

## Chapter 18.37 - SURFACE MINING AND RECLAMATION

**Sections:**

## 18.37.010 - Purpose and Intent.

- A. This chapter is adopted pursuant to the California Surface Mining and Reclamation Act of 1975, hereinafter referred to as "SMARA," California Public Resources Code, Section 2710 et seq., as amended, and Chapter 8, Title 14, Section 3500 et seq. of the California Code of Regulations and adopted pursuant hereto.
- B. The City Council finds and declares that the extraction of minerals is essential for the continued economic well being of the City and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health, safety and welfare.
- C. The Council further finds that the reclamation of mined lands as provided in this chapter will Permit the continued mining of minerals and will provide for the protection and subsequent beneficial Use of the mined and reclaimed land.
- D. The Council further finds that surface mining takes place in certain diverse areas where the geologic, topographic, climatic, biological and social conditions are significantly different and that reclamation operations and the specifications May therefore vary accordingly.

(Ord. 0-27-92 § 1 (part), 1992)

## 18.37.020 - Definitions—Construction.

The provisions, phrases and words of this chapter and those of any standards or procedures adopted pursuant thereto Shall be construed and applied consistently with the provisions and definitions contained in SMARA and the California Code of Regulations (commencing with Chapter 8, Title 14, Section 3500 et seq.), as the same have been enacted or may be amended from time to time.

(Ord. 0-27-92 § 1 (part), 1992)

## 18.37.030 - Scope.

- A. The provisions of this chapter Shall apply to areas within the incorporated areas of the City.
- B. The provisions of this chapter are not applicable to:
  - 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. Prospecting and exploration for minerals of commercial value where less than one thousand cubic Yards of overburden is removed in any one location of one acre or less;

3. Any surface mining operation that does not involve either the removal of a total of more than one thousand cubic Yards of minerals, ores, and overburden, or involve more than one acre in any one location;
4. 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;
5. Operations involving the extraction of geothermal resources, natural Gas, petroleum and water;
6. Such other mining operations that the City determines to be of an infrequent nature, and which involve only Minor surface disturbances and are categorically identified by the State Mining and Geology Board pursuant to Sections 2714(d) and 2758(c) of the California Public Resources Code.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.040 - Permit and Reclamation Plan Requirement.

- A. Any Person, except as provided in Section 2776 of the Public Resources Code, who proposes to engage in surface mining operations as defined by reference in Section 18.37.020 Shall, prior to the commencement of such operations: (1) obtain a Permit to mine; (2) submit and obtain Approval of a reclamation plan; and (3) obtain Approval regarding financial assurances for reclamation; in accordance with the provisions set forth in this chapter and SMARA. A Fee as prescribed by Resolution of the City Council Shall be paid to the City at the time of filing. All Applications for a reclamation plan for the surface mining operations Shall be made on forms provided by the Department of Planning and Community Development in accordance with Section 18.37.050 of this chapter, and Section 2772 of the California Public Resources Code.
- B. A Person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, pursuant to Section 2776 of the Public Resources Code, Shall submit to the City, and receive, within a period of one Year, Approval of the reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was Approved by the City prior to January 1, 1976, and the Person submitting that plan has accepted responsibility for reclaiming the mined lands in accordance with that plan.
- C. The State geologist Shall be notified of the filing of all Permit Applications by the Director of Planning and Community Development of the City in accordance with Section 2774(e) of the California Public Resources Code. Pursuant to that section, copies of all Permits to mine which are issued Shall be forwarded to the State geologist.
- D. This chapter Shall be reviewed from time to time and revised as necessary in order to ensure that it is in accordance with the State Police for mined lands reclamation. Any revisions Shall be submitted to the State Mining and Geology Board for review and recertification.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.050 - Permit—Application—Contents.

