

**ORDINANCE NO. 1295**

**AN ORDINANCE OF THE CITY OF FONTANA, CALIFORNIA, REPEALING CHAPTER 9, ARTICLE III AND AMENDING CHAPTER 30, ARTICLE VII, TABLE 30-245A AND ARTICLE XIII OF THE FONTANA MUNICIPAL CODE RELATING TO DEVELOPMENT STANDARDS AND REQUIREMENTS FOR THE ISSUANCE OF RESOURCE EXTRACTION PERMITS AND RESOURCE RECLAMATION PLANS PURSUANT TO THE STATE OF CALIFORNIA SURFACE MINING AND RECLAMATION ACT OF 1975 (SMARA).**

**THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 9, Article III of the Fontana Municipal Code is hereby repealed in its entirety, and Chapter 30, Article XIII is hereby amended in its entirety to read as follows:

**“ARTICLE XIII. RESOURCE EXTRACTION**

**DIVISION 1. GENERALLY**

**Sec. 30-345. Purpose and intent.**

This article is designed to regulate the extraction and utilization of rock, gravel, sand, clay and similar materials consistent with the requirements of the State of California Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710, et seq.); Public Resources Code Section 2207 (relating to annual reporting requirements); the State Mining and Geology Board regulations (hereinafter referred to as “State regulations”) for surface mining and reclamation practice contained in the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Section 3500, et seq.; and the City of Fontana General Plan.

The city recognizes that the extraction of minerals, while necessary to meet the needs of society, may also have adverse environmental and aesthetic effects. The city also recognizes that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and societal conditions are significantly different and that the reclamation operations and standards may vary accordingly. As a result, this article establishes minimum procedures and standards for development of resources extraction sites and associated uses necessary to guarantee that:

(1) The intended use of land resources will not result in a public nuisance through the creation of hazardous or detrimental environmental or aesthetic conditions on both the extraction site and areas surrounding the extraction site.

(2) The most efficient use is made of available land resources.

(3) All adverse environmental impacts of resource utilization are mitigated or reduced to a level of insignificance.

(4) Reclamation of mined lands may be assured throughout the life of the extractive use.

(5) The mining operations result in landforms suitable to adaptive reuse for uses such as parks, open space, water reclamation, housing development or other alternative land uses.

**Sec. 30-346. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandonment* means cessation of mining, quarrying and extraction operations on the site in compliance with the provisions of this code.

*Commercial extraction operation* means the removal or displacement of rock, gravel, sand, clay or similar materials conducted for financial gain.

*Department* means the Community Development Department of the City of Fontana.

*Director* means the Director of Community Development of the City of Fontana or the authorized representative.

*Division* means the Planning Division of the City of Fontana

*Land resource* means the general land form (basic geologic structure), the soil types and their associated constraints to land use, and underlying mineral resources.

*Minerals* means any naturally occurring chemical element or compound, or other groups of elements and compounds, formed from inorganic processes and organic substances.

*Mining* means the process of obtaining rock, gravel, sand, clay or similar materials from an open excavation in the earth for financial gain, including the removal of minerals extracted by underground methods.

*Operator* means the person, whether proprietor, lessee or independent contractor, actually in charge and in control of the pit or the operation being conducted upon the site.

*Overburden* means soil, rock, or other materials that lie above a mineral deposit, or in between deposits, before or after their removal by surface mining.

*Owner* means a person who owns a site upon which a pit is located or upon which mining, quarrying, or commercial extraction operations are being conducted, have been conducted or may be conducted.

*Permit* means any permit issued pursuant to the provisions of this code, together with the application for same, the conditions upon which it was issued, and any plans, specifications, reports, and approved modifications pertaining thereto.

*Person* means any person to whom a permit is issued pursuant to this development code.

*Permittee* means any individual firm, association, corporation, joint venture composed of individuals, or any other group or combination acting as a unit.

*Pit* means any excavation or depression or hole in the ground, natural or artificial, from which sand, gravel, rock, aggregate, clay or similar materials are being or have been dug, mined, extracted, or quarried.

*Planning Manager* means the Planning Manager of the City of Fontana..

*Quarrying* means the process of removing or extracting stone, rock or similar materials from an open excavation for financial gain.

*Reclamation* means the process of land treatment that minimizes water degradation, air pollution, damage to aquatics 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.

*Settling basin* means an area devoted to the storage of waste residue.

*Site* means a lot or parcel of land, or a series of contiguous or adjacent lots or parcels of land, described by a lease or similar document upon which commercial extraction operations are being or may be conducted, and which is authorized by a permit.

*Slope* means the exposed surface of an excavation or fill which forms an incline.

*Surface mining operations* mean 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 include, but are not limited to, inplace 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 their recovery.

