

Ordinance 11-16

AN ORDINANCE AMENDING TITLES 6 & 11 OF THE MUNICIPAL CODE OF PARK CITY BY CREATING CHAPTER 4, TITLE 6 - MINE SHAFTS AND TUNNELS, AND CHAPTER 20, TITLE 11- PHYSICAL MINE HAZARD MITIGATION

Whereas, Mining has played an important and large role in the history of Park City;

Whereas, the State Division of Oil, Gas, & Mining regulates the surface effects of mining through bonding and a permit process and also operates a voluntary abandoned mine closure program;

Whereas, the vast majority of past mining in Park City occurred prior to the regulation of surface impacts by the Division of Oil, Gas, & Mining and this past mining has left open mine shafts, mine tunnels, horizontal openings, adits, and other mine-related openings that represent a hazard to the community and that have not been voluntarily mitigated;

Whereas, the City Council desires to address past mining impacts but does not desire to regulate present surface impacts of mining or evaluate those voluntary closures conducted under the Division of Oil, Gas, & Mining;

Whereas, the City Council is granted the authority to declare what shall be a nuisance, and abate the same, and impose fines upon persons who create or suffer nuisances to exist UCA § 10-8-60;

Whereas, the City Council may pass all ordinances necessary and proper for the safety, prosperity, comfort, and convenience of the city and its residents UCA § 10-8-84; and

Whereas, the City Council finds that these openings constitute public nuisances and threats to the health, safety, and welfare of citizens and visitors; and

Whereas, the City Council finds that enacting this Ordinance will reduce the hazard presented by mine related openings

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARK CITY, UTAH THAT:

SECTION I. AMENDMENT. Title 6 of the Municipal Code of Park City is hereby amended to add Chapter 4 as provided in the following attachment:

Attachment A

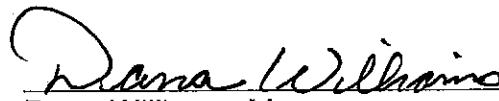
SECTION II. AMENDMENT. Title 11 of the Municipal Code of Park City is hereby amended to add Chapter 20 as provided in the following attachments:

Attachment B
Mine Hazard Mitigation Area Map

SECTION III. EFFECTIVE DATE. This ordinance shall be effective upon publication.

PASSED AND ADOPTED this 21st day of April, 2011.

PARK CITY MUNICIPAL CORPORATION



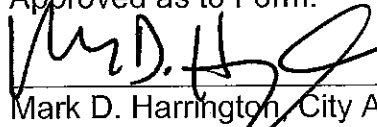
Dana Williams, Mayor

Attest:

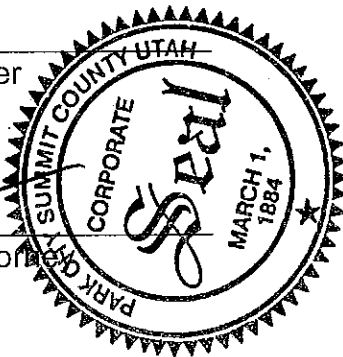


Janet M. Scott, City Recorder

Approved as to Form:



Mark D. Harrington, City Attorney



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TITLE 6 - HEALTH, NUISANCE ABATEMENT,
NOISE

**CHAPTER 4 - MINE SHAFTS AND
TUNNELS**

6-4-1. DEFINITIONS.

All words and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

(A) **MINING OPERATIONS.** Any activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

(B) **MITIGATE.** The completion of Mitigation.

(C) **MITIGATION.** Actions taken that are reasonably designed to prevent accidental or unauthorized intentional access to an underground working, which actions may include but shall not be limited to backfilling, installing block or stone wall enclosures, installing bat gates, or installing corrugated metal pipe or rebar grates.