An Application for a surface mining and reclamation Permit Shall include the Following:

- A. Name and address of the Applicant;
- B. Name(s) and address(es) of the Property Owner(s) or Owners of surface rights;
- C. Name(s) and address(es) of Owner(s) of mineral rights;
- D. Name and address of lessee;
- E. Name and address of Operator;
- F. Name and address of Person Designated by Operator as his agent for the service of process;
- G. Assessor's Parcel number(s);
- H. Legal description of the subject Property;
- I. Site Development plan drawn at a scale specified by the Director of Planning and Community Development of the City, which includes the Following information:
  - 1. Property boundary lines and dimensions,
  - 2. Areas proposed for Development,
  - 3. Location of proposed Buildings and Structures,
  - 4. Parking and Vehicle maneuvering areas,
  - 5. Method of vehicular Access,
  - 6. Location of any existing or proposed roads, water lines or other pipelines, Easements proposed or existing, and any existing Buildings, Structures, or major areas of Use for the Property being considered,
  - 7. Height, type and location of fencing,
  - 8. Such additional information as May be deemed necessary to Permit adequate consideration of the proposal;
- J. A vicinity map showing all proposed Access routes and a statement as to the method proposed for transporting mined Materials from the site;
- K. A sufficient number of cross-sections of the area to show existing Grades and proposed finished Grades after all surface mining has been completed Shall be provided. Cross-sections Shall be drawn to an engineer's scale that is practical and workable;
- L. Reclamation plan including the Following information:
  - 1. The anticipated quantity and type of minerals for which the surface mining operation is to be conducted,
  - 2. The proposed dates for the initiation and termination of such operation,
  - 3. The maximum anticipated depth of the surface mining operation,
  - 4. The size and legal description of the lands that will be affected by such operation; a map that includes the boundaries and topographic details of such lands; a description of the general geology of the area; a detailed description of the geology of the area in which surface mining is

- to be conducted; the location of all streams, roads, Railroads, and Utility facilities within, or adjacent to, such lands; the location of all proposed Access roads to be constructed in conducting such operation; and the names and addresses of the Owners of all surface and mineral interests of such lands,
5. A description of and plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation,
  6. A description of the proposed Use or potential Uses of the land after reclamation and evidence that all Owners of a possessory interest in the land have been notified of the proposed Use or potential Uses,
  7. A description of the manner in which reclamation adequate for the proposed Use or potential Uses will be accomplished, including:
    - a. A description of the manner in which contaminants will be controlled and mining waste will be disposed,
    - b. A description of the manner in which rehabilitation of affected stream bed channels and stream banks to a condition minimizing erosion and sedimentation will occur,
  8. An assessment of the effect of implementation of the reclamation plan on future mining in the area,
  9. A statement that the Person submitting the plan accepts the responsibility for reclaiming the mined lands in accordance with the reclamation plan,
  10. Compliance with the reclamation standards regulations as adopted by the State Mining and Geology Board pursuant to California Public Resources Code Section 2773,
  11. Any other information determined by the Director of Planning and Community Development of the City to be necessary for consideration of the reclamation plan.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.060 - Development standards and conditions.

Surface mining operations Shall comply with the Following standards:

- A. Surface mining operations Shall be consistent with the goals and policies of the City's General Plan.
- B. Surface mining operations Shall comply with the requirements of SMARA and the California Code of Regulations, Title 14, Division 6, Chapter 8, Subchapter 1, Section 3500 et seq., and all other applicable standards and procedures as required by Law.
- C. Surface mining operations Shall comply with any conditions deemed necessary or convenient by the City Council to effect the purposes of this chapter, including conditions with respect to the Following:

1. The environmental objectives set forth in Section 21000 et seq. of the California Public Resources Code;
2. Protection of the health, safety and welfare of Persons residing near the site of the mining operation and the general public;
3. Reasonable preservation of the values and Uses and opportunity for potential Uses of the adjacent and nearby areas insofar as this is not inconsistent with the provisions of SMARA, state policy, this chapter, or any implementing standards or procedures adopted by the City Council.

(Ord. 0-27-92 § 1 (part), 1992)

18.37.070 - Review procedure.

