

ORDINANCE NO. CCO-92-06

AN ORDINANCE OF THE CITY OF MT. SHASTA
REGULATING SURFACE MINING AND RECLAMATION

THE CITY COUNCIL OF THE CITY OF MT. SHASTA, DOES ORDAIN
AS FOLLOWS:

SECTION I. TEXT OF ORDINANCE

Chapter 18.80 of the Mt. Shasta Municipal Code is
adopted, to read in its entirety as follows:

CHAPTER 18.80

SURFACE MINING AND RECLAMATION

Article 1

Section 18.80.010 Purpose and Intent

(a) This ordinance is adopted pursuant to the California Surface Mine and Reclamation Act of 1975, Chapter 9, Public Resources Code; Chapter 8, Title 14, Section 3500 et seq of the California Code of Regulations.

(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 needs of the 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 and safety.

(c) The Council further finds that the reclamation of mined lands as provided in this ordinance 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 diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

Section 18.80.020 Definitions

(a) "Exploration" or "prospecting" means the search for minerals by geological, geophysical, geochemical or other techniques including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent, or quantity of minerals present.

(b) "Idle": To curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, operations with the intent to resume those surface mining operations at a future date.

(c) "Mined Lands": Includes the surface, subsurface, and groundwater 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.

(d) "Minerals": Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(e) "Mining Waste": Includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

(f) "Operator": Any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except as an employee with wages as his sole compensation.

(g) "Overburden": Soil, rock, or other materials that lie above a natural mineral deposit or in between deposits, before or after their removal, by surface mining operations.

(h) "Permit": Any formal authorization from, or approved by, the City, the absence of which would preclude surface mining operations.

(i) "Person": Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state of any department or agency thereof.

(j) "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 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.

(k) "State Board": State Mining and Geology Board, in the Department of Conservation, State of California.

(l) "State Geologist": Individual holding office as structured in Section 677 of Article 3, Chapter 2 of Division 1 of the Public Resources Code.

(m) "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, retorting or leaching.
- (2) The production and disposal of mining waste.
- (3) Prospecting and exploratory activities.

In addition to the provisions of Section 2735 of SMARA, borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of Chapter 8, Title 14, of the California Code of Regulations.

Article 2

Section 18.80.030 Scope

(a) The provisions of the chapter shall apply to all areas within the City of Mt. Shasta.

(b) The provisions of this chapter are not applicable to:

(1) Excavations or grading conducted for farming or onsite 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 1000 cubic yards of over burden 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 1000 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) Such other mining operations that the City of Mt. Shasta determines to be of an infrequent nature, and which involve only minor surface disturbances and are categorically identified by the State Board pursuant to Sections 2714 (d) and 2758 (c) California Surface Mining and Reclamation Act of 1975.

Article 3

Section 18.80.040 Permit and Reclamation Plan Requirement

(a) Any person, except as provided in Section 2776, California Surface Mining and Reclamation Act of 1975, who proposes to engage in surface mining operations as defined in this chapter shall, prior to the commencement of such operations, obtain (1) permit to mine, (2) approval of a reclamation plan, and (3) financial assurances for reclamation have been approved in accordance with the provisions set forth in this chapter and as further provided in Article 5, California Surface Mining and Reclamation Act of 1975. Fees shall be adopted by Resolution of the City Council and payable at the time of submission of any required permits.

All applications for a Reclamation Plan for surface mining operations shall be made on forms provided by the City Planning Department, and as called for by Section 2772 of California Surface Mining and Reclamation Act of 1975. Copies of the proposed reclamation plan and/or financial assurances must be submitted by the city to the State Geologist for review pursuant to SMARA Section 1774(c).

(b) No person who has obtained a vested right to conduct a surface mining operation prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as such vested right continues, provided that no substantial change is made in that operation except in accordance with the provisions of this chapter. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall submit to the City Planning Department and receive, within a period of six (6) months ("a reasonable period of time"), approval of a Reclamation Plan for operations to be conducted after January 1, 1976, unless a Reclamation Plan was approved by the City of Mt. Shasta prior to January 1, 1976, and the person submitting that plan has accepted responsibility for reclaiming the mined lands in accordance with that plan. Nothing in this ordinance shall be construed as requiring the filing of a reclamation plan or the reclamation of, mined lands on which surface mining operations were conducted prior to, but not after, January 1, 1976.