*Ultimate right-of-way* means the right-of-way shown as ultimate on an adopted precise plan of highway alignment, or street right-of-way shown within the boundary of a recorded tract map, a recorded parcel map, or a recorded development plan. The latest adopted or recorded document in the above case shall take precedence. If none of these exist, the ultimate right-of-way shall be considered to be the right-of-way required by the highway classification as shown on the master plan of streets. In all other instances, the ultimate right-of-way shall be considered to be the existing right-of-way in the case of a private street, and the existing right-of-way, but not less than 60 feet, in the case of a public street.

**Sec. 30-347. Incorporation by reference.**

The provisions of the Surface Mining and Reclamation Act (hereinafter referred to as "SMARA," codified in Pub. Res. Code, §2710, et seq., Public Resources Code, §2207, and the State regulations (Cal.Code of Regs., §3500, et seq.), as those provisions and regulations may be amended from time to time, are made a part of this Article 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 Article are more restrictive than the correlative State provisions, this Article shall prevail.

**Sec. 30-348. Permit required.**

No person shall conduct an operation for the mining, extraction or removal of any land resource within the City of Fontana without first obtaining a resource extraction permit ("Resource Extraction Permit") which incorporates a reclamation plan ("Resource Reclamation Plan") for such operation and financial assurances for the reclamation. 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 of Fontana, including but not limited to, the application of the California Environmental Quality Act (CEQA), the City of Fontana's environmental laws and guidelines, requirements for site approvals or other permits, the payment of development impact fees, or the imposition of other dedications and exactions that may be permitted under the law.

**Sec. 30-349. Applicability of article.**

The provisions of this Article shall not be generally applicable to the following:

(1) Excavations or grading for farming, onsite construction, or restoration of land following a flood or natural disaster.

(2) Reclamation of lands mined prior to January 1, 1976 and not disturbed since by mining activities.

(3) 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.

(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) Onsite excavation and onsite 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 the 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 provisions of state law, CEQA and all ordinances and laws of the City of Fontana.

b. The City of Fontana's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to CEQA.

c. The approved construction project is consistent with the general plan of the City of Fontana and the applicable zoning designation for the site.

d. Surplus materials are 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.

(6) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following:

a. The plant site is located on land designated for industrial or open space uses in the City's General Plan.

b. The plant site is located on land zoned M-1 (Planned Industrial) or M-2 (General Industrial);

c. None of the minerals being processed are being extracted from the site;

d. All reclamation work has been completed pursuant to an approved Reclamation Plan for any mineral extraction activities that occurred onsite after January 1, 1976;

(7) Such operations that the State Mining and Geology Board determines are of an infrequent nature and that involve only minor surface disruption.

(8) Emergency excavations or grading conducted by the Department of Water Resources or 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.

#### **Sec. 30-350. Principal Uses.**

The following resource extraction uses are permitted subject to the requirements of this Article:

(1) Mining, quarrying and commercial extraction of rock, gravel, sand, clay and similar materials, and the storage, stockpiling, distribution and sale thereof.

(2) The installation and operation of plants or apparatus for rock crushing, appurtenant screening, blending, washing, loading and conveyor facilities.

(3) Shops and garages for the repair or maintenance of equipment and warehouses for the storage of equipment or supplies as are necessary for the conduct of the uses permitted.

(4) Offices for the conduct of the uses permitted.

(5) Truck scales and loading facilities.

#### **Sec. 30-351. Accessory uses during resource extraction.**

The following uses may be permitted where such uses are accessory to an approved resource extraction operation under this Article:

- (1) Manufacture of concrete products and prestressed structural units.
- (2) Concrete batching plants.
- (3) Mixing and processing facilities for Portland cement or asphaltic concrete.

**Sec. 30-352. Uses following reclamation.**

The following uses may be permitted where such uses are accessory to an approved resource reclamation operation under this Article:

- (1) Public or private parks and recreation areas and appurtenant buildings and improvements.
- (2) Sanitary landfill.
- (3) Water recharge and reclamation.
- (4) Flood control or retention facilities in conjunction with a comprehensive flood control program.
- (5) Such other appropriate uses as determined by the Planning Commission.

**DIVISION 2. PERMIT AND APPLICATION PROCEDURES**

**Sec. 30-353. Application Process.**

*Generally.* Applications for a Resource Extraction Permit or Resource Reclamation Plan for surface mining or land reclamation projects shall be accepted only for areas identified as "Regionally Significant Construction Aggregate Resource Areas" on Exhibit CON-1 in the City of Fontana General Plan Conservation Element and in the OS-R (Open Space Resource) General Plan Land Use designation, provided these areas are also zoned for industrial development (M-1 (Planned Industrial; M-2 General Industrial). Applications shall be submitted on forms provided by the Planning Division and shall be filed in accordance with this Article and any procedures established by the Planning Manager.

