

Footnotes:

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State Law reference— *State Housing Law, Health and Safety Code § 17910 et seq.; city authority to regulate the construction, repair, or alteration of buildings, Government Code § 38660.*

CHAPTER 15.04. - GENERAL PROVISIONS

Sec. 15.04.010. - Applicability of regulations.

The provisions of this title shall apply to the regulation of the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all buildings and/or structures in the city.

(Code 1969, § 15.04.010; Ord. No. 518, § 2(part), 1983)

CHAPTER 15.08. - BUILDING CODES

Footnotes:

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Editor's note— *Ordinance No. 950-2017, § 1, adopted January 17, 2017, amended ch. 15.08 in its entirety, save and except § 15.08.060 to read as herein set out. Former 15.08.010—15.08.070 pertained to similar subject matter and derived from Ordinance No. 786, § 1(part), adopted 2003; and Ordinance No. 838, §§ 1—3, adopted 2008; and Ordinance No. 870-2010 § 1, adopted January 18, 2011; and Ord. No. 925-2014, adopted July 21, 2014.*

State Law reference— *City building department required to enforce state building standards code, state housing law, and other rules and regulations promulgated pursuant to them, Health and Safety Code § 17960.*

Sec. 15.08.010. - Codes adopted.

The following codes, including their appendices unless otherwise provided, (hereinafter collectively referred to as the "codes") are adopted for the purpose of regulating the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area and maintenance of all building or structures; regulating the design, construction, quality of materials erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of heating, ventilation, cooling, refrigeration systems, incinerators or other miscellaneous heat-producing appliances and plumbing systems in the city; providing for the issuance of permits and collection of fees therefor; and providing for

penalties for the violation thereof. A copy of each of the codes has been filed, and shall remain on file, in the office of the city building official for public inspection, and the codes are adopted with the same full force and effect as though set out herein. The city adopts the following codes by this reference, as amended by this chapter:

- (1) The California Standards Administrative Code, 2019 Edition (Part 1, Title 24, California Code of Regulations);
- (2) The California Building Code, 2019 Edition (Part 2, Title 24, California Code of Regulations) (but only Appendices B, C, F, G, H, I, J);
- (3) The California Residential Code, 2019 Edition (Part 2.5, Title 24, California Code of Regulations) (but only appendices A, B, C, D, E, G, H, I, J, K, N, O, P, Q);
- (4) The California Electrical Code, 2019 Edition (Part 3, Title 24, California Code of Regulations);
- (5) The California Mechanical Code, 2019 Edition (Part 4, Title 24, California Code of Regulations);
- (6) The California Plumbing Code, 2019 Edition (Part 5, Title 24, California Code of Regulations);
- (7) The California Energy Code, 2019 Edition (Part 6, Title 24, California Code of Regulations);
- (8) The California Historical Building Code, 2019 Edition (Part 8, Title 24, California Code of Regulations);
- (9) The California Existing Building Code, 2019 Edition (Part 10, Title 24, California Code of Regulations);
- (10) The California Green Building Standards Code, 2019 Edition (Part 11, California Code of Regulations), (excluding Appendix Chapters A4 and A5);
- (11) The California Referenced Standards Code, 2019 Edition (Part 12, Title 24, California Code of Regulations);
- (12) The Uniform Administrative Code, 1997 Edition (Chapter 3 - Permits and Inspections).

(Code 1969, § 15.08.010; Ord. No. 870-2010, § 1, 1-18-2011; Ord. No. 925-2014, § 1, 7-21-2014; Ord. No. 950-2017, § 1, 1-17-2017; Ord. No. 964-2019, § 1, 12-2-2019; Ord. No. 1021-2023, § 1, 12-18-2023)

Sec. 15.08.020. - Building code amendments.

- (a) Chapter 1, Section 109.2 of the California Building Code is amended to read as follow:

Section 109.2.1 - Exemption

The City, County, State, Federal Government, School Districts and Barstow Fire Protection District are exempt from paying fees.

- (b) Sections 105.2 and 105.2 #4 of the California Building Code are amended to read:

Block walls (garden walls) that are not over 3 feet in height measured from the top of footing to the top of the wall.

Retaining walls of any height require a building permit.

(Ord. No. 950-2017, § 1, 1-17-2017; Ord. No. 964-2019, § 1, 12-2-2019; Ord. No. 1021-2023, § 1, 12-18-2023)

Sec. 15.08.030. - Green building code amendments.

- (a) Section 4.408.2 of the Green Building Standards Code is amended by adding Section 4.408.2(6)-Waste Management Plan Application and shall read as follows:

Section 4.408.2(6) - Waste Management Plan Application

A Waste Management Plan Application from the City of Barstow shall be completed with each applicable building permit application.

(Ord. No. 950-2017, § 1, 1-17-2017; Ord. No. 964-2019, § 1, 12-2-2019; Ord. No. 1021-2023, § 1, 12-18-2023)

Sec. 15.08.040. - Residential building code amendments.

- (a) A new section AG101.1.1 is hereby added to Appendix chapter G (Swimming Pools, Spas and Hot Tubs) of the Residential Building Code and shall read as follows:

Section AG101.1.1 - Swimming Pools, Spas and Hot Tubs

- (1) Equipment shall be so installed as to provide ready accessibility for cleaning, operating maintenance, and servicing.
- (2) Any swimming pool constructed after the effective date of the requirements set forth in this section shall be constructed so that there are at least five feet between the swimming pool and:
 - a. The main building.
 - b. Any lot line.
 - c. Any building (including auxiliary buildings) unless the swimming pool is specially designed to maintain the structural integrity of the buildings or structure involved, even though they are within five feet of the pool.
- (3) The owner of any swimming pool may request approval of modifications or variances from the fencing requirement by submitting to the building official written application, setting forth a description of the pool and an alternate safeguard or condition of the site by which entry into the swimming pool may be restricted or prevented. The building official may approve such alternate safeguard or obstruction upon finding that one of the following conditions exists:
 - a. That the physical conditions of the site would make the erection of a fence or wall impractical or purposeless:
 - b. That the proposed limitation of access or conditions of control thereof which would be continuously effective would accomplish the intent of the enclosure requirements; or

- c. That the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the enclosure and/or safety features, which are required by the code.
- (b) Section AG105.2.1 (Barrier Requirements) of Appendix chapter G (Swimming Pools, Spas and Hot Tubs) of the Residential Building Code is amended as follows:

The top of the barrier is to be 60 inches above grade. The remainder of the section remains the same.

(Ord. No. 950-2017, § 1, 1-17-2017; Ord. No. 964-2019, § 1, 12-2-2019)

Sec. 15.08.050. - Violations and penalties.

- (a) No person, firm or corporation shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish equip. use, occupy or maintain any building or structure, plumbing or mechanical systems or equipment, or cause or permit the same to be done, in violation of the codes. Each such person, firm or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of the codes is committed, contained or permitted.
- (b) No person, firm or corporation shall remove, deface, alter or obstruct from view a posted notice of the building official, or his or her authorized representative, when such notice constitutes a stop work order or a warning of substandard or hazardous conditions or prohibits or restricts the occupancy or use of any building or structure, plumbing or mechanical systems or equipment regulated by the codes.
- (c) Every violation of the codes shall be deemed a misdemeanor, punishable as set forth in section 1.01.110 of this Code.

(Ord. No. 950-2017, § 1, 1-17-2017; Ord. No. 964-2019, § 1, 12-2-2019; Ord. No. 1021-2023, § 1, 12-18-2023)

Sec. 15.08.060. - Board of appeals.

- (a) *Established.* In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of this Code, there is created a board of appeals.
- (b) *Powers and duties.* The board of appeals shall:
 - (1) Hear and determine appeals from the rulings of the building official concerning any of the codes adopted by the ordinance codified in this chapter.
 - (2) Have the authority to approve the use of any material or method of construction not specifically prescribed by this Code, provided that the proposed design is satisfactory and that the material or method of work offered is for the purpose intended, at least the equivalent of that prescribed in this Code in quality, strength, effectiveness, fire resistance, durability and safety. Each approval of the use of an alternate material or method of construction shall be singular and shall not be applied as a modification of the regulations of this Code.

- (3) Adopt reasonable rules and regulations for conducting its hearings and meetings; the rules shall be called the bylaws of the building board of appeals.
- (4) In connection with hearing appeals from the rulings of the building official, the board shall render all findings of facts and decisions in writing. A copy of each of such findings and decisions shall be sent to the building official and the appellant.
- (5) The decisions of the board of appeals may be appealed to the city council within ten days. The review by the city council of a decision of the board of appeals shall be based solely upon the administrative record as presented before the board of appeals. The review of the city council shall be limited to whether the findings of the city council are supported by the evidence. The decisions of the city council shall be final.
- (6) Recommend to the city council any new legislation necessary or any change to existing regulations it deems necessary.

(c) *Method of appeals.*

- (1) Appeals shall be made and conducted as provided under state law.
- (2) Appeals from decisions of the building official shall be in writing on forms provided by the building division.
- (3) Each separate appeal shall be accompanied by a fee in an amount as established by the city council from time to time.
- (4) The board of appeals shall hear the appeal within ten working days after application has been filed with the building official and shall render their findings to the appellant in writing within five days after the hearing.

State Law reference— Local appeals board authorized by board of supervisors to hear appeals regarding building requirements of the city, Health and Safety Code § 17920.5.

Sec. 15.08.070. - Reserved.

Editor's note— Ord. No. 950-2017, § 1, adopted January 17, 2017, repealed § 15.08.070, which pertained to violations and penalties, and derived from Code 1969, § 15.08.050; Ord. No. 870-2010, § 1, 1-18-2011; Ord. No. 925-2014, § 1, 7-21-2014.

CHAPTER 15.10. - EXPEDITED REVIEW PROCESS FOR ROOFTOP SOLAR ENERGY SYSTEM (10 KW OR LESS) FOR ONE- AND TWO-FAMILY DWELLING

Sec. 15.10.010. - Purpose.

California Government Code § 65850.5 provides that, on or before September 30, 2015, every city, county, or city and county shall adopt an ordinance that creates an expedited, streamlined permitting process for small residential roof top solar energy systems (10kW or less) for one- and two-family dwellings.

Sec. 15.10.020. - Definitions.

For the purpose of this chapter, unless otherwise more particularly defined, the following terms are hereby defined:

(a) *Electronic submittal* means the utilization of one or more of the following:

- (1) E-mail,
- (2) The internet,
- (3) Facsimile (fax).

(b) *Small residential rooftop solar energy system* means all of the following:

1. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city and paragraph (3) of subdivision (c) of section 714 of the Civil Code, as such section or subdivision may be amended, renumbered, or redesignated from time to time.
3. A solar system that is installed on a single or duplex family dwelling.
4. A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(c) *Solar energy system* has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of section 801.5 of the Civil Code, as such section or subdivision may be amended, renumbered, or redesignated from time to time.

(d) *Feasible method to satisfactorily mitigate or avoid the specific, adverse impact* includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (a) and (b) or paragraph (1) of subdivision (d) of section 714 of the Civil Code.

(e) *Specific, adverse impact* means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Sec. 15.10.030. - Duties of the building department.

(a) As per California Government Code § 65850.5, the building department shall develop an expedited permitting process which shall include the adoption of a checklist of all requirements for which a small residential solar energy system may be eligible for expedited review.

- (b) All documents required for the submission of an expedited solar energy system application shall be made available on the city's website.
- (C) An applicant may submit the permit application and associated documentation to the city's building department in person, by mail, or by electronic submittal along with the permit fee, as adopted in the city's Master Fee Schedule.
- (d) In the case of electronic submittal, an applicant's electronic signature shall be accepted on all forms, application and other documents in lieu of a wet signature. For purposes of this section, the city will accept as an electronic signature an electronic copy, such as a facsimile image or an electronic image (such as a PDF), of an applicant's original signature.

(Ord. No. 936-2015, § 1, 8-17-2015)

Sec. 15.10.040. - Permit review and inspection.

- (a) Applications received either in person or electronic submittal will be plan checked within three business days. Upon receipt of an incomplete application, the building department shall issue a written correction notice within the same time frame, which details all deficiencies in the application and provide any additional information required to be eligible for expedited permit issuance.
- (b) Review of an application shall be limited to the building official's review of whether the application meets the requirements of the adopted checklist and the California Building Standards Code (whichever edition has been most recently adopted by the city council). In the event the building official makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the applicant may be required to apply for a use permit.
- (c) In the case that a use permit is required to install a solar energy system, its applicant may not be denied unless written findings are made based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- (d) In most cases only one consolidated inspection shall be performed, in a timely manner, for small residential rooftop solar energy systems which are permitted under expedited review. If a small residential rooftop solar energy system fails an inspection, subsequent inspection(s) shall be authorized but need not conform to the requirements of this chapter.
- (e) The building official shall not condition approval of any solar energy system on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(Ord. No. 936-2015, § 1, 8-17-2015)

CHAPTER 15.12. - GRADING

- (a) *Scope.* The provisions of this chapter apply to grading, excavation and earthwork construction, including fills and embankments and the control of grading site runoff, including erosion sediments and construction-related pollutants. The purpose of this chapter is to safeguard life, limb, property, and the public welfare by regulating grading on private property.
- (b) *Flood hazard areas.* The provisions of this chapter shall not apply to grading, excavation and earthwork construction, including fills and embankments, in floodways within flood hazard areas established or in flood hazard areas where design flood elevations are specified but floodways have not been designated, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed work will not result in any increase in the level of the base flood.
- (c) *General hazards.* Whenever the building official determines that any existing excavation or embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the building official shall within the period specified therein repair or eliminate such excavation or embankment to eliminate the hazard and to be in conformance with the requirements of this Code.
- (d) *Safety precautions.* If at any stage of the work the building official determines by inspection that further grading as authorized is likely to endanger any public or private property or result in the deposition of debris on any public way or interfere with any existing drainage course, the building official may order the work stopped by notice in writing served on any persons engaged in doing or causing such work to be done, and any such person shall immediately stop such work. The building official may authorize the work to proceed if the building official finds adequate safety precautions can be taken or corrective measures incorporated in the work to avoid the likelihood of such danger, deposition or interference. If the grading work as done has created or resulted in a hazardous condition, the building official shall give written notice requiring correction thereof as specified in section 15.12.050.
- (e) *Protection of utilities.* The owner of any property on which grading has been performed and that requires a grading permit under section 15.12.030 shall be responsible for the prevention of damage to any public utilities or services.
- (f) *Protection of adjacent property.* The owner of any property on which grading has been performed and that requires a grading permit under section 15.12.030 is responsible for the prevention of damage to adjacent property and no person shall excavate on land sufficiently close to the property line to endanger any adjoining public street, sidewalk, alley, or other public or private property without supporting and protecting such property from settling, cracking or other damage that might result. Special precautions approved by the building official shall be made to prevent imported or exported materials from being deposited on the adjacent public way and/or drainage courses.
- (g) *Stormwater control measures.* The owner of any property on which grading has been performed and that requires a grading permit under section 15.12.030 shall put into effect and maintain all precautionary measures necessary to protect adjacent watercourses and public or private property from damage by erosion, flooding, and deposition of mud, debris, and construction-related pollutants originating from the site during

grading and related construction activities.

- (h) *Maintenance of private devices.* The owner of any property on which grading has been performed pursuant to a permit issued under the provisions of this Code, or any other person or agent in control of such property, shall maintain in good condition and repair all drainage structures and other protective devices when they are shown on the grading plans filed with the application for grading permit and approved as a condition precedent to the issuance of such permit.
- (i) *Conditions of approval.* In granting any permit under this Code, the building official may include such conditions as may be reasonably necessary to prevent creation of a nuisance or hazard to public or private property. Such conditions may include, but shall not be limited to:
 - (1) Improvement of any existing grading to comply with the standards of this Code;
 - (2) Requirements for fencing of excavations or fills which would otherwise be hazardous.

(Code 1969, § 15.12.010; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.020. - Definitions.

For the purposes of this chapter, the terms, phrases, and words listed in this section and their derivatives have the indicated meanings, unless the context or subject matter otherwise requires:

Bench means the relatively level step excavated into earth material on which fill is to be placed.

Borrow means earth material acquired from an off-site location for use in grading on a site.

Civil engineer means a professional engineer registered in the state to practice in the field of civil works.

Civil engineering means the application of the knowledge of the forces of nature, principles of mechanics, and the properties of materials to the evaluation, design, and construction of civil works.

Compaction means the densification of a fill by mechanical means.

Cut. See *Excavation*.

Design engineer means the civil engineer responsible for the preparation of the grading plans for the site grading work.

Desilting basins means physical structures constructed for the removal of sediments from surface water runoff.

Down drain means a device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility.

Earth material means any rock, natural soil, or fill or any combination thereof.

Engineering geologist means a geologist experienced and knowledgeable in engineering geology holding a valid certificate of registration as a geologist in the specialty of engineering geology issued by the state under the applicable provisions of the Geologist and Geophysicist Act of the Business and Professions Code.

Engineering geology means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

Erosion means the wearing away of the ground surface as a result of the movement of wind, water, or ice.

Excavation means the removal of earth material by artificial means, also referred to as a cut.

Field engineer means the civil engineer responsible for performing the functions as set forth in section J105.2 of the CBC appendix J.

Fill means the deposition of earth materials by artificial means.

Geotechnical engineer. See *Soils engineer*.

Geotechnical hazard means an adverse condition due to landslide, settlement, and/or slippage. These hazards include but are not limited to loose debris, slope wash, and mud flows from natural or graded slopes.