As amended in 1978, SMARA Section 2770(b) requires that operators with vested rights who had not yet obtained an approved reclamation plan, to have had a plan submitted to their respective lead agency not later than March 31, 1988 and approved by the lead agency not later than July 1, 1990; therefore, any vested operation without an approved reclamation plan, unless under appeal to the State Mining and Geology Board must cease operation until a reclamation plan is approved by the lead agency (City).

(c) The State Geologist shall be sent the filing of all permit applications.

(d) This ordinance may be reviewed and revised, as necessary, in order to ensure that it is in accordance with the state policy for mined lands reclamation. Any revisions to this ordinance must be submitted to the State Mining and Geology Board for review and recertification.

Section 18.80.050 Review Procedure

The Planning Department shall review the permit application and the Reclamation Plan and shall schedule a public hearing within 45 days of the filing of both the permit application and the Reclamation Plan. Such public hearing shall be held by the City Planning Commission for the purpose of consideration of the issuance of a permit for the proposed surface mining operation.

Section 18.80.060 Phasing of Reclamation

Phasing of Reclamation - (See also, Sec. 18.80.080, Interim Management Plans for Idle Mining Operations) - Reclamation activities shall be phased with respect to the phasing of the mining operation and shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance (SMARA, Sec. 2772(f)).

Interim reclamation will be required for mined lands that have been disturbed and will be disturbed again in future operations. Reclamation may be done on an annual basis, or 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: the beginning and expected ending dates for each phase; all reclamation activities required; criteria for measuring completion of specific reclamation activities; and estimated costs as provided in Section 18.80.070 (Performance Bond). The City shall approve the reclamation schedule.

Section 18.80.070 Performance Bond

Pursuant to SMARA Section 2770, all surface mining operators must obtain lead agency (City) approved financial assurances for reclamation. SMARA Section 2773.1 states that financial assurances must be made payable to the lead agency (City) and the State Geologist, and may only be in the form of a surety bond, irrevocable letter of credit, trust fund, or other forms as specified by the Board through the regulatory process. The amount of the financial assurance must cover the cost to reclaim, pursuant to the approved reclamation plan, those lands currently disturbed by mining activities, and lands which are proposed to be disturbed within the upcoming 12-month period. Financial assurances are to be adjusted annually to account for (1) inflation, (2) completed reclamation, and (3) new lands disturbed. Financial assurances are also transferable in the event that ownership of the mining operation changes.

Section 18.80.080 Interim Management Plans

(1) Within 90 days of a surface mining operation becoming idle, as defined in this chapter, the operator shall submit to the Planning Department an interim management plan (SMARA, Sec. 2770 (h)). The interim management plan shall fully comply with the requirements of SMARA, Sec. 2770(h) and shall provide measures the operator will implement to maintain the site in compliance with SMARA, including, but not limited to, all conditions of the Use Permit and/or Reclamation Plan. The interim management plan shall be processed as an amendment to the Reclamation Plan and shall not be considered a project for the purposes of environmental review (SMARA, Sec. 2770(h)).

(2) Financial assurances for idle operations shall be continued as addressed in the reclamation plan or as otherwise approved through the idle mine's interim management plan.

(3) Within 60 days of receipt of the interim management plan, or a longer period mutually agreed upon by the Planning Department and the operator, the Planning Commission shall review and approve or deny the plan 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 Department to submit a revised plan. The Planning Commission shall approve or deny the revised interim management plan within sixty (60) days of receipt. If the Planning Commission denies the revised interim management plan, the operator may appeal that action to the City Council.

(4) The interim management plan may remain in effect for a period not to exceed five years, at which time the Planning Commission may renew the plan for another period not to exceed five years or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

Section 18.80.090 Public Records

Reclamation Plans, reports, applications, and other documents submitted pursuant to this chapter 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 chapter, including proprietary information, shall be furnished to the District Geologist of the State Division of Mines (and Geology) by the City of Mt. Shasta. Proprietary information shall be made available to persons other than the State Geologist 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.

