

**ORDINANCE NO. 2352**

**AN ORDINANCE OF THE CITY OF FREMONT AMENDING ARTICLE 18.3 ((Q) QUARRY COMBINING DISTRICT) AND ADDING ARTICLE 18.3.1 (SURFACE MINING AND RECLAMATION) OF CHAPTER 2 (ZONING) OF TITLE VIII (PLANNING AND ZONING) OF THE FREMONT MUNICIPAL CODE BY AMENDING REQUIREMENTS PURSUANT TO STATE LAW**

The City Council of the City of Fremont does ordain as follows:

**Section 1:**

Section 8-21830 (Purpose) of Article 18.3 ((Q) Quarry Combining District), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby amended to read as follows:

**Sec. 8-21830. Purpose.**

The purpose of the (Q) [Quarry] Combining District is to provide for establishment of districts in the city which are recognized as potentially or conditionally suitable for quarries and to eliminate or minimize the adverse effects of quarries by regulating the orderly operation of quarries, and assure that the lands quarried are rehabilitated promptly upon completion of quarrying to a condition compatible with land uses indicated on the general plan for the quarried and adjacent lands. The provisions of this Article shall be applied concurrently with those of Article 18.3.1, and in the event of conflict the provisions of Article 18.3.1 shall prevail.

(Sec. 2, Ord. 734.)

**Section 2:**

Section 8-21832 (Quarry operations; conditional use permit--Required) of Article 18.3 ((Q) Quarry Combining District), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby amended to read as follows:

**Sec. 8-21832. Quarry operations; conditional use permit and reclamation plan--Required.**

No quarry shall operate within a (Q) District unless and until a conditional use permit shall first have been secured therefor pursuant to Article 25 of this chapter and until the requirements of Article 18.3.1 of this chapter have been met. A public hearing shall be held by the planning commission prior to the approval or amendment of any

conditional use permit or reclamation plan for a quarry.

(Sec. 2, Ord. 734.)

Section 3:

Section 8-21833 (Same--Application procedure; plans and specifications) of Article 18.3 ((Q) Quarry Combining District), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby amended to read as follows:

**Sec. 8-21833. Same--Application procedure; plans and specifications.**

- (a) Application for a conditional use permit in a (Q) District for a quarry shall be accompanied by the following:
- (1) A general development plan illustrating graphically the proposed quarry operation and its eventual effect on the terrain. The general development plan shall be a plan drawn at a scale adequate to show the following:
    - d. Such other sketches, models, diagrams, which the applicant may wish to provide to support the proposal. In case of a hillside quarry, a three-dimensional model may be required by the planning commission.

Such general development plan shall respond to and be guided by the city's general plan, and no general development plan shall be approved unless the planning commission finds the plan to be consistent with the city's general plan; upon approval of the general development plan by the planning commission the specifics of the plan shall be deemed to be a refinement of the general plan;
  - (5) A cash deposit of one thousand dollars, pursuant to subsection (c) of section 8-21834 of this Code.
- (b) Within one hundred twenty days of commission approval of the general development plan, the applicant shall submit a reclamation plan meeting the requirements of this Article and those of Article 18.3.1. The reclamation plan shall be a refinement of the general development plan and shall respond to any conditions of approval of the general development plan. The plan shall be at a scale of one inch = one hundred feet or such other scale as the Development and Environmental Services Director may require and shall:
- (1) Be divided into phases not longer than five years each;

- (2) Provide technical data and planning criteria in a report form supporting design phasing and related proposals;
  - (3) Propose appropriate landscaping and planting necessary for the control of erosion and to blend the rehabilitated area with the surrounding non-quarried area;
  - (4) Provide proposals for future land use and circulation as set forth in the approved general development plan;
  - (5) Contain existing and proposed topographic information with a contour interval of five feet.
- (c) Upon approval of the general development plan and the reclamation plan, the commission may approve the application for the conditional use permit, subject to the requirements of this article and chapter and of Article 18.3.1.