(D) **PHYSICAL MINE HAZARD(S).**

Any open mine shaft, mine tunnel, horizontal opening, adit, or other mine related opening that extends more than 5 feet into the ground. None of the following is a Physical Mine Hazard:

- (1) above-ground structures;
- (2) vertical opening where the Chief Building Official has made a written determination that due to the physical characteristics of an opening it does not present a potential health or safety concern; or
- (3) sites previously the object of Mitigation so long as Mitigation has not failed.

**6-4-2. MAINTENANCE OF
PHYSICAL MINE HAZARDS
PROHIBITED.**

It is unlawful for any Owner, to knowingly permit or maintain on their premises any Physical Mine Hazard, unless the Physical Mine Hazard:

- (1) is a necessary part of a public water system as determined by the applicable public water system operator;
- (2) is presently part of Mining Operations as defined in this Chapter or U.C.A. § 40-8-4;
- (3) was previously issued a Permit by the Utah Division of Oil, Gas and Mining as defined in U.C.A. § 40-8-4;
- (4) prior to December 1st, 2012, is within the Mine Hazard Mitigation Area as defined in Section 11-20-1 so long as the Chief Building Official has not made a written determination that the Physical Mine Hazard represents a substantial hazard to the public; or
- (5) after December 1st, 2012, is identified in Section 11-20-3, Section 11-20-4, or Section 11-20-6(B) and is in compliance with the submitted schedule for Mitigation.

**6-4-3. VIOLATION--
NUISANCE – ABATEMENT.**

Any Physical Mine Hazard not otherwise exempt from this Chapter is declared to be a public nuisance. An Owner shall within ninety (90) days of written notice from the City as to the existence of a Physical Mine Hazard submit a plan for Mitigation to the Chief Building Official. An Owner shall complete Mitigation within one (1) year of

written notice from the City. If the Owner fails to abate the same through Mitigation within this time frame, the Chief Building Official may direct its summary abatement through Mitigation at the full expense of the Owner.

**6-4-4. OTHER CLAIMS NOT
PRECLUDED.**

Nothing in this Chapter shall prevent an Owner, other individuals or entities from asserting any claim in law or equity regarding any Physical Mine Hazard.

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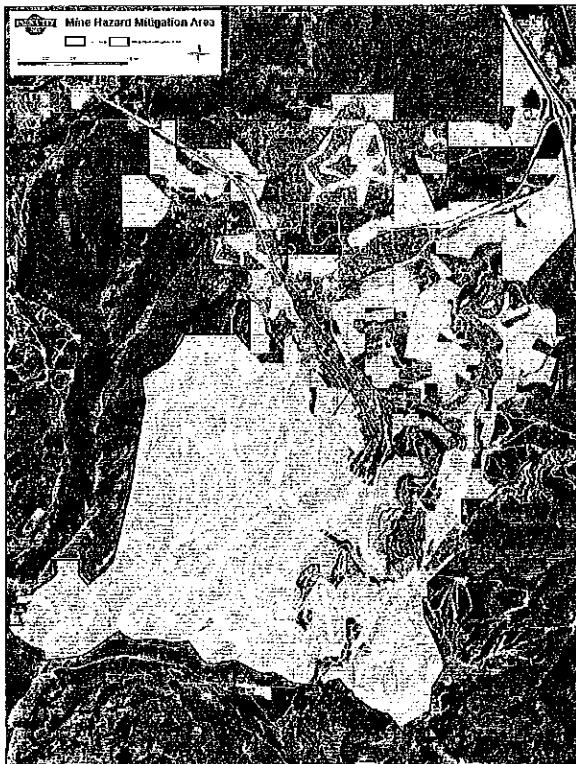


TITLE 11 - BUILDING AND BUILDING REGULATIONS

CHAPTER 20 - PHYSICAL MINE HAZARD MITIGATION

11-20-1. AREA.

This Chapter shall affect only that property depicted in the map attached hereto, hereinafter referred to as the Mine Hazard Mitigation Area.



11-20-2. DEFINITIONS.

All word and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

(A) **EVALUATION PLAN.** Defined in Section 11-20-3.

(B) **MINE HAZARD MITIGATION AREA.** Defined in Section 11-20-1.

