

AN ORDINANCE RELATING TO THE OPEN MINING OF CERTAIN MINERALS WITHIN THE CITY OF WATHENA, KANSAS, ALL AS DEFINED IN THE ORDINANCE, PROVIDING FOR THE REGULATION OF SUCH MINING AND PRESCRIBING PROCEDURES THEREFOR, PROVIDING FOR THE RECLAMATION OF LANDS AFFECTED BY ALL SUCH OPEN MINING AND PRESCRIBING PROCEDURES THEREFOR, DEFINING CERTAIN MISDEMEANORS AND PRESCRIBING PENALTIES THEREFOR.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WATHENA, KANSAS:

SECTION 1. DEFINITIONS. As used in this Ordinance:

(a) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit thereof, and mining directly from the natural deposit thereby exposed.

(b) "Minerals" means sand, gravel, limestone and all other types and kinds of rock and stone.

(c) "Overburden" means all of the earth and other materials which lie above a natural deposit of minerals and also means such earth and other material after removal from their natural state in the process of surface types of mining.

(d) "Area of land affected" means the area of land from which minerals and/or overburden is to be or has been removed and upon which the overburden is to be or has been deposited and shall include all lands affected by the construction of new roads or the improvement or use of existing roads, other than public roads, to gain access and to haul minerals.

(e) "Operator" means any person engaged in surface types of mining who disturbs more than one-tenth acre or who removes or intends to remove more than one hundred (100) tons of minerals or who removes overburden for the purpose of producing minerals.

(f) "Operation" means all of the premises, facilities, roads and equipment used in the process of producing minerals from a designated surface mining area and also means removing overburden for the purpose of producing minerals.

(g) "Method of operation" means the manner by which the surface cut is made, the overburden is placed or handled, and other acts are performed by the operator in the process of uncovering and removing minerals.

(h) "Person" means any person, firm, partnership or corporation.

(i) "Reclamation and conservation" means the reconditioning of the area of land affected by surface types of mining under a plan approved by the Governing Body.

(j) "City" means the City of Wathena, Kansas, and also means all land lying within the corporate limits of said City of Wathena.

(k) "Pit" means the place where minerals are being or have been mined by surface mining.

(l) "Governing Body" means the Governing Body of the City of Wathena, Kansas.

SECTION 2. POWERS OF THE GOVERNING BODY. The Governing Body shall have and exercise the following authority and powers:

(a) To examine, hear, and act upon all applications for permits and all plans and specifications submitted by any operator for the method of operation and for the reclamation and conservation of the area of land affected by any proposed operation.

(b) To make such investigations and inspections as may be deemed necessary to insure compliance with the provisions and intent of this ordinance.

(c) To order the suspension of any permit and order any operator to cease and desist operations for failure to comply with any of the provisions of this ordinance or any permit issued hereunder.

(d) To order the suspension of any operation which is started without first having secured a permit as required by this ordinance.

(e) After a hearing, to order an operator to adopt such remedial measures as are necessary to comply with this ordinance or the conditions of any permit issued hereunder.

(f) After a hearing, to issue a final order revoking a permit when any remedial action ordered taken has not been completed within the time required.

(g) To secure enforcement of the orders of the Governing Body pursuant to this ordinance in the District Court of Doniphan County, through mandamus or injunction, or by action to compel specific performance of any such order.

SECTION 3. PERMIT TO ENGAGE IN SURFACE MINING; APPLICATION THEREFOR; FEE AND BOND. (a) No person shall engage in surface mining in the City unless such person possesses a valid permit authorizing the same issued by the Governing Body as herein provided. Such permit shall authorize the operator to engage in surface types of mining upon the area of land described in such permit under the conditions described in the permit and, when issued, unless sooner revoked or suspended as herein provided, any such permit shall be effective until finally terminated by the first to occur of the following events: (1) Completion by the Operator of all Surface mining authorized under the permit, or, (2) Abandonment by the Operator of all Surface mining on all of the area described in the permit for a period of twelve (12) consecutive months.

(b) The application for a permit shall include:

- (1) A map on which the operator has indicated the location of the area of land affected and the total acreage thereof.
- (2) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within one thousand five hundred (1500) feet of any part of the affected area.
- (3) All persons with any interest in the minerals to be mined.
- (4) The source of the applicant's legal right to mine the minerals affected by the permit.
- (5) The name and post office address of the applicant.
- (6) The written consent of the applicant and such other persons, if any, necessary to grant access to the Governing Body and its representatives to the area of land affected under the application from the date of the application until the expiration of any permit granted under such application and thereafter for such time as is necessary to assure compliance with all provisions of this ordinance.
- (7) The date of the application.
- (8) A showing that the proposed surface mining operation is in full compliance with all zoning regulations and ordinances.