*Application Information.* All documentation for Resource Extraction Permits and Resource Reclamation Plans shall be submitted to the City at one time. The following application information shall be submitted prior to considering a Resource Extraction Permit or Resource Reclamation Plan request:

(1) A legal description of the entire property to be utilized for extractive use, accessory operations and reclamation, and a detailed plot plan that includes the following:

a. The boundaries of the entire property drawn to scale and showing contour intervals of not more than five feet, defining the location and showing exterior boundaries of the area to be excavated. The plot plan shall also show the location of any existing structures, easements, watercourses, levees, drainage facilities, underground utilities and roads or improvements adjoining the property.

b. A vehicular access plan showing all proposed exit routes designed in such a manner as to result in minimum additional vehicular traffic over residential streets.

c. A topographic map prepared by a registered civil engineer or licensed surveyor or license photometric surveyor, and a complete report of soils and geologic investigation prepared by a registered civil engineer or registered engineering geologist. The topographic map shall be accompanied by a written report setting forth probable volume and depth of overburden and nonusable materials.

d. A description of the proposed operation in all of its phases, including a phasing plan and schedule showing the approximate start date, the proposed increments of extraction and the sequence in which such increments will be accomplished. The plan shall also show the approximate future locations of any machinery and processing equipment, excluding vehicles that may be moved during the excavation operations. The plan shall also show the location of proposed buildings and structures, processing plants and other appurtenant equipment, areas to be excavated and their approximate depths, storage of topsoil and overburden, stockpiles, points of ingress and egress, driveways, parking areas, and required setbacks, fencing, berms and screen planting. Where operations include the washing of sand and gravel, the estimated daily quantity of water required and its source and disposition shall also be made a part of this description and application materials.

e. A plan showing the location of proposed protective works, settling basins, desilting ponds and other bodies of water, including a description of the provisions to be taken for the conservation and protection of groundwater, the disposition of drainage and control of erosion.

f. A statement of the estimated time required to complete the proposed excavation.

g. An initial study questionnaire and such other environmental documentation that may be required by the City, as outlined in the City's environmental guidelines.

(2) For Resource Reclamation Plans, as many copies of the application as may be required shall also be submitted in conjunction with all applications for a Resource Extraction Permit. Resource Reclamation Plan requests shall contain detailed information concerning each of the elements required by state law (Public Resources Code, §§ 2772-2773), other applicable state regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the Resource Reclamation Plan request, including, but not limited to, the following:

a. A final plan, showing the property as it will be prepared for installation and establishment of the proposed ultimate use;

b. A phasing plan showing how the area will be incrementally restored to a natural appealing or otherwise usable condition as excavation operations are completed in one area and moved to the next area;

c. A statement and plan describing the proposed rehabilitation methods and procedures including, but not limited to, the following:

1. Landscaping plans;
2. Drainage plans and facilities; and
3. Slope stability and erosion control plans.

All such plans are to be approved by the Community Development Director or designee;

d. An assessment of the effect of implementation of the rehabilitation plan on future mining in the area.

e. For surface mining operations that are exempt from the Resource Extraction Permit requirements pursuant to this Article, a Resource Reclamation Plan shall nevertheless be submitted by the applicant that also includes information concerning the exempt mining activity.

#### **Sec. 30-354. Fees required.**

Prior to processing a Resource Extraction Permit and/or Resource Reclamation Plan, the applicant shall provide to the City such fees as may be required by resolution of the City Council of the City of Fontana. In addition to such filing fees as may be established by resolution, the operator shall be responsible for all city costs directly attributable to conduct of the resource extraction operation and any required reclamation. The operator shall enter into an agreement, acceptable in form to the City Attorney, that includes, but is not limited to, consideration of the following costs:

- (1) Road bed maintenance and improvements;
- (2) Construction of special aprons/approaches, islands, turn pockets;

- (3) Street sweeping to control dust and gravel;
- (4) Traffic signalization to accommodate truck traffic;
- (5) Operation and maintenance of flood control structures;
- (6) Administrative costs for public hearing notifications, noise monitoring, audits for reclamation assessments, and enforcement costs.

**Sec. 30-355. Processing and hearing procedure.**

Upon submittal of a complete application for Resource Extraction Permit and/or Resource Reclamation Plan and filing of all environmental documents and all documents required by the Planning Manager, consideration of the Resource Extraction Permit or Resource Reclamation Plan for the proposed surface mining operation or exempt activity shall be completed pursuant to the following:

(1) The Planning Division shall, within 30 days of receipt of such applications, certify the application requests with regard to completeness in accordance with California Government Code §65920 *et seq.* (Permit Streamlining Act). The Planning Division shall process the application(s) in accordance with all requirements of the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*) and the City's environmental review guidelines.