Grade means the vertical location of the ground surface.

Grade, existing, means the grade prior to grading.

Grade, final. See section 15.12.050(g)(4).

Grade, finished, means the grade of the site at the conclusion of all grading efforts.

Grade, initial. See section 15.12.050(g)(2).

Grade, rough. See section 15.12.050(g)(3).

Grading means an excavation or fill or combination thereof.

Key means a compacted fill placed in a trench excavated in earth material generally constructed at the toe of the slope.

Landscape architect means a person who holds a certificate to practice landscape architecture in the state under the applicable landscape architecture provisions of division 3, chapter 3.5 of the Business and Professions Code.

Line means and refers to the horizontal location of the ground surface.

Permittee. See section 15.120.050(f).

Private sewage disposal system means a septic tank with effluent discharging into a subsurface disposal field, into one or more seepage pits or into a combination of subsurface disposal field and seepage pit or such other facilities as may be permitted.

Professional inspection means the inspection required by this Code to be performed by the project consultants. Such inspections shall be sufficient to form an opinion relating to the conduct of the work.

Project consultants means the professional consultants required by this Code which may consist of the design engineer, field engineer, soils engineer, engineering geologist, and landscape architect as applicable to this chapter.

Site means a lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

Slope means an inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

Soil means naturally occurring superficial deposits overlying parent bedrock.

Soil testing agency means an agency regularly engaged in the testing of soils and rock under the direction of a civil engineer experienced in soil testing.

Soils engineer (geotechnical engineer) means an engineer experienced and knowledgeable in the practice of soils engineering (geotechnical) engineering.

Soils engineering (geotechnical engineering) means the application of the principles of soils mechanics in the investigation, evaluation, and design of civil works involving the use of earth materials and the inspection or testing of construction thereof.

Storm drain system means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, and manmade channels, designed or used for collecting and conveying stormwater.

Stormwater pollution prevention plan (SWPPP) means a site drawing with details, notes and related documents that identify the measures proposed by the permittee to:

- (1) Control erosion and prevent sediment and construction-related pollutants from being carried off-site by stormwater; and
- (2) To prevent non-stormwater discharges from entering the storm drain system.

Surface drainage means flows over the ground surface.

Terrace means a relatively level step constructed in the face of a graded slope for drainage and maintenance purposes.

(Code 1969, § 15.12.020; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

- (a) *Permits required.* Except as exempted in subsection (b) of this section, no grading shall be performed without first having obtained a permit from the building official. A grading permit does not include the construction of retaining walls or other structures. A separate permit shall be obtained for each site and may cover both excavations and fills. Any engineered grading as described in section 15.12.040 shall be performed by a contractor licensed by the state to perform the work described hereon. Regular grading less than 5,000 cubic yards may require a licensed contractor if the building official determines that special conditions or hazards exist.
- (b) *Exemptions.* A grading permit shall not be required for the following:
- (1) When approved by the building official, grading in an isolated, self-contained area, provided there is no danger to the public, and that such grading will not adversely affect adjoining properties;
 - (2) Excavation for construction of a structure permitted under this Code;
 - (3) Cemetery graves;
 - (4) Refuse disposal sites controlled by other regulations;
 - (5) Excavations for wells, or trenches for utilities;
 - (6) Mining, quarrying, excavating, processing or stockpiling rock, sand, gravel, aggregate, or clay controlled by other regulations, provided such operations do not affect the lateral support of, or significantly increase stresses in, soil on adjoining properties;
 - (7) Exploratory excavations performed under the direction of a soils engineer or engineering geologist. This shall not exempt grading of access roads or pads created for exploratory excavations. Exploratory excavations must be restored to existing conditions, unless approved by the building official;
 - (8) An excavation that does not exceed 50 cubic yards (38.3 m³) and complies with one of the following conditions:
 - a. Is less than two feet (0.6 m) in depth;
 - b. Does not create a cut slope greater than five feet (1.5 m) measured vertically upward from the cut surface to the surface of the natural grade and is not steeper than two units horizontal to one unit vertical (50 percent slope);
 - (9) A fill not intended to support a structure, that does not obstruct a drainage course and complies with one of the following conditions:
 - a. Is less than one foot (0.3 m) in depth and is placed on natural terrain with a slope flatter than five units horizontal to one unit vertical (20 percent slope);
 - b. Is less than three feet (0.9 m) in depth at its deepest point measured vertically upward from natural grade to the surface of the fill, does not exceed 50 cubic yards, and creates a fill slope no greater than two units horizontal to one unit vertical (50 percent slope);
 - c. Is less than five feet (1.5 m) in depth at its deepest point measured vertically upward from natural grade to the surface of the fill, does not exceed 20 cubic yards, and creates a fill slope no steeper than two units horizontal and one unit vertical (50 percent slope).

Exemption from the permit requirements of this section shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of this jurisdiction.

- (c) *Unpermitted grading.* A person shall not own, use, occupy or maintain any site containing unpermitted grading. For the purposes of this Code, unpermitted grading shall be defined as any grading that was performed, at any point in time, without the required permits having first been obtained from the building official, pursuant to subsection (a) of this section.
- (d) *Availability of permit at site.* No person shall perform any grading that requires a permit under this chapter unless a copy of the grading permit and approved grading plans is in the possession of a responsible person and available at the site for the building official.

(Code 1969, § 15.12.030; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.040. - Permit application submittals.

- (a) *Submittal requirements.* In addition to the provisions of California Building Code (CBC) appendix J, section 104, the applicant shall state the estimated quantities of excavation and fill.
- (b) *Site plan requirements.* In addition to the provisions of CBC appendix J section 104, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this Code. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this Code.
- (c) *Grading designation.* Grading in excess of 5,000 cubic yards (3,825 m³) or for the support of a structure shall be performed in accordance with the approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than 5,000 cubic yards (3,825 m³) and not for the support of a structure shall be designated "regular grading" unless the permittee chooses to have the grading performed as engineered grading, or the building official determines that special conditions or unusual hazards exist, in which case grading shall conform to the requirements for engineered grading.
- (d) *Regular grading requirements.* In addition to the provisions of CBC chapter 1, division II, section 107, and subsection (b) of this section, an application for a regular grading permit shall be accompanied by two sets of plans in sufficient clarity to indicate the nature and extent of the work. The plans shall give the location of the work, the name of the owner, and the name of the person who prepared the plan. The plan shall include the following information:
 - (1) General vicinity of the proposed site;
 - (2) Limits and depths of cut and fill;
 - (3) Location of any buildings or structures where work is to be performed and the location of any buildings or structures within 15 feet (4.57 m) of the proposed grading;

(4) Contours, flow areas, elevations, or slopes which define existing and proposed drainage patterns.

(e) *Engineered grading requirements.*

- (1) In addition to the provisions of CBC chapter 1, division II, section 107, and subsection (b) of this section, an application for an engineered grading permit shall be accompanied by four sets of plans and specifications, and supporting data consisting of a soils engineering report and engineering geology report. The plans and specifications shall be prepared and signed by an individual licensed by the state to prepare such plans or specifications when required by the building official.
- (2) Specifications shall contain information covering construction and material requirements. Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that it will conform to the provisions of this Code and all relevant laws, ordinances, rules, and regulations. The first sheet of each set of plans shall give location of the work, the name and address of the owner, and the person by whom they were prepared.
- (3) The plans shall include but shall not be limited to, the following information:
 - a. General vicinity of the proposed site;
 - b. Property limits and accurate contours of existing ground and details of terrain and area drainage;
 - c. Limiting dimensions, elevations, or finish contours to be achieved by the grading, proposed drainage channels, and related construction;
 - d. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, and other protective devices to be constructed with, or as a part of, the proposed work. A map showing the drainage area and the estimated runoff of the area served by any drains shall also be provided;
 - e. Location of any existing or proposed buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners who are within 15 feet (4.57 m) of the property that may be affected by the proposed grading operations;
 - f. Recommendations in the soils engineering report and the engineering geology report shall be incorporated into the grading plans or specifications. When approved by the building official, specific recommendations contained in the soils engineering report and the engineering geology report that are applicable to grading may be included by reference;
 - g. The dates of the soils engineering and engineering geology reports together with the names, addresses, and phone numbers of the firms or individuals who prepared the reports;
 - h. A statement of the earthwork quantities of material to be excavated and/or filled. Earthwork quantities shall include quantities for geotechnical and geological remediation. In addition, a statement of material to be imported or exported from the site;
 - i. A statement of the estimated starting and completion dates for work covered by the permit;
 - j.

A statement signed by the owner acknowledging that a field engineer, soils engineer and engineering geologist, when appropriate, will be employed to perform the services required by this Code, whenever approval of plans and issuance of permit are to be based on the condition that such professional persons be so employed. These acknowledgements shall be on a form furnished by the building official;

- k. A drainage plan for that portion of a lot or parcel to be utilized as a building site (building pad), including elevations of floors with respect to finish site grade and locations of proposed stoops, slabs and fences that may affect drainage;
 - l. Location and type of any proposed private sewage disposal system;
 - m. Location of existing and proposed utilities, drainage facilities, and recorded public and private easements;
 - n. Location of all recorded natural drainage courses and drainage easements.
- (f) *Soils engineering report.* The soils engineering report required by subsection (e) of this section shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes. Supplemental reports and data may be required as the building official may deem necessary. Recommendations included in the reports and approved by the building official shall be incorporated in the grading plan or specifications.
- (g) *Engineering geology report.* The engineering geology report required by subsection (e) of this section shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors. The engineering geology report shall include a geologic map and cross sections utilizing the most recent grading plan as a base. Supplemental reports and data may be required as the building official may deem necessary. Recommendations included in the reports and approved by the building official shall be incorporated in the grading plan or specifications.

(Code 1969, § 15.12.040; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.050. - Grading inspection.

- (a) *General.* Grading inspections shall be governed by CBC chapter 1, division II, section 110. Grading operations for which a permit is required shall be subject to inspection by the building official. Professional inspection of grading operations shall be provided by the field engineer, soils engineer and the engineering geologist retained to provide such services in accordance with this section for engineered grading and as required by the building official for regular grading.
- (b) *Special and supplemental inspections.*

(1)

The special inspection requirements of CBC section 1704.7 shall apply to work performed under a grading permit where required by the building official. In addition to the called inspections specified in subsection (g) of this section, the building official may make such other inspections as may be deemed necessary to determine that the work is being performed in conformance with the requirements of this Code. Investigations and reports by an approved soil testing agency, soils engineer and/or engineering geologist, and field engineer may be required. Inspection reports shall be provided when requested by the building official.

- (2) Continuous inspection of drainage devices by the field engineer in accordance with this section may be required when the building official determines the drainage devices are necessary for the protection of the structures in accordance with section 15.12.090.
- (c) *Field engineer.* The field engineer shall provide professional inspection within such engineer's area of technical specialty, oversee and coordinate all field surveys, set grade stakes, and provide site inspections during grading operations to ensure the site is graded in accordance with the approved grading plan and the appropriate requirements of this Code. During site grading, and at the completion of both rough grading and final grading, the field engineer shall submit statements and reports required by sections 15.12.110 and 15.12.120. If the revised grading plans are required during the course of work, they shall be prepared by a civil engineer and approved by the building official.
- (d) *Soils engineer.* The soils engineer shall provide inspection within such engineer's area of technical specialty, which shall include observation during grading and testing for required compaction. The soils engineer shall provide sufficient observation during the preparation of the natural ground and placement and compaction of the fill to verify that such work is being performed in accordance with the conditions of the approved plan and the appropriate requirements of this chapter. Revised recommendations relating to conditions differing from the approved soils engineering and engineering geology reports shall be submitted to the permittee, the building official and the field engineer.
- (e) *Engineering geologist.* The engineering geologist shall provide professional inspection within such engineer's area of technical specialty, which shall include professional inspection of the excavation to determine if conditions encountered are in conformance with the approved report. Revised recommendations relating to conditions differing from the approved engineering geology report shall be submitted to the soils engineer.
- (f) *Permittee.* The permittee shall be responsible for the work to be performed in accordance with the approved plans and specifications and in conformance with the provisions of this Code and the permittee shall engage project consultants, if required, to provide professional inspections on a timely basis. The permittee shall act as a coordinator between the project consultants, the contractor, and the building official. In the event of changed conditions, the permittee shall be responsible for informing the building official of such change and shall provide revised plans for approval.
- (g) *Building official.* The building official shall inspect the project site at the following various stages of work requiring approval to determine that adequate control is being exercised by the project consultants:
 - (1) *Pre-grade.* Before any construction or grading activities occur at the site, the permittee shall schedule a pre-grade inspection with the building official. The permittee is responsible for coordinating that all project consultants are present at the pre-grade inspection;
 - (2)

Initial. When the site has been cleared of vegetation and unapproved fill and it has been scarified, benched or otherwise prepared for fill. No fill shall have been placed prior to this inspection;

- (3) *Rough.* When approximate final elevations have been established; drainage terraces, swales, and other drainage devices necessary for the protection of the building sites from flooding are installed; berms are installed at the top of the slopes; and the statements required by subsection (l) of this section have been received;
- (4) *Final.* When grading has been completed; all drainage devices necessary to drain the building pad are installed; slope planting is established, irrigation systems are installed; and the as-graded plans and required statements and reports have been submitted.
- (h) *Notification of noncompliance.* If, in the course of fulfilling their respective duties under this chapter, the field engineer, the soils engineer or the engineering geologist finds that the work is not being done in conformance with this chapter or the approved grading plans, the discrepancies and corrective measures which should be taken shall be reported immediately in writing to the permittee and to the building official.
- (i) *Transfer of responsibility.* If the field engineer, the soils engineer, or the engineering geologist of record is changed during the grading, the work shall be stopped until the replacement has agreed in writing to accept their responsibility within the area of technical competence for approval upon completion of the work. It shall be the duty of the permittee to notify the building official in writing of such change prior to the recommencement of such grading.
- (j) *Noninspected grading.* No person shall own, use, occupy, or maintain any noninspected grading. For the purpose of this Code, noninspected grading shall be defined as any grading for which a grading permit was first obtained, pursuant to section 15.12.030, but which has progressed beyond any point requiring inspection and approval by the building official without such inspection and approval having been obtained.
- (k) *Routine field inspections and reports.* Unless waived by the building official, routine inspection reports shall be provided by the field engineer for all engineered grading projects. The field engineer shall file these reports, with the building official as follows:
 - (1) Bi-weekly during all times when grading of 400 cubic yards or more per week is active on the site;
 - (2) Monthly, at all other times; and
 - (3) At any time when requested in writing by the building official.

Such reports shall certify to the building official that the field engineer has inspected the grading site and related activities and has found them in compliance with the approved grading plans, the building code, grading permit conditions, and other applicable ordinances and requirements.

- (l) *Completion of work.* Upon completion of the rough grading work and at the final completion of the work, the following reports and drawings and supplements thereto are required for engineered grading or when professional inspection is required by the building official:
 - (1) An as-built grading plan prepared by the field engineer retained to provide such services in accordance with subsection (c) of this section showing all plan revisions as approved by the building official. This shall include original ground surface elevations, as-built ground surface elevations, lot drainage patterns, and the locations and elevations of surface drainage facilities and the outlets of subsurface drains. As-built

locations, elevations and details of subsurface drains shall be shown as reported by the soils engineer. The field engineer shall state in a report, to the building official, that to the best of their knowledge, the work within their area of responsibility was done in accordance with the final approved grading plan;

- (2) A report prepared by the soils engineer retained to provide such services in accordance with subsection (d) of this section including locations and elevations of field density tests, summaries of field and laboratory tests, other substantiating data, and comments on any changes made during grading and their effect on the recommendations made in the approved soils engineering report. Soils engineers shall submit a statement that, to the best of their knowledge, the work within their area of responsibilities is in accordance with the approved soils engineering report and applicable provisions of this chapter. The reports shall contain a finding regarding the safety of the completed grading and any proposed structures against hazard from landslide, settlement, or slippage;
- (3) A report prepared by the engineering geologist retained to provide such services in accordance with subsection (e) of this section including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. Engineering geologists shall submit a statement that, to the best of their knowledge, the work within their area of responsibility is in accordance with the approved engineering geologist report and applicable provisions for this chapter. The report shall contain a finding regarding the safety of the completed grading and any proposed structures against hazard from landslide, settlement, or slippage. The report must contain a final as-built geologic map and cross sections depicting all the information collected prior to and during grading;
- (4) The grading contractor shall submit in a form prescribed by the building official a statement of conformance to said as-built plan and the specifications.
- (m) *Notification of completion.* The permittee shall notify the building official when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage facilities and their protective devices, and all erosion control measures have been completed in accordance with the final approved grading plan, and the required reports have been submitted and approved.
- (n) *Change of ownership.* If a grading permit has been issued on a property and the building official has not approved the final grading when a property changes ownership, a new grading application and permit will be required from the new property owner.

(Code 1969, § 15.12.050; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.060. - Excavations.

- (a) *General.* Unless otherwise recommended in the approved soils engineering or engineering geology report, cuts shall conform to the provisions of this section. In the absence of an approved soils engineering or engineering geology report, these provisions may be waived, as approved by the building official, for minor cuts not intended to support structures or subject to a surcharge.