(Sec. 2, Ord. 734; Ord. No. 837, § 1, 5-11-71.)

**Editor's note--**Ord. No. 837, § 1, amended § 8-21833(a)(2).

**Section 4:**

Section 8-21834 (Same--Conditions for quarry operation) of Article 18.3 ((Q) Quarry Combining District), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby amended to read as follows:

**Sec. 8-21834. Same--Conditions for quarry operation.**

- (a) The planning commission shall attach appropriate and reasonable conditions to the approval of a conditional use permit for a quarry which will assure the following:
  - (1) That the quarry premises will be maintained in a neat and orderly manner at all times;
  - (2) That all over-burden will be removed from the quarry premises or placed at locations at least two hundred fifty feet from any dwelling on an adjacent lot or in other suitable places on the quarry premises in such a manner so as not to present an unsightly appearance from beyond the boundaries of the premises;
  - (3) That the operation of the quarry, including access and haulage roads, shall

be conducted and maintained without excessive noise or dust and in such a manner that quarry operations will not adversely affect persons or property in the vicinity;

- (4) That surface drainage from such surface slopes as are formed by the quarrying operations will be made in such a manner as to eliminate any reasonable possibility of erosion or other damage to adjacent properties, and neither divert nor concentrate runoff water in other than existing drainage channels; this requirement shall apply to areas within the quarry premises in which the quarry operation is in progress as well as to those in which the operation has been terminated;
- (5) That the slopes and setbacks for quarry operations meet the following criteria:
  - a. *Setback requirements:* No quarrying activity shall occur within twenty feet of any property line of the quarry premises as established by the use permit permitting such quarrying, or within twenty feet of any right-of-way line or potential property line established by immediate possession effected under eminent domain proceedings, unless written consent is granted by the adjacent property owners or condemnor, and provided the planning commission also approves such quarrying closer than such twenty foot requirement.
  - b. *Slope requirements:* Slopes created by quarrying activity shall commence at the approved setback line. Slopes shall be no steeper than three feet horizontal to one foot vertical, provided however that in the case of pit quarries, slopes may be quarried to a maximum of two feet horizontal to one foot vertical with transverse benches ten feet wide for each twenty-five feet of vertical descent above any anticipated permanent water surface and may be quarried to provide a slope of 2:1 maximum below any anticipated water surface, provided that all proposed slopes (steeper than 3:1) shall be specifically recommended by a qualified soils consultant and/or an engineering geologist and city engineer, provided however that only the recommendation of the city engineer is required for the slopes steeper than 3:1 in those cases where adequate soils and/or engineering geology information is readily available to the satisfaction of the city engineer. Determination of the recommended slope for any embankment or cut shall take into consideration the site geology, soil conditions, shear strength of the materials, ground water effects, future use of

the area above and below the slope, useful life expectancy of the constructed slope, possible natural causes of instability and any surcharges which exist or are anticipated to exist adjacent to the excavation. All finished slopes in quarries shall be blended with the surrounding unquarried land. Finished slopes in all quarries shall conform to the approved reclamation plan for the quarry. In no case shall the slope be greater than the natural angle of repose of the material, or fail to meet the standards specified above, whichever provides the most gentle slope.

c. *Exceptions:*

1. Working slopes in the interior of a pit quarry need not comply with any specific setback or slope requirements, provided that the excavation is compatible with the approved reclamation plan;
2. Slopes preexisting the use permit application as legal nonconforming uses which are not in conformance with the requirements of this paragraph (5) may continue to exist provided that any reworking of such slopes shall conform to said requirements, except that minimal modification may be required in order to preclude the continued existence of slopes that the city engineer finds to be a hazard to public safety.

