

**BOARD OF COUNTY COMMISSIONERS
OF SANDOVAL COUNTY, NEW MEXICO
ORDINANCE NO. _____**

AN ORDINANCE, AMENDING ORDINANCE NO. 10-11-18.7A COMPREHENSIVE ZONING ORDINANCE OF SANDOVAL COUNTY, FOR THE SURFACE LAND REGULATION OF OIL AND GAS ACTIVITIES; ESTABLISHING DESIGN AND OPERATIONAL STANDARDS FOR OIL AND GAS FACILITIES; AND FURTHER PROVIDING FOR VARIANCES, RELIEF, APPEALS, THE ENFORCEMENT OF THIS ORDINANCE AND OTHER RELATED MATTERS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANDOVAL COUNTY, NEW MEXICO:

**ARTICLE I.
GENERAL**

Section 1.1 Short Title. This Ordinance shall be officially cited as the “Sandoval County Oil and Gas Ordinance”.

Section 1.2. Statutory Authority. The Sandoval County Board of County Commissioners (the “Commission”) is authorized to adopt this ordinance pursuant to NMSA 1978, Section 3-2-1 et seq., and NMSA 1978 Section 4-37-9 et. seq.

Section 1.3. Conflicts. This ordinance is promulgated pursuant to the police powers of Sandoval County and to protect County residents from potential and foreseeable nuisances. **Sandoval County (“the County”) is the primary authority of surface land development within the County’s planning and zoning jurisdiction.** The County recognizes the primary authority of various other state and federal agencies to regulate oil and gas operations and development and their role balancing and protecting the interests of mineral interest owners, protecting correlative rights, and overseeing subsurface activities related to oil and gas resource development and extraction. Should a conflict arise between any provision of this ordinance and any state or federal law or regulation, the County shall defer to the authority of state and federal agencies.

1.4. State and Federal Preemption.

This Ordinance is supplementary to, does not replace, enhances and is consistent with the following Federal and State statutes. This list includes, but is not limited to:

Note: Alternative language you may wish to consider: This Ordinance does not replace, alter or in any way seek to amend any Federal and State statutes applicable to the oil and gas industry, including but not limited to the statutes listed below. To the extent this regulation conflicts with any federal or state statute or regulation, this ordinance is preempted and the applicable federal or state statute or regulation shall control

- (A) The Surface Owners Protection Act, N.M.S.A. 1978, §§ 70-12-1 et. seq.;
- (B) The Oil and Gas Act, N.M.S.A. 1978, §§ 70-2-1 et seq.;
- (C) The Water Quality Act, N.M.S.A. 1978, §§ 74-6-1 et seq.;
- (D) The Solid Waste Act, N.M.S.A. 1978, §§ 74-9-1 et seq.;
- (E) The Rangeland Protection Act, N.M.S.A. 1978, §§ 76-7B-1 et seq.;

- (F) The Emergency Planning and Community Right To Know Act, 42 U.S.C.A. §§ 11001et seq.;
- (G) The New Mexico Public Health Act, N.M.S.A. 1978 §§ 24-1-1 et seq.;
- (H) The Wildlife Conservation Act, N.M.S.A. 1978, §§ 17-2-37 et seq.;
- (I) The Cultural Properties Act, N.M.S.A. 1978, §§ 18-6-1 et seq.;
- (J) The National Historic Preservation Act, 16 U.S.C.A §§ 470 et seq.;
- (K) The Uniform Trade Secret Act N.M.S.A. 1978, §§ 57-3A-1 et seq.;
- (L) The Prehistoric and Historic Sites Act, N.M.S.A. 1978, §§18-8-1 et seq.;
- (M) The Cultural Properties Protection Act, N.M.S.A. 1978, §§ 18-6A- 1 et seq.;
- (N) The Archaeological Resources Protection Act, 16 U.S.C.A. § 470 aa et seq.; and
- (O) The Energy Policy Act, 42 U.S.C.A. § 6201 et. seq.
- (P) Clean Water Act 33 U.S.C.A §1251 et.seq.

ARTICLE II.
DEFINITIONS

Section 2.1. Incorporation by Reference. For purposes of defining the terms used in this Ordinance, the County hereby adopts the definitions used by the New Mexico Oil Conservation Division, which are provided in 19.15.2.7 NMAC.

ARTICLE III.
ZONING ORDINANCE AMENDMENT

Section 3.1. Amending Comprehensive Zoning Ordinance.

A. The Sandoval County Board of County Commissioners hereby amends Ordinance No. 10-11-18.7A, Comprehensive Zoning Ordinance of Sandoval County, to establish Oil and Gas Exploration and Production, and the Structures and Facilities Associated with That Use, as a Permissive use within Section 9 (1). RRA – Rural Residential Agricultural District, and to remove this use from Section 10. SU – Special Use District.

ARTICLE IV.
PERMIT

A. It is unlawful and an offense for any person acting either for himself or herself or acting as agent, employee, independent contractor or servant for any

person to knowingly drill any well within the County and jurisdiction of this chapter without a well drilling permit.

B. When a permit has been issued for the drilling of a well, such permit shall constitute sufficient authority for drilling, operation, production and for the construction and gathering lines and discharge by the permittee and its employees, agent and contractors.

C. No permit shall authorize the drilling of more than one (1) well pad.

Section 4. Permit Application. Prior to commencing drilling, deepening or re-entry operations, commencing an additional lateral, plugging a well back to a different pool, or completing or re-completing a well in an additional pool, an operator is required to provide the County the following information:

- A. Scope of Operations. A brief description of the scope of operations contemplated by the operator, including the estimated depth of any proposed well(s) and the estimated commencement date of the operations.
- B. Contact Information. The name and contact information (including for emergencies) of (i) operator and any contractors known as of the date of the **Application** and (ii) lease owner(s) and surface owner(s).
- C. Site Plan. The proposed site plan for the well(s), including the proposed location and routing of any gathering lines, and a diagram of the permanent location/footprint.
- D. Property Details. The legal property description and a map or plat depicting (i) the location of the proposed well(s), (ii) ~~any regularly occupied building(s)~~ replace **regularly occupied dwelling, school, church or hospital** within three hundred (300) **(750)** feet for a single well and seven hundred fifty (750) feet with production equipment, (iii) fresh water supply wells and subsurface fresh water storage reservoirs within **seven hundred fifty (750)** feet of the proposed well(s), and (iv) **seven hundred fifty (750) feet** distance of any public or private road.
- E. Noise Control Plan. Estimate the noise levels from expected operations requiring notice, which will not exceed **fifty five (55)** decibels, including noise from traffic, and describe the manner in which operator intends to limit the noise levels associated with such operations below that threshold.
- F. Road Plan. Plan identifying roads for use in operations and the estimated amount of traffic anticipated in conducting operations. Roads constructed will take into account soil type, slope, grade, weight of loads transported and expected use including length of time to be used. **Note: Public Works shall review and approve the road plan and this approval should take no more than 30 days. Language you may wish to consider:**

Applicant will submit a road plan for approval to the Sandoval County Public Works department (PW). PW must respond to applicant and provide notice to Sandoval County Planning and Zoning Department with approval or modifications for approval of the road plan within 30 days; if no response is provided within 30 days, the road plan is approved as submitted by applicant and notice shall be provided to Sandoval County Planning and Zoning Department.

- G. Emergency Response Plan. Plan identifying all fire, police, and emergency response services in the County that are within five miles of the drill site as well as a description of standard operating procedures, including applicable health, safety and environment protocols, used by the operator in the