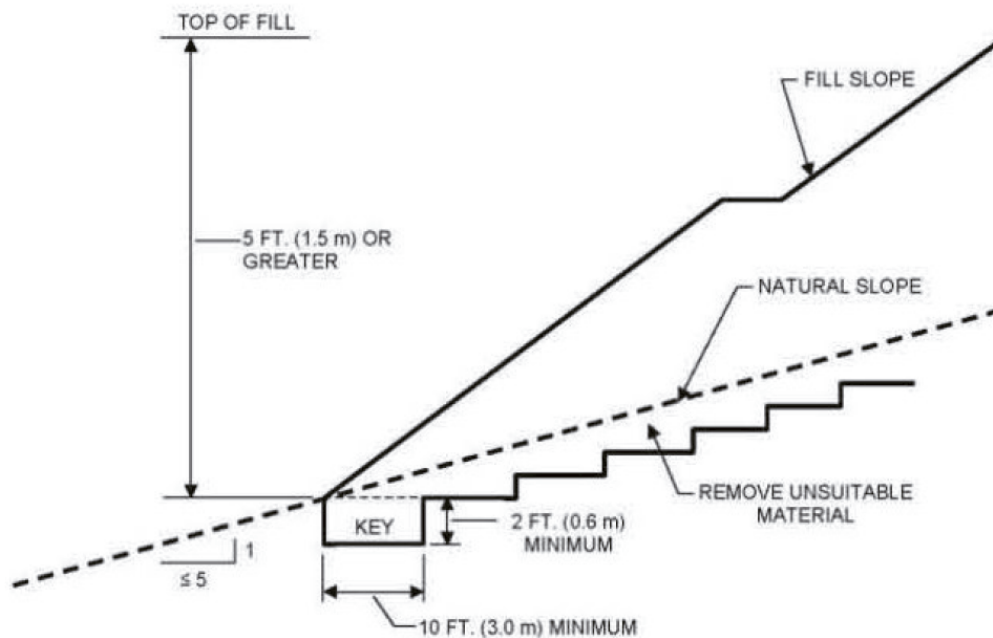
- (b) *Maximum cut slope.* The slope of cut surfaces shall be no steeper than is safe for the intended use and shall be no steeper than two units horizontal to one unit vertical (50 percent slope) unless the permittee furnishes a soils engineering or an engineering geology report, or both, stating that the site has been investigated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property. The building official may require the excavation to be made with a cut face flatter in slope than two units horizontal to one unit vertical if the building official finds it necessary for stability and safety.
- (c) *Slope surface protection.* All slopes must be stabilized against surface erosion. Stabilization may be accomplished through the application of erosion control blankets, soil stabilizers or other means as approved by the building official.

(Code 1969, § 15.12.060; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.070. - Fills.

- (a) *General.* Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section. In the absence of an approved soils engineering report, and if approved by the building official, these provisions may be waived for minor fills not intended to support structures.

FIGURE 15.12.070. BENCHING DETAILS



- (b) *Preparation of ground.* Fill slopes shall not be constructed on natural slopes steeper than two units horizontal to one unit vertical (50 percent slope). The ground structure shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials scarifying to provide a bind with the new fill. Where slopes are steeper than five units horizontal to one unit vertical (20 percent slope) and the

height is greater than five feet (1.53 m), the ground surface shall be prepared to receive fill by benching into sound bedrock or other competent material as determined by the soils engineer. The ground preparation shall be in accordance with figure 15.12.070 or as determined by the soils engineer. The key under the toe of the fill on a slope steeper than five units horizontal to one unit vertical (20 percent slope) shall be at least ten feet (3.05 m) wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. When fill is to be placed over a cut, the key shall be at least ten feet (3.05 m) wide. The cut shall be made before placing the fill and the soils engineer or engineering geologist or both shall accept the cut as suitable for the foundation and placement of fill material.

(c) *Subdrains.* Except where recommended by the soils engineer or engineering geologist as not being necessary, subdrains shall be provided under all fills placed in natural drainage courses and in other locations where seepage is evident. Such subdrainage systems shall be of a material and design approved by the soils engineer and acceptable to the building official. The soils engineer shall provide continuous inspection during the process of subdrain installation to conform to the approved plans and the engineering geologist's and soil engineer's recommendation. Testing of materials shall be done by a soil testing agency based on the soil engineer's or engineering geologist's recommendation. The location of the subdrains shall be shown on a plan by the soils engineer. Excavations for the subdrains shall be inspected by the engineering geologist when such subdrains are included in the recommendations of the engineering geologist.

(d) *Fill material.*

- (1) Detrimental amounts of organic material shall not be permitted in fills. Unless approved by the building official, no rock or similar irreducible material with a maximum dimension of greater than 12 inches (0.305 m) shall be buried or placed in fills.
- (2) Exception: The building official may permit placement of larger rock when the soils engineer properly devises a method of placement, and continuously inspects its placement and approves the fill stability. The following conditions shall also apply:
 - a. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan;
 - b. Rock sizes greater than 12 inches (0.305 m) in maximum dimension shall be ten feet (3.05 m) or more below grade, measured vertically;
 - c. Rocks shall be placed so as to assure filling of all voids with well-graded soil;
 - d. The reports submitted by the soils engineer shall acknowledge the placement of the oversized material and whether the work was performed in accordance with the engineer's recommendations and the approved plans;
 - e. The location of the oversized rock dispersal areas shall be shown on the as-built plan.

(e) *Compaction.*

- (1) All fills shall be compacted to a minimum of 90 percent of maximum density. Fills shall be compacted throughout their full extent to a minimum relative compaction of 90 percent of maximum dry density within 40 feet (12.19 m) below finished grade and 93 percent of maximum dry density deeper than 40 feet (12.19 m) below finished grade, unless a lower relative compaction (not less than 90 percent of maximum dry density) is justified by the soils engineer. The relative compaction shall be determined by A.S.T.M. soil compaction test D1557

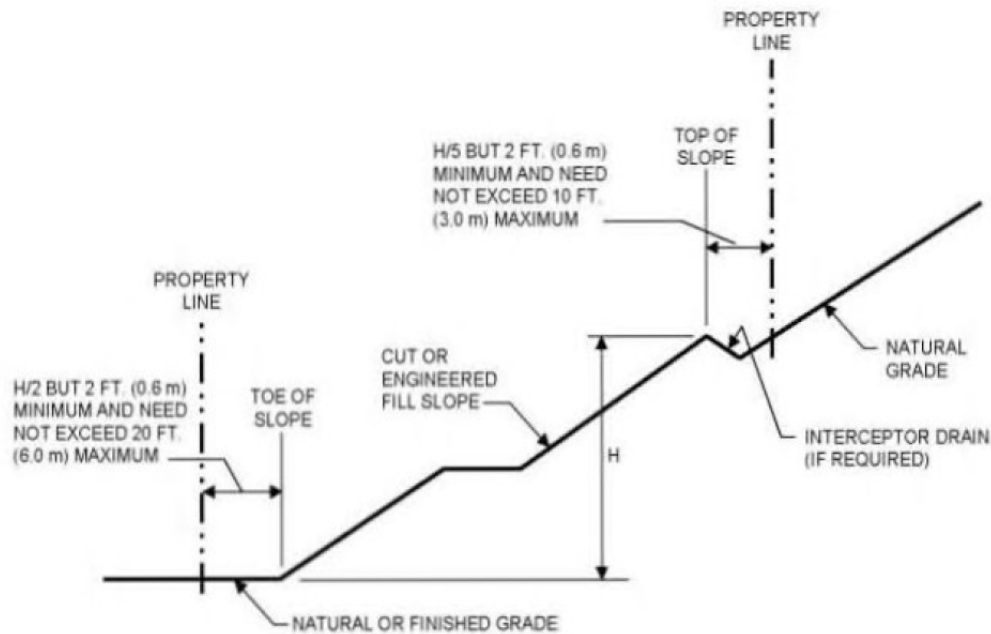
where applicable. Where not applicable, a test acceptable to the building official, shall be used unless the owner furnishes a soils engineering report conforming with the requirements of section 15.12.040(e), stating that the site has been investigated and giving an opinion that a fill at a steeper slope will be stable and not create a hazard to public or private property. Substantiating calculations and supporting data may be required where the building official determines that such information is necessary to verify the stability and safety of the proposed slope. The building official may require the fill slope be constructed with a face flatter in slope than two units horizontal to one unit vertical (50 percent slope) if the building official finds it necessary for stability and safety.

- (2) Field density shall be determined by a method acceptable to the building official. However, not less than ten percent of the required density tests, uniformly distributed, shall be obtained by the sand cone method.
- (3) Fill slopes steeper than two units horizontal to one unit vertical (50 percent slope) shall be constructed by the placement of soil a sufficient distance beyond the proposed finish slope to allow compaction equipment to operate at the outer surface limits of the final slope surface. The excess fill is to be removed prior to completion or rough grading. Other construction procedures may be utilized when it is first shown to the satisfaction of the building official that the angle of slope, construction method and other factors will comply with the intent of this section.
- (f) *Maximum fill slope.* The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two units horizontal in one unit vertical (50 percent slope) unless calculations are provided by a soils engineer which indicate a steeper slope will be stable and approved by the building official.
- (g) *Slopes to receive fill.* Where fill is to be placed above the top of an existing slope steeper than three units horizontal to one unit vertical (33 percent slope), the toe of the fill shall be set back from the top edge of the slope a minimum distance of six feet (1.83 m) measured horizontally or such other distance as may be specifically recommended by a soils engineer or engineering geologist and approved by the building official.
- (h) *Inspection of fill.* For engineered grading, the soils engineer shall provide sufficient inspections during the preparation of the natural ground and the placement and compaction of the fill ensuring that the work is being performed in accordance with the conditions of plan approval and the appropriate requirements of this chapter. In addition to the above, the soils engineer shall be present during the entire fill placement and compaction of fills that will exceed a vertical height or depth of 30 feet (9.14 m) or result in a slope surface steeper than two units horizontal to one unit vertical (50 percent slope).
- (i) *Testing of fills.* Sufficient tests of the fill soils shall be made to determine the density and to verify compliance of the soil properties with the design requirements. This includes soil types and shear strengths in accordance with referenced standards in section 15.12.120.

(Code 1969, § 15.12.070; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

- (a) *General.* Cut and fill slopes shall be set back from the property lines in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the property line and shall be as shown in figure 15.12.080 unless substantiating data is submitted justifying reduced setbacks is recommended by soils engineering and engineering geology reports approved by the building official.
- (b) *Top of slope.* The setback at the top of a cut slope shall not be less than that shown in figure 15.12.080, or than is required to accommodate any required interceptor drains, whichever is greater. For manufactured slopes the grading design must be such that the property line between adjacent lots will be at the apex of the berm at the top of the slope. Property lines between adjacent lots cannot be located on a graded slope equal to five units horizontal to one unit vertical (20 percent slope).

FIGURE 15.12.080 SETBACK DIMENSIONS



- (c) *Toe of fill slope.* The setback from the toe of a fill slope shall not be less than that shown by figure 15.12.080. Where required to protect adjacent properties at the toe of a slope from adverse effects of the grading, additional protection, approved by the building official, shall be included. Such protection may include but shall not be limited to:
- (1) Setbacks greater than those required by figure 15.12.080;
 - (2) Provisions for retaining walls or similar construction;
 - (3) Erosion protection of the fill slopes;
 - (4) Provision for the control of surface waters.
- (d)

Alternate setbacks. The building official may approve alternate setbacks. The building official may require an investigation and recommendation by a qualified engineer or engineering geologist to demonstrate that the intent of this section has been satisfied.

(Code 1969, § 15.12.080; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.090. - Drainage and terracing.

- (a) *General.* Unless otherwise recommended by a registered design professional, and approved by the building official, drainage facilities and terracing shall be provided in accordance with the requirements of subsection (b) of this section for all cut and fill slope where the ground slope is steeper than three units horizontal to one unit vertical (33 percent slope). For slopes flatter than three units horizontal to one unit vertical (33 percent slope) and steeper than five units horizontal to one unit vertical (20 percent slope), a paved swale or ditch shall be provided at 30-foot (9.14 m) vertical intervals to control surface drainage and debris. Swales shall be sized based on contributory area and have adequate capacity to convey intercepted waters to the point of disposal as defined in subsection (e) of this section. Swales must be paved with reinforced concrete not less than three inches (0.0762 m) in thickness, reinforced with six-inch (0.153 m) by six-inch (0.153 m) "No. 10 by No. 10" welded wire fabric or equivalent reinforcing centered in the concrete slab or an approved equal. Swales must have a minimum gradient of not less than five percent. There shall be no reduction in grade along the direction of flow unless the velocity of flow is such that slope debris will remain in suspension on the reduced grade.
- (b) *Drainage terraces.* Drainage terraces at least eight feet (2.44 m) in width shall be established at not more than 30-foot (9.14 m) vertical intervals on all cut and fill slopes to control surface drainage and debris. When only one terrace is required, it shall be mid-height. For cut or fill slopes greater than 100 feet (30.5 m) and up to 120 feet (36.576 m) in vertical height, one terrace at approximately mid-height shall be 20 feet (6 m) in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet (36.6 m) in height shall be designed by the civil engineer and approved by the building official. Suitable access shall be provided to permit proper cleaning and maintenance. Drainage swales on terraces shall have a longitudinal grade of not less than five percent and no more than 12 percent and a minimum depth of one foot (0.305 m) at the flow line. There shall be no reduction in grade along the direction of flow unless the velocity of flow is such that slope debris will remain in suspension on the reduced grade. Such terraces must be paved with reinforced concrete not less than three inches (0.076 m) in thickness, reinforced with six-inch (0.2 m) by six-inch (0.152 m) "No. 10 by No. 10" welded wire fabric or equivalent reinforcing centered in the concrete slab or an approved equal paving. They shall have a minimum depth at the deepest point of one foot (0.3 m) and a minimum paved width of five feet (1.524 m). Drainage terraces exceeding eight feet (2.438 m) in width need only be so paved for a width of eight feet (2.438 m), provided such pavement provides a paved swale at least one foot (0.305 m) in depth. Down drains or drainage outlets shall be provided at approximately 300-foot (91.44 m) intervals along the drainage terrace or at equivalent locations. Down drains and drainage outlets shall be of approved materials and of adequate capacity to convey the intercepted waters to the point of disposal as defined in subsection (e) of this section.
- (c) *Interceptor drains and overflow protection.*

- (1) Berms, interceptor drains, swales, or other devices shall be provided at the top of cut or fill slopes to prevent surface waters from overflowing onto and damaging the face of a slope. Berms used for slope protection shall not be less than 12 inches (3.0 m) above the level of the pad and shall slope back at least four feet (1.22 m) from the top of the slope.
 - (2) Interceptor drains shall be installed along the top of manufactured slopes greater than five feet in height receiving drainage from a slope with a tributary width greater than 30 feet (9.1 m) measured horizontally. They shall have a minimum depth of one foot (0.305 m) and a minimum width of three feet (0.914 m). The slope shall be approved by the building official, but shall not be less than 50 horizontal to one vertical (two percent). The drain shall be paved with concrete not less than three inches (0.076 m) in thickness, or by other materials suitable to the application and reinforced as required for drainage terraces. Discharge from the drain shall be accomplished in a manner to prevent erosion and shall be approved by the building official.
- (d) *Drainage across property lines.* Drainage across property lines shall not exceed that which existed prior to grading. Excess or concentrated drainage shall be contained on site or directed to an approved drainage facility. Erosion of the ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices.
- (e) *Disposal.*
- (1) All drainage facilities shall be designed to carry waters to the nearest practicable street, storm drain, or natural watercourse drainage way approved by the building official or other appropriate governmental agency jurisdiction, provided it is a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices. Desilting basins, filter barriers or other methods, as approved by the building official, shall be utilized to remove sediments from surface waters before such waters are allowed to enter streets, storm drains, or natural watercourses. If the drainage device discharges onto natural ground, riprap or a similar energy dissipater may be required.
 - (2) Building pads shall have a minimum drainage gradient of two percent toward approved drainage facilities, a public street or drainage structure approved to receive stormwaters unless waived by the building official. A lesser slope may be approved by the building official for sites graded in relatively flat terrain, or where special drainage provisions are made, when the building official finds such modification will not result in unfavorable drainage conditions.

(Code 1969, § 15.12.090; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.100. - Slope planting and erosion control.

(a) *General.*

- (1) The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control shall consist of effective planting, erosion control blankets, soil stabilizers or other means as approved by the building official.