- A. The City Council Shall hear and consider at a Public Hearing:
  1. Applications for Permits to conduct surface mining operations;
  2. Reclamation plans for surface mining operations;
  3. Amendments to Approved reclamation plans involving substantial deviations therefrom;
  4. Amendments of any other term or condition of a Permit to conduct surface mining operations including the reclamation plan;
  5. Proceedings for revocation of Permits; and
  6. The Establishment and fixing of Fees necessary under this chapter.
- B. Following the filing in proper form of any Application for a Permit, reclamation plan, or proposed amendment thereto, and the payment of the prescribed Fee, the Director of Planning and Community Development of the City Shall fix a time and date not less than thirty Days thereafter, or such later date as May be agreed upon for a Public Hearing thereon.
- C. Not less than ten Days before the date of such Public Hearing, Notice of the date, time, place of hearing and location of the Property, and the nature of the request Shall be given in the Following manner:
  1. By publishing once in a newspaper of general circulation in the City;
  2. By mailing a Notice, postage prepaid, to the Applicant, to each member of the City Council, and to the Owners of all Property within three hundred feet of the exterior boundaries of the Property involved, using for this purpose the name and address of such Owners as shown upon the latest County Assessment Roll.
- D. At the Public Hearing the Applicant or Permittee and any other interested Person Shall be entitled to be heard and present evidence. Any continued hearing May be convened at any Public Place as May appear convenient to the hearing body and those who May wish to attend or be heard. The City Council Shall follow its customary rules of procedure, except as May otherwise be required by the provisions of SMARA or the California Code of Regulations.
- E. After such Matter has been heard and considered, the City Council Shall:

1. Approve subject to conditions or disapprove any Application for any Permit which it has considered;
  2. Approve subject to conditions or disapprove any reclamation plan which it has considered;
  3. Approve subject to conditions, or disapprove any proposed amendment to an Approved reclamation plan, or any proposed amendment of other terms and conditions of a Permit or reclamation plan;
  4. Fix the amount of the performance bond to guarantee reclamation in accordance with the reclamation plan if found necessary under Section 18.37.070;
  5. Make such other orders as May be appropriate to the disposition of the Matters considered by the City or City staff.
- F. In making a Decision on a reclamation plan, conditions of a reclamation plan or conditions of a Permit, there May be imposed, in addition to the requirements and conditions provided in SMARA, any and all requirements or conditions as May appear necessary to foster or protect:
1. The environmental objectives set forth in Section 21000 et seq. of the California Public Resources Code;
  2. The health, safety and welfare of Persons residing near the site of the mining operation and the general public;
  3. Reasonable preservation of values and Uses and opportunity for potential Uses of the adjacent and nearby areas insofar as consistent with the provisions of SMARA and the California Code of Regulations.
- G. Any Decision required to be made under this chapter and any necessary finding Shall be made within thirty Days after completion of the hearing, or within such longer period agreed upon by the Applicant, or in the case of an Appeal under Section 18.37.170, by the appellant. A Copy of the Decision and any findings Shall be mailed to the Applicant's Permittee, or appellant at his or her address as shown in his or her Applications Permit or Notice of Appeal. Notice of such Decision and any findings Shall be deemed given to a Person when a Copy thereof has been placed in the United States mail, first-class postage prepaid, addressed according to Section 18.37.020(C)(2) of this chapter.
- H. Pursuant to SMARA Section 2774(c), a reclamation plan, or an amendment to an Approved reclamation plan, Must be forwarded to the state geologist for review forty-five Days prior to Approval.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.080 - Violation—Notice to correct.

- A. Except as provided in Section 2770(i) of the California Public Resources Code, if the City or State Geologist determines, based upon an annual inspection pursuant to Section 2774 of the California Public Resources Code or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the City or the State Geologist May notify the Operator of that Violation by personal service or certified mail. If the Violation extends beyond thirty

Days after the date of the City's or the State Geologist's notification, the City or the State Geologist May issue an order by personal service or certified mail requiring the Operator to comply with this chapter or, if the Operator does not have an Approved reclamation plan, cease all further mining activities.

