

ORDINANCE NO. 2921

BY: Susan Bigelow  
SUSAN BIGELOW, CMC/AE CITY CLERK

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CHULA VISTA AMENDING SECTIONS 19.04 AND 19.54,  
ADDING CHAPTER 19.69 TO THE CHULA VISTA  
MUNICIPAL CODE TO DEFINE AND PROVIDE LOCAL  
PROVISIONS FOR SURFACE MINING OPERATIONS  
WITHIN THE CITY OF CHULA VISTA

WHEREAS, the Surface Mining and Reclamation Act (SMARA, Public Resources Code Sections 2710 et seq.) declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of society, and the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety; and

WHEREAS, SMARA requires every lead agency to adopt ordinances in accordance with state policy which establishes procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations; and

WHEREAS, it is an objective of the Conservation and Open Space Element of the City's General Plan to protect and manage sand and gravel resources for the benefit of the general public; and

WHEREAS, the Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that there is no possibility that the activity may have a significant effect on the environment; therefore, pursuant to Section 15061(b)(3) of the State CEQA Guidelines the activity is not subject to CEQA; and

WHEREAS, the City Council proposes to amend Title 19 (Zoning) of the Chula Vista Municipal Code (CVMC) to provide specific regulations to review plans and issue permits for surface mining operations within any zones of Title 19 (Zoning) of the CVMC; and

WHEREAS, the Planning Commission held a duly noticed public hearing on June 11, 2003 and has forwarded a recommendation to the City Council to adopt the proposed amendments and additions to the CVMC.

NOW, THEREFORE, the City Council of the City of Chula Vista does hereby ordain:

SECTION I. That Section 19.04.291 is added to Chapter 19.04 of the Chula Vista Municipal Code as follows:

Section 19.04.291 Surface Mining Operations

"Surface Mining Operations" means all, or part of, the process involved in the mining of minerals on mined lands, as defined in CVMC 19.69, by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to, in-place distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities,

borrow pitting, streambed skimming, and segregation and stockpiling of mined materials (and recovery of same).

SECTION II. That Chapter 19.54 (Unclassified Uses) of the Chula Vista Municipal Code is amended to read:

Section 19.54.020 –Unclassified Uses

- A. Surface Mining Operations: See Section 19.69

SECTION III. That Chapter 19.69 of the Chula Vista Municipal Code is hereby added to read as follows:

**Chapter 19.69**

**SURFACE MINING OPERATIONS**

Sections:

- 19.69.010 Purpose and Intent
- 19.69.020 Scope
- 19.69.030 Definitions
- 19.69.040 Vested Rights
- 19.69.050 Incorporation by Reference
- 19.69.060 Conditional Use Permit, Reclamation Plan and Financial Assurance Process
- 19.69.070 Standards for Reclamation
- 19.69.080 Findings for Approval
- 19.69.090 Financial Assurances for Reclamation
- 19.69.100 General Provisions
- 19.69.110 Modification to Approved Surface Mining Operation
- 19.69.120 Inspection, Reporting and Violations
- 19.69.130 Idle Mining Operations

**19. 09.010 Purpose and Intent.**

The purpose and intent of this Chapter is to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by California’s Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.), as amended, hereinafter referred to as “SMARA”, Public Resources Code (PRC) Section 2207 (relating to annual reporting requirements), and State Mining and Geology Board regulations (hereinafter referred to as “State regulations”) for surface mining and reclamation practice to ensure that:

- (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.
- (b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
- (c) Residual hazards to the public health and safety are eliminated.

**19.69.020 Scope.**

Except as provided in this Chapter, no person shall conduct Surface Mining Operations, as defined in 19.04.291, unless the City has first approved a Conditional Use Permit pursuant to Section 19.14.060 through 19.14.130, a Reclamation Plan, and financial assurances for reclamation.

Activities not subject to these regulations are those listed in the Surface Mining and Reclamation Act of 1975 (PRC§2714). Any applicable exemption from these requirements 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 California Environmental Quality Act (CEQA), the requirement of Building Permits, the payment of development impact fees, or the imposition of other dedications and exactions as may be permitted under the law.

#### **19.69.030 Definitions.**

Unless otherwise stated, the following definitions pertain to this chapter:

Borrow Pits: Excavations created by the surface mining of rock, geologic deposits or soil to provide material (borrow) for use elsewhere.

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 are used in, surface mining operations are located.

Operator: Any person or business entity who is engaged in surface mining operations, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.

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 or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

Idle Mining Operations: To curtail a surface mining operation 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.

