRC §2770(d).
- K. The Planning Division shall forward a copy of each approved Conditional Use Permit for mining operations and/or approved Reclamation Plan, and a copy of the approved financial assurances to the State Department of Conservation.
- L. By July 1 of each year, the Planning Division shall submit to the State Department of Conservation for each active or idle mining operation a copy of the Conditional Use Permit or Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.
- M. The Director of the Department of Conservation shall be notified of the filing of all permit applications.
- N. All plans and specifications for the grading of the property shall be prepared or approved and signed by a registered civil engineer.

20.124.060 Standards for Reclamation

- 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, 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 on 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 (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of specific reclamation activities; and (d) estimated costs for completion of each phase of reclamation.
- D. The reclamation plan shall, in addition to all other requirements, provide in designated phases for the progressive rehabilitation of the mining site land form so that, when reclamation is complete, it will contain stable slopes, be readily adaptable for alternate land uses, and free of waste materials and scraps. The proposed mining site land form, to the extent reasonable and practical, shall be revegetated for soil stabilization, free to drainage problems, coordinated with present and anticipated future land use, and compatible the topography and general environments of surrounding properties.

20.124.070 REVIEW CRITERIA. The Planning Commission, and on appeal, the City Council, shall be governed by, not limited to, the criteria established herein and by Chapter 17.32 of this Code, in reviewing and granting of a Conditional Use Permit and/or a reclamation plan. A Conditional Use Permit shall not be granted unless the Planning Commission determines and finds that:

- A. The proposed surface mine is consistent with the San Marcos General Plan and furthers its implementation.
- B. The proposed surface mine will not impose or create a threat to the public health, safety or welfare either during its operation or upon completion of said operation.

- C. Establishment of the surface mine will not adversely affect the environment in any manner which is not mitigated satisfactorily by the Commission.
- D. Erosion control practices and facilities are proposed that will minimize soil erosion from the site and prevent degradation of downstream watershed.
- E. The proposed surface mining operation will not be detrimental to any scenic corridor or preservation district officially designated as such by local, state or federal agencies.
- F. The site is physically suited for a surface mining operation; e.g., existing or proposed ingress and egress routes are adequate to serve the site.
- G. The proposed surface mine will not damage any public or private property or interfere with any existing drainage course(s) in such a manner as to cause damage to any adjacent property or result in the deposition of debris in or on any public right(s)-of-way or create a hazard to persons or property.
- H. The land area on which the surface mine is proposed is not subject to geological hazards to the extent that no reasonable amount of corrective work will eliminate or significantly reduce any potential hazard to persons or property.
- I. The proposed surface mining site is to be fenced and/or maintained in such a manner that no hazards are presented to the public.
- J. Finished slopes must match or blend with the natural contours and undulations of surrounding land areas in accord with the provisions of the San Marcos Grading Ordinance.
- K. Finish slopes that exceed ten (10) feet in vertical height shall conform to the Grading Code Ordinance 73-244 as revised and that are exposed to public view from or across such open areas as roads, canyons, floodplains or similar public vantage (view) points or open spaces are adequately screened or landscaped.
- L. Where the primary purpose of a surface mining (borrow pit) operation is to prepare (level) a site for future site development related to a specific use, the timing of the project in relation to development in the surrounding area should be a major consideration. When the operation is determined to be premature, it may be grounds for denial pursuant to the provision of the City Zoning Code.

20.124.080 REAPPLICATION FOR SURFACE MINING USE PERMIT AND RECLAMATION PLAN.

Any application for a surface mining use permit and reclamation plan which is denied by the City Council shall be revised as directed by the City Council and resubmitted within one hundred twenty (120) days of such denial. All resubmitted plans shall be accompanied by any required fee(s) unless said fee(s) is/are waived by the City Council.

20.124.090 Statement of Responsibility

The person submitting a Conditional Use Permit for a surface mining and Reclamation Plan shall sign a statement accepting responsibility for reclaiming the mined land in accordance with the Reclamation Plan. Said statement shall be kept by the Planning Division in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to the Planning Division for placement in the permanent record.

20.124.100 Findings for Approval

- A. **Conditional Use Permit:** In addition to any findings required by the City Municipal Code, Conditional Use Permits for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.
- B. **Reclamation Plans.** For Reclamation Plans, the following findings shall be required:
 - 1. That the Reclamation Plan complies with SMARA Sections 2772 and 2773, and any other applicable provisions;
 - 2. That the Reclamation Plan complies with applicable requirements of State regulations (CCR §3500-3505, and §3700-3713).
 - 3. That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Chapter and the City's General Plan and any applicable resource plan or element.
 - 4. That 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 surface mining operations are mitigated to the maximum extent feasible.
 - 5. That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the

surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values.

6. That the Reclamation Plan will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.
7. That a written response to the State Department of Conservation has been prepared, describing the disposition of major issues raised by that Department. Where the City's position is at variance with the recommendations and objections raised by the State Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

20.124.110 Financial Assurances

- 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. The applicant may pose security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the City and the State Mining and Geology Board as specified in State regulations, and which the City reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved Reclamation Plan. Financial assurances shall be made payable to the City of San Marcos and the State Department of Conservation.
- B. Financial assurances will 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 habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if necessary.
- C. Cost estimates for the financial assurance shall be submitted to the Planning Division for review and approval prior to the operator securing financial assurances. 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 Department of Conservation does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the City has reason to determine that additional costs may be incurred. The Planning Director shall have the discretion to approve the financial assurance if it meets the requirements of this Chapter, SMARA, and 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 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. Cost estimates should be prepared by a California registered Professional Engineer and/or other similarly licensed and qualified professionals retained by the operator and 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 approved Reclamation Plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. 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 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 ten percent (10%) shall be added to the cost of financial assurances.
- E. In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the City or State Department of Conservation may need to contract with a third party commercial company for reclamation of the site.
- F. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required).

- G. The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved Reclamation Plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year.
- H. Revision of financial assurances shall be submitted to the Planning Director each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

20.124.120 PERFORMANCE BOND AND AGREEMENT REQUIREMENT.

- A. Upon a finding by the Planning Agency that a supplemental guarantee for the reclamation of the mined land is necessary, and upon the determination by the Planning Commission of the cost of the reclamation of the mined land according to the reclamation plan, a surety bond, lien, or other security guarantee conditioned upon the faithful performance of the reclamation plan shall be filed with the City Engineering Department. Such surety shall be executed in favor of the City of San Marcos and reviewed and revised, as necessary biannually.
- B. No surface mining shall be conducted pursuant to a Conditional Use Permit or pursuant to vested nonconforming rights unless prior to commencement of grading, an agreement has been entered into, allowing the City to enter the property to correct any landscaping or irrigation system deficiencies, any unsafe condition, or breach or provisions of the Conditional Use Permit and/or reclamation plan. Said agreement shall be executed by the permittee, the owner of the property and by holders, except government entities, of any lien upon the property which could ripen into a fee. The permittee shall provide acceptable evidence of title showing all existing legal and equitable interests in the property. The agreement shall be recorded prior to the commencement of grading

pursuant to a Conditional Use Permit of reclamation plan. Any security instrument as required by this section, shall provide that in the event suit is brought by the City and judgment recovered, the surety shall pay, in addition to the above specified sum, all costs incurred by the City in such suit, including reasonable attorney's fee.

20.124.130 Interim Management Plans

- A. Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Division a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all Conditional Use Permit conditions, 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 submitted on forms provided by the Planning Division, and shall be processed as an amendment to the Reclamation Plan. IMPs shall not be considered a project for the purposes of environmental review.
- B. Financial assurances for idle operations shall be maintained as though the operation were active, or as otherwise approved through the idle mine's IMP.
- C. Upon receipt of a complete proposed IMP, the Planning Division shall forward the IMP to the State Department of Conservation for review. The IMP shall be submitted to the State Department of Conservation at least 30 days prior to approval by the Planning Commission.
- D. Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Planning Director and the operator, the Planning Commission shall review and approve or deny the IMP in accordance with this Chapter. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the Planning Director, to submit a revised IMP. The Planning Commission shall approve or deny the revised IMP within sixty (60) days of receipt. If the Planning Commission denies the revised IMP, the operator may appeal that action to the City Council.
- E. The IMP may remain in effect for a period not to exceed five years, at which time the Planning Commission may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

20.124.140 Annual Report Requirements

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the City Planning Division 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.

20.124.150 Inspections

The Planning Division shall arrange for inspection of a surface mining operation within six months of receipt of the Annual Report required in Section 12, to determine whether the surface mining operation is in compliance with the approved Conditional Use Permit and/or Reclamation Plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months., or other qualified specialists, as selected by the Planning Director by any authorized member of the Planning Department of the City of San Marcos or such other persons as may be designated by the City Council. The operator shall pay for said inspections. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

The Planning Division shall notify the State Department of Conservation within thirty (30) days of completion of the inspection that said inspection has been conducted, and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection.

20.124.160 REVIEW.

- A. If the Planning Department determines that the Conditional Use Permit or reclamation plan is not continuing compliance as approved, the mining operator shall be so notified and given a reasonable time to comply, but not to exceed ninety (90) calendar days. If,

at the end of this period of time, the Conditional Use Permit or reclamation plan is still not being followed and completed as approved, the Planning Director shall set the matter for public hearing before the Planning Commission for modification or revocation of a Conditional Use Permit.