- B. An order issued under subsection A of this section Shall not take effect until the Operator has been provided a hearing before the City Council for orders issued by the City, or State Mining and Geology Board for orders issued by the state geologist, concerning the alleged Violation. Any order issued under subsection A of this section Shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, or other applicable Law, and Shall specify a time for compliance which the City or state geologist determines is reasonable, taking into account the seriousness of the Violation and any good-faith efforts to comply with applicable requirements, and Shall set a date for the hearing, which Shall not be sooner than thirty Days after the date of the order.
- C. Any Operator who violates or fails to comply with an order issued under subsection A of this section after the order's effective date, as provided in subsection B of this section, or who fails to submit a report to the State Geologist or City as required by Section 2207 of the California Public Resources Code, Shall be subject to an order by the City or the State Geologist imposing an administrative penalty of not more than five thousand dollars per Day, assessed from the original date of noncompliance with this chapter or Section 2207 of the California Public Resources Code. The penalty May be imposed administratively by the City or by the State Geologist. In determining the amount of the administrative penalty, the City or the State Geologist Shall take into consideration the nature, circumstances, extent and gravity of the Violation or Violations, any prior history of Violations, the degree of culpability, economic savings, if any, resulting from the Violation, and any other Matters justice May require. Orders setting administrative penalties Shall become effective upon issuance thereof and payment Shall be made to the lead agency or the state geologist within thirty Days, unless the Operator petitions the City Council, State Mining and Geology Board, or the superior Court for review as provided in California Public Resources Code Section 2774.2 to cover the reasonable costs incurred by the state geologist in implementing California Public Resources Code Section 2710 et seq. or Section 2207 of the California Public Resources Code. Any order Shall be served by personal service or by certified mail upon the Operator. Penalties collected by the state geologist Shall be Used for no purpose other than to cover the reasonable costs incurred by the state geologist in implementing this chapter or Section 2207 of the California Public Resources Code.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.090 - Failure to comply with Notice to correct—Permit review of Notice to correct.

- A. Within thirty Days of the issuance of an order setting administrative penalties under Subdivision (c) of Section 2774.1 of the California Public Resources Code, the Operator May petition the City Council, if the City has issued the order, or the appropriate State Officials for orders issued by the State Geologist,

for review of the order. If the Operator does not petition for review within the time limits set forth by this subsection, the order setting administrative penalties Shall not be subject to review by any Court or agency.

- B. The City Council or State Mining and Geology Board Shall notify the Operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record Shall consist of the record before the City or the State Geologist, and any other relevant evidence which, in the judgment of the City Council or State Mining and Geology Board, should be considered to effectuate and implement the policies of this chapter.
- C. The City Council or State Mining and Geology Board May affirm, modify or set aside, in whole or in Part, by its own order, any order of the lead agency or the state geologist setting administrative penalties pursuant to this section.
- D. Any order of the City Council or State Mining and Geology Board issued under subsection C of this section Shall become effective upon issuance thereof, unless the Operator petitions the superior Court for review as provided in subsection E of this section. Any order Shall be served by personal service or by certified mail upon the Operator. Payment of any administrative penalty which is specified in an order issued under subsection C of this section Shall be made to the City or the State Geologist within thirty Days of service of the order; however, the payment Shall be held in an interest-bearing impound account pending the Resolution of a petition for review filed pursuant to subsection E of this section.
- E. Any Operator aggrieved by an order of the City Council or State Mining and Geology Board issued under subsection C of this section May obtain review of the order by filing dicks in the superior Court a petition for writ of mandate within thirty Days Following the issuance of the order. Any Operator aggrieved by an order of a City or State Geologist setting administrative penalties under Subdivision (c) of Public Resources Code, Section 2774.1, for which the City Council or State Mining and Geology Board denies review, May obtain review of the order in the Superior Court by filing in the Court a petition for writ of mandate within thirty Days Following the denial of review. The provisions of Section 1094.5 of the California Code of Civil Procedure Shall govern judicial proceedings pursuant to this subsection, except that in every case the Court Shall exercise its independent judgment. If the Operator does not petition for writ of mandate within the time limits set by this subsection, an order of the State Mining and Geology Board or the City Council Shall not be subject to review by any Court or agency.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.100 - Permit review after Notice to correct—Alternative actions by Council.

