

Justin B. Lee
City Attorney

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. 12496 C.M.S

RECEIVED
OCT 22 PM 2:34

AN ORDINANCE DELETING IN ITS ENTIRETY EXISTING CHAPTER 17.102.220 OF THE ZONING CODE ENTITLED "SPECIAL REGULATIONS APPLYING TO MINING AND QUARRYING EXTRACTIVE ACTIVITIES" AND REPLACING IT WITH NEW CHAPTER 17.102.220 ENTITLED "SURFACE MINING AND RECLAMATION IN COMPLIANCE WITH STATE LAW"

WHEREAS, on December 3, 2002, the City Council approved a Planned Unit Development ("PUD"), Design Review ("DR"), Vesting Tentative Map ("VTM"), Variances and introduced a Zoning Boundary Line Adjustment for the Leona Quarry Residential Project located at 7100 Mountain Boulevard and on December 17, 2003 adopted the Zoning Boundary Line Adjustment; and

WHEREAS, as part of the proposed development, the project applicant must obtain an amendment to the current Reclamation Plan for the Leona Quarry that is consistent with the PUD, VTM and the Conditions of Approval ("COA") and all requirements of the State Mining and Reclamation Act ("SMARA"). As set forth in COA No. 12, the project applicant may obtain this amendment through the State Mining and Geology Board ("SMGB") or the City; and

WHEREAS, City currently lacks authority to approve amendments to the current Reclamation Plan because existing Zoning Code Section 17.102.220 has not been updated to meet current SMARA requirements for the regulation of mining activity and, as a result, the City lacks a state-certified SMARA ordinance; and

WHEREAS, the City desires to reestablish its full lead agency authority, including its authority to approve an amendment to the current Reclamation Plan for the Leona Quarry Project and to perform effectively all the required inspections, reporting, monitoring and other requirements in a comprehensive and integrated manner with all the applicable conditions and requirements set forth in the approved PUD, including but not limited to geotechnical, hydrologic, biological, air quality, noise and traffic control measures; and

WHEREAS, the notice required by section 17.144.060 has been given.

THE CITY COUNCIL OF THE CITY OF OAKLAND ORDAINS AS FOLLOWS:

Section I: Chapter 17.102.220 Special regulations applying to Mining and Quarrying Extractive Activities is hereby deleted in its entirety and replaced with new Chapter 17.102.220 entitled **Surface Mining and Reclamation**, as set forth in Section II.

Section II: Chapter 17.102.220 Surface Mining and Reclamation

Sections:

- 1.0 Purpose and Intent
- 2.0 Definitions
- 3.0 Incorporation by Reference
- 4.0 Scope
- 5.0 Vested Rights
- 6.0 Process
- 7.0 Standards for Reclamation
- 8.0 Statement of Responsibility
- 9.0 Findings for Approval
- 10.0 Financial Assurances
- 11.0 Interim Management Plans
- 12.0 Annual Report Requirements
- 13.0 Inspections
- 14.0 Violations and Penalties
- 15.0 Appeals
- 16.0 Fees
- 17.0 Severability
- 18.0 Effective Date

§1.0 Purpose and Intent

The City of Oakland recognizes that, historically, the extraction of minerals has benefited the economic well-being of the City and 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 also recognizes that surface mining within the City occurs in a diverse, established, urban environment, which presents unique health, safety and welfare issues and where geologic, topographic, climatic, biological, and other conditions are significantly different than in less urbanized areas. Therefore, reclamation operations and the applicable specifications, inspections, reporting, monitoring must be appropriate to the surrounding conditions.

The purpose and intent of this Chapter is to regulate 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, Chapter 8, Subchapter 1, Sections 3500 et seq.), to ensure that:

- (a) Reclamation activities eliminate hazards to public health and safety and restore mined lands to a standard that is safe, stable, and usable for development of reuses that will enhance the community;
- (b) Adverse environmental effects are prevented or minimized in accordance with CEQA and other applicable requirements;
- (c) Reclamation activities further adopted City goals, plans, policies, objectives and regulations, including, without limitation the City's General Plan;
- (d) Reclamation activities appropriately consider values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

§2.0 Definitions

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

“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.

“Approved Plan.” A land use and/or development plan and all conditions of approval and adopted mitigation measures, as approved by the City pursuant to Chapter 17 of the Oakland Municipal Code.

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

“City.” City of Oakland.

“City Council.” City Council of the City of Oakland.

“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.

“General Plan.” The General Plan of the City of Oakland.

“Haul Road.” A road along which material is transported from the area of excavation to the processing plant or stock pile 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.

“Reclamation Plan.” A plan for reclamation of mined lands as specified by SMARA.

“Stream Bed Skimming” Excavation of sand and gravel from stream bed 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).

“Use Permit.” A conditional use permit or other land use permit for mining activities.