(2) Within thirty (30) days of acceptance of an application for Resource Extraction Permit and/or Resource Reclamation Plan as complete, 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(s) have been received.

(3) *Development Advisory Board.* Upon deeming the application complete and completing the environmental review procedures, the Planning Division shall forward the application(s) to the Development Advisory Board (DAB). The DAB shall review the plot plan, landscape plans, elevations and any environmental review documents for the intended operation. Upon completion of the review, the DAB shall forward its recommendation and recommended approval conditions to the Planning Commission.

(4) *Planning Commission Review.* The Planning Commission shall hold at least one noticed public hearing on the application for Resource Extraction Permit and/or Resource Reclamation Plan. The Planning Division shall prepare a staff report with recommendations for consideration by the Planning Commission. The

staff report shall include, but not be limited to, recommendations concerning the following:

- a. A statement of the recommended intensity of use;
- b. Acceptable accessory uses;
- c. The suitability of the extraction and reclamation proposals; and
- d. Suggested conditions for approval to ensure that the resource extraction use and related accessory uses may be conducted and reclaimed without creating a public nuisance or otherwise adversely affecting the public welfare.

The staff report may recommend denial of the Resource Extraction Permit and/or Resource Reclamation Plan applications if it is determined that the intent of this article cannot be met by the proposed applications.

(5) *Planning Commission Approvals.*

a. The Planning Commission shall take action approving, conditionally approving or denying the Resource Extraction Permit. If a Resource Extraction Permit is being processed concurrently with the Resource Reclamation Plan, the Planning Commission may simultaneously also conceptually approve the Resource Extraction Permit. However, the Planning Commission may defer action on the Resource Extraction Permit until taking final action on the Resource Reclamation Plan and financial assurances.

b. Prior to final approval of a Resource Reclamation Plan, approval of financial assurances (as provided in this Article), or any amendments to a Resource Reclamation Plan or existing financial assurances, the Planning Commission shall:

1. Certify to the State Department of Conservation that the Resource Reclamation Plan and/or financial assurances comply 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 Resource Reclamation Plan and any financial assurances before submittal to the State Department of Conservation.

2. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the Resource Extraction Permit with a condition that the Planning Division shall not issue any required subsidiary permits for mining operations, including grading and/or building permits, 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.

3. Pursuant to Public Resources Code, §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 assurances. 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.

c. Once comments are received by the Department of Conservation, and within thirty (30) days of receipt of such comments, the Planning Commission shall then take action to approve, conditionally approve, or deny the Resource Extraction Permit and/or Reclamation Plan, and to approve the financial assurances pursuant to Public Resources Code, §2770(d).

d. The decisions of the Planning Commission shall become final unless appealed to the City Council within the time period indicated in Section 30-35 of the Fontana Municipal Code.

e. The Planning Division shall forward a copy of each approved Resource Extraction Permit and/or approved Reclamation Plan, and a copy of the approved financial assurance to the State Department of Conservation. By July 1st of each year, the Planning Division shall submit to the State Department of Conservation for each active or idle mining operation a copy of any Resource Extraction Permit or Reclamation Plan amendments, as applicable, or a statement that there have been no changes or amendments during the previous year.

#### **Sec. 30-356. Required Findings for permit and plan approvals.**

A. *Resource Extraction Permit Approvals.* Resource Extraction Permit Approvals for surface mining operations may be approved by the Planning Commission, or the City Council on appeal, subject to the following findings:

(1) The proposed mining operations are consistent with the general plan and the applicable land use zone.

(2) The site for the intended mining operations is adequate in size, shape, topography, accessibility, and other physical characteristics to accommodate the mining operations and all required provisions of this chapter including yards, setbacks, walls or fences, landscaping and other applicable regulations of this article;

(3) Adequate streets and highways exist to carry the type and quantity of traffic anticipated by the proposed mining operations and that adequate access to utilities and other services exist;

(4) The proposed mining operation at the specific location will be compatible with surrounding properties and that there will be no adverse effect to surrounding properties or their permitted uses;

(5) The proposed mining operations will be organized, designed, constructed, operated, and maintained so as to be compatible with the character of the area as intended by the general plan;

(6) Any adverse effects upon the surrounding properties are justified by the benefits conferred by the mining operations and that potential adverse effects to the health, safety, and general welfare shall be required to be mitigated in order to minimize such effects. The design and operation requirements contained in Division 3 of this article shall be considered when reviewing the effects upon surrounding properties;

(7) The plans and reports submitted incorporate adequate mitigation measures to mitigate probable significant adverse environmental effects of the proposed operation;

(8) The plans and reports submitted are sufficiently detailed to adequately describe the proposed operation;

(9) The plan as proposed or amended incorporates adequate mitigation measures to restore the site, excluding abandoned pits and previously mined areas, in a diligent manner to a natural-appearing or otherwise usable condition compatible with adjacent areas; and

(10) The plans comply with the provisions of SMARA and all State regulations.