In addition to the actions of the City Council prescribed by Section 18.37.090, after such Matter has been heard and considered, the City Council May take any of the Following actions:

- A. Revoke the Permit;
- B. Require the reclamation program to begin immediately or within a prescribed time Following the effective date of revocation of the Permit;



- C. Allow additional time within which to cure the Violation, if requested by the Permittee and agreed upon by the City;
- D. Such other order or orders as May be appropriate to correct the Violation or Default.

(Ord. 0-27-92 § 1 (part), 1992)

18.37.110 - Financial assurances to ensure reclamation.

- A. Financial assurances Must be reviewed by the state geologist at least forty-five Days prior to receiving City Council Approval. The City Council Shall require financial assurances of each surface mining operation within the City limits to ensure compliance with reclamation plans, as follows:
  - 1. Financial assurances May take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the State Mining and Geology Board which the City reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's Approved reclamation plan.
  - 2. The financial assurances Shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.
  - 3. 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.
  - 4. The financial assurances Shall be made payable to the City and the State Geologist. However, if a surface mining operation has received Approval of its financial assurances from a public agency other than the City Council, the City Shall deem those financial assurances adequate for purposes of this section, or Shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the City Council, and the state geologist and otherwise meet the requirements of this section. In any event, if the City Council and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the City Council and the public agencies for any one Year Shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "Public Agency" May include a Federal agency.
- B. If the City Council or the State Mining and Geology Board, Following a Public Hearing, determines that the Operator is financially incapable of performing reclamation in accordance with its Approved reclamation plan, or has Abandoned its surface mining operation without commencing reclamation, either the City or the state geologist Shall do all of the Following:
  - 1. Notify the Operator by personal service or certified mail that the City or the state geologist intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.
  - 2. Allow the Operator sixty Days to commence or cause the commencement of reclamation in accordance with its approve reclamation plan and require that reclamation be completed within the time limits specified in the Approved reclamation plan or some other time period mutually

agreed upon by the lead agency or the state geologist and the Operator.

3. Proceed to take appropriate action to require forfeiture of the financial assurances if the Operator does not substantially comply with Section 18.37.120(B)(2) of this chapter.
  4. 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, in excess of the proceeds from the forfeited financial assurances.
- C. Financial assurances Shall no longer be required of a surface mining operation, and Shall be released, upon Written notification by the City, which Shall be forwarded to the Operator and the state geologist, that reclamation has been completed in accordance with the Approved reclamation plan.
- D. The City Council Shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subsection B of this section. However, in cases where the State Mining and Geology Board is not the lead agency pursuant to Section 2774.4 of the Public Resources Code, the state geologist May act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subsection B of this section only if both of the Following occur:
1. The financial incapability of the Operator or the abandonment of the mining operation has come to the attention of the state geologist.
  2. The City Council has been notified in writing by the state geologist of the financial incapability of the Operator or the abandonment of the mining operation for at least fifteen Days and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the Following has occurred:
    - a. The City Council has been notified in writing by the state geologist that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site Shall result in actions being taken against the lead agency under Section 2774.4 of the California Public Resources Code.
    - b. The state geologist determines that there is a Violation which amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.
    - c. The City Council notifies the state geologist in writing that its good-faith attempt to seek forfeiture of the financial assurances has not been successful.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.120 - Idle Mines.