- (2) Exception: Erosion control measures need not be provided on cut slopes not subject to erosion due to the erosion-resistant character of materials as approved by the project consultants to the satisfaction of the building official.
- (3) Erosion control for the slopes shall be installed as soon as practicable and prior to calling for final inspection.
- (b) *Other devices.* Where necessary, check dams, cribbing, riprap or other devices or methods shall be employed to control erosion and provide safety.
- (c) *Planting.*
 - (1) The surface of all cut slopes more than five feet (1.52 m) in height and fill slopes more than three feet (0.9144 m) in height shall be protected against damage by erosion. Slopes exceeding 15 feet (4.57 m) in vertical height shall be planted with shrubs, spaced at not to exceed ten feet (3.048 m) on centers; or trees, spaced at not to exceed 20 feet (6.096 m) on centers; or a combination of shrubs and trees at equivalent spacings. The plants selected and planting methods used shall be suitable for the soil and climatic conditions of the site. Plant material shall be selected which will produce a coverage of permanent planting to effectively control erosion. Consideration shall be given to deep-rooted plant material needing limited watering, maintenance, high root to shoot ratio, wind susceptibility and fire retardant characteristics. All plant materials must be approved by the building official.
 - (2) Planting may be modified for the site if specific recommendations are provided by both the soils engineer and a landscape architect. Specific recommendations must consider soils and climatic conditions, irrigation requirements, planting methods, fire retardant characteristics, water efficiency, maintenance needs, and other regulatory requirements. Recommendations must include a finding that the alternative planting will provide a permanent and effective method of erosion control. This modified planting shall be approved by the building official.
- (d) *Irrigation.* Slopes required to be planted by subsection (c) of this section shall be provided with an approved system of irrigation that is designed to cover all portions of the slope. Irrigation system plans shall be submitted and approved prior to installation. A functional test of the system may be required. Specific recommendations must consider soils and climatic conditions, plant types, planting methods, fire retardant characteristics, water efficiency, maintenance needs, and other regulatory requirements. Modifications for irrigation systems shall be approved by the building official.
- (e) *Plans and specifications.* Planting and irrigation plans shall be submitted for slopes required to be planted and irrigated by subsections (c) and (d) of this section. Except as waived by the building official for minor grading, the plans for slopes 20 feet (6.096 m) or more in vertical height shall be prepared and signed by a civil engineer or landscape architect. If requested by the building official, planting and irrigation details shall be included on the grading plan.
- (f) *Release of security.* The planting and irrigation systems required by this section shall be installed as soon as practical after rough grading. Prior to final approval of grading and before the release of the grading security, the planting shall be well established and growing on the slopes.

Sec. 15.12.110. - National pollutant discharge elimination system (NPDES) compliance.

(a) *General.*

- (1) All grading plans and permits shall comply with the provisions of this section for NPDES compliance.
- (2) All best management practices shall be installed before grading begins. All best management practices shall be updated as necessary to prevent erosion and control construction-related pollutants from discharging from the site. All best management practices shall be maintained in good working order to the satisfaction of the building official unless final grading approval has been granted by the building official and all permanent drainage and erosion control systems, if required, are in place.

- (b) *Stormwater pollution prevention plan (SWPPP).* When requested by the building official, no grading permit shall be issued unless the plans for such work include a stormwater pollution prevention plan with details of best management practices, including desilting basins or other temporary drainage or control measures, or both, as may be necessary to control construction-related pollutants which originate from the site as a result of construction-related activities.

(Code 1969, § 15.12.110; Ord. No. 870-2010, § 2, 1-18-2011; Ord. No. 925-2014, § 2, 7-21-2014)

Sec. 15.12.120. - Referenced standards.

- (a) These regulations establish minimum standards and are not intended to prevent the use of alternate materials, methods or means of conforming to such standards, provided such alternate has been approved.
- (1) The building official shall approve such an alternate, provided he or she finds that the alternate is, for the purpose intended, at least the equivalent of that prescribed in this Code in quality, strength, effectiveness, durability and safety.
 - (2) The building official shall require that sufficient evidence or proof be submitted to substantiate any claims regarding the alternate.
- (b) The standards listed below are recognized standards:
- 1.1 ASTM D 1557—Laboratory Characteristics Compaction of Soil Using Modified Effort.
 - 1.2 ASTM D 1556—Density and Unit Weight of Soils in Place by the Sand Cone Method.
 - 1.3 ASTM D 2167—Density and Unit Weight of Soils in Place by the Rubber—Balloon Method.
 - 1.4 ASTM D 2937—Density of Soils in Place by the Drive-Cylinder Method.
 - 1.5 ASTM D 2922—Density of Soil and Soil Aggregate in Place by Nuclear Methods.
 - 1.6 ASTM D 3017—Water Content of Soil and Rock in Place by Nuclear Methods.

CHAPTER 15.14 - STORMWATER AND URBAN RUNOFF POLLUTION CONTROL

Sec. 15.14.010. - Title.

This chapter shall be known as the "City of Barstow Storm Water Management and Discharge Control Ordinance."

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.020. - Findings.

- (a) The Federal Clean Water Act (33 USC 1251 et seq.) provides for the regulation and reduction of pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter "NPDES") requirements to storm water and urban runoff discharge into municipal storm drain systems.
- (b) Storm water and urban runoff flows from individual properties onto streets, then through storm drains passing through the City of Barstow (hereinafter "city").
- (c) The city is a co-permittee under the "Waste Discharge Requirements for Small Municipal Separate Storm Sewer System (MS4) Discharges within the Mohave River Watershed (Order No. 2013-0001 DWQ), NPDES Permit No. CAS000004, effective July 1, 2013, issued by the California Regional Water Quality Control Board and any successor permit to that permit (the "Municipal NPDES Permit"), and, as a co-permittee under the Municipal NPDES Permit, the city is required to implement and enforce the requirements contained in the Municipal NPDES Permit, to control discharges to and from those portions of the MS4 over which it has jurisdiction, and to hold dischargers to the MS4 accountable for their contributions of pollutants and flows.
- (d) Section E.6.a(ii)(a) of the Municipal NPDES Permit requires the city to prohibit, for the portion of the MS4 for which it is an owner or operator, non-storm water discharges into the MS4, except where such discharges are identified and in compliance with Section B.3 of the Municipal NPDES Permit.
- (e) In order to control, in a cost effective manner, the quantity and quality of storm water and urban runoff to the maximum extent practicable, the adoption of reasonable regulations, as set forth herein, is essential.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.030. - Purpose.

- (a) The purpose of this chapter is to ensure the future health, safety and general welfare of the citizens of the city and the water quality of the receiving waters and surrounding areas by:
 - (1) Reducing pollutants in storm water discharges to the maximum extent practicable;
 - (2) Regulating illicit connections and illicit discharges and thereby reducing the level of contamination of storm water and dry weather runoff into the MS4; and
 - (3) Regulating non-storm water discharges to the MS4.
- (b) The intent of this chapter is to protect and enhance the quality of watercourses, water bodies, and wetlands within the city in a manner consistent with the Federal Clean Water Act, the California Porter-Cologne Water Quality Control Act and the Municipal NPDES Permit.
- (c) This chapter is also intended to provide the city with the legal authority necessary to control discharges to and from those portions of the MS4 over which it has jurisdiction as required by the Municipal NPDES Permit, and thereby fully and timely comply with the terms of the Municipal NPDES Permit.
- (d) This chapter also sets forth requirements for the construction and operation of certain "commercial development," "new development" and "redevelopment" and other projects (as further defined herein) which are intended to ensure compliance with the storm water mitigation measures prescribed in the current version of the Municipal NPDES Permit, a copy of which is on file in the office of the city clerk.
- (e) This chapter authorizes the authorized enforcement officer to define and adopt applicable best management practices (BMPs) and other storm water pollution control measures, to grant emergency self-waivers from Municipal NPDES Permit requirements, as provided herein in order to conduct repairs of essential public service systems and infrastructure in emergency situations, to cite infractions and to impose fines pursuant to this chapter. This chapter also authorizes the authorized enforcement officer to carry out inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this chapter and the Municipal NPDES Permit. Except as otherwise provided herein, the authorized enforcement officer shall administer, implement and enforce the provisions of this chapter.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.040. - Definitions.

Except as specifically provided herein, any term used in this chapter shall be defined as that term is defined in the current Municipal NPDES Permit, or if it is not specifically defined in the Municipal NPDES Permit, then as such term is defined in the Federal Clean Water Act, as amended, and/or the regulations promulgated thereunder. The following words and phrases shall have the following meanings when used in this chapter:

Area susceptible to runoff. Any surface directly exposed to precipitation or in the path of runoff caused by precipitation which path leads off the parcel on which the surface is located.

Authorized enforcement officer. The city manager, his/her designee, or any staff empowered by the Municipal NPDES Permit to enforce this chapter.

Best management practices (BMPs). Practices or physical devices or systems designed to prevent or reduce pollutant loading from storm water or non-

storm water discharges to receiving waters, or designed to reduce the volume of storm water or non-storm water discharged to the receiving water.

Examples of BMPs may include public education and outreach, proper planning of development projects, proper cleaning of catch basin inlets, and proper sludge- or waste-handling and disposal, or treatment requirements, operating procedures, and practices to control site run-off spillage or leaks, sludge or waste disposal, or drainage from raw material storage, among others.

Bioretention. A LID BMP that reduces storm water runoff by intercepting rainfall on vegetative canopy or groundcover, and through evapotranspiration and infiltration.

Construction. Any project, including projects requiring coverage under the construction general permit (CGP), that involves soil disturbing activities including, but not limited to, clearing, grading, paving, disturbances to ground such as stockpiling, and excavation.

Construction general permit. The NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002), adopted September 2, 2009, revised by Order No. 2010-0014-DWG and Order No. 2012-0006-DWQ, and any successor permit to that permit.

Control. To minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

Development. Any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other nonresidential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

Discharge. When used without qualification, means the discharge of a pollutant.

Discharger. Any responsible party or site owner or operator within the permittees' jurisdiction whose site discharges storm water runoff, or a non-storm water discharge.

Discharge of a pollutant. Any addition of any pollutant or combination of pollutants to waters of the United States from any point source or, any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge of a pollutant includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately-owned treatment works.

Discretionary project. Shall be defined in the same manner as in Cal. Code of Regulations Title 14, § 15357 of the Guidelines for Implementation of the California Environmental Quality Act, as amended, and means a project which requires the exercise of judgment or deliberation when the city decides to approve or disapprove a particular activity, as distinguished from situations where the city merely has to determine.

Disturbed area. An area that is altered as a result of clearing, grading, and/or excavating, unless solely for the purposes of landscape maintenance or fire prevention.

Enforcement response plan. Describes enforcement measures to employ any combination of actions to escalate responses where necessary to correct persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm.

Environmentally sensitive area (ESA). An area in which plant or animal life or its habitats is either rare or especially valuable because of its special nature or role in an ecosystem, and which would be easily disturbed or degraded by human activities and developments (Cal. Public Resources Code §30107.5). Areas subject to storm water mitigation requirements are areas designated as a significant natural area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the basin plan as supporting the rare, threatened, or endangered species (RARE) beneficial use; and an area identified by the city as environmentally sensitive.

Hillside. Property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25 percent or greater and where grading contemplates cut or fill slopes.

Illicit connection. Any man-made conveyance that is connected to the MS4 without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the MS4.

Illicit discharge. Any discharge to the MS4 that is prohibited under local, state or federal statutes, ordinances, codes or regulations. This includes all non-storm water discharges, except authorized non-storm water discharges; conditionally exempt non-storm water discharges; and non-storm water discharges resulting from natural flows specifically identified in Section B. of the Municipal NPDES Permit.

Industrial development. Development or redevelopment of property to be used for industrial purposes, such as factories, manufacturing buildings, and research and development parks.

Infiltration. The downward entry of water into the surface of the soil.

Inspection. Entering and conducting an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

- (1) Pre-inspection documentation research;
- (2) Request for entry;
- (3) Interview of property owner, resident and/or occupant(s);

- (4) Property walk-through;
- (5) Visual observation of the condition of property;
- (6) Examination and copying of records as required;
- (7) Sample collection (if necessary or required);
- (8) Exit discussion (to discuss preliminary evaluation) as appropriate; and
- (9) Report preparation, and if appropriate, recommendations for coming into compliance.

Low impact development (LID). Building or landscape features designed to retain or filter storm water runoff.

Material. Any substance including, but not limited to garbage and debris; lawn clippings, leaves, and other vegetation; biological and fecal waste; sediment and sludge; oil and grease; gasoline; paints, solvents, cleaners, and any fluid or solid containing chemicals.

Municipal NPDES Permit. Waste discharge requirements for small municipal separate storm sewer system (MS4) Discharges within the Mohave River Watershed (Order No. 2013-0001 DWQ), NPDES Permit No. CAS000004, effective July 1, 2013, issued by the California Regional Water Quality Control Board, and any successor permit to that permit.

MS4 (Municipal separate storm sewer system). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (1) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- (2) Designed or used for collecting or conveying storm water;
- (3) Which is not a combined sewer; and
- (4) Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

New development. Land-disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision. To qualify as new development, the development must occur on an open (pervious) lot that has not formerly been developed.

Non-storm water discharge. Any discharge to the MS4 or from the MS4 into a receiving water that is not composed entirely of storm water.

NPDES permit. NPDES is an acronym for National Pollutant Discharge Elimination System. NPDES is the national program for administering and regulating Sections 307, 318, 402, and 405 of the Clean Water Act (CWA). In California, the State Water Resources Control Board (SWRCB) has issued a General Permit for stormwater discharges.

Parking lot. Land area or a facility for the parking or storage of motor vehicles used for businesses, commerce, industry or personal use.

Pollutant. Those pollutants defined in Section 502(6) of the Federal Clean Water Act (33 USC 1362(6)), or incorporated into California Water Code § 13373.

Examples of pollutants include, but are not limited to the following:

- (1) Commercial and industrial waste (such as fuels, solvents, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash, and sludge);
- (2) Metals (such as cadmium, lead, zinc, copper, silver, nickel, chromium; and non-metals such as phosphorus and arsenic);
- (3) Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
- (4) Excessive eroded soils, sediment and particulate materials in amounts which may adversely affect the beneficial use of the receiving waters, flora or fauna of the state;
- (5) Animal wastes (such as discharge from confinement facilities, kennels, pens, recreational facilities, stables, and show facilities);
- (6) Substances having characteristics such as pH less than six or greater than nine, or unusual coloration or turbidity, or excessive levels of fecal coliform, or fecal streptococcus, or enterococcus;
- (7) The term pollutant shall not include uncontaminated storm water, potable water or reclaimed water generated by a lawfully permitted water treatment facility. The term pollutant also shall not include any substance identified in this definition, if through compliance with the BMPs available, the discharge of such substance has been reduced or eliminated to the maximum extent practicable. In an enforcement action, the burden shall be on the person who is the subject of such action to establish the reduction or elimination of the discharge to the maximum extent practicable through compliance with the BMPs available.

Project. All development, redevelopment, and land-disturbing activities. The term project is not limited to project as defined under the California Environmental Quality Act under California Public Resources Code Section 21065.

Rainfall harvest and use. A LID BMP system designed to capture runoff, typically from a roof but can also include runoff capture from elsewhere within the site, and to provide for temporary storage until the harvested water can be used for irrigation or non-potable uses. The harvested water may also be used for potable water uses if the system includes disinfection treatment and is approved for such use by the local building department.

Redevelopment. Land-disturbing activity that results in the creation, addition or replacement of exterior impervious surface area on a site on which some past development has occurred. Redevelopment does not include trenching, excavation and resurfacing associated with LUPs; pavement grinding and resurfacing of existing roadways; construction of new sidewalks, pedestrian ramps, or bike lanes on existing roadways; or routine replacement of damaged

pavement such as pothole repair or replacement of short, noncontiguous sections of roadway. Redevelopment includes, but is not limited to the following activities that meet the minimum standards set forth in this definition:

- (1) The expansion of a building footprint;
- (2) Addition or replacement of a structure;
- (3) Replacement of impervious surface that is not part of a routine maintenance activity; and
- (4) Land-disturbing activities related to structural or impervious surfaces.

Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

Regional board. The California Regional Water Quality Control Board—Lahontan Region.

Routine maintenance. Includes, but is not limited to, projects conducted to:

- (1) Maintain the original line and grade, hydraulic capacity, and original purpose of facility;
- (2) Perform as needed restoration work to preserve the original design grade, integrity and hydraulic capacity of flood control facilities;
- (3) Carry out road shoulder work, regrading dirt or gravel roadways and shoulders and performing ditch cleanouts;
- (4) Update existing lines and facilities, including the replacement of existing lines with new materials or pipes, to comply with applicable codes, standards and regulations regardless of such projects result in increased capacity;
- (5) Repair leaks;
- (6) Conduct landscaping activities without changing existing or natural grades; and
- (7) Conduct brush cleaning and grubbing for fire prevention.

Routine maintenance does not include construction of new lines or facilities resulting from compliance with applicable codes, standards, and regulations. New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

Runoff. Any runoff, including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Source control BMP. Any schedule of activities, prohibition of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

Storm water runoff. That part of precipitation (rainfall or snow melt) which travels via flow across a surface to the MS4 or receiving waters from impervious, semi-pervious or pervious surfaces.

Structural BMP. Any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). Structural BMPs may include both treatment control BMPs and source control BMPs.

Treatment. Any method, technique, or process designed to remove pollutants and/or solids from polluted storm water runoff, wastewater, or effluent.

Treatment control BMP. Any engineered system designed to remove pollutants.

Verbal warnings. Verbal warnings are primarily consultative in nature. At a minimum, verbal warnings shall specify the nature of the violation and required corrective action.

Written notices. Written notices shall include nature of the violation and the required corrective action, with deadlines for taking such action.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.050. - Construction and application.

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and the Municipal NPDES Permit, and any amendment, revision or reissuance thereof.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.060. - Prohibited activities.