(b) The planning commission may attach regulatory conditions relating to the following when deemed necessary to protect the public health, safety, comfort, convenience or general welfare:

- (1) The prohibition or control of the use of explosives in excavation;
- (2) The establishment of dates the operation is to commence and to cease;
- (3) The establishment of haul routes;
- (4) The hours during which quarry operations may be conducted;
- (5) The control of spilling of material from trucks onto public streets;
- (6) The precautions which must be taken to guide safe traffic movements in and around the quarry operation;

- (7) The protection of the underground water percolation and replenishing system;
  - (8) The landscaping and screening of the quarry premises pursuant to approved plans;
  - (9) Construction of fencing;
  - (10) The insuring against liability arising from quarry operations;
  - (11) Recommendations of the city engineer necessitated by or based upon sound engineering practices;
  - (12) Replacement or transplanting of trees which are removed by quarry operations;
  - (13) Other factors and situations applicable to the specific quarry operation.
- (c) The Development and Environmental Services Director shall cause to be made such inspections of quarries as he or she deems necessary, or as required by the planning commission, to determine the conditions which should be imposed with the granting of a conditional use permit for a quarry and to ensure that the terms and provisions of the conditional use permit are being complied with. All inspection services provided for by this section shall be paid for by the applicant or permittee at the actual cost thereof to the city. City inspectors or other officials coming on the property shall leave their names at the applicant's office and comply with all reasonable safety regulations of the applicant while on the property. As soon as reasonably possible after any such liability has incurred, the applicant or permittee shall be billed for such expense. Payment shall be due within thirty days after billing. The applicant for a conditional use permit for a quarry shall deposit with the city, at the time of application, a prescribed sum as a deposit to ensure payment of inspection fees required herein. This deposit shall be refunded to the applicant when the conditional use permit expires, or is terminated, provided that all inspection fees have been paid. This deposit shall be available to reimburse the city for any expense incurred in carrying out the required inspections which has not been paid within thirty days after billing the same. The applicant or permittee shall be notified immediately upon the dissemination of the deposit and shall have thirty days thereafter to reinstate the amount of deposit. Failure to so reinstate the deposit shall be considered as an abandonment of any application or a violation of a condition of any conditional use permit as applicable.

(Ord. No. 734, § 2; Ord. No. 832, § 25, 4-20-71; Ord. No. 837, § 2, 5-11-71.)

Section 5:

Section 8-21835 (Contract and performance guarantee) of Article 18.3 ((Q) Quarry Combining District), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby amended to read as follows:

**Sec. 8-21835. Contract and performance guarantee.**

- (a) Subsequent to final approval of the reclamation plan, but prior to the commencement of each phase of quarry operations, the permittee shall enter into a contract with the city and state of California to provide for the reclamation of the first phase of the quarry operation within five years from the date of commencement of such quarry operation or such date as may be specified in the conditional use permit; provided, that the contract may include a provision for the extension of such completion date. The contract shall be in a form acceptable to the city attorney.
- (b) The contract shall be accompanied by a financial guarantee in an amount equal to the estimated cost of each phase of reclamation. Such contract and financial guarantee shall be in conformance with the requirements of Article 18.3.1

(Ord. No. 734, § 2.)

Section 6:

Section 8-21836 (Final rehabilitation plans; subsequent approvals) of Article 18.3 ((Q) Quarry Combining District), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby amended to read as follows:

**Sec. 8-21836. Final reclamation plans; subsequent approvals.**

- (a) Not less than six months, or other date considered appropriate by the planning commission at the time the reclamation plan is submitted, prior to completion of quarry operations within an approved phase of the quarry operation, there shall be submitted for commission approval a final reclamation plan. The final reclamation plan shall be a detailed plan drawn to a scale of one inch equals one hundred feet or such other scale as the Development and Environmental Services Director may require, and shall:
  - (1) Be in general conformance with the reclamation plan approved in conjunction with the approval of the conditional use permit;

- (2) Include a plan for landscaping, irrigation and drainage facilities proposed to be installed;
- (3) Contain existing and proposed topographic information with a contour interval of five feet.