Section 18.80.100 Annual Review

Annual inspections must be completed, using a form provided by the State, within 6 months upon receipt of the mining operators annual report (completed and a copy forwarded to the lead agency (City) pursuant to Public Resources Code Section 2207). The mining operator is responsible for the reasonable costs associated with the inspection, and once the inspections have been conducted, the completed inspection form must be forwarded to the State. The purpose of the inspection is to ensure that the mining operation is in compliance with the permit, approved reclamation plan, approved financial assurances, and the provisions of Public Resources Code Section 2207 and SMARA.

Article 4

Section 18.80.110 Amendments

Amendments to an approved Reclamation Plan may be submitted to the City at any time, detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with, and approved by, the City.

Any amendments to an approved reclamation plan must be submitted to the State Geologist for review 45 days prior to the lead agency's (City) approval of such amendments.

Article 5

Section 18.80.120 Variances

Variances from an approved Reclamation Plan may be allowed upon request of the operator and applicant, if they are not one and the same, and upon a finding by the City Planning Commission that each requested variance is necessary to achieve the prescribed or higher post-mining use of the reclaimed land.

Article 6

Section 18.80.130 Enforcement

The provisions of this chapter shall be enforced by the City Administrator, Building Official or Director of Public Works of the City of Mt. Shasta or such other persons as may be designated by the Resolution of Council. Noncompliance penalties will be assessed by the lead agency (City) or the State pursuant to SMARA Section 2774.1.

Section 18.80.140 Appeal

Any person aggrieved by an act or determination by a City Official in the exercise of the authority granted herein shall have the right to appeal to the City Planning Commission and thereafter the City Council. Any appeal must be filed within 10 days after, the rendition, in writing, or the lower decision.

SECTION II. CONSTITUTIONALITY; EFFECTIVE DATE

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 a competent jurisdiction, it shall not effect the remaining portions of this chapter.

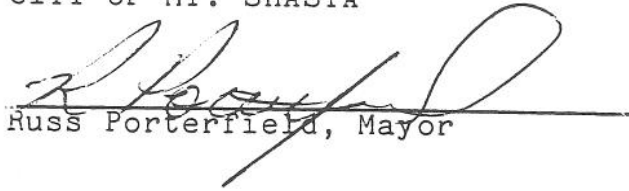
This ordinance shall become effective thirty (30) days after its passage and shall be published once in the Mt. Shasta Herald, a newspaper of general circulation printed and published in the City of Mt. Shasta within fifteen (15) days after the passage hereof. In the alternative, the City Clerk may follow the procedure for publication of a summary hereof.

I HEREBY CERTIFY that the foregoing Ordinance No. CCO-92-06 was introduced, by title only, at a regular meeting of the Mt. Shasta City Council on the 26th day of May, 1992, amended and reintroduced at a regular meeting on June 22, 1992, and was adopted at a regular meeting of said Council on the 13 day of July, 1992, by the following


ROLL CALL VOTE

AYES: Council Member Dawson, Dettman, Melo, Sponsler,
Mayor Porterfield
NOES: None
ABSENT: None
ABSTAIN: None

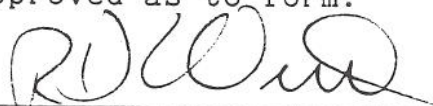
CITY OF MT. SHASTA


Russ Porterfield, Mayor

ATTEST:


C. R. Sutton, City Clerk


Approved as to form:


Robert D. Winston, City Attorney

CITY CLERK'S CERTIFICATE

I, C. R. Sutton, City Clerk of the City of Mt. Shasta, County of Siskiyou, State of California, hereby certify that the foregoing is a true and correct copy of Ordinance No. CCO-92-06, adopted by the City Council of the City of Mt. Shasta at a Regular Meeting of said Council on the 13th day of July, 1992; original copy of Ordinance No. CCO-92-06 being on file in the City Clerk's office at the City Hall, Mt. Shasta, California.

WITNESS MY HAND AND THE SEAL OF SAID CITY OF MT. SHASTA THIS 28th day of July, 1992.


C. R. Sutton, City Clerk
City of Mt. Shasta