B. *Resource Reclamation Plans.* Resource Reclamation Plans, may be approved by the Planning Commission, or City Council on appeal, subject to the following findings:

(1) The Reclamation Plan complies with state law as set forth in Public Resources Code, §2772 and §2773, and any other applicable provisions;

(2) The Reclamation Plan complies with applicable requirements of the State regulations contained in the California Code of Regulations, §§3500-3505, and §§3700-3713.

(3) The Resource Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Article as well as the City's General Plan and any applicable resource plan or element.

(4) The Resource 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) The land and/or resources 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 disturbances to natural resource values.

(6) The Reclamation Plan will restore the mined lands to a usable condition readily adaptable for alternative land uses that are consistent with the General Plan and applicable resource plans.

(7) 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 addresses, in detail, why specific comments and suggestions were not accepted.

### DIVISION 3. DESIGN AND OPERATION REQUIREMENTS

#### **Sec. 30-357. Standards for Approval of Resource Extraction Permits and Resource Reclamation Plans.**

A. *Resource Extraction Permits.* All Resource Extraction Permits shall comply with the following design and operational requirements:

(1) Dust control. All quarries, private truck roads connecting quarries, processing plants or stockpiles shall be maintain so as to control dust.

(2) Setbacks. No excavation activities shall be carried on less than 50 feet from:

a. The common property line of any parcel of land upon which such uses are conducted;

b. Any highway or street; or

c. Any flood control channel, retarding or conservation basin not a part of the proposed mining operation.

(3) Equipment location. No rock crushing plant or other apparatus for the processing of rock, gravel or sand, except primary excavation operation, shall be located within 300 feet of the boundary line of any residential, commercial or specialized employment zoning districts.

(4) Slopes. No production from an open pit shall be permitted which creates a finished slope steeper than two feet horizontal to one foot vertical.

(5) Days and hours of operation.

a. With the exception of trucking, distribution, sale, loading and unloading of products and materials, and equipment repairs, all crushing and excavating activities permitted shall be limited to the days of Monday through Saturday, inclusive, between the hours of 7:00 a.m. to 10:00 p.m. The Planning Commission may approve additional operating hours where continuous pours of concrete or other special circumstances require extended hours. Such extended hours shall be permitted only after conduct of a public hearing.

b. Hours of operation outside of those stated above may be permitted, subject to prior notification to the Planning Manager, in the following situations:

1. Where required by public authorities to protect the public welfare and safety.

2. Where necessary due to public emergencies.

(6) Noise. The following noise standards shall be observed during all operations:

**Noise Standards**

<u>Affected Land Use (receiving noise)</u>	<u>Noise Level</u>	<u>Time Period</u>
Residential district p.m.	55 dB(A)	7:00 a.m. - 10:00
Commercial district	60 dB(A)	Anytime
Industrial property	70 dB(A)	Anytime

Noise standards. No person shall operate or cause to be operated any source of sound at any location or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property, either incorporated or unincorporated, to exceed:

- a. The noise standard for that receiving land use (as specified above) for a cumulative period or more than 30 minutes in any hour; or
- b. The noise standard plus five dB(A) for a cumulative period of more than 15 minutes in any hour; or
- c. The noise standard plus ten dB(A) for a cumulative period of more than five minutes in any hour; or
- d. The noise standard plus 15 dB(A) for a cumulative period of more than one minute in any hour; or
- e. The noise standard plus 20 dB(A) for any period of time.

If the measured ambient level exceeds any of the first three noise limit categories above, the allowable noise exposure standard shall be increased to reflect said ambient noise level. If the ambient noise level exceeds the fourth noise limit category, the maximum allowable noise level under this category shall be increased to reflect the maximum ambient noise level.

(7) Off-Street parking requirements. Off-street parking shall be provided on the site for all equipment and for all employee vehicles. Operations in this zone shall be exempt from all other off-street parking requirements of this development code. All off-street visitor and employee parking areas shall be treated and/or constructed in such a manner so as to minimize dust and blowing sand.