- (a) *Illicit discharges and connections.* No person shall commence, establish, use, maintain, or continue any illicit connections to the Municipal Separate Storm Sewer System (MS4) or any illicit discharges to the MS4. This prohibition against illicit connections applies to the use, maintenance, or continuation of any illicit connection, whether that connection was established prior to, or after the effective date of this chapter.
- (b) *Littering.* Littering on public property is prohibited.
- (c) *Non-storm water discharges.* All non-storm water discharges into the MS4 are prohibited unless those flows are:
 - (1) Compliant with a separate NPDES Permit;
 - (2) Pursuant to a discharge exemption by the regional board, the regional board's executive officer, or the State Water Resources Control Board;
 - (3) Associated with emergency firefighting activities (i.e., flows necessary for the protection of life or property);

- (4) Conditionally exempt non-storm water discharges as defined in accordance with the Municipal NPDES Permit; or
- (5) Discharges through the MS4 of material other than storm water to waters of the U.S. shall be effectively prohibited, except as allowed under this provision or as otherwise authorized by a separate NPDES permit. The following non-storm water discharges are not prohibited provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges, are developed and implemented under the permittee's storm water program. This provision does not obviate the need to obtain any other appropriate permits for such discharges.
- a. Water line flushing;
 - b. Individual residential car washing;
 - c. Diverted stream flows;
 - d. Rising ground waters;
 - e. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
 - f. Uncontaminated pumped ground water;
 - g. Discharges from potable water sources;
 - h. Foundation drains;
 - i. Air conditioning condensation;
 - j. Springs;
 - k. Water from crawl space pumps;
 - l. Footing drains;
 - m. Flows from riparian habitats and wetlands;
 - n. Dechlorinated swimming pool discharges; and
 - o. Incidental runoff from landscaped areas (as defined and in accordance with Section B.4 of this Order).

Discharges or flows from fire-fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the U.S.

If city appointed authorized enforcement officer or a regional water board executive officer determines that any individual or class of non-storm water discharge(s) listed above may be a significant source of pollutants to waters of the U.S. or physically interconnected MS4, or poses a threat to water quality standards (beneficial uses), the city or regional water board executive officer may require and enforce an immediate stop of activity, monitor, report, and/or require the implementation of BMPs on the discharge.

- (d) *Discharges in violation of the Municipal NPDES Permit.* Any discharge that would result in or contribute to a violation of the Municipal NPDES Permit, either separately or in combination with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such person(s) shall defend, indemnify and hold harmless the city from all losses, liabilities, claims, or causes of actions in any administrative or judicial action relating to such discharge.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.070. - Exempted discharges, conditionally exempted discharges or designated discharges.

Discharges from those activities specifically identified in or pursuant to Section B.3 of the Municipal NPDES Permit as being exempted discharges, conditionally exempted discharges, or designated discharges shall not be considered a violation of this chapter, provided that any such discharges are consistent with the Municipal NPDES Permit and:

- (a) Applicable BMPs developed pursuant to the Municipal NPDES Permit are implemented to minimize any adverse impacts from such identified sources;
- (b) The discharger meets all notification, reporting and recordkeeping requirements; and
- (c) The discharger has conducted all applicable monitoring requirements.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.080. - Requirements for existing properties.

Owners and occupants of property and owners of businesses within the city shall comply with 40 CFR 131.12 including an anti-degradation policy consistent with the federal policy. The State Water Board established California's anti-degradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal anti-degradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Water Quality Control Plans (Basin Plans) implement, and incorporate by reference, both the State and federal anti-degradation policies.

May include, but not limited to:

- (a) *Storage of materials, machinery, and equipment.* Machinery or equipment that is to be repaired or maintained in areas susceptible to or exposed to storm water shall be placed in a manner so that leaks, spills and other maintenance-related pollutants are not discharged to the MS4.
- (b)

Removal and disposal of debris from industrial/commercial motor vehicle parking lots. Industrial/commercial motor vehicle parking lots with more than 25 parking spaces that are located in areas potentially exposed to storm water shall be swept regularly, or other equally effective measures shall be utilized to remove oil, chemicals, debris, or other pollutionnable materials from such parking lots.

- (c) *Best-management practices.* BMPs shall be used in areas exposed to storm water for the removal and lawful disposal of all fuels, chemicals, fuel and chemical wastes, animal wastes, garbage, batteries, or other materials which have potential adverse impacts on water quality.
- (d) *Septic waste.* No person shall leave, deposit, discharge, dump, or otherwise expose any chemical or septic waste in an area where a discharge to city streets or the MS4 may or does occur.
- (e) *Use of water.* Runoff of water used for irrigation purposes shall be minimized to the maximum extent practicable. Runoff of water from the permitted washing down of paved impervious areas shall be minimized to the maximum extent practicable, and diverted so that flow is directed to landscaped areas for infiltration where possible.
- (f) *Food and liquid wastes.* Food and liquid wastes generated by nonresidential food service and food distribution sources shall be properly disposed of and in a manner so such wastes are not discharged to the MS4.
- (g) *Maintenance of structural BMPs.* Structural BMPs required by the city or any state or federal agency shall be properly operated and maintained, as specified by an approved storm water mitigation plan, or otherwise determined by the authorized enforcement officer. Records and documentation of such maintenance shall be provided to the public works director upon request.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.090. - Requirements for industrial/commercial and construction activities.

- (a) Each industrial discharger, discharger associated with construction activity, or other discharger described in any general NPDES permit addressing such discharges, as may be issued by the U.S. Environmental Protection Agency, the State Water Resources Control Board, or the regional board, shall comply with all requirements of such permit and the provisions of this chapter. Each discharger identified in an individual NPDES permit shall comply with and undertake all activities required by such permit. Proof of compliance with any such NPDES permit may be required in a form acceptable to the authorized enforcement officer, or designated representative, prior to the issuance of any grading, building or occupancy permits, or any other type of permit or license issued by the city.
- (b) Non-storm water discharges to the MS4 from industrial, commercial, or construction activities in violation of any applicable NPDES permit or the provisions of this chapter are prohibited.
- (c) Industrial and commercial dischargers and dischargers associated with construction activities shall implement effective BMPs, including source control BMPs, in accordance with the California Storm Water Quality Association (CASQA) Best Management Practice Handbooks or equivalent, as required by Section E.6.a(ii)(e) of the Municipal NPDES Permit unless a particular pollutant generating activity does not occur on a facility's site.

Sec. 15.14.100. - Planning and land development program requirements for new development and redevelopment—Low impact development.

- (a) *Objective.* The provisions of this section establish requirements for construction activities and facility operations of development and redevelopment projects to comply with the current Municipal NPDES Permit, to lessen the water quality impacts of development by using smart growth practices, and to integrate low impact development (LID) practices and standards for storm water pollution mitigation through means of infiltration, evapotranspiration, biofiltration, and rainfall harvest and use. LID shall be inclusive of new development and/or redevelopment requirements.
- (b) *Scope.* This section contains requirements for storm water pollution control measures in development and redevelopment projects and authorizes the city to further define and adopt storm water pollution control measures, and to develop LID principles and requirements, including but not limited to the objectives and specifications for integration of LID strategies, grant alternative compliance measures from the LID requirements for projects that demonstrate technical infeasibility to retain the hydraulic sizing design criteria on-site or where an opportunity exists for regional groundwater replenishment as defined in the Municipal NPDES Permit, and collect funds for projects that are granted alternative compliance measures. Except as otherwise provided herein, the city shall administer, implement and enforce the provisions of this section.
- (c) *Applicability.* This section applies to the following new development and redevelopment projects that are subject to city conditioning and approval for the design and implementation of post-construction controls and other BMPs to mitigate storm water pollution, prior to completion of the project(s), as follows:
 - (1) *Site design measures.* Implementation of site design measures for all projects that create and/or replace (including projects with no net increase in impervious footprint) between 2,500 square feet and 5,000 square feet of impervious surface, including detached single family homes that create and/or replace 2,500 square feet or more of impervious surface and are not part of a larger plan of development. Site design measures as specified in this section are not applicable to linear underground/overhead projects (LUPs).
 - (2) *Regulated projects.* All projects that create and/or replace 5,000 square feet or more of impervious surface (regulated projects) shall require to implement measures for site design, source control, runoff reduction, storm water treatment and baseline hydromodification management.
 - (3) *Priority site-specific projects.* Projects selected based on site activities and operations, location, or hydrologic conditions where pollutants of concern are increased, and/or project requires alternative post-construction treatment strategies.
 - (4) *Source control measures.* Regulated projects with pollutant-generating activities and sources shall be required to implement standard permanent and/or operation source control measures as applicable to meet requirements on the water quality management plan (WQMP).

(5) *Low impact development (LID) design standards.* Regulated projects shall implement LID standards designed to reduce runoff, treat storm water, and provide baseline hydromodification management to the extent feasible, to meet the numeric sizing criteria for storm water retention and treatment.

A. Numeric sizing criteria includes site assessment, and drainage management areas (DMAs) to manage runoff from each DMA using site design measures, source controls and/or storm water treatment and baseline hydromodification measures, as defined in Municipal NPDES Permit.

1. Volumetric criteria:

- a. The maximized capture storm water volume for the tributary area, on the basis of historical rainfall records, determined using the formula and volume capture coefficients in urban runoff quality management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998) pages 175-178 (that is, approximately the 85th percentile 24-hour storm runoff event); or
- b. The volume of annual runoff required to achieve 80 percent or more capture, determined in accordance with the methodology in Section 5 of the CASQA's Stormwater Best Management Practice Handbook, New Development and Redevelopment (2003), using the San Bernardino County 85th percentile precipitation isohyetal map.

2. Flow-based criteria:

- a. The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or
- b. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity as determined from local rainfall records.

B. After implementation of site design measures, the facilities must be demonstrated to be at least as effective as a bioretention system with the following design parameters:

1. Maximum surface loading rate of five inches per hour, based on the flow rates calculated. A sizing factor of four percent of tributary impervious area may be used.
2. Minimum surface reservoir volume equal to surface area times a depth of six inches.
3. Minimum planting medium depth of 18 inches. The planting medium must sustain a minimum infiltration rate of five inches per hour throughout the life of the project and must maximize runoff retention and pollutant removal. A mixture of sand (60 percent—70 percent) meeting the specifications of American Society for Testing and Materials (ASTM) C33 and compost (30 percent—40 percent) may be used.
4. Subsurface drainage/storage (gravel) layer with an area equal to the surface area and having a minimum depth of 12 inches.
5. Underdrain with discharge elevation at top of gravel layer.
6. No compaction of soils beneath the facility, or ripping/loosening of soils if compacted.

7. No liners or other barriers interfering with infiltration.

8. Appropriate plant palette for the specified soil mix and maximum available water use.

(6) *Hydromodification measures.* Hydromodification management projects are regulated projects that create and/or replace one acre or more of impervious surface. A project that does not increase impervious surface area over the pre-project condition is not a hydromodification management project.

A. Post-project runoff shall not exceed estimated pre-project flow rate for the 10-year, 24-hour storm in the following geomorphic provinces.

(7) *Operation and maintenance (O & M) of storm water control measures.* All regulated projects shall implement an operations and maintenance verification program of signed legal statement accepting responsibility for the O & M of structural control measure(s) until such responsibility is legally transferred to another entity.

(d) *Issuance of discretionary permits.* No discretionary permit may be issued for any new development or redevelopment project identified in this section until the authorized enforcement officer confirms the project plans comply with the applicable requirements of this section.

(e) *Issuance of certificates of occupancy.* As a condition for issuing a certificate of occupancy for new development or redevelopment projects identified in this chapter, the authorized enforcement officer shall require property owners or their representative(s) to build all the storm water pollution control BMPs and structural or treatment control BMPs that are shown on the approved project plans and consistent with the storm water mitigation plan and to submit a signed certification statement stating that the site and all structural or treatment control BMPs will be maintained in compliance with the Municipal NPDES Permit, the storm water mitigation plan, and other applicable regulatory requirements.

(1) If no grading permit has been issued or no construction has begun on a project within a period of 180 days of approval of LID/WQMP plan(s), the LID/WQMP plan(s) for that project shall expire. The authorized enforcement officer may extend the time by written extension for action by the applicant for a period not to exceed 180 days upon written request by the applicant showing that circumstances beyond the control of the applicant prevented the construction from commencing. In order to renew the LID plan(s), the applicant shall resubmit all necessary forms and other data and pay any applicable plan check fees.

(f) *Transfer of properties subject to requirement for maintenance of structural and treatment control BMPs.*

(1) The transfer or lease of a property subject to a requirement for maintenance of structural and treatment control BMPs shall include conditions requiring the transferee and its successors and assigns to either:

A. Assume responsibility for maintenance of any existing structural or treatment control BMP; or

B. To replace an existing structural or treatment control BMP with new control measures or BMPs meeting the current standards of the city and the Municipal NPDES Permit. Such requirement shall be included in any sale or lease agreement or deed for such property. The condition of transfer shall include a provision that the successor property owner or lessee conduct maintenance inspections of all structural or treatment control BMPs at least once a year and retain proof of inspection.

- (2) For residential properties where the structural or treatment control BMPs are located within a common area which will be maintained by the community association, appropriate arrangements shall be made with the association regarding the responsibility for maintenance.
- (3) If structural or treatment control BMPs are located within an area proposed for dedication to a public agency, they will be the responsibility of the developer until the dedication is accepted.
- (g) *CEQA*. Provisions of this section shall be complementary to, and shall not replace, any applicable requirements for storm water mitigation required under the California Environmental Quality Act, Pub. Res. Code §§ 21000 et seq.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.110. - Scope of inspections.

- (a) *Entry to inspect*. The authorized enforcement officer or designated representative may enter property to investigate the source of any discharge to any public street, inlet, gutter, storm drain or any other part of the MS4 located within the jurisdiction of the city.
- (b) *Compliance assessments*. The authorized enforcement officer may inspect property for the purpose of verifying compliance with this chapter, including but not limited to:
 - (1) Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;
 - (2) Identifying point(s) of discharge of all wastewater, process water systems and pollutants;
 - (3) Investigating the natural slope at the location, including drainage patterns and manmade conveyance systems;
 - (4) Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;
 - (5) Locating any illicit connection or the source of prohibited discharge;
 - (6) Evaluating compliance with any permit issued relating to a discharge to the storm water drainage system.
- (c) *Portable equipment*. For purposes of verifying compliance with this chapter, the authorized enforcement officer may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.
- (d) *Records review*. The authorized enforcement officer may inspect all records of the owner or occupant of property relating to chemicals or processes presently or previously occurring on-site, including material and/or chemical inventories, facilities maps or schematics and diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, state general permits, storm water pollution prevention plans, monitoring program plans and any other record(s) relating to illicit connections, prohibited discharges, or any other source of contribution or potential contribution of pollutants to the storm water drainage system.
- (e) *Sample and test*. The authorized enforcement officer may inspect, sample and test any area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any container contents), and/or treatment system discharge for the purpose of determining the potential for contribution of pollutants to the storm water drainage system. The authorized enforcement officer may

investigate the integrity of all storm drain and sanitary sewer systems, any legal nonconforming connection or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The authorized enforcement officer may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

(f) *Monitoring.* The authorized enforcement officer may erect and maintain monitoring devices for the purpose of measuring or sampling any discharge or potential source of discharge to the storm water drainage system.

(g) *Test results.* The owner or occupant of property subject to inspection shall, on submission of a written request, receive copies of all monitoring and test results conducted by the authorized enforcement officer.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.120. - Fees.

Fees for plan reviews, inspections, violations, corrections, and tasks associated with this chapter will be established in the City of Barstow;'s Master Fee Schedule.

(Ord. No. 951-2017, § 2, 3-6-2017)

Sec. 15.14.130. - Enforcement.

(a) *Violations deemed a public nuisance.*

(1) Any condition caused or permitted to exist in violation of any of the following is hereby determined to be a threat to the public health, safety and welfare, is declared and deemed a public nuisance, and may be abated or restored by any authorized enforcement officer, and a civil or criminal action to abate, enjoin or otherwise compel the cessation of such nuisance may be brought by the city attorney:

(i) Any of the provisions of this chapter; or

(ii) Any failure to comply with any applicable requirement of the planning and land development program or the Municipal NPDES Permit; or

(iii) Any false certification or verification, or any failure to comply with a certification or verification provided by a project applicant or the applicant's successor in interest; or

(iv) Any failure to properly operate and maintain any structural or treatment control BMP on a property in accordance with an approved storm water mitigation plan, the planning and land development program, or the Municipal NPDES Permit.

(2) The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be invoiced to the owner of the property, as provided by law or ordinance for the recovery of nuisance abatement costs.

- (b) *Concealment.* Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of such provision.
- (c) *Civil actions.* In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action brought by the city. In any such action, the city may seek, as appropriate, any or all of the following remedies:
- (1) A temporary and/or permanent injunction.
 - (2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this division.
 - (3) Costs incurred in removing, correcting, or terminating the adverse effects resulting from violation.
 - (4) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.
- (d) *Administrative enforcement powers.* In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement officer has the authority to utilize the following administrative remedies:
- (1) Cease and desist orders. When an authorized enforcement officer finds that a discharge has taken place or is likely to take place in violation of this chapter, the officer may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:
 - (i) Comply with the requirement to cleanup and abate the discharge(s);
 - (ii) Comply with a time schedule for compliance within 72 hours of discharge, spill, or pollutant release, and where high risk spill shall be cleaned up as soon as possible; and
 - (iii) Comply with abatement within 30 days of notification, for uncontrolled sources of pollutants that could pose an environmental threat; and
 - (iv) Take appropriate remedial or preventive action to prevent the violation from recurring.
 - (2) Notice to clean. Whenever an authorized enforcement officer finds any oil, earth, debris, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in pollutants entering the MS4 or a non-storm water discharge to the MS4, he or she may give notice to the owner or occupant of the adjacent property to remove such oil, earth, debris, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.
- (e) *Penalties.* Violation of this chapter shall be an infraction punishable as provided in section 1.01.150 of this Code. Each day that a violation continues shall constitute a separate offense. Costs endured by the city for cleanup, restoration, maintenance, or protection shall be billed to the responsible party in addition to the violation fees of section 1.01.150.