The planning commission shall also consider, at such time or at appropriate subsequent intervals, the next phase as affected by the final reclamation of the previous phase, and may attach conditions regarding the preparation of the final reclamation plan for such next phase which appear warranted by knowledge of the actual effect of the quarry operation and the performance of the final reclamation plan for the previous phase.

- (b) Upon approval by the commission of the detailed final reclamation plan, the permittee shall proceed with reclamation of the phase where quarrying is complete, and may commence quarrying within the next phase as approved by the planning commission. The permittee shall provide a contract and guarantees for the subsequent phase as specified in section 8-21835 Article 18.3.1 of this Code. Upon completion of reclamation of a phase the city shall return the financial guarantees previously posted for that phase. Reclamation shall include the grading and shaping of the land, the establishment of finished grades and the installation of landscaping and irrigation facilities necessary to stabilize slopes and control erosion completed in accordance with the approved reclamation plan.

(Ord. No. 734, § 2.)

#### Section 7:

Article 18.3.1 (Surface Mining and Reclamation), of Chapter 2 (Zoning), of Title VIII (Planning and Zoning) of the Fremont Municipal Code is hereby added to read as follows:

#### **Article 18.3.1 Surface Mining and Reclamation**

- § 8-21830.10 Purpose and Intent
- § 8-21830.11 Definitions
- § 8-21830.12 Incorporation by Reference
- § 8-21830.13 Scope
- § 8-21830.14 Vested Rights
- § 8-21830.15 Process
- § 8-21830.16 Standards for Reclamation
- § 8-21830.17 Statement of Responsibility
- § 8-21830.18 Findings for Approval



- ə 8-21830.19 Financial Assurances
- ə8-21830.110 Interim Management Plans
- ə8-21830.112 Annual Report Requirements
- ə8-21830.113 Inspections
- ə8-21830.114 Violations and Penalties
- ə8-21830.115 Appeals
- ə8-21830.116 Fees
- ə8-21830.117 Mineral Resource Protection
- ə8-21830.118 Severability
- ə8-21830.119 Effective Date

**Sec. 8-21830.10. Purpose and Intent**

The City of Fremont recognizes that the extraction of minerals is essential to the continued economic well-being of the City and to the needs of society and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety. The City of Fremont recognizes that the extraction of minerals is essential to the continued economic well-City also recognizes 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.

The purpose and intent of this Article 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 (California Code of Regulations [CCR], Title 14, Division 2, Article 8, SubArticle 1, Sections 3500 et seq.), 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.

**Sec. 8-21830.11. Definitions**

The definitions set forth in this section shall govern the construction of this Article.

*Area of Regional Significance.* An area designated by the State Mining and Geology Board which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the State within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the premature loss of minerals that are of more than local significance.

*Area of Statewide Significance.* An area designated by the Board which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the State and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

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

*Compatible Land Uses.* Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

*Haul Road.* A road along which material is transported from the area of excavation to the processing plant or stockpile area of the surface mining operation.

*Idle.* Surface mining operations curtailed for a period of one year or more, by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

*Incompatible Land Uses.* Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

*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.

*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.

*Operator.* Any person 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.

*Stream Bed Skimming.* Excavation of sand and gravel from streambed deposits above the mean summer water level or stream bottom, whichever is higher.

*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 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).

#### **Sec. 8-21830.12. Incorporation by Reference**

The provisions of SMARA (PRC §2710 et seq.), PRC Section 2207, and State regulations CCR §3500 et seq., as those provisions and regulations may be amended from time to time, are made a part of this 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 correlative State provisions, this Article shall prevail.

#### **Sec. 8-21830.13. Scope**

Except as provided in this Article, no person shall conduct surface mining operations unless a Conditional Use Permit, Reclamation Plan, and financial assurances for reclamation have first been approved by the City. Any applicable exemption from this requirement does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the City, including but not limited to, the application of CEQA, the requirement of Conditional Use Permits or other permits, the payment of development impact fees, or the imposition of other dedications and exactions as may be permitted under the law. The provisions of this Article shall apply to all lands within the City, public and private.