(8) Screening. Extracting and processing operations shall be screened in such a manner that they are not readily visible from public or private streets and surrounding properties. The operator shall install such screening along the perimeter of the visible portion of the parcel being operated or previously mined. The required screen shall have a total height of not less than six feet. Where there is a difference in elevation on the opposite side of the screen, the height shall be measured from the highest elevation. A screen shall consist of one or a combination of the following types:

- a. *Walls.* Walls shall be required for all operations that are visible from a public or private street, subject to the approval of the planning commission. A wall shall consist of concrete, stone, brick, tile or similar type of solid masonry material a minimum of four inches thick.
- b. *Berms.* A berm shall be constructed of earthen materials and it shall be landscaped.
- c. *Planting.* Plant materials, when used as a screen, shall consist of dense evergreen plants. They shall be of a kind or used in such a manner so as to provide a continuous opaque screen within 24 months after commencement of

operations in the area to be screened. Plant materials shall not be limited to a maximum height. The design shall be prepared by a licensed landscape contractor or a licensed landscape architect.

d. *Intersections.* Required screening shall be set back as required by the city traffic engineer from the point of intersect of:

1. A vehicular accessway or driveway and a street;
2. A vehicular accessway or driveway and a sidewalk; and
3. Two or more vehicular accessways, driveways or streets.

e. *Installation.* Required screening shall be installed prior to commencement of operations in a phased manner so that all operations and excavated sites are continuously screened.

(9) Posting of signs. Within 90 days after an area has been approved for extract uses, the outer boundaries of the site shall be continuously posted with signs not less than 500 feet apart, and at each change of direction of the boundary line in such a manner as will reasonably give notice to passers by of matters contained in such notice, stating in letters not less than four inches in height: "THIS PROPERTY MAY BE USED AT ANY TIME FOR THE EXCAVATION OF ROCK, SAND, GRAVEL OR CLAY, ROCK CRUSHING PLANT OR ANY ASSOCIATED USES." The signs shall be of wood or metal and shall be maintained in legible condition at all times. Such signs shall meet all requirements of the City's sign code.

(10) Maximum permitted depth of excavation. The maximum permitted depth of excavation shall be 150 feet.

(11) Excavation below water table. No excavation below historic water tables shall be permitted except as approved by the Santa Ana Regional Water Quality Control Board.

(12) Fencing. Fencing, walls and landscape screening shall be required and maintained in accordance with any permits issued for such fencing, walls and landscape screening.

(13) Arterial highways. Whenever a property is traversed by a highway shown on a precise plan of highway alignment, the necessary right-of-way for such highways shall not be excavated, and no permanent structures shall be erected to the extent of the width of the right-of-way plus an additional 50 feet on each side thereof.

(14) Ingress, egress and traffic safety. Access roads to any premises shall be only at points designated on the extraction plan and shall be constructed on a level with the pavement of any public street or highway for a distance of not less than 80 feet therefrom, and the 80 feet shall be paved. Adequate sight distance shall be maintained for traffic safety in compliance with the standards and requirements of the city traffic engineer.

(15) Drainage.

a. Surface drainage shall be controlled in a manner meeting the approval of the Community Development Director, City Engineer, Building Official, or state or local laws to prevent loose material from filling any existing drainage course or encroaching upon adjoining property and improvements.

b. All provisions to control natural watercourses shall be designed to prevent overflow or diversion of water away from the natural point of discharge and such provisions shall be subject to review and approval of the City Engineer, Building Official, or state or local laws.

(16) Removal of buildings and equipment. All buildings, foundations and equipment used in the excavation or processing of land resources or in the administration of the resource extraction operations shall be removed within six months of the termination of activities on the property if the buildings are not to be utilized in conjunction with the reclamation plan.

(17) Noise and vibration control. All development and equipment for conduct of the uses permitted shall be constructed, maintained and operated in such a manner as to reduce noise and vibration to a level consistent with the City's noise ordinance. Internal combustion engines shall be equipped at all times with exhaust mufflers in good working condition to control excessive noise.

(18) Air pollution control. All operations shall be conducted in compliance with all the requirements of the South Coast Air Quality Management District.

B. *Resource Reclamation Plans.* All Resource Reclamation Plans shall comply with the following standards:

(1) Resource Reclamation Plans shall comply with the provisions of Public Resource Code, §2772 and §2773 and State regulations contained in the California Code of Regulations, §3500-3505. Resource 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 contained in the California Code of Regulations, §§3700-3713.

(2) The City may impose additional performance standards as part of the review of individual projects, or through the formulation and adoption of Citywide performance standards adopted by separate Resolution.

(3) Reclamation activities shall be initiated at the earliest possible time on those portions of 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 conducted on an annual basis, in stages compatible with continuing operations, or upon completion of all excavation, removal, or fill, as may be 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.