§3.0 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 Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.

§4.0 Scope

Except as provided in this Chapter, no person shall conduct surface mining operations unless a Reclamation Plan and financial assurances for reclamation have first been approved by the City. Any applicable exemption from this requirement does not automatically exempt or limit a project or activity from the application of other regulations, ordinances or policies of City, including but not limited to, the application of CEQA, the requirements of an Approved Plan 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 Chapter shall apply to all lands within the City, public and private.

This Chapter 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 an approved 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 or agencies 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's approval and CEQA review (if applicable) of the construction project included the onsite excavation and onsite earthmoving activities.

(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 the City determines, in its discretion, that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Permitted 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:

(1) The plant site is located on lands designated for industrial or commercial uses in the City's general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the City.

(3) None of the minerals being processed is being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved Reclamation Plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) 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.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, as specified in Public Resources Code section 2714(e).

(f) 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.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) 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.

(i) Road construction and maintenance for timber or forest operations, as specified in Public Resources Code section 2714(j)(1); and

(j) Excavation, grading, or other earthmoving activities in an oil or gas field, as specified in Public Resources Code section 2714(k).

§5.0 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 mining operation except in accordance with SMARA, State regulations, this Chapter and any other applicable requirements. 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), as determined by the City to be necessary or appropriate to accommodate reuse of the proposed site according to City plans, policies, ordinances, and other applicable requirements.

All other requirements of State law, this Chapter or an approved plan shall apply to vested mining operations.

§6.0 Process

(a) Applications under the requirement for an Approved Plan or Reclamation Plan for surface mining or land reclamation projects shall include, at a minimum, each of the elements required by SMARA (§2772-2773) and State regulations, and any other requirements determined, in the discretion of the Planning Director or designee, to be necessary or appropriate to facilitate an evaluation of the proposed Reclamation Plan.

(b) Within thirty (30) days of the acceptance of a complete application for a Reclamation Plan or as a requirement of an Approved Plan for surface mining operations and/or a Reclamation Plan, the Planning 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 ("FEMA"), and within one mile, upstream or downstream, of any state highway bridge, the Planning Department shall also notify the State Department of Transportation ("Caltrans") that the application has been received.

(c) The Planning Department shall process the application(s) in accordance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and the City's environmental review guidelines.

(d) Subsequent to the appropriate environmental review, the Planning Department shall prepare a staff report with recommendations for consideration by the City Planning Commission. The City Planning Commission shall hold at least one noticed public hearing on Use Permit and/or Reclamation Plan. Notice shall be given by mail or delivery to all persons shown on the last available equalized assessment role as owning real property in the city limits within three hundred feet (300 feet) of the property involved. All such notices shall be given not less than ten days prior to the date set for the hearing. At the conclusion of such hearing or hearings, the Planning Commission shall recommend to the City Council that it should approve, approve with changes, or deny the subject Reclamation Plan and/or Use Permit.

(e) The City Council shall hold at least one noticed public hearing on a Use Permit and/or Reclamation Plan. Notice shall be given by mail or delivery to all persons shown on the last available equalized assessment role as owning real property in the city limits within three hundred feet (300 feet) of the property involved. All such notice shall be given not less than ten days prior to the date set for the hearing.

(f) Prior to final approval of a Reclamation Plan, financial assurances (as provided in this Chapter), any amendments to the Reclamation Plan, existing financial assurances, or those financial assurances required as part of an Approved Plan, the City Council 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.

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 Planning Department shall evaluate written comments received, if any, from the State Department of Conservation during the comment periods. Staff shall prepare a response describing the disposition of the major issues raised by the State for the City Council's approval. In particular, when the Planning Department's position is at variance with the recommendations and objections raised in the State's comments, the 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 Department shall be promptly forwarded to the operator/applicant.

(g) The City Council shall then take action to approve, conditionally approve, or deny Use Permit and/or Reclamation Plan, and to approve the financial assurances pursuant to PRC §2770(d) or any other requirement of an Approved Plan.

(h) The Planning Department shall forward a copy of each approved Use Permit for mining operations, an Approved Plan 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 Planning Department shall submit to the State Department of Conservation for each active or idle mining operation a copy of the Approved Plan, or Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.

§7.0 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, through the formulation and adoption of Citywide performance standards or through an Approved Plan.

(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 (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.

(d) The information, analysis and other specifications submitted as part of the Reclamation Plan shall demonstrate that the improvements and financial assurances are sufficient to reclaim the site in a condition that meets all applicable state and city standards, and that is appropriate for the proposed reuse of the site and consistent with the land use and other applicable policies of the General Plan.

§8.0 Statement of Responsibility

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 Planning Department in the mining operation's permanent record. Prior to sale or transfer of the operation, the new operator shall submit a signed statement of responsibility as well as evidence required to demonstrate the financial assurance requirement set forth in this Chapter or the Planning Department for placement in the permanent record.