This Article shall not apply to the following activities, subject to the above-referenced exceptions:

- (a) Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster.
- (b) 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 all of the following conditions:
  - (1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act ("CEQA", Public Resources Code, Division 13, §21000 et seq.).
  - (2) The City approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to CEQA.
  - (3) The approved construction project is consistent with the general plan and zoning of the site.
  - (4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.
  - (5) 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 conditions:

- (A) The plant site is located on lands designated for industrial or commercial uses in the City's general plan.
  - (B) The plant site is located on lands zoned industrial or commercial, or is contained within a zoning category intended exclusively for industrial activities by the City's general plan.
  - (C) None of the minerals being processed are being extracted onsite.
  - (D) All reclamation work has been completed pursuant to the approved Reclamation Plan for any mineral extraction activities that occurred onsite after January 1, 1976.
- 
- (c) 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.
  - (d) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.
  - (e) Any other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbances.
  - (f) The solar evaporation of sea water or bay water for the production of salt and related minerals.
  - (g) 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.
  - (h) Road construction and maintenance for timber or forest operations if the land is owned by the same person or entity, and if the excavation is conducted adjacent to timber or forest operation roads. This exemption is only available if slope stability and erosion are controlled in accordance with Board regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and post-closure uses in consultation with the Department of Forestry and Fire Protection. This exemption does not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavations for materials that are, or

have been, sold for commercial purposes.

**Sec. 8-21830.14. Vested Rights**

No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, State regulations, and this Article. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, he shall obtain City approval of a Reclamation Plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the Reclamation Plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976).

All other requirements of State law and this Article shall apply to vested mining operations.

**Sec. 8-21830.15. Process**

- (a) Applications for a Conditional Use Permit or Reclamation Plan for surface mining or land reclamation projects shall be made on forms provided by the Planning Section of the Development and Environmental Services Department. Said application shall be filed in accord with this Article and procedures to be established by the Development & Environmental Services Director. The forms for Reclamation Plan applications shall require, at a minimum, each of the elements required by SMARA (§§2772-2773) and State regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed Reclamation Plan, to be established at the discretion of the Development & Environmental Services Director. As many copies of the Conditional Use Permit application as may be required by the Development & Environmental Services Director shall be submitted to the Development & Environmental Services Department.
- (b) As many copies of a Reclamation Plan application as may be required shall be submitted in conjunction with all applications for Conditional Use Permits for surface mining operations. For surface mining operations that are exempt from a Conditional Use Permits pursuant to this Article, the Reclamation Plan application shall include information concerning the mining operation that is required for processing the Reclamation Plan. All documentation for the Reclamation Plan shall be submitted to the City at one time.
- (c) Applications shall include all required environmental review forms and

information prescribed by the Development & Environmental Services Director.

- (d) Upon completion of the environmental review procedure and filing of all documents required by the Development & Environmental Services Director, consideration of the Conditional Use Permit or Reclamation Plan for the proposed or existing surface mine shall be completed pursuant to Title VIII, Chapter 2 Article 18.3 of the Municipal Code at a public hearing before the Planning Commission or City Council in instances when it is the approving body, and pursuant to Section 2774 of the Public Resources Code.
- (e) Within thirty (30) days of acceptance of an application for a Conditional Use Permit for surface mining operations and/or a Reclamation Plan as complete, the Development & Environmental Services Department 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 Development & Environmental Services Department shall also notify the State Department of Transportation that the application has been received.
- (f) The Development & Environmental Services Department shall process the application(s) through environmental review pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and the City's environmental review guidelines.
- (g) Subsequent to the appropriate environmental review, the Development & Environmental Services Department shall prepare a staff report with recommendations for consideration by the Planning Commission and for the City Council in instances when it is the approving body.
- (h) The approving body shall hold at least one noticed public hearing on the Conditional Use Permit and/or Reclamation Plan.
- (i) Prior to final approval of a Reclamation Plan, financial assurances (as provided in this Article), or any amendments to the Reclamation Plan or existing financial assurances, the approving body 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, assurance, or amendments to the State Department of Conservation for review. The approving body may conceptually approve the Reclamation Plan and financial assurance before submittal to the State Department of Conservation. If a Conditional Use Permit is being processed concurrently with the Reclamation Plan, the approving