(c) The application for a permit shall be accompanied by an enlarged United States geological survey topographic map prepared and certified by a professional engineer as containing the following:

- (1) Identification of the area affected to correspond with the area described in the application.
- (2) The boundaries of surface properties and the names of owners of the area of land affected and the names of owners within one thousand five hundred (1500) feet of any part of the area of land affected.
- (3) A scale of not less than four hundred (400) feet to the inch and not more than six hundred and sixty (660) feet to the inch.
- (4) The locations and names, if any, of all streams, creeks, and other bodies of water, roads, buildings, cemeteries, and utility lines on the area to be mined and within one thousand five hundred (1500) feet of any part of the area affected.
- (5) Appropriate markings to show the boundaries of the area of land affected, the cropline of the seam or deposit to be mined, and the total number of acres involved in the area of land affected.

final order of the Governing Body may appeal to the District Court of Doniphan County in the manner provided by law.

SECTION 5. GRADING OF AREA AFFECTED; IMPOUNDMENTS; DUTIES OF OPERATOR; GRADING TIME LIMIT. All land affected by surface mining shall be graded to a rolling topography traversable by machines necessary for maintenance in accordance with the planned use, with slopes having no more than twenty-five percent (25%) grade.

Impoundment is encouraged and water impoundments may be constructed provided such construction is consistent with accepted engineering practices.

In addition to the grading requirements of this section, the operator shall perform the following:

(a) Impound, drain or control the flow of all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters.

(b) Grade the overburden as required by this section covering the surface of mined lands with soil materials adequate to support plant growth comparable to that originally on the site and provide suitable vegetative cover.
,reject minerals

(c) Remove or bury all metal, lumber and other refuse resulting from the operation.

No operator shall throw, dump, pile or permit the dumping, piling or throwing or otherwise placing of any overburden, stones, rocks, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature upon or into any public roads, ways or any other public property, or into any creeks, streams, ponds, lakes or any other surface waters, or upon any adjacent property owners whose surface area is not included ~~in~~ the application for permit, or place such materials herein described in such a way that normal erosion or a slide brought about by natural physical causes will permit such materials to go upon or into any public roads, ways or any other public property, or any streams, creeks, ponds, or other surface waters or upon any adjacent property owners whose surface area is not included in the area of land affected as described in the application for a permit.

In order to be considered current, grading shall meet the following time limits: (1) Grading of spoil ridges shall be completed not more than one hundred eighty (180) days after the final placing of spoil ridges. When more than one seam is to be mined, said information shall be included in the application, and the Governing Body may defer reclamation until all seams have been mined. Grading of a spoil ridge that will have an adjacent spoil ridge placed against it shall be completed one hundred eighty (180) days after the placing of such adjacent spoil ridge. When heavy rains or other conditions make grading impracticable, the 180 day period shall be extended by the Governing Body for the length of time that such grading was impracticable.

- (6) The date on which the map was prepared and the north point thereon.
- (7) The proposed drainage plan on and away from the area of land affected. Such plan shall indicate the present and proposed directional flow of water, proposed drainways, natural drainways used for drainage, the nearest streams or tributaries receiving the discharge, and the manner in which it is proposed that such discharge be received.

(d) The application for a permit shall be accompanied by a plan of reclamation prepared by a professional engineer. Such plan shall contain the proposed method of operation, grading, reclamation and conservation for the affected area including dates and approximate times of completion.

(e) The Governing Body shall not approve an application for a permit to mine where such mining would constitute a nuisance or a hazard to any residence, public building, church, school, cemetery, commercial or residential building, public road, stream, creek or other property. Surface mining operations which remove and do not replace lateral support shall not approach within one hundred (100) feet of property lines, public roads, streams, creeks, or other property unless such closer approach be approved by the Governing Body.

(f) A fee of One hundred dollars (\$100.00) shall be paid to the City at the time that any application for a permit hereunder shall be filed.

(g) Contemporaneously with, and as a condition precedent to the issuance of any permit applied for, there shall be filed by the operator with the City a bond payable to the Treasurer of the City conditioned that the operator shall faithfully perform all requirements of the Governing Body in accordance with the provisions of this ordinance. Such bond shall be signed by the operator as principal and shall be guaranteed by a corporate surety duly authorized to act as a surety under Chapter 78, K.S.A. The penal sum of such bond shall be Two thousand dollars (\$2,000.00) for each acre, or fraction thereof, of the area of land affected, with a minimum bond of Three thousand Dollars (\$3,000.00).

SECTION 4. HEARING ON APPLICATIONS FOR PERMIT, WHEN; NOTICE THEREOF; APPEALS. Within thirty (30) days after an applicant has filed an application for a permit, the Governing Body shall either grant or deny such application and shall so advise the applicant by registered mail. If the application is denied, such notice shall set forth wherein the application does not meet the requirements of this ordinance and the changes or actions which are necessary before a permit will be granted. Prior to taking final action on any application for a permit, the Governing Body shall hold a public hearing thereon. Such public hearing shall be held within twenty-five (25) days after the date that the application is filed and notice thereof shall be published two times in the official City newspaper with the last publication being not less than five (5) days prior to the date of the hearing. A copy of such notice as published shall be mailed by the City Clerk to every owner of land within one thousand five hundred (1500) feet of any part of the area of land affected with such mailing to be completed within five (5) days following the first publication of the notice of hearing. Any person aggrieved by a

SECTION 6. REVEGETATION OF AFFECTED AREAS. After the area of land affected, except access roads, has been graded and found by the Governing Body to meet the requirements of Section 5 above, the operator shall revegetate the affected area so graded with seeds, plants or cuttings of trees, shrubs or grasses as shall be approved in writing by the Governing Body. Such revegetation shall conform to the approved land-use objectives as stated in the approved plan of reclamation. Such seeding or planting shall be carried out in accordance with the revegetation plan which shall be filed with the Governing Body at the time that the application for a permit is filed. Every revegetation plan shall include information on the approximate number and kinds of plants or seeds proposed to be used.