- (f) *Permit revocation.* To the extent the city makes a provision of this chapter or any identified BMP a condition of approval to the issuance of a permit or license, any person in violation of such condition is subject to the permit revocation procedures set forth in this code.
- (g) *Burden of proof.* In an enforcement action, the burden of proof shall be on the person who is the subject of such action to establish that the reduction or elimination of the discharge to the maximum extent practicable has been accomplished through compliance with the best management practices available, including applicable monitoring, notifications and reporting requirements.
- (h) *Remedies.* Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.
- (i) *Reporting.* An enforcement response plan shall obtain records and documentation of the following occurrences as described in the Municipal NPDES Permit:
 - (1) Verbal warnings, and
 - (2) Written notices, and
 - (3) Escalated enforcement measures.
 - a. Citations (with fines);
 - b. Stop work orders;
 - c. Explanation of withholding of plan approvals or other authorizations; and
 - d. Additional measures, that may include written notices to appropriate regional water board, or authorities of interest, where NPDES compliance(s) is mandated.

(Ord. No. 951-2017, § 2, 3-6-2017)

CHAPTER 15.16. - FLOODPLAIN MANAGEMENT

Footnotes:

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Prior ordinance history—Ord. Nos. 449, 566, 588, 651, 718 and 762.

Sec. 15.16.010. - Statutory authorization, findings of fact, purpose and methods.

- (a) *Statutory authorization.* The legislature of the state has, in Government Code §§ 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city council of the city has adopted the following floodplain management regulations.
- (b) *Findings of fact.*
- (1) The flood hazard areas of the city are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare of the residents of the city.
 - (2) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities also contributes to flood losses.
- (c) *Statement of purpose.* It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within floodprone or flood-related erosion areas. These regulations are designed to:
- (1) Protect human life and health;
 - (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) Minimize prolonged business interruptions;
 - (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in special flood hazard areas;
 - (6) Help maintain a stable tax base by providing for the sound use and development of special flood hazard areas so as to minimize future blighted areas caused by flood damage;
 - (7) Ensure that potential buyers are notified that property is in a special flood hazard area; and
 - (8) Ensure that those who occupy the special flood hazard areas assume responsibility for their actions.
- (d) *Methods of reducing flood losses.* In order to accomplish its purposes, this chapter includes regulations to:
- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities.
 - (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
 - (3)

Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters.

(4) Control filling, grading, dredging, and other development which may increase flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Code 1969, § 15.16.010; Ord. No. 836, § 1(part), 2007)

Sec. 15.16.020. - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

100-year flood. See *Base flood*.

Accessory structure means a structure that is either:

(1) Solely for the parking of motor vehicles; or

(2) A small, low cost shed for limited storage, less than 120 square feet and \$1,500.00 in value.

Accessory use means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

Alluvial fan means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this chapter.

Area of shallow flooding means a designated AO or AH Zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base flood means a flood which has a one-percent chance of being equaled or exceeded in any given year (also called the 100-year flood). Base flood is the term used throughout this chapter.

Base flood elevation (BFE) means the elevation shown on the flood insurance rate map for Zones AE, AH, AO, A1-30, VE, and V1-V30 that indicates the water surface elevation resulting from a flood that has a one-percent or greater chance of being equaled or exceeded in any given year.

Basement means any area of a building having its floor subgrade (i.e., below ground level) on all sides.

Building. See *Structure*.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

Exceptional hardship means that the hardship is exceptional, unusual, and unique to the property subject to the variance. Economic or financial hardship is not an exceptional hardship. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot qualify as an exceptional hardship.

Existing manufactured home park or subdivision means a parcel (or contiguous parcels) of land for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before February 1, 1980.

Expansion of an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood, flooding, or floodwater means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
- (2) The condition resulting from flood-related erosion.

Flood boundary and floodway map (FBFM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the special flood hazard areas and the floodway.

Flood insurance rate map (FIRM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate map, the flood boundary and floodway map, and the water surface elevation of the base flood.

Flood-related erosion means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical level or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or by some similarly unusually and unforeseeable event which results in flooding.

Floodplain or floodprone area means any land area susceptible to being inundated by water from any source. See *Flooding*.

Floodplain administrator is the city engineer as set forth in section 15.16.040 herein charged with the responsibility to administer and enforce the floodplain management regulations in this chapter.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control), and other application of police power which control development in floodprone areas. This term "floodplain management regulations" describes federal, state, or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "regulatory floodway."

Floodway encroachment lines means the lines marking the limits of floodways on federal, state, and local floodplain maps where encroachment is not permitted.

Floodway fringe is that area of the floodplain on either side of the regulatory floodway where encroachment may be permitted.

Fraud and victimization means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for 50 to 100 years. Buildings that are permitted to be constructed below the BFE are subject during all those years to increased risk of damage from floods, while future

owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

Governing body is the local governing unit, i.e., county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety, and general welfare of its citizenry.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

Lowest floor means:

- (1) The lowest floor of the lowest enclosed area, including basement (see *Basement*).
- (2) An unfinished or flood-resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided it conforms to applicable nonelevation design requirements, including, but not limited to:
 - a. The flood openings standard in [section 15.16.050\(a\)\(3\)c](#);
 - b. The anchoring standards in [section 15.16.050\(a\)\(1\)](#);
 - c. The construction materials and methods standards in [section 15.16.050\(a\)\(2\)](#); and
 - d. The standards for utilities in [section 15.16.050\(b\)](#).

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For the purpose of this chapter, the term "mobile home or modular factory built home" means manufactured home. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value is defined in the city's substantial damage/improvement procedures in section 15.16.040(b)(2)a.

Mean sea level means, for purposes of the National Flood Insurance Program and the city, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988 or other datum to which the city's flood insurance rate maps reference.

New construction means structures for which the start of construction commenced on or after February 1, 1980, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a parcel (or contiguous parcels) of land for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after February 1, 1980.

Obstruction means and includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Program deficiency means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

Public safety concerns and nuisance means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Reasonably safe from flooding means base floodwaters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light-duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing state or federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sheet flow area. See *Area of shallow flooding*.

Special flood hazard area (SFHA) means an area in the floodplain subject to a one-percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, or AH.

Start of construction means and includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term "substantial improvement" includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term "substantial improvement" does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

Violation means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988 of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Watercourse means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. The term "watercourse" includes specifically designated areas in which substantial flood damage may occur.

Zone A means a special flood hazard area that is inundated by the base flood with no BFEs determined. *See Special flood hazard area.*

(Code 1969, § 15.16.020; Ord. No. 836, § 1(part), 2007)

Sec. 15.16.030. - General provisions.

- (a) *Lands to which this chapter applies.* This chapter shall apply to all special flood hazard areas as defined in this chapter within the jurisdiction of the city.
- (b) *Basis for establishing the special flood hazard areas.* The special flood hazard areas subject to this chapter are those identified by the Federal Emergency Management Agency (FEMA) in the flood insurance study (FIS), dated January 17, 1997, with accompanying flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), dated March 18, 1996, and all subsequent amendments and/or revisions, and are hereby adopted by reference and declared to be a part of this chapter. This FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the city by the floodplain administrator. The study, FIRMs and FBFMs are on file with the floodplain administrator at 220 East Mountain View St., Suite A, Barstow, California 92311.
- (c)

Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the city from taking such lawful action as is necessary to prevent or remedy any violation.

- (d) *Abrogation and greater restrictions.* This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (e) *Interpretation.* In the interpretation and application of this chapter, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (f) *Warning and disclaimer of liability.* The degree of flood protection required by this chapter is considered reasonable for regulatory purposes, and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, the state, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Code 1969, § 15.16.030; Ord. No. 836, § 1(part), 2007)

Sec. 15.16.040. - Administration.

- (a) *Designation of the floodplain administrator.* The city engineer is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permit applications in accordance with its provisions.
- (b) *Duties and responsibilities of the floodplain administrator.* The duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:
 - (1) *Permit review.* Review all development permits to determine:
 - a. Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
 - b. All other required local, state, and federal permits have been obtained;
 - c. The site is reasonably safe from flooding;
 - d.

The proposed development does not adversely affect the carrying capacity of areas where BFEs have been determined but a floodway has not been designated. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the city;

- e. Require within Zones AH and AO adequate paths around structures on slopes, to guide floodwaters around and away from proposed structures; and
- f. All letters of map revision (LOMRs) for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on conditional letters of map revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the start of construction definition.

(2) *Development of substantial improvement and substantial damage procedures.*

- a. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," and FEMA 311, "Guide on Estimating Substantial Damage Using the NFIP Residential Substantial Damage Estimator," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining the term "market value."
- b. Ensure procedures are coordinated with other departments/divisions and implemented by city staff.

(3) *Review, use and development of other base flood data.* When BFE data has not been provided in accordance with section 15.16.030(b), the floodplain administrator shall obtain, review, and reasonably utilize any BFE and floodway data available from a federal or state agency, or other source, in order to administer section 15.16.050 A BFE shall be obtained using one of two methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas — A Guide for Obtaining and Developing Base (100-year) Flood Elevations," dated July 1995.

(4) *Notification of other agencies.*

- a. Alteration or relocation of a watercourse:
 - 1. Notify adjacent communities and the state department of water resources prior to alteration or relocation;
 - 2. Submit evidence of such notification to the Federal Emergency Management Agency; and
 - 3. Ensure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
- b. BFE changes due to physical alterations:
 - 1. Within six months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or ensure that the permit applicant submits technical or scientific data to FEMA for a letter of map revision (LOMR).
 - 2. All LOMRs for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on conditional letters of map revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the start of construction definition. Such submissions are necessary so that, upon confirmation of those

physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

3. Changes in the city's jurisdictional boundaries: Notify FEMA in writing whenever the jurisdictional boundaries of the city have been modified by annexation or other means and include a copy of a map of the city clearly delineating the new jurisdictional limits.

- (5) *Documentation of floodplain development.* Obtain and maintain for public inspection and make available as needed the following:
 - a. Certification required by section 15.16.050(a) and (d) (lowest floor elevations);
 - b. Certification required by section 15.16.050(a) (elevation or floodproofing of nonresidential structures);
 - c. Certification required by section 15.16.050(a)(3) (wet floodproofing standard);
 - d. Certification of elevation required by section 15.16.050(c) (subdivisions and other proposed development standards);
 - e. Certification required by section 15.16.050(f) (floodway encroachments); and
 - f. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.
- (6) *Map determination.* Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection (d) of this section.
- (7) *Remedial action.* Take action to remedy violations of this chapter as specified in section 15.16.030(c).
- (8) *Biennial report.* Complete and submit biennial report to FEMA.
- (9) *Planning.* Ensure city's general plan is consistent with floodplain management objectives herein.
- (10) *Nonconversion of enclosed areas below the lowest floor.* To ensure that the areas below the BFE shall be used solely for parking vehicles, limited storage, or access to the building and not be finished for use as human habitation without first becoming fully compliant with the floodplain management ordinance in effect at the time of conversion, the floodplain administrator shall:
 - a. Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are five feet or higher;
 - b. Enter into a nonconversion agreement for construction within flood hazard areas, or equivalent, with the city. The agreement shall be recorded with the county recorder as a deed restriction. The nonconversion agreement shall be in a form acceptable to the floodplain administrator and city attorney; and
 - c. Have the authority to inspect any area of a structure below the BFE to ensure compliance upon prior notice of at least 72 hours.

Development permit. A development permit shall be obtained before any construction or other development, including manufactured homes, within any special flood hazard area established in section 15.16.030(b). Application for a development permit shall be made on forms furnished by the city. The applicant shall provide the following minimum information:

- (1) Plans in duplicate, drawn to scale, showing:
 - a. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 - b. Proposed locations of water supply, sanitary sewer, and other utilities;
 - c. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 - d. Location of the regulatory floodway when applicable;
 - e. BFE information as specified in section 15.16.030(b) or subsection (b)(3) of this section;
 - f. Proposed elevation of the lowest floor (including basement) of all structures; and
 - g. Proposed elevation to which any nonresidential structure will be floodproofed, as required of section 15.16.050(a) and detailed in FEMA Technical Bulletin TB 3-93.
- (2) Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in section 15.16.050(a)(3).
- (3) For a crawl-space foundation, location and total net area of foundation openings as required of section 15.16.050(a) and detailed in FEMA Technical Bulletins 1-93 and 7-93.
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- (5) All appropriate certifications listed in subsection (b)(5) of this section.
- (d) *Determinations on development permits.* The floodplain administrator shall make determinations on development permits under this section in accordance with the criteria set forth in subsection (b)(1) of this section.
- (e) *Appeals.* Appeals of any requirement, decision or determination of the floodplain administrator related to development permits shall be governed by section 15.16.070.

(Code 1969, § 15.16.040; Ord. No. 836, § 1(part), 2007)

Sec. 15.16.050. - Provisions for flood hazard reduction.

- (a) *Standards of construction.* In all special flood hazard areas the following standards are required:

- (1)

Anchoring. All new construction and substantial improvements of structures, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Specific requirements shall be that:

- a. Over-the-top ties be provided at each of the four corners of manufactured home with two additional ties per side at intermediate locations, with homes less than 50 feet long requiring one additional tie per side;
 - b. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
 - c. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and
 - d. Any additions to the manufactured home be similarly anchored.
- (2) *Construction materials and methods.* All new construction and substantial improvements of structures, including manufactured homes, shall be constructed:
- a. With flood resistant materials, and utility equipment resistant to flood damage for areas below the BFE;
 - b. Using methods and practices that minimize flood damage;
 - c. With electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
 - d. If located within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(3) *Elevation and floodproofing.*

- a. *Residential construction.* All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:
 1. If located within Zones AE, AH, A1-30, elevated one foot above the BFE.
 2. If located within Zone AO, elevated above the highest adjacent grade to a height one foot above the number specified in feet on the FIRM, or elevated at least three feet above the highest adjacent grade if no depth number is specified.
 3. In Zone A, without BFEs specified on the FIRM, elevated one foot above the BFE as determined in section 15.16.040(b)(3) (Review, use, and development of other base flood data). All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, include BFE data.

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

- b. *Nonresidential construction.* All new construction or substantial improvements of nonresidential structures shall either be elevated to conform with this chapter or:
1. Be floodproofed, together with attendant utility and sanitary facilities, below the elevation recommended in subsection (a)(3)a of this section, so that the structure is watertight with walls substantially impermeable to the passage of water;
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 3. Be certified by a registered civil engineer or architect that the standards of subsections (a)(3)b.1 and 2 of this section are satisfied. Such certification shall be provided to the floodplain administrator.
- c. *Flood openings.* All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet the following minimum criteria:
1. For nonengineered openings:
 - (i) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above grade;
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices; provided that they permit the automatic entry and exit of floodwater; and
 - (iv) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater to directly enter; or
 2. For engineered openings designs shall be certified by a registered civil engineer or architect.
- d. *Manufactured homes.* See subsection (d) of this section.
- e. *Garages and low cost accessory structures.*
1. Attached garages.
 - (i) A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of floodwaters. See subsection (a)(3)c of this section. Areas of the garage below the BFE must be constructed with flood resistant materials. See subsection (a)(2) of this section.
 - (ii) A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.

Detached garages and accessory structures.

- (i) Accessory structures used solely for parking (two car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in section 15.16.020, may be constructed such that its floor is below the BFE, provided the structure is designed and constructed in accordance with the following requirements:
 - (a) Use of the accessory structure must be limited to parking or limited storage;
 - (b) The portions of the accessory structure located below the BFE must be built using flood-resistant materials;
 - (c) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - (d) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;
 - (e) The accessory structure must comply with floodplain encroachment provisions in subsection (f) of this section; and
 - (f) The accessory structure must be designed to allow for the automatic entry of floodwaters in accordance with this chapter.
- (ii) Detached garages and accessory structures not meeting the standards in subsection (a)(3)e.2(i) of this section must be constructed in accordance with all applicable standards in this chapter.

f. *Crawl space construction.* No subgrade crawl spaces shall be permitted. The term "subgrade" shall be defined as below grade on all four sides.

(b) *Standards for utilities.*

- (1) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 - a. Infiltration of floodwaters into the systems; and
 - b. Discharge from the systems into floodwaters.
- (2) On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.
- (3) With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(c) *Standards for subdivisions and other proposed development.*

- (1) All new subdivisions proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than 50 lots or five acres, whichever is the lesser, shall:
 - a. Identify the special flood hazard areas (SFHA) and BFE.
 - b. Identify the elevations of lowest floors of all proposed structures and pads on the final plans which shall meet the requirements of subsection (a)(3) of this section.
 - c.

If the site is filled above the BFE, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a letter of map revision based on fill (LOMR-F) to the floodplain administrator for approval prior to submittal to FEMA:

1. Lowest floor elevation.
2. Pad elevation.
3. Lowest adjacent grade.

LOMR-F applications are available online at www.fema.gov.

- (2) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- (3) All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (4) All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

(d) *Standards for manufactured homes.*

- (1) All manufactured homes that are placed or substantially improved on sites located:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision upon which a manufactured home has incurred substantial damage as the result of a flood, shall: Within Zones A, A1-30, AH, AO, and AE on the community's flood insurance rate map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the BFE and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (2) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A, A1-30, AH, AO, and AE on the community's flood insurance rate map that are not subject to the provisions of subsection (d)(1) of this section will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:
 - a. Lowest floor of the manufactured home is at least one foot above the BFE;
 - b. Lots are large enough to permit steps;
 - c. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade;

- d. Piling foundations are placed in stable soil no more than ten feet apart; and
- e. Reinforcement is provided for pilings more than six feet above the ground level.