- A. Idle Mines are defined as referenced in California Public Resources Code Section 2727.1.
- B. The Following requirements pertain to the maintenance of Idle Mines:
  1. Operator Shall submit and obtain Approval from the City Council of an interim management plan pursuant to California Public Resources Code Section 2770(h).

2. Operator Shall comply with the financial assurance requirements of California Public Resources Code Section 2770.
3. Operator Shall comply with annual reporting requirements pursuant to California Public Resources Code Section 2207.
4. Operator Shall be subject to City inspections pursuant to California Public Resources Code Section 2774.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.130 - Periodic review.

- A. As a condition of continuing Approval for the Permit or the reclamation plan, or both, a schedule for periodic inspections of the site Shall be established to evaluate continuing compliance with the Permit and the reclamation plan. These inspections, at a minimum, Must be annual, and the inspection findings Shall be documented. Pursuant to Section 2774(b) of the California Public Resources Code, annual inspections for all surface mining operations Shall be conducted by the City within six Months of receipt of a Copy of the surface mining Operators annual report, filed pursuant to Section 2207 of the California Public Resources Code.
- B. As a further condition for Approval for the Permit or the reclamation plan, or both, a schedule for annual reports of the operation and the site completed by the Applicant or a Representative Shall be established and submitted to both the Department of Planning and Community Development of the City and the State Geologist.
- C. A reporting Fee May be required as established herein by Sections 18.37.040 and 18.37.070.
- D. All inspections Shall be conducted utilizing forms Approved by the State Mining and Geology Board.
- E. The mine Operator Shall be solely responsible for the reasonable cost of inspection undertaken at said surface mining operation so inspected.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.140 - Variances from reclamation plan.

Variances from an Approved reclamation plan May be allowed upon request of the Operator or Applicant, upon a finding by the City Council that the requested Variance is necessary to achieve the prescribed or higher post-mining Use of the reclaimed land.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.150 - Minor modifications to Approved plans.

- A. The Director of Planning and Community Development or his or her Designee Shall be authorized to consider proposed Minor amendments to Approved reclamation plans and Shall either approve, approve subject to conditions, or disapprove such requests.

- B. In the event the Director of Planning and Community Development or his or her Designee concludes that a proposed amendment constitutes a substantial deviation from the original plan, such amendment Shall thereafter be considered by the City Council.
- C. Any Decision of the Director of Planning and Community Development or his or her Designee May be subject to Appeal to the City Council.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.160 - Enforcement.

- A. The provisions of this chapter Shall be enforced by any authorized member of the City or such other Persons as May be Designated by the City Council.
- B. The City Council May assess fines as necessary, on mining operations in Violation of this chapter and/or SMARA. In accordance with Section 2774.1 of the California Public Resources Code, fines May be imposed on a single mining operation in amounts not to exceed five thousand dollars per Day for Violations thereof.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.170 - Appeal.

- A. Any Person aggrieved by an Act or determination of the City staff in the exercise of the authority granted in this chapter Shall have the right to Appeal to the City Council.
- B. Any Person seeking to Appeal any Decision or finding made pursuant to this chapter Shall file a Notice of Appeal in writing with the Department of Planning and Community Development and pay any Fee required for filing a Notice of Appeal within ten calendar Days after Notice of the Decision has been given as required in Section 18.37.070.
- C. The Decision Shall be deemed final if no Notice of Appeal is filed within the period set forth in subsection B of this section.
- D. The City Council Shall hear and consider Appeals from Decisions of the Department of Planning and Community Development.
- E. In case of an Appeal to the City Council, the time, date and place for a Public Hearing thereon Shall be fixed on a date not less than thirty Days after filing of the Notice of Appeal and Notice of such Public Hearing Shall be given in the manner provided in Section 18.37.070(C) of this chapter.
- F. Hearings on Appeals Shall be conducted, as nearly as possible in accordance with the provisions of Section 18.37.070(D).
- G. The City Council Shall during a Public Hearing receive and hear evidence presented by the appellant, the Applicant or Permittee, or any other interested Person(s).
- H.