#### **DIVISION 4. PERFORMANCE GUARANTEES**

##### **Sec. 30-358. Statements of Insurance and Responsibility.**

Before commencing any operation, the operator shall procure public liability insurance with coverages of sufficient amount and term so as to adequately compensate for loss due to either personal injury or to damage to property. Such required insurance shall cover all activities of the operator connected with the uses permitted, and shall be kept in full force and effect at all times during such operations.

The person submitting the Reclamation Plan shall also sign a statement accepting responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. Said statement shall be kept on file 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.

##### **Sec. 30-359. Financial Assurances.**

(1) To ensure that reclamation will proceed in accordance with the approved Resource Reclamation Plan, the City shall also 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 Resource Reclamation Plan. Financial assurances shall be made payable to the City of Fontana and the State Department of Conservation.

(2) Financial assurances will be required to ensure compliance with elements of the Resource 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.

(3) 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 Manager 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 Manager shall have the discretion to approve the financial assurance if it meets the requirements of this Article, SMARA, and State regulations.

(4) The amount of the financial assurance shall be based upon the estimated costs of reclamation for the years or phases stipulated in the approved Resource 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 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 operator and approved by the Planning Manager. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved Resource 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 any water bodies, and any other applicable element of the approved Resource 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.

(5) 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.

(6) 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).

(7) 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 Resource 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.

(8) Revisions to financial assurances shall be submitted by the operator to the Planning Manager 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.

**Sec. 30-360. Annual Report Requirements.**

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

**Sect 30-361. 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 30-360, to determine whether the surface mining operation is in compliance with the approved Resource Extraction Permit approval and/or Resource Reclamation Plan, the 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, or state-registered forester, 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 Manager. 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 the said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection.

**DIVISION 5. ABANDONMENT**

**Sec. 30-362. Notification.**

Whenever a resource extraction operation is to be permanently abandoned, the operator shall notify the Planning Manager in writing of his intention to abandon the operation at least 90 days prior to such abandonment.

**Sec. 30-363. Inspection.**

The Planning Manager shall inspect the site within 30 days of the notification of proposed abandonment and shall notify the operator of what protective devices, structures, or corrective measures are or may be necessary for the protection of the adjacent properties and the general public. The Planning Manager shall also notify the property owner and the operator what assurance, if any, shall be required for the continued maintenance of protective devices, future correction of possible unsafe conditions as may occur, and reclamation of the site to a usable condition consistent with the reclamation plan. Such assurance may include a requirement for an offer of dedication of said lands where it is determined that such action is necessary to guarantee future use of the site.

**Sec. 30-364. Conformance with resource reclamation plan.**

Upon the notification of abandonment, the Planning Manager shall cause a survey to be conducted setting forth the cubic yards of material removed and requirements for conformance to the adopted Resource Reclamation Plan approved for the site pursuant to this Article.

**DIVISION 6. SUSPENSION OR REVOCATION**

**Sec. 30-365. Suspension or revocation.**

Whenever a resource extraction operation is to be suspended voluntarily, the operator shall notify the Planning Manager in writing of his intention to suspend operations at least 90 days prior to such voluntary suspension.

**Sec. 30-366. Interim Management Plans.**

(1) Within 90 days of the voluntary suspension of a surface mining operation, 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 site 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 Resource Reclamation Plan. IMPs shall not be considered a project for the purposes of environmental review.

(2) Financial assurances for suspended operations shall be maintained as though the operation were active.

(3) 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.

(4) Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Planning Manager and the operator, the Planning Commission shall review and approve or deny the IMP in accordance with this Article. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the Planning Manager, 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 in accordance with Chapter 30, Article II, Division 5 of the Fontana Municipal Code.

(5) 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.

**Sec. 30-367. Revocations, Violations and Penalties.**

If the Planning Manager, 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 Article, the applicable Resource Extraction Permit approval, any required permit and/or the Resource Reclamation Plan, the City shall follow the procedures set forth in Public Resources Code §2774.1 and §2774.2 concerning violations and penalties. In addition, the following provisions of the City of Fontana Municipal Code for revocation and/or abandonment of permits shall be followed:

a. The Planning Manager shall review any possible violation and make a recommendation to the Planning Commission. In addition to any other means of enforcing these regulations, they Planning Commission may suspend or revoke a resource extraction permit or any other entitlement to conduct mining operations granted pursuant to the City of Fontana Development Code when the Commission determines that a permittee is violating material terms of a resource extraction permit or that a reclamation plan is not being implemented.

b. Prior to any such suspension or revocation, the Planning Manager shall specify the nature of the violation or the failure to implement a reclamation plan in writing and demand at least twice over a period not less than 30 days that the permittee correct the violation or failure. When adequate steps have not been taken to insure the immediate correction of the violation or failure to the satisfaction of the Planning Manager, the Planning Manager shall request the Planning Commission set a hearing to consider whether the Resource Extraction Permit or other entitlement to mining operations should be suspended or revoked. The owner and operator of the

site in question shall be given at least 15 days' notice of any such hearing, except when life, safety, or health issues are in question.