body may simultaneously also conceptually approve the Conditional Use Permit. However, the approving body may defer action on the Conditional Use Permits until taking final action on the Reclamation Plan and financial assurances. If necessary to comply with permit processing deadlines, the Conditional Use Permit may be conditionally approved with the condition that the Development & Environmental Services Department shall not issue the Conditional Use Permit for the mining operations until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the Reclamation Plan and financial assurances.

Pursuant to PRC §2774(d), the State Department of Conservation shall be given 30 days to review and comment on the Reclamation Plan and 45 days to review and comment on the financial assurance. The approving body 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 approving body's approval. In particular, when the approving body'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 approving body shall be promptly forwarded to the operator/applicant.

- (j) The approving body shall then take action to approve, conditionally approve, or deny the Conditional Use Permit and/or Reclamation Plan, and to approve the financial assurances pursuant to PRC §2770(d).
- (k) The Development & Environmental Services Department shall forward a copy of each approved Conditional Use Permit for mining operations and/or approved Reclamation Plan, and a copy of the approved financial assurances to the State Department of Conservation. By July 1 of each year, the Development & Environmental Services Department shall submit to the State Department of Conservation for each active or idle mining operation a copy of the Conditional Use Permit or Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.

#### **Sec. 8-21830.16. Standards for Reclamation**

- (a) All Reclamation Plans shall comply with the provisions of SMARA (§2772 and §2773) and State regulations (CCR §3500-3505). Reclamation Plans approved after January 15, 1993, Reclamation Plans for proposed new mining operations, and any substantial amendments to previously approved Reclamation Plans, shall also comply with the requirements for reclamation performance standards (CCR §3700-3713).



- (b) The City may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulation and adoption of Citywide performance standards.
- (c) Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the City. Each phase of reclamation shall be specifically described in the Reclamation Plan and shall include (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.

**Sec. 8-21830.17. Statement of Responsibility**

- (j) The person submitting the Reclamation Plan shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. Said statement shall be kept by the Development & Environmental Services Department 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 Development & Environmental Services Department for placement in the permanent record.

**Sec. 8-21830.18. Findings for Approval**

- (a) Conditional Use Permits. In addition to any findings required by the Fremont Municipal Code, a Conditional Use Permit for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.
- (b) Reclamation Plans. For Reclamation Plans, the following findings shall be required:
  - (1) That the Reclamation Plan complies with SMARA §2772 and §2773, and any other applicable provisions;
  - (2) That the Reclamation Plan complies with applicable requirements of State regulations (CCR §§3500-3505, and §§3700-3713).
  - (3) That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Article and the City's General Plan and

any applicable resource plan or element.

- (4) That the Reclamation Plan has been reviewed pursuant to CEQA and the City's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible.
- (5) That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values.
- (6) That the Reclamation Plan will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.
- (7) That a written response to the State Department of Conservation has been prepared, describing the disposition of major issues raised by that Department. Where the City's position is at variance with the recommendations and objections raised by the State Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

**Sec. 8-21830.19. Financial Assurances**

- (a) To ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the City shall require as a condition of approval security, which will be released upon satisfactory performance. The applicant may pose security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the City and the State Mining and Geology Board as specified in State regulations, and which the City reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved Reclamation Plan. Financial assurances shall be made payable to the City of Fremont and the State Department of Conservation.
- (b) Financial assurances will be required to ensure compliance with elements of the Reclamation Plan, including but not limited to, revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if necessary.