SECTION 7. AMENDMENT OF PERMIT; APPLICATION; FEE; AND BOND. The Governing Body may increase or reduce the area of land affected by any operation under a permit on application by an operator as herein provided.

Any operator may, at any time after the issuance of any permit, but before the expiration thereof, apply to the Governing Body for an amendment of the permit to increase or reduce the acreage affected by it. The operator shall file an application and supporting documents in the same form and with the same information as required for the original application under Section 3 hereof and shall pay the City Clerk a fee of Fifty Dollars (\$50.00) at the time of the filing of any such application. A hearing shall be held upon such application for amendment and notice shall be published and given thereon and a decision rendered and an appeal taken all in the same manner as provided for an original application in Section 4 above.

If the Governing Body approves a reduction in the acreage covered by the original permit, it shall release the bond for each acre reduced, but, in no case, shall the bond be reduced below three thousand dollars (\$3,000.00) or one-half (1/2) of the original amount thereof, whichever is lesser. If the area of land affected by an operation is increased, then the amount of the bond required under Section 3 (g) shall be increased by the sum of two thousand dollars (\$2,000.00) for each additional acre included.

SECTION 8. COMMENCEMENT OF RECLAMATION, WHEN. It shall be the duty of an operator to commence the reclamation of the area of land affected by an operation as soon as possible after the beginning of surface mining of that area in accordance with the plan of reclamation required by this ordinance. The operator must complete reclamation of any area where mining has been completed within twelve (12) months after mining of the area subject to reclamation shall have been completed or, in case of expiration of the permit, within twelve (12) months after the permit has expired, provided, however, that grading shall be kept current with the operation as required in Section 5 above. The total area of land affected may be divided into different parts for the purposes of this section.

SECTION 9. PLANTING REPORT; INSPECTION AND EVALUATION OF VEGETATIVE COVER; REPLANTING, WHEN; RELEASE OF BOND, WHEN. When the planting of any part of a permit area is completed, the operator shall file a planting report with the Governing Body giving the following information: (a) The type of planting or seeding, including mixtures and amounts, (b) The date of planting or seeding, (c) The area of land planted, (d) Any other relevant information that may be required by the Governing Body.

Inspection and evaluation of the affected area revegetated shall be made by the Governing Body as soon as possible after planting and seeding has been completed to determine if a satisfactory stand has been established. If the Governing Body determines that a satisfactory vegetative cover has not been reestablished in accordance with the approved plan of reclamation, then the Governing Body may require such additional replanting or replanings as shall be necessary to achieve a satisfactory stand and in compliance with the requirements of the approved plan of reclamation. If the Governing Body determines that a satisfactory vegetative cover has been established, then it shall release any remaining bond on the area reclaimed.

SECTION 10. NONCOMPLIANCE, NOTICE THEREOF; REVOCATION OF PERMIT; FORFEITURE OF BOND. If any of the requirements of this ordinance or the orders of the Governing Body have not been complied with within the time fixed by the Governing Body or this ordinance, the Governing Body shall cause notice of such noncompliance to be served upon the operator. Such notice shall be delivered to the operator in person or served by registered mail and the same shall specify the details wherein the operator has failed to comply with this ordinance or the orders of the Governing Body. If the operator has not reached an agreement with the Governing Body or has not complied with the requirements set forth by it in the notice within twenty (20) days after mailing of such notice, then the permit may be revoked by order of the Governing Body in which event the performance bond shall be ordered forfeited by the Governing Body.

SECTION 11. ORDINANCE VIOLATIONS AND PENALTIES THEREFOR. (a) Any person who violates any of the provisions of this ordinance or violates any written order of the Governing Body issued pursuant to the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed Five hundred Dollars (\$500.00). Each day that any provision of this ordinance or any such order of the Governing Body is violated as herein defined shall constitute a separate offense.

(b) Action pursuant to subsection (a) of this section shall not be a bar to enforcement of this ordinance and any orders made by the Governing Body pursuant to this ordinance by injunction, specific performance or other appropriate remedy and the Governing Body shall have the power to institute and maintain any such action in the name of the City.

SECTION 12. SEVERABILITY. If any clause, paragraph, subsection or section of this ordinance shall be held invalid, it shall be conclusively presumed that the Governing Body would have enacted the remainder of this ordinance without such clause, paragraph, subsection or section.

PASSED by the Council and APPROVED by the Mayor on the 15th day of February, 1977.

ATTEST:
(CITY SEAL)

Sarlene J. Meidinger
City Clerk

John L. Little
Mayor, City of Wathena, Kansas