#### **19.69.40 Vested Rights**

No person who obtained a vested right to conduct Surface Mining Operations in accordance with the California Surface Mining and Reclamation Act of 1975 (SMARA) shall be required to secure a Conditional Use Permit to mine pursuant to the provisions of this Chapter provided that no change or expansion of use has occurred beyond those vested rights.

#### **19.69.050 Incorporation by Reference.**

The provisions of SMARA (PRC §2710 et seq.), PRC §2207, State regulations CCR §3500 et seq. and CCR§3700 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.

**19.69.060 Conditional Use Permit, Reclamation Plan and Financial Assurance Process.**

- a) Conditional Use Permits.
  - i) All applications for a Conditional Use Permit for surface mining shall be made, considered and granted or denied pursuant to Section 19.14.060 through 19.14.130, 19.54.010 and shall be accompanied by an application for a Reclamation Plan, and Financial Assurances in accordance with the provisions set forth in this Chapter and as further required by SMARA and State regulations.
  - ii) Within thirty (30) days of acceptance of an application for a Conditional Use Permit for surface mining operations as complete, the City shall notify the State Department of Conservation of the filing of the application.
- b) Reclamation Plans and Financial Assurances.
  - i) All Reclamation Plans shall include all elements required by and comply with the provisions of SMARA (§§2772-2773), State regulations (CCR §§3500-3505), and any additional information necessary to evaluate the proposed plan. All engineering plans and geological analyses shall be approved and signed by a civil engineer and a geologist, respectively, both of which are licensed to practice in the State of California.
  - ii) Prior to final approval of a Reclamation Plan or financial assurances, the City shall certify to the State Department of Conservation that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan and/or assurance to the State Department of Conservation for review, Pursuant to PRC§2774(d). The City shall evaluate written comments received, if any, from the State Department of Conservation. Staff shall prepare a written response describing the disposition of the major issues raised by the state for the City Council's approval.

**19.69.070 Standards for Reclamation.**

- a) All Reclamation Plans shall comply with the provisions of SMARA (§2772 and §2773) and State regulations (CCR §3500-3505). All new Reclamation Plans, and any existing Reclamation Plans for which a modification is proposed, shall also comply with the requirements for reclamation performance standards in CCR§3700 et seq., as may be modified from time to time.
- 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 (i) the beginning and expected ending dates for each phase; (ii) all reclamation activities required; (iii) criteria for measuring completion of specific reclamation activities; and, (iv) estimated costs for completion of each phase of reclamation.

**19.69.080 Findings for Approval.**

- a) **Conditional Use Permit Approvals.** In addition to the findings required by Section 19.14.080, Conditional Use Permit approvals for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.
- b) **Reclamation Plan Approvals.** In addition to the findings required by the City for the conditional use permit, approvals for Reclamation Plans for surface mining operations shall include the following findings:
- (1) That the Reclamation Plan complies with SMARA §2772 and §2773, and any other applicable provisions, and with applicable requirements of State regulations (CCR §§3500-3505, and §§3700-3713).
  - (2) That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Chapter, the City's General Plan and any applicable resource plan or element.
  - (3) 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 as determined the CEQA document either through adoption of mitigation measures or a statement of overriding considerations.
  - (4) That the land and/or resources to be reclaimed will be restored to a condition that is compatible with, and blends in with, the existing surrounding natural environment, topography, and other resources or land uses. If the City determines that on-site restoration is not feasible, suitable off-site lands may be set aside to compensate for related disturbance to resource values.
  - (5) That the Reclamation Plan will restore the mined lands to a usable condition that is readily adaptable for alternative land uses consistent with the General Plan and Multiple Species Conservation Program (MSCP).
  - (6) 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, said response shall address, in detail, why specific comments and suggestions were not accepted.

**19.69.090 Financial Assurances for Reclamation.**

- a) Financial assurances shall be required to ensure compliance with elements of the Reclamation Plan, including but not limited to, revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if necessary.
- b) Cost estimates for the financial assurance shall be submitted to the Planning Department for review and approval prior to the Operator securing financial assurances. 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.
- c) 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 may need to contract with a third party commercial company for reclamation of the site.
- d) Financial Assurances shall be in a form and an amount satisfactory to the City Attorney and City Risk Manager and may include the following:
- i) Surety bond issued by a California admitted surety insurer;

- ii) Irrevocable letter of credit.
- e) Revisions to financial assurances shall be submitted to the Director of Planning and Building 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.
- f) The financial assurances shall remain in effect and shall be released when the City determines that reclamation has been completed in accordance with the approved Reclamation Plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in full force and effect and shall be released by the City upon receipt of financial assurances from the new owner in a form and an amount satisfactory to the City Attorney and Risk Manager.