c. Whenever the Planning Commission suspends or revokes a Resource Extraction Permit or other entitlement to conduct mining operation pursuant to this Article, it shall do so by resolution, which resolution shall set forth the findings upon which the Commission bases its action.

d. A resolution of suspension shall also set forth any conditions which must be met to reinstate the Resource Extraction Permit or other entitlement to conduct mining operations. Prior to reinstatement of any suspended Resource Extraction Permit or other entitlement to conduct mining operations, the permittee shall submit a compliance plan to the Planning Commission for approval. The Planning Manager shall determine that mining operations and other uses are in accordance with an approved compliance plan prior to resumption of mining operations. Upon certification by the Planning Manager that a permittee has corrected all violations and satisfied any conditions of reinstatement in accordance with an approved compliance plan, the Planning Commission shall reinstate a suspended resource extraction permit or other entitlement to conduct mining operations.

#### **Sec. 30-368. Appeals.**

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 in accordance with Chapter 30, Article II, Division 5 of the Fontana Municipal Code. An appeal shall be filed on forms provided, within fifteen (10) calendar days after the rendition, in writing, of the appealed decision.

#### **Sec. 30-369. Mineral Resource Protection.**

Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the State Department of Conservation's Division of Mines and Geology or designated by the State Mining and Geology Board, as well as existing surface mining operations that remain in compliance with the provisions of this Chapter, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the City of Fontana General Plan.

In accordance with Public Resources Code §2762, the City of Fontana General Plan and any of the City's associated resource maps shall be revised to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Mining and Geology Board of such information. Land use decisions within the City will be guided by information provided on the location of identified mineral resources of regional significance. Conservation and potential development of identified mineral resource areas will be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified

mineral resource areas may be encouraged as a condition of approval of any development project in impacted areas. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may be applied to encroaching development projects to minimize potential conflicts.

**Sec. 30-370. Severability.**

In 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.

**Sec. 30-371 - Sec. 30-382. Reserved.”**

**Section 3.** Section 30-245 of Chapter 30, Division 3, Article VII of the Fontana Municipal Code is hereby amended to read as follows:

**“Sec. 30-245. Uses permitted.**

Table 30-245A lists the uses permitted in each of the industrial districts. A “P” indicates the use is permitted by right, a “C” indicates the use requires a conditional use permit, and “-” means the use is not permitted in that district. Permitted uses marked with an asterisk “\*” or a double asterisk “\*\*” are permitted subject to use regulations outlined in section 30-247 and section 30-345 et seq, respectively.”

**Section 4** Table 30-245A of Chapter 30, of the Fontana Municipal Code is hereby amended by removing the “C” designation alongside Section 12 (Miscellaneous Uses) - “Natural Resource Development” for both the M-1 and M-2 zoning designations, and replacing the “C” with two asterisk which are defined in the abbreviation section of the table, as follows:

\*\* = Resource Extraction Permit Required. Refer to Section 30-345 et seq.

**Section 5.** Based upon the facts and information contained in the proposed exemption together with all written and oral reports included for the environmental assessment, as well as the staff reports prepared for this ordinance, the City Council finds there is action is authorized by State to assure the maintenance, restoration, enhancement or protection of the environment and hereby adopts an exemption.

**Section 6.** An exemption has been prepared in compliance with the Local Guidelines for Implementing the California Environmental Quality Act and reflects the independent judgment of the City Council of the City of Fontana. Staff is directed to file a Notice of Exemption with the County of San Bernardino.

**Section 7.** This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of the fifteen (15) days from the passage thereof,

the Ordinance or a summary of the Ordinance shall be published at least once in the Herald News, a newspaper of general circulation in the City of Fontana. Thereafter this Ordinance shall be in full force and effect.

**APPROVED AND ADOPTED** this 3rd day of August, 1999.

**READ AND APPROVED AS TO LEGAL FORM:**

/s/ Clark Alsop  
City Attorney

I, Beatrice Watson, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council do hereby certify that the foregoing ordinance is the actual ordinance adopted by the City Council and was introduced at a regular meeting of said City Council on the 20th day of July, 1999, and was finally passed and adopted not less than five days thereafter on the 3rd day of August 1999, by the following vote to wit:

**AYES:** Mayor Eshleman, Council Member Gonzales, Mancha, Nuaimi and Roberts  
**NOES:** None  
**ABSENT:** None

/s/ Beatrice Watson  
City Clerk

/s/ David R. Eshleman  
Mayor of the City of Fontana

**ATTEST:**

/s/ Beatrice Watson  
City Clerk