(C) **MINING OPERATIONS.** Any activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

(D) **MITIGATE.** The completion of Mitigation.

(E) **MITIGATION.** Actions taken that are reasonably designed to prevent accidental or unauthorized intentional access to underground workings, which actions may include but shall not be limited to backfilling, installing block or stone wall enclosures, installing bat gates, or installing

corrugated metal pipe or rebar grates.

(F) **MITIGATION PLAN.** A written statement of the Mitigation activities to be conducted by the Owner and a schedule for the completion of those Mitigation activities.

(G) **PHYSICAL MINE HAZARD(S).** Any open mine shaft, mine tunnel, horizontal opening, adit, or other mine related opening that extends more than five (5) feet into the ground. The following are not Physical Mine Hazards:

- (1) above ground structures;
- (2) vertical opening where the Chief Building Official has made a written determination that due to the physical characteristics of an opening it does not present a potential health or safety concern; or
- (3) sites previously the object of Mitigation so long as Mitigation has not failed.

11-20-2. PHYSICAL MINE HAZARD PROHIBITED.

Physical Mine Hazards are prohibited within the Mine Hazard Mitigation Area, except for those Physical Mine Hazards that:

- (A) are a necessary part of a public water system as determined by the applicable public water system operator;
- (B) are a part of Mining Operations as defined in this Chapter or U.C.A. § 40-8-4;

(C) were previously issued a Permit by the Utah Division of Oil, Gas and Mining as defined in U.C.A. § 40-8-4;

(D) prior to December 1st, 2012, are within the Mine Hazard Mitigation Area as defined in Section 11-20-1 and where the Chief Building Official has not made a written determination that the Physical Mine Hazard represents a substantial hazard to the public; or

(E) after December 1st, 2012, are identified as required in Section 11-20-3, Section 11-20-4, or Section 11-20-6(B) and in compliance with the submitted schedule for Mitigation.

Physical Mine Hazards maintained in violation of this section may be declared a public nuisance under Title 6 Chapter 4 of this Code. The Chief Building Official may direct their summary abatement through Mitigation at the full expense of the Owner.

11-20-3. OWNER EVALUATION AND INSPECTION.

Owners within the Mine Hazard Mitigation Area shall devise an Evaluation Plan and implement the Evaluation Plan on or before November 1st, 2012. The Evaluation Plan shall include reasonable due diligence to identify Physical Mine Hazards. The Evaluation Plan shall include a written statement of the activities to be undertaken to identify Physical Mine Hazards. At a minimum, this plan shall require the visual inspection of the property, specifically the:

- (A) location(s) on the Owner's property that are identified on the 1955 or more

recent United States Geologic Service Topographic Map by symbols representing the following:

- (1) mine tunnel or cave entrance;
- (2) mine shaft;
- (3) prospect;
- (4) tailings; or
- (5) mine dump;

(B) location(s) on the Owner's property that show, scarring, or limited vegetation where the cause of such scarring or limited vegetation is unknown or known to be caused by previous mining activity;

(C) location(s) on the Owner's property identified as possibly containing a Physical Mine Hazard after conducting reasonable due diligence, including inquiry into public records, property records, business records, past leases, employee activities known on the property, real estate disclosures, or other sources known to the Owner to contain information any Physical Mine Hazard on the property; and

(D) any Physical Mine Hazard known to the Owner.

Owners may include additional requirements in the Evaluation Plan that in his or her opinion may lead to location of any additional Physical Mine Hazards.

Owners shall maintain a copy of their Evaluation Plan available for inspection for 10 years from the date of completion of the plan.

Owners of parcels that submit an evaluation and inspection report and, as applicable, a Mitigation Plan under Section 11-20-4 and demonstrate to the Chief Building Official substantial progress in the evaluation and inspection of the Owner's property may obtain an extension until December 1, 2013 to complete the evaluation and inspection of the property. Any Physical Mine Hazard identified after December 1, 2012 in accordance with this Section shall be deemed a newly discovered Physical Mine Hazard and Owner shall submit a Mitigation Plan with a completion date on or before December 1, 2014 for the Mitigation of the Physical Mine Hazards identified pursuant to this Section.