**19.69.100 General Provisions.**

- a) Whenever any uncompleted surface mining operation or portion of an operation that is subject to this Chapter is sold, assigned, conveyed, exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of the Reclamation Plan required by this Chapter.
- b) Nothing in this ordinance shall exempt the Operator from complying with the regulations of the State Water Resources Control Board, and the San Diego Regional Water Quality Control Board, as well as the City of Chula Vista Grading and Storm Water Management and Discharge Control Ordinances.
- c) All mining and other related mining activities shall be consistent with the objectives, guidelines, and recommendations in the City's General Plan, the California Surface Mining and Reclamation Act of 1975, City of Chula Vista Grading Ordinance, and National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, and Air Pollution Control District regulations as each may be amended from time to time.
- d) All mining and other related mining activities must be consistent with Article 77 of Uniform Fire Code and all blasting activities are subject to any and all permits required by the Chula Vista Fire Department.

**19.69.110 Modification to Approved Surface Mining Operation.**

An approved Conditional Use Permit, Reclamation Plan, or any conditions thereof, may be revised or modified in the same manner as provided for a new application, including the requirement for environmental impact review. Requests for minor modifications may be submitted to the Director of Planning and Building. If in the Director's sole determination the requested modification is in substantial conformance with approved plans, the Director may approve said modification.

**19.69.120 Inspection, Reporting and Violations.**

- a) Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the City. New mining operations shall file an initial surface mining report with the State Department of Conservation within 30 days of permit approval, or before commencement of operations, whichever is sooner.
- b) A schedule of periodic inspections by the City of the site shall be established to evaluate continuing compliance with the Conditional Use Permit and the Reclamation

Plan. The inspections shall occur no less frequently than once per calendar year and within six months of receipt of the annual report.

c) The Operator shall provide to the Director of Engineering by each July 1, aerial photographs of the mining site taken in the same month of the second quarter of each year. The aerial photographs shall consist of:

- i) Defined, marked and permanent ground controls; and
- ii) Planimetric map of the mining site based on the aerial models with 5' contours and drawn to 1"=200' scale.

Upon the request of an Operator, the Director of Engineering may waive the requirement for the aerial photographs on a case by case basis, such as when no excavation has been accomplished since the last inspection, or may adjust the quarter of each year in which the aerial photographs are taken.

d) If the City finds the Operator is not in compliance with the provisions of the Conditional Use Permit, Reclamation Plan and/or the provisions of this Chapter, the subject violations will be handled in conformance with PRC§2774.1 and §2774.2, as well as the provisions of the Chula Vista Municipal Code concerning violations and penalties.

e) Each Operator shall pay an annual inspection deposit to the City by July 1 of each year unless otherwise stated in an approved Reclamation Plan.

#### 19.69.130 Idle Mining Operations.

a) Within 90 days of a surface mining operation becoming idle, the Operator shall submit to the City a proposed Interim Management Plan (IMP). The proposed IMP 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 City, and shall be processed as an amendment to the Reclamation Plan.

b) The IMP may remain in effect for a period not to exceed five years, at which time the City may renew the IMP for another period not to exceed five years, or require the Operator to commence reclamation in accordance with its approved Reclamation Plan.

c) Financial assurances for idle operations shall be maintained as though the operation were active.

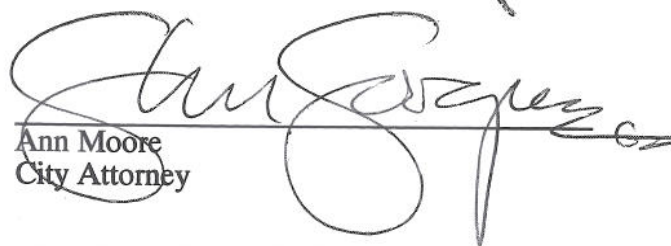
SECTION VII. This ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

Submitted by

Approved as to form by




Robert A. Leiter  
Planning and Building Director



Ann Moore  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 8<sup>th</sup> day of July, 2003, by the following vote:

AYES:	Councilmembers:	Davis, McCann, Rindone, Salas and Padilla
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

  
\_\_\_\_\_  
Stephen Padilla, Mayor

ATTEST:

  
\_\_\_\_\_  
Susan Bigelow, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2921 had its first reading at a regular meeting held on the 17th day of June, 2003 and its second reading and adoption at a regular meeting of said City Council held on the 8th day of July, 2003.

Executed this 8th day of July, 2003.

  
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Susan Bigelow, City Clerk