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

(e) *Standards for recreational vehicles.* All recreational vehicles placed in Zones A, A1-30, AH, AO, and AE will either:

- (1) Be on the site for fewer than 180 consecutive days;
- (2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the permit requirements of section 15.16.040(c) and the elevation and anchoring requirements for manufactured homes described by subsection (d)(1) of this section.

(f) *Floodways.* Since floodways are an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one foot at any point within the city.
- (2) Within an adopted regulatory floodway, the city shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (3) If subsections (f)(1) and (2) of this section are satisfied, all new construction, substantial improvement and other proposed new development shall comply with all other applicable flood hazard reduction provisions of this chapter.
- (4) Prohibit the placement of any manufactured home temporary or permanent.

(Code 1969, § 15.16.050; Ord. No. 836, § 1(part), 2007)

Sec. 15.16.060. - Variance procedure.

(a) *Nature of variances.*

- (1) The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

- (2) The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that the variance pertain to a piece of property and is not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.
- (3) It is the duty of the city to help protect its citizens from flooding. This need is so compelling and the implications of the cost of ensuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(b) *Conditions for variances.*

- (1) An applicant may apply for a variance based on the following property conditions:
 - a. New construction, substantial improvement of property, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of sections 15.16.040 and 15.16.050 have been fully considered and at the discretion of the floodplain administrator as pertaining to subsection (b)(4) of this section. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
 - b. For the repair or rehabilitation of historic structures as defined in this chapter upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - c. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (2) In making a determination on a variance application, the floodplain administrator shall use the criteria set forth in section 15.16.070(c)(2). In addition, variances shall only be issued upon a determination that the variance is the minimum necessary considering the flood hazard, to afford relief. The term "minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, this means the city need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the city believes will both provide relief and preserve the integrity of the local ordinance.
- (3) Conditions of approval of a variance. The floodplain administrator may attach such other conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

- (4) Any applicant to whom a variance is granted shall be given written notice over the signature of the floodplain administrator that:
- a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
 - b. Such construction below the base flood level increases risks to life and property. It is recommended that a copy of the notice shall be recorded by the floodplain administrator in the office of the county recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- (5) The floodplain administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

(Code 1969, § 15.16.060; Ord. No. 836, § 1(part), 2007)

Sec. 15.16.070. - Appeals.

- (a) *General.* This section shall govern appeals of any requirement, decision or determination made by the floodplain administrator pertaining to development permits and variances.
- (b) *Development permits.*
 - (1) A requirement, decision or determination made by the floodplain administrator pertaining to a development permit may be appealed by any interested person to the planning commission when the basis for the appeal alleges an error or abuse of discretion or that the application for a development permit did meet or failed to meet the qualifications or standards set forth in this chapter.
 - (2) The decision of the floodplain administrator on a development permit may be appealed in writing to the planning commission, within five business days of the floodplain administrator's decision; thereafter the floodplain administrator's decision becomes final. Such appeal shall be filed in the office of the city clerk during normal business hours. The appeal before the planning commission shall be governed by the procedures set forth in section 19.44.050 as they apply to appeals before the planning commission, except that such appeal shall be a public hearing. The decision of the planning commission shall be final, unless appealed to the city council.
 - (3) The decision of the planning commission may be appealed by any interested person in writing to the city council, within five business days of the planning commission's decision; thereafter the planning commission's decision becomes final. Such appeal shall be filed in the office of the city clerk during normal business hours. The appeal shall be governed by the procedures set forth in section 19.44.050 as they apply to appeals before the city council, except that such appeal shall be a public hearing. The decision of the city council shall be final.
- (c) *Variances.*
 - (1)

The floodplain administrator's decision on an application for a variance may be appealed by any interested person to the planning commission within five business days of the floodplain administrator's decision; thereafter the floodplain administrator's decision becomes final. Such appeal shall be filed in the office of the city clerk during normal business hours. The appeal before the planning commission shall be governed by the procedures set forth in section 19.44.050 of this Code as they apply to appeals before the planning commission, except that such appeal shall be a public hearing. The decision of the planning commission shall be final, unless appealed to the city council.

- (2) In reviewing an appeal for a variance, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the following:
 - a. Danger that materials may be swept onto other lands to the injury of others;
 - b. Danger of life and property due to flooding or erosion damage;
 - c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 - d. Importance of the services provided by the proposed facility to the community;
 - e. Necessity to the facility of a waterfront location, where applicable;
 - f. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. Compatibility of the proposed use with existing and anticipated development;
 - h. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. Safety of access to the property in time of flood for ordinary and emergency vehicles;
 - j. Expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site;
 - k. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges;
 - l. Whether the applicant has shown good and sufficient cause for the variance as defined in this chapter;
 - m. Whether the applicant has shown that failure to grant the variance would result in exceptional hardship, as defined in this chapter, to the applicant; and
 - n. The granting of a variance will not result in increased flood heights, result in public safety concerns and nuisance as defined in this chapter, or extraordinary public expense cause fraud and victimization of the public as defined in this chapter, or conflict with existing local laws or ordinances.
- (3) The decision of the planning commission may be appealed by any interested person in writing to the city council, within five business days of the planning commission decision; thereafter the planning commission's decision becomes final. Such appeal shall be filed in the office of the city clerk during normal business hours. The appeal shall be governed by the procedures set forth in section 19.44.050 as they apply to

appeals before the city council, except that such appeal shall be a public hearing. The decision of the city council shall be final.

(Code 1969, § 15.16.070; Ord. No. 836, § 1(part), 2007)

CHAPTER 15.24. - MOBILE HOME PARKS

Sec. 15.24.010. - Fees for application of permit.

- (a) There shall be a fee of \$50.00 for plan check to be submitted with the plans and application.
- (b) There shall be construction permit fees, plumbing and electrical fees as permitted by the Uniform Building Code, Uniform Plumbing Code, Uniform Electrical Code and the Health and Safety Code.

(Code 1969, § 15.24.010; Ord. No. 336, § 5(part), 1971; Ord. No. 652, § 1, 1990)

Sec. 15.24.020. - Mobile home parks.

The purpose of this section is to provide regulations for the use, construction and operation of mobile home parks in the city, in order to promote, protect and secure the public health, safety and general welfare.

- (1) Definitions: See State of California Administrative Code, Health and Safety Code, division 13, Part 2.1.
- (2) Fees for application of permit shall be the same as section 15.24.010.
- (3) Parking for automobiles:
 - a. Two parking spaces shall be provided on the individual site for each mobile home lot in the park.
 - b. Each parking space shall be a minimum size of ten feet by 20 feet, tandem parking permitted.
 - c. There shall be provided for visitors and guests a minimum of one parking space for every five mobile home sites in the development.
Space minimum size of nine feet by 20 feet double-striped.
 - d. No mobile home site shall be further than 200 feet from guest parking. All parking shall be paved.
- (4) The following permanent improvements shall be installed on each lot prior to placing a mobile home on the lot:
 - a. A concrete slab containing at least 200 square feet.
 - b. All utilities shall be provided and the utilities shall be underground.
- (5) Minimum area of a mobile home park shall be 200,000 square feet.
- (6)

Storage area. An open storage area shall be provided in the mobile home park for the storage of boats and trailers, and travel trailers.

- (7) Signs. One double face identification sign (park name and address only) at the main point of entry to the development not exceeding 18 square feet in area for each.

(Code 1969, § 15.24.020; Ord. No. 336, § 5(part), 1971)

Sec. 15.24.030. - Mobile homes.

All mobile homes shall comply with the Health and Safety Code, division 13, Part 2.

(Code 1969, § 15.24.030; Ord. No. 336, § 5(part), 1971)

Sec. 15.24.040. - Recreational trailer parks and campgrounds.

All recreational trailer parks and campgrounds shall comply with the California Administrative Code, Title 25, Health and Safety Code, division 13.

(Code 1969, § 15.24.040; Ord. No. 336, § 5(part), 1971)

Sec. 15.24.050. - Enforcement.

The state department of housing and community development shall be the enforcement agency for the provisions of the Health and Safety Code, division 13, Part 2.1 (Mobile Home Park Act) and related regulations of the California Code of Regulations, Title 25 pertaining to mobile home parks.

(Code 1969, § 15.24.050; Ord. No. 522, § 7, 1983; Ord. No. 841U, § 1, 2008; Ord. No. 842, § 1, 2008)

CHAPTER 15.28. - SURFACE MINING

Footnotes:

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State Law reference— *California Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq.*

ARTICLE I. - GENERAL PROVISIONS

Sec. 15.28.010. - Title.

This chapter shall be known as the "Surface Mining Ordinance of the City of Barstow."

(Code 1969, § 15.28.010; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.020. - Purpose.

The purpose of this chapter is to regulate surface mining operations in accordance with the requirements of the Surface Mining and Reclamation Act of 1975, the regulations adopted thereunder, and Public Resources Code § 2207. This chapter is further intended to secure the continued availability of important mineral resources while also ensuring that:

- (1) Adverse environmental effects are prevented or mitigated; and
- (2) Mined lands are reclaimed to a usable condition readily adaptable for alternative land uses.

(Code 1969, § 15.28.020; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.030. - Incorporation by reference.

The provisions of the Surface Mining and Reclamation Act of 1975, the regulations adopted thereunder, and Public Resources Code § 2207, 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 they were specifically and fully set out herein. Notwithstanding the preceding, when the provisions of this chapter are more restrictive than correlative state provisions, then the provisions of this chapter shall prevail.

(Code 1969, § 15.28.030; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.040. - Requirements for surface mining operations.

Except as provided in section 15.28.050, no person shall conduct a surface mining operation on public or private property without first obtaining approval of all of the following:

- (1) A surface mining permit;
- (2) A reclamation plan; and
- (3) Financial assurances.

(Code 1969, § 15.28.040; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.050. - Exemptions.

This chapter shall not apply to the following activities:

- (1) Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster.
- (2) On-site excavation and on-site earthmoving activities that are both an integral and necessary part of a construction project and 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. This exemption shall not be applicable unless all of the following conditions are satisfied:
 - a. All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, CEQA.
 - b. Approval of the construction project included consideration of the on-site excavation and on-site earthmoving activities pursuant to CEQA.
 - c. The approved construction project is consistent with the general plan designation and zoning of the site.
 - d. 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.
- (3) Operation of a plant site used for mineral processing, including associated on-site structures, equipment, machines, tools, or other materials. This exemption shall include the on-site stockpiling and on-site recovery of mined materials. This exemption shall not be applicable unless all of the following conditions are satisfied:
 - a. The plant site is located on lands designated for industrial or commercial uses in the general plan.
 - b. The plant site is located on lands zoned industrial or commercial.
 - c. None of the minerals being processed are being extracted on site.
 - d. All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred on site after January 1, 1976.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) The solar evaporation of sea water or bay water for the production of salt and related minerals.

- (8) Emergency excavations or grading conducted by the state department of water resources or the state reclamation board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.
- (9) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads. This exemption is available only if slope stability and erosion are controlled in accordance with state regulations and upon closure of the site, where necessary, revegetation measures and postclosure uses are implemented in consultation with the state department of forestry and fire protection. This exemption does not apply to on site excavation or grading that occurs within 100 feet of a Class One watercourse or within 75 feet of a Class Two watercourse. This exemption also does not apply to excavations for materials that are, or have been, sold for commercial purposes.
- (10) Excavations, grading or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas. This exemption shall not be applicable unless all of the following conditions are satisfied:
 - a. The operations are being conducted in accordance with division 3 of the Public Resources Code (commencing with section 3000).
 - b. The operations are consistent with the general plan designation and zoning for the site.
 - c. The earthmoving activities are within oil or gas field properties under a common owner or operator.
 - d. No excavated materials are sold for commercial purposes.

(Code 1969, § 15.28.050; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.060. - Vested rights.

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a surface mining permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, the regulations promulgated thereunder, and this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore. The reclamation plan and the financial assurances requirements of this chapter shall apply to operations conducted after January 1, 1976. In those cases where an overlap exists (in the horizontal or vertical sense) between pre- and post-SMARA mining, the reclamation plan shall call for reclamation proportional to that disturbance caused after January 1, 1976.

(Code 1969, § 15.28.060; Ord. No. 747, § 1(part), 1999)

ARTICLE II. - DEFINITIONS

Sec. 15.28.070. - Backfilling.

The term "backfilling" means to replace material removed during mining with earth, overburden, mine waste or imported material.

(Code 1969, § 15.28.070; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.080. - Borrow pitting.

The term "borrow pitting" means to create an excavation by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

(Code 1969, § 15.28.080; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.090. - CEQA.

The abbreviation "CEQA" means the California Environmental Quality Act, located at Public Resources Code § 21000 et seq., as amended.

(Code 1969, § 15.28.090; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.100. - Commission.

The term "commission" means the planning commission of the city.

(Code 1969, § 15.28.100; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.110. - Critical gradient.

The term "critical gradient" means the maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

(Code 1969, § 15.28.110; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.120. - Department.

The term "department" means the community development department of the city.

(Code 1969, § 15.28.120; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.130. - Director.

The term "director" means the community development director of the city, or the designee thereof.

(Code 1969, § 15.28.130; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.140. - Financial assurances.

The term "financial assurances" mean security posted by the owner or operator of a surface mining operation to guarantee satisfactory performance of a reclamation plan.

(Code 1969, § 15.28.140; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.150. - Grading.

The term "grading" means to bring an existing surface to a designed form by cutting, filling and smoothing operations.

(Code 1969, § 15.28.150; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.160. - Idle.

The term "idle" means to curtail a surface mining operation for a period of one year or more, with the intent to resume those surface mining operations at a future date, by more than 90 percent of the operation's previous maximum annual mineral production within any of the last five years during which an interim management plan has not been approved.

(Code 1969, § 15.28.160; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.170. - Interim management plan.

The term "interim management plan" means a report setting forth the measures that will be implemented to maintain the site of an idle surface mining operation in compliance with this chapter.

(Code 1969, § 15.28.170; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.180. - Mined lands.

The term "mined lands" means the surface, subsurface, and groundwater of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

(Code 1969, § 15.28.180; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.190. - Minerals.

The term "minerals" means any naturally occurring chemical element or compound, or groups of elements or compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock. The term "minerals" shall not include geothermal resources, natural gas, and petroleum.

(Code 1969, § 15.28.190; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.200. - Operator.

The term "operator" means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

(Code 1969, § 15.28.200; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.210. - Overburden.

The term "overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

(Code 1969, § 15.28.210; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.220. - Reclamation.

The term "reclamation" means 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.

(Code 1969, § 15.28.220; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.230. - Reclamation plan.

The term "reclamation plan" means a completed and approved plan for reclaiming the lands impacted by a surface mining operation conducted after January 1, 1976.

(Code 1969, § 15.28.230; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.240. - Resoiling.

The term "resoiling" means the process of artificially building or reconstructing a soil profile.

(Code 1969, § 15.28.240; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.250. - SMARA.

The abbreviation "SMARA" means the Surface Mining and Reclamation Act of 1975, located at Public Resources Code § 2710 et seq., as amended.

(Code 1969, § 15.28.250; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.260. - Stream bed skimming.

The term "stream bed skimming" means excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

(Code 1969, § 15.28.260; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.270. - Surface mining operation.

The term "surface mining operation" means 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. The term "surface mining operation" includes, but is not limited to, in place distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities, borrow pitting, stream bed skimming, and segregation and stockpiling of mined materials (and recovery of same).

(Code 1969, § 15.28.270; Ord. No. 747, § 1(part), 1999)

ARTICLE III. - SURFACE MINING PERMITS

Sec. 15.28.280. - Application.

Applications for a surface mining permit shall be filed with the department on a form provided by the director. The application shall include all environmental review forms and information required by the director, and shall be accompanied by a fee in an amount established by resolution of the city council.

(Code 1969, § 15.28.280; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.290. - Notification of filing.

- (a) No later than 30 days after acceptance of a surface mining permit application as complete, the director shall notify the state department of conservation of the filing of the application.
- (b) No later than 30 days after acceptance of a surface mining permit application as complete, the director shall notify the state department of transportation of the filing of the application if both of the following conditions are satisfied:
 - (1) The proposed mining operations are in the 100-year floodplain of any stream, as shown in Zone A of the flood insurance rate maps issued by the Federal Emergency Management Agency; and
 - (2) The proposed mining operations are within one mile, upstream or downstream, of any state highway bridge.

(Code 1969, § 15.28.290; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.300. - Approval or denial of surface mining permit.

- (a) The commission shall approve or deny an application for a surface mining permit after conducting a public hearing. If notification of the application filing has been given pursuant to section 15.28.290(b), then such hearing shall not be held until the state department of transportation submits its comments or until 45 days from the date the application was accepted as complete, whichever occurs first.
- (b) The commission may approve a surface mining permit application upon making the following findings:
 - (1) The proposed surface mining operation will not be detrimental to the public health, safety and welfare.
 - (2)

The proposed surface mining operation is consistent with the requirements of SMARA, the regulations promulgated thereunder, and this chapter.

- (c) The commission may impose such conditions as deemed reasonably necessary when approving a surface mining permit.
- (d) The director shall send a copy of each approved surface mining permit, and any conditions imposed on such permit, to the department of conservation.

(Code 1969, § 15.28.300; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.310. - Expansion of surface mining operation.