11-20-4. SUBMISSION.

On or before December 1, 2012, Owners within the Mine Hazard Mitigation Area shall submit to the Building Department the results of the evaluation and inspection effort conducted pursuant to Section 11-20-3. The submittal shall be on a form provided by the Building Department, and at a minimum contain the following:

(A) If Physical Mine Hazard are not found or Physical Mine Hazards were present on or after January 1, 2011 and have subsequently been the subject of Mitigation

- (1) identification of the property inspected, including a map;
- (2) a statement of the inspection results;

(3) Mitigation that occurred after January 1, 2011 and pre- and post-Mitigation photos of Physical Mine Hazards; and

(4) a signed statement certifying the following: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Mitigation Plan and that, based on my inquiry of those persons immediately responsible for obtaining and completing the information contained in the Mitigation Plan and report, I believe that the information is true, accurate and complete and that no unreported Physical Mine Hazards are known to me to exist on the property."

(B) If Physical Mine Hazards are found:

(1) identification of the property inspected, including a map;

(2) a statement of the inspection results;

(3) the location, including GPS coordinates, and a pre-Mitigation photograph of all Physical Mine Hazards identified;

(4) actions taken to Mitigate any Physical Mine Hazards between January 1, 2011 and December 1, 2012 and the location, including GPS coordinates, and a pre- and a post- Mitigation photo of such Physical Mine Hazards;

(5) a Mitigation Plan with a schedule not to exceed three (3) years for Mitigation of all identified Physical Mine Hazards; and

(6) a signed statement certifying the following: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Mitigation Plan and that, based on my inquiry of those persons immediately responsible for obtaining and completing the information contained in the Mitigation Plan and report, I believe that the information is true, accurate and complete and that no unreported Physical Mine Hazards are known to me to exist on the property."

(C) Acceptance of a submission by the City does not indicate approval by the City.

11-20-5. REQUIREMENT TO MITIGATE.

After submission of the information required in Section 11-20-4, Owners within the Mine Hazard Mitigation Area shall complete the Mitigation Plan as submitted or as approved by the Chief Building Official or his designee.

11-20-6. OBLIGATION TO UPDATE.

(A) Owners that complete the Mitigation Plan under Section 11-20-5 shall report the completion of the Mitigation Plan to the Chief Building Official or his designee. The report shall include a brief written summary

of the completed Mitigation Plan and a post-Mitigation photograph of each Physical Mine Hazard corresponding with the GPS coordinates as described in the Mitigation Plan.

(B) After submission of the information required in Section 11-20-4, Owners within the Mine Hazard Mitigation Area shall notify the Chief Building Official or his designee within seven (7) days if additional Physical Mine Hazards, not included in a Mitigation Plan, are later identified or if prior Mitigation work fails. Owner shall within ninety (90) days of notice to the Chief Building Official submit a Mitigation Plan with a completion date not to exceed one (1) year for the Mitigation of the Physical Mine Hazard.

11-20-7. INSPECTION.

A. The Chief Building Official or his designee may make inspections to ensure identification and Mitigation of any Physical Mine Hazard consistent with Title 11 Chapter 11 of this Code.

B. The Chief Building Official or his designee may request a copy the Evaluation Plan.

11-20-8. FAILURE TO COMPLY WITH CHAPTER.

Any person failing to comply with the provisions of this Chapter may be fined up to one thousand (1,000) dollars per violation. Each day of non-compliance may be found to be an additional violation. Any person failing to comply with the provisions

of this Chapter may be subject to action under Title 6 Chapter 4 of this Code.

11-20-9. OTHER CLAIMS NOT PRECLUDED.

Nothing in this Chapter shall prevent an Owner, other individuals or entities from asserting any claim they may have in law or equity regarding Physical Mine Hazards.