- (c) Cost estimates for the financial assurance shall be submitted to the Development & Environmental Services Department for review and approval prior to the operator securing financial assurances. The Development & Environmental Services Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State Department of Conservation does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the City has reason to determine that additional costs may be incurred. The Development & Environmental Services Director shall have the discretion to approve the financial assurance if it meets the requirements of this Article, SMARA, and State regulations.
- (d) The amount of the financial assurance shall be based upon the estimated costs of reclamation for the years or phases stipulated in the approved Reclamation Plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities in the upcoming year. Cost estimates should be prepared by a California registered Professional Engineer and/or other similarly licensed and qualified professionals retained by the operator and approved by the Development & Environmental Services Director. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved Reclamation Plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved Reclamation Plan shall be based upon cost estimates that include but may not be limited to labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permittee. A contingency factor of ten percent (10%) shall be added to the cost of financial assurances.
- (e) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the City or State Department of Conservation may need to contract with a third party commercial company for reclamation of the site.
- (f) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required).
- (g) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface

mining operations, inflation, and reclamation of lands accomplished in accordance with the approved Reclamation Plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year.

- (h) Revisions to financial assurances shall be submitted to the Development & Environmental Services Director each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

**Sec. 8-21830.110. Interim Management Plans**

- (a) Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Development & Environmental Services Department a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all Conditional Use Permits 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 Development & Environmental Services Department, and shall be processed as an amendment to the Reclamation Plan. IMPs shall not be considered a project for the purposes of environmental review.
- (b) Financial assurances for idle operations shall be maintained as though the operation were active.
- (c) Upon receipt of a complete proposed IMP, the Development and Environmental Services Director 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 approving body.
- (d) Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Development & Environmental Services Director and the operator, the approving body 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 Development & Environmental Services Director, to submit a revised IMP. The approving body shall approve or deny the revised IMP within sixty (60) days of receipt. If the Planning Commission, acting as the approving body, denies the revised IMP, the operator may appeal that action

to the City Council.

- (e) The IMP may remain in effect for a period not to exceed five years, at which time the approving body 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. 8-21830.111. Annual Report Requirements**

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the City Development & Environmental Services Director 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.

**Sec. 8-21830.112 Inspections**

The Development and Environmental Services Department shall arrange for inspection of a surface mining operation within six months of receipt of the Annual Report required in Section 12, to determine whether the surface mining operation is in compliance with the approved Conditional Use Permits and/or Reclamation Plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, 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 Development & Environmental Services Director. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

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

**Sec. 8-21830.113. Violations and Penalties.**

If the Development & Environmental Services Director, based upon an annual inspection

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

**Sec. 8-21830.114. Appeals**

Any person aggrieved by an act or determination of the Development & Environmental Services Department in the exercise of the authority granted herein, shall have the right to appeal pursuant to Title VIII, Chapter Two Article 30 of the Fremont Municipal Code.

**Sec. 8-21830.115. Fees**

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

**Sec. 8-21830.116 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 Article, 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's General Plan.

In accordance with PRC §2762, the City's General Plan and resource maps will be prepared 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 the impacted area. 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.

Section 8:

**Sec. 8-21830.117. Severability**

If any section, subsection, sentence, clause or phrase of this Article 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 Article.

Section 9:

**Sec. 8-21830.118. Effective Date**

This Article shall take effect thirty (30) days following its adoption.

Section 10:

This ordinance shall be published once in The Argus, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont, within fifteen (15) days from and after its adoption, and shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was duly introduced before the City Council of the City of Fremont, County of Alameda, at the meeting of the City Council of such City, held on the 7th day of September, 1999, and finally adopted at a regular meeting of said Council held on the 14th day of September, 1999, by the following vote, to wit:

AYES: Mayor Morrison, Vice Mayor Pease, Councilmembers Zlatnik, and Zager

NOES: None

ABSENT: Councilmember Wasserman

ABSTAIN: None

GUS MORRISON

Mayor

ATTEST:

BARBARA HOWARD

APPROVED AS TO FORM:

Acting City Clerk

JAMES E. GONZALES  
Senior Deputy City Attorney