- (a) No expansion of a surface mining operation for which a surface mining permit has been issued shall occur without the prior approval of a modification of such permit. For purpose of this section, the following definitions shall apply:
 - (1) The term "expansion" means an increase in the land area on which a surface mining operation is conducted.
 - (2) The term "minor expansion" means an increase in the land area on which a surface mining operation is conducted by an amount that does not result in the total land area of such operation exceeding the land area originally approved for such operation by more than 25 percent.
- (b) Applications for modification of a surface mining permit shall be processed in the same manner as applications for a surface mining permit; provided, however, that applications related to minor expansions shall be approved or denied by the director without a public hearing.
- (c) The commission or the director may approve an application for modification of a surface mining permit upon making the following findings:
 - (1) The proposed expansion of the surface mining operation will not be detrimental to the public health, safety and welfare.
 - (2) The proposed expansion of the surface mining operation is consistent with the requirements of SMARA, the regulations promulgated thereunder, and this chapter.
- (d) The commission or the director may impose such conditions as deemed reasonably necessary when approving a modification of a surface mining permit.
- (e) The director shall send a copy of each approved modification of a surface mining permit, and any conditions imposed in conjunction with such approval, to the department of conservation.

(Code 1969, § 15.28.310; Ord. No. 747, § 1(part), 1999)

ARTICLE IV. - RECLAMATION PLANS

Sec. 15.28.320. - General requirements.

- (a) Reclamation plans shall contain all of the information and elements required by SMARA and the regulations promulgated thereunder.
- (b) An item of information or document required pursuant to subsection (a) of this section that has already been prepared as part of the application for a surface mining permit, or as part of an environmental document prepared pursuant to CEQA, may be included in the reclamation plan by reference, if that item of information is attached to the reclamation plan.

(Code 1969, § 15.28.320; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.330. - Application.

A proposed reclamation plan shall be filed with the department. Applicants shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the reclamation plan. Applications for reclamation plan approval shall include all environmental review forms and information required by the director. All documentation for the reclamation plan shall be submitted at one time. The proposed reclamation plan shall be accompanied by a fee in an amount established by resolution of the city council.

(Code 1969, § 15.28.330; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.340. - Transmittal of copies.

- (a) Within 30 days of receipt of a complete reclamation plan, the director shall submit copies of all of the following to the state department of conservation:
 - (1) The reclamation plan.
 - (2) Information from any related document prepared, adopted or certified pursuant to CEQA.
 - (3) Any other pertinent information.
- (b) In conjunction with such submission, the director shall certify to the state department of conservation that the reclamation plan is in compliance with the applicable requirements of Public Resources Code §§ 2772 and 2773 and article 1 (commencing with section 3500) of chapter 8 of division 2 of Title 14 of the California Code of Regulations in effect at the time.

(Code 1969, § 15.28.340; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.350. - Evaluation of comments.

- (a) The state department of conservation shall have 30 days from its receipt of a reclamation plan to prepare comments if it so chooses. The director shall prepare a written response to any comments received from the state department of conservation. Such written response shall describe the disposition of the major issues raised by the state department of conservation. Additionally, if the director's position is at variance with any of the

recommendations made or objections raised in the state department of conservation's comments, then the written response shall address, in detail, why specific comments and suggestions were not accepted.

- (b) The director shall forward to the operator copies of any written responses received from the state department of conservation, as well as the responses prepared by the director.

(Code 1969, § 15.28.350; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.360. - Approval or denial of reclamation plan.

- (a) The commission shall approve or deny an application for a proposed reclamation plan after conducting a public hearing. At the public hearing, the commission shall consider any comments received from the state department of conservation.
- (b) The commission may approve a reclamation plan upon making the following findings:
 - (1) The reclamation plan complies with SMARA, the regulations promulgated thereunder and this chapter.
 - (2) The reclamation plan and potential use of reclaimed land pursuant to such plan are consistent with this chapter, the general plan and any applicable resource plan or element.
 - (3) 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 mined lands are mitigated to the maximum extent feasible.
 - (4) Either:
 - a. The land and resources to be reclaimed (e.g., waterbodies) will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography and other resources; or
 - b. Suitable off-site development will compensate for related disturbance to resource values.
 - (5) The reclamation plan will ensure that the mined lands are restored to a useable condition that is readily adaptable for alternative land uses consistent with the general plan and any applicable resource plan or element.
 - (6) Section 15.28.340 has been satisfied.
- (c) If the commission does not approve a reclamation plan, the director shall return the plan to the applicant within 60 days. The applicant shall have 60 days from the date on which the reclamation plan is returned to revise the plan to address identified deficiencies.
- (d) The director shall send a copy of each approved reclamation plan to the department of conservation.

(Code 1969, § 15.28.360; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.370. - Performance of reclamation.

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 from mining activity. Reclamation may be performed on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the director.

(Code 1969, § 15.28.370; Ord. No. 747, § 1(part), 1999)

ARTICLE V. - FINANCIAL ASSURANCES

Sec. 15.28.380. - General requirements.

- (a) Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms specified by the state department of conservation, which the director reasonably determines are adequate to perform reclamation in accordance with the operator's approved reclamation plan. The financial assurances shall be made payable to the city and the state department of conservation.
- (b) The amount of required financial assurances shall be based upon the following criteria:
 - (1) 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 since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year.
 - (2) An analysis of physical activities necessary to implement the approved reclamation plan, the unit costs for these activities, the number of units of each of these activities, and the actual administrative costs.
 - (3) 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 on cost estimates that include, but are not limited to, labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the operator.
 - (4) A contingency factor of ten percent.

(Code 1969, § 15.28.380; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.390. - Application.

A financial assurances proposal shall be filed with the department prior to the securing of financial assurances. Such proposal shall be prepared by a state registered professional engineer approved by the director. The financial assurances proposal shall be accompanied by a fee in an amount established by resolution of the city council.

(Code 1969, § 15.28.390; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.400. - Transmittal of copies.

Within 30 days of receipt of a complete financial assurances proposal, the director shall forward a copy of the proposal, together with any documentation supporting the proposal, to the state department of conservation for review.

(Code 1969, § 15.28.400; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.410. - Evaluation of comments.

- (a) The state department of conservation shall have 45 days from its receipt of a financial assurances proposal to prepare comments if it so chooses. The director shall prepare a written response to any comments received from the state department of conservation. Such written response shall describe the disposition of the major issues raised by the state department of conservation. Additionally, if the director's position is at variance with any of the recommendations made or objections raised in the state department of conservation's comments, then the written response shall address, in detail, why specific comments and suggestions were not accepted.
- (b) The director shall forward to the operator copies of any written responses received from the state department of conservation, as well as the responses prepared by the director.
- (c) If the state department of conservation does not comment within 45 days of receipt of the financial assurances proposal, the director shall assume that the cost estimates contained within the proposal are adequate unless there is reason to determine that additional costs may be incurred.

(Code 1969, § 15.28.410; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.420. - Approval or denial of financial assurances proposal.

- (a) The commission shall approve or deny a financial assurances proposal after conducting a public hearing. At the public hearing, the commission shall consider any comments received from the state department of conservation.
- (b) The commission may approve a financial assurances proposal upon making the following findings:
 - (1) The financial assurances proposal complies with SMARA, the regulations promulgated thereunder and this chapter.
 - (2) The financial assurances proposal is sufficient to fund reclamation of lands remaining disturbed by the surface mining operation.
- (c)

If the commission does not approve a financial assurances proposal, the director shall return the proposal to the applicant within 60 days. The applicant shall have 60 days from the date on which the financial assurances proposal is returned to revise the proposal to address identified deficiencies.

(d) The director shall send a copy of each approved financial assurances proposal to the department of conservation.

(Code 1969, § 15.28.420; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.430. - Securing and maintenance of financial assurances.

Financial assurances shall be secured in accordance with the approved financial assurances proposal prior to conducting surface mining operations. The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(Code 1969, § 15.28.430; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.440. - Revision.

Each year, no later than 45 days prior to the anniversary date of the approval of the financial assurances proposal, the operator shall submit any revisions to the financial assurances to the director. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

(Code 1969, § 15.28.440; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.450. - Annual adjustment.

The director shall annually adjust the amount of financial assurances required for a surface mining operation for any one year to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

(Code 1969, § 15.28.450; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.460. - New ownership.

If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force until new financial assurances are secured from the new owner and have been approved in accordance with this chapter.

(Code 1969, § 15.28.460; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.470. - Forfeiture.

If the director determines that an operator is financially incapable of performing reclamation in accordance with the approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, the director shall do the following:

- (1) Notify the operator by personal service or certified mail that the city intends to take appropriate action to forfeit the financial assurances. Such notification shall specify the reasons for forfeiting the financial assurances.
- (2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with the approved reclamation plan. Reclamation shall be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the director and the operator.
- (3) Take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with subsection (b) of this section.
- (4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator shall be responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan that are in excess of the proceeds from the forfeited financial assurances.

(Code 1969, § 15.28.470; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.480. - Release.

Upon determining that reclamation has been completed in accordance with the approved reclamation plan, the director shall release financial assurances for that surface mining operation. The director shall give written notice of the release of the financial assurances to the operator and to the state department of conservation.

(Code 1969, § 15.28.480; Ord. No. 747, § 1(part), 1999)

ARTICLE VI. - INTERIM MANAGEMENT PLANS

Sec. 15.28.490. - Application.

Within 90 days of a surface mining operation becoming idle, the operator shall file with the department an interim management plan for review and approval. The interim management plan shall provide measures the operator will implement to maintain the surface mining operation site in compliance with this chapter, including, but not limited to, all permit conditions. The interim management plan shall be accompanied by a fee in an amount established

by resolution of the city council.

(Code 1969, § 15.28.490; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.500. - Transmittal of copies.

Within 30 days of acceptance of an interim management plan for filing, the director shall forward a copy of the interim management plan to the state department of conservation for review.

(Code 1969, § 15.28.500; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.510. - Approval or denial of interim management plan.

- (a) The commission shall approve or deny a proposed interim management plan within 60 days of the acceptance of a proposed plan for filing, unless the operator consents to a longer period. Such decision shall not be made before the state department of conservation has had 30 days to review the proposed interim management plan. The commission shall approve a proposed interim management plan upon making a finding, based on substantial evidence, that the interim management plan is consistent with the requirements of SMARA, the regulations promulgated thereunder, and this chapter.
- (b) If the commission denies a proposed interim management plan, the director shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days from such notice, or any longer period mutually agreed upon by the director and the operator, to submit a revised plan.
- (c) The commission shall approve or deny approval of a revised interim management plan within 60 days of receipt.

(Code 1969, § 15.28.510; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.520. - Duration.

The interim management plan shall remain in effect for a period not to exceed five years.

(Code 1969, § 15.28.520; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.530. - Expiration.

Upon expiration of an interim management plan, the director shall take one of the following actions:

(1)

Renew the interim management plan for another period not to exceed five years. An interim management plan shall not be renewed if the operator has not fully complied with the plan.

(2) Require the operator to commence reclamation in accordance with the approved reclamation plan.

(Code 1969, § 15.28.530; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.540. - Maintenance of financial assurances.

Financial assurances required by this chapter shall remain in effect during the period that a surface mining operation is idle.

(Code 1969, § 15.28.540; Ord. No. 747, § 1(part), 1999)

ARTICLE VII. - MISCELLANEOUS PROVISIONS

Sec. 15.28.550. - Appeals.

- (a) The applicant, the city council, or any interested party may appeal to the city council any decision approving or denying a surface mining permit, modification of a surface mining permit, a reclamation plan, financial assurances or an interim management plan. No appeal shall be processed unless filed in accordance with this section.
- (b) An appeal shall be made within five days of the date of the decision being appealed by filing an application of appeal with the director. The application shall state all of the grounds for the appeal. An appeal filed by the city council shall not require a statement of the grounds for the appeal. Upon receipt of a timely appeal, the director shall transmit to the city clerk the application of appeal and all other documents constituting the record upon which the decision was made.
- (c) An appeal shall be accompanied by a fee established by resolution of the city council to cover the cost of processing the appeal. An appeal by the city council shall not be subject to the payment of a fee.
- (d) The effectiveness of any decision approving or denying a surface mining permit, modification of a surface mining permit, a reclamation plan, financial assurances or an interim management plan shall be stayed during:
 - (1) The appeal period set forth in this section; and
 - (2) The pendency of any appeal.
- (e) Within 45 days of the filing of a timely appeal, the city council shall adopt a resolution affirming, reversing or modifying the decision being appealed. The city council shall hold at least one public hearing on the appeal prior to making a decision.

(Code 1969, § 15.28.550; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.560. - Annual operations report.

The owner or operator shall file with the department an annual operations report as required by Public Resources Code § 2207(b).

(Code 1969, § 15.28.560; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.570. - Inspection.

- (a) The director shall arrange for inspection of a surface mining operation within six months of receipt of the annual operations report required by this chapter in order to determine whether the surface mining operation is in compliance with the provisions of this chapter and state regulations. In no event shall less than one inspection be conducted in any calendar year. The director may cause such inspections to be conducted 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.
- (b) All inspections shall be conducted using the form provided by the state.
- (c) The operator shall be solely responsible for the reasonable cost of the inspection.
- (d) The director shall notify the state department of conservation within 30 days of completion of the inspection that said inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with SMARA, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operation, if any, are inconsistent with that statute. If the operator has a review of its reclamation plan, financial assurances, or an interim management plan pending before the state department of conservation or the commission, the notice shall so indicate. The director shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(Code 1969, § 15.28.570; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.580. - Abandonment.

Unless review of an interim management plan is pending before the commission, or an appeal is pending before the city council, a surface mining operation that remains idle for over one year after becoming idle without obtaining approval of an interim management plan shall be considered abandoned. The owner of a surface mining operation which has been deemed abandoned pursuant to this section shall commence and complete reclamation in accordance with the approved reclamation plan.

(Code 1969, § 15.28.580; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.590. - Notice of change of address.

Every operator shall notify the director of each change of address. Notice shall be given no more than seven days after the change is effective and shall be given on a form provided by the department.

(Code 1969, § 15.28.590; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.600. - Notice of change of ownership of property.

Any person who owns real property on which a surface mining operation is being conducted for which a surface mining permit has been issued shall file a certified report with the department within 30 days of encumbering, selling, transferring or conveying the property or part thereof or permitting the property or part thereof to be encumbered, sold, transferred or conveyed. The report shall be made on a form provided by the director. The director shall transmit a copy of the report to the state department of conservation and shall file a copy with the county clerk within five business days of its receipt.

(Code 1969, § 15.28.600; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.610. - Annual update report.

By July 1 of each year, for each active and idle surface mining operation, the director shall submit to the state department of conservation either of the following:

- (1) A copy of any amendments to the surface mining permit and reclamation plan for such operation; or
- (2) A statement that there have been no amendments during the previous year.

(Code 1969, § 15.28.610; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.620. - Notice of public hearing.

Notice of all public hearings required by this chapter shall be given in accordance with the provisions of section 19.40.010.

(Code 1969, § 15.28.620; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.630. - Fees.

The city council may establish by resolution such fees as it deems necessary to cover the reasonable costs incurred in implementing this chapter.

(Code 1969, § 15.28.630; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.640. - Regulations nonexclusive.

The provisions of this chapter are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other applicable provisions of the Barstow Municipal Code or other law.

(Code 1969, § 15.28.640; Ord. No. 747, § 1(part), 1999)

Sec. 15.28.650. - Failure to comply.

- (a) Upon determining that a surface mining operation is not in compliance with SMARA or this chapter, the director may notify the operator of the violation by personal service or certified mail.
- (b) If the violation extends beyond 30 days after the notification given pursuant to subsection (a) of this section, then the director may issue an order by personal service or certified mail requiring compliance; provided, however, that such order may require cessation of further mining activities if the operator does not have an approved reclamation plan or financial assurances. The order shall specify the violations, a time for compliance and shall set a date for a hearing before the commission. In setting a compliance date, the director shall take into account the seriousness of the violation and any good faith efforts to comply made by the operator. The date of the commission hearing shall not be sooner than 30 days after the date of the order. The order shall not take effect until the operator has been provided a hearing before the commission.
- (c) The director may impose an administrative penalty of not more than \$5,000.00 per day on any operator that violates or fails to comply with an order issued under subsection (a) of this section after the order's effective date. Such penalty shall be imposed by means of an order to the operator that is served by personal service or certified mail. The penalty shall be assessed from the original date of noncompliance. In determining the amount of the administrative penalty, the director shall consider the following factors:
 - (1) The nature, circumstances, extent and gravity of the violation;
 - (2) Any prior history of violations;
 - (3) The degree of culpability;
 - (4) Any economic savings resulting from the violation; and
 - (5) Any other matters justice may require. Administrative penalty orders shall be effective upon issuance. The operator shall make payment for an administrative penalty within 30 days unless a petition for review has been filed pursuant to subsection (d) of this section.
- (d) Within 30 days of the issuance an administrative penalty order pursuant to subsection (c) of this section, the operator may petition the city council for review of the order. The city council shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. The city council may affirm, modify, or set aside, in whole or in part, any order setting administrative penalties

that it reviews. The decision of the city council shall be by resolution, shall be effective upon issuance and shall be served on the operator by personal service or certified mail. The operator shall make payment for the administrative penalty ordered by the city council within 30 days of service of the order.

- (e) Any operator aggrieved by decision of the city council pursuant to subsection (d) of this section may obtain judicial review in accordance with Public Resources Code § 2774.2(e). Payment of the administrative penalty shall be held in an interest bearing impound account pending the resolution of a duly filed petition for judicial review.

(Code 1969, § 15.28.650; Ord. No. 747, § 1(part), 1999)