§9.0 Findings for Approval

(a) Approved Plans. In addition to any findings required by the Approved Plan or for surface mining operations, a finding shall be included 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 Sections 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 Chapter, the City's General Plan and any applicable resource plan, element or an Approved Plan.

(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 safe, stable and usable condition which is readily adaptable for alternative land uses consistent with the General Plan, and other City Approved Plans, policies, ordinances and regulations..

(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.

§10.0 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 determines are adequate to perform reclamation in accordance with the surface mining operation's approved Reclamation Plan and/or an Approved Plan. Financial assurances shall be made payable to City 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 determined necessary by the Planning Department to comply with the requirements of an Approved Plan.

(c) Cost estimates for the financial assurance shall be submitted to the Planning Department for review and approval prior to the operator securing financial assurances. The Planning 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 Planning Director shall have the discretion to approve the financial assurance if it meets the requirements of this Chapter, SMARA, State regulations and any requirements of an Approved Plan .

(d) The amount of the financial assurance shall be based upon the estimated costs of reclamation to a safe, stable and usable condition in accordance with an Approved Plan 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 since January 1, 1976, and new lands to be disturbed 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 Planning Director. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved Reclamation Plan in accordance with an Approved Plan for the site, 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 Reclamation Plan implementation and 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, monitoring, inspections 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 Planning 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.

§11.0 Interim Management Plans

(a) Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Department a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all Approved Plan 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 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, or as otherwise approved through the idle mine's IMP.

(c) Upon receipt of a complete proposed IMP, the Planning Department 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 Director.

(d) Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Planning Director and the operator, the Planning Director shall review and approve or deny the IMP in accordance with this Chapter. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the Planning Director, to submit a revised IMP. The Planning Director shall approve or deny the revised IMP within sixty (60) days of receipt. If the Planning Director denies the revised IMP, the operator may appeal that action to the City Council. The decision of the City Council shall be final.

(e) The IMP may remain in effect for a period not to exceed five years, at which time the City Council 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.

§12.0 Annual Report Requirements

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the City Planning Department on a date established by the State Department of Conservation, on 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.

§13.0 Inspections

The Planning Director, through the Building Department Inspection Services Division or other agency or other designee, 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 applicable requirements, including, without limitation, the Approved Plan, 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 Planning Director. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

The Planning Department 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 all costs of inspections required by the City in furtherance of this Ordinance in accordance with the City master fee schedule or other applicable fee agreements or requirements.

§14.0 Violations and Penalties

If the Planning Director, through the Building Department Inspection Services Division or other designee, 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 Chapter, the Approved Plan, the Reclamation Plan or other applicable requirements, the City shall follow the procedures set forth in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties.

§15.0 Appeals

A decision by the City Council to either approve or deny a Reclamation Plan pursuant to this Chapter shall be considered a final agency action.

§16.0 Fees

The City shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this Chapter and the State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. These fees

may be set forth in the City master fee schedule; however, failure to include such fees in the master fee schedule shall not limit the City's ability to impose fees it determines are necessary or desirable to fulfill the purposes of this Chapter, State regulations and other applicable requirements. Such fees shall be paid by the operator, as required by the City, at the time of filing of the Reclamation Plan application, as a part of a fee agreement through an Approved Plan or at such other times as are determined by the City to be appropriate in order to ensure that all reasonable costs of implementing this Chapter are borne by the mining operator.

Section III: This ordinance, is based in part on the findings set forth above, findings pursuant to Chapter 17.144.040 that the zoning text amendment is in the public interest to serve public safety and for the purposes of complying with current state law, and the City Council's findings that adoption of this ordinance is not a "project" within the meaning of the California Environmental Quality Act and is otherwise exempt from its requirements (reference: Public Resources Code § 21065 and CEQA Guidelines § 15378 (defining "project"); 15061(b)(3); § 15307 (actions for the protection of natural resources); § 15308 (actions for the protection of the environment)).

Section IV: Except as specifically set forth herein, this ordinance suspends and supercedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.


Section V: If any provisions of this ordinance or application thereof to any person of circumstances is held invalid, the remainder of this ordinance and the application of provisions to the other persons or circumstances shall not be affected thereby.

Section VI: This ordinance shall become effective 30 days after passage and within 15 days of passage shall be published once with the names of the City Council Members voting for and against it in the Oakland Tribune, a newspaper which is published in this City and in Alameda County.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 20 2003

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BROOKS, BRUNNER, CHANG,~~
~~NADDEL, REID, QUAN, WAN~~
NOES - ~~NADDEL,~~ AND PRESIDENT DE LA FUENTE - 5
ABSENT - BROOKS - 2
Excused
ABSTENTION - QUAN - 1

ATTEST 
for CEDRA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California