- B. At the hearing, if the Planning Commission determines that the operator is not complying with the Conditional Use Permit or reclamation plan, the Commission shall revoke or merely suspend the permit until the operator either complies or obtains approval of a revised Conditional Use Permit or reclamation plan. The Commission shall also determine whether said reclamation plan must be accompanied by a security. If the Commission determines that the mining operator is making reasonable effort to comply with the reclamation plan, an additional period of time, not exceeding ninety (90) days, may be allowed for full compliance.

20.124.170 Violations and Penalties

If the Planning Director, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable Conditional Use Permit, any required permit and/or the Reclamation Plan, the City shall follow the procedures set forth in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provision of the City Municipal Code for revocation and/or abandonment of a Conditional Use Permit which are not preempted by SMARA.

20.124.180 ENFORCEMENT PROVISIONS.

- A. The provisions of this article shall be enforced by any authorized member of the Planning Department of the City of San Marcos or such other persons as may be designated by the City Council.
- B. A violation of any provision of this article shall be deemed a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed five hundred dollars (\$500), imprisonment not to exceed six (6) months, or both, each day of violation being deemed to be a separate offense.

20.124.190 APPEAL RIGHTS. Any person aggrieved by an act or determination of the Planning Commission in the exercise of the

authority granted herein shall have the right to appeal to the City Council pursuant to the procedures set forth in City Zoning code, Section 20.104.170 of this Code. Any appeal must be made within ten (10) days after the rendition, in writing, of the decision.

20.124.200 PUBLIC RECORDS. Reclamation plans, reports, applications, and other documents submitted pursuant to this article are public records unless it can be demonstrated to the satisfaction of the City that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The City shall identify such proprietary information as a separate part of each application. A copy of all permits, reclamation plans, reports, applications and other documents submitted pursuant to this article, including proprietary information, shall be furnished to the Director of the Department of Conservation ~~of the State Division of Mines (and Geology)~~ by the City of San Marcos.

Proprietary information shall be made available to persons other than the ~~State Geologist~~ Director only when authorized by the Mine operator and by the mine owner in accordance with Section 2778, California Surface Mining and Reclamation Act of 1975.

20.124.210 Fees

The City shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this Chapter and the State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator, as required by the City at the time of filing of the Conditional Use Permit application, Reclamation Plan application, and at such other times as are determined by the City to be appropriate in order to ensure that all reasonable costs of implementing this Chapter are borne by the mining operator.

20.124.220 AMENDMENTS.

- A. An approved surface mining use permit and/or reclamation plan, or any condition thereof, may be revised, amended or modified in the same manner as provided in this article for a ~~new~~ new application.
- B. Minor amendments to the reclamation plan may be approved by the Planning Director where the Director determines that (1) the change is minor in accord with the provisions of the Section 20.96.270 of this code, (2) will not result in a substantial change in the

finished appearance of the mining site land form, (3) will not increase the impact on adjacent property, and (4) the change is consistent with the intent of this article and the State Surface Mining and Reclamation Act.

20.124.230 LIABILITY AND RESPONSIBILITY OF PERMITTEE. Neither the issuance of a Conditional Use Permit or reclamation plan, nor the compliance with any provisions or condition thereof, shall relieve any person from any liability or responsibility resulting from grading operation as specified elsewhere in the San Marcos Municipal Code.

20.124.240 SUCCESSOR IN INTEREST. Whenever any surface mining operation or portion of an operation subject to this article is sold, assigned, conveyed, exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of any reclamation plan approved pursuant to the provisions of this article.

20.124.250 Severability

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Chapter.

EFFECTIVE DATE This Ordinance shall be effective 30 days after its adoption. Within 15 days after its adoption, the City Clerk shall cause this Ordinance or the Title hereof as a summary to be published in a newspaper of general circulation in the City pursuant to the provisions of Government Code Section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of San Marcos, California, held on the 13th day of January, 1998 and thereafter;

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the _____ day of _____, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

F.H. Corky Smith, Mayor

EFFECTIVE DATE This Ordinance shall be effective 30 days after its adoption. Within 15 days after its adoption, the City Clerk shall cause this Ordinance or the Title hereof as a summary to be published in a newspaper of general circulation in the City pursuant to the provisions of Government Code Section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of San Marcos, California, held on the 13th day of January, 1998, and thereafter;

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the 27th day of January, 1998, by the following vote:

AYES: COUNCILMEMBERS:

ANDRADE, GENTRY, HARRIS-EBERT,
MARTIN, SMITH

NOES: COUNCILMEMBERS:

NONE

ABSENT: COUNCILMEMBERS:


NONE


F.H. "Corky" Smith
Mayor

ATTEST:


Sheila A. Kennedy
City Clerk

APPROVED AS TO FORM:


Kenneth H. Lounsbury
City Attorney