In modifying a Decision from which an Appeal has been taken, the City Council hearing such Appeal May delete or modify any condition imposed by the Decision from which the Appeal has been taken, and May impose new or additional conditions which it May deem germane to the Matters considered in such Appeal or Decision and/or finding thereon.

- I. Decisions on Appeals Shall be made and Notice of such Decisions Shall be given in accordance with Section 18.37.070(G).

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.180 - Permittee Default—Performance by City.

- A. If the Permittee fails to perform or conform to any requirement imposed by any order made pursuant to Sections 18.37.080 through 18.37.130 of this chapter within the time fixed in such order, or if no time is fixed in such order, then within a reasonable time, the City Council, pursuant to Section 18.37.180, Shall be authorized to order and otherwise undertake the planning and conduct all or any Part of the work necessary to accomplish the reclamation plan, to perform any conditions in Default, or to otherwise cure any Default.
- B. The officers, Employees and agents of the City, and any contractor hired by the City, and his Employees, subcontractors and agents, and any engineers, surveyors, or other experts retained by the City, May go on the site of the mining operation and any adjacent Property of the Permittee for the purposes of planning or performing all or any Part of the work mentioned in subsection A of this section, employing the Use of any and all equipment and machines necessary for performing such work.
- C. Insofar as it is practical to do so, the City Shall Following the previously Approved reclamation plan or conditions in the conduct of such work.
- D. The City Council is authorized to order retention and deposit into the City's General Fund a portion of the proceeds from the security for its costs and reasonable expenses and Fees, including reasonable Attorneys' Fees, incurred in successfully enforcing the obligation of the security, and for its reasonable expenses incurred in any inspections, Notices or hearings pursuant to Sections 18.37.080 through 18.37.130 of this chapter, and for any expenses incurred in the planning, Surveying, testing and administration in preparation for the letting of any contracts, administration and enforcement of contracts, and otherwise performing any of the work as Designated in this section.
- E. The City Council May enter into an agreement with the Permittee, or any successor in interest of the Permittee, under which he/she May agree to do the work needed to accomplish the reclamation plan or a specified portion thereof, or to perform any or all of the conditions in Default or such other work needed to cure any Default, in consideration of payment from the remaining proceeds of the security of an amount commensurate with the work completed.
- F. The City Council May enter into an agreement with any public agency or public entity under which such agency or entity May agree to do the work needed to accomplish the reclamation plan or a specified portion thereof, or to perform all or any of the conditions in Default or such other work needed to cure

any Default, in consideration of transfer or payment to such agency or entity of all or any Part of the remaining proceeds from the security.

- G. If the City Council determines that the work has been completed for the accomplishment of the reclamation plan, or for the performance of conditions in Default or as otherwise needed to cure any Default, or if the City Council determines that there is no reasonable prospect that such work can be accomplished by any means mentioned in this section, or if the City Council determines that by reason of changed circumstances no public purpose would be served by completion of such work, the City Council Shall order any portion of the proceeds from such security not retained by the City under subsection D of this section or not expended under the provisions of this chapter, to be refunded to the Permittee or his surety.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.190 - Agreement for performance under this chapter.

The City Council May enter into an agreement with any public agency or public entity for the provision of inspection, review and enforcement services as described in this chapter.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.200 - Successors in interest.

Any reference in this chapter to the Permittee or Applicant Shall also be deemed to include any successor in interest or assignee of the Permittee or Applicant.

(Ord. 0-27-92 § 1 (part), 1992)

#### 18.37.210 - Remedies not exclusive.

The remedies available to the City or to any Representative of the City for noncompliance with a Default in the performance of any reclamation plan, or of any condition of any Permit or reclamation plan under this chapter, Shall not be deemed as a limitation on any other available remedy at Law or in equity which the City or any Representative of the City May otherwise have.

(Ord. 0-27-92 § 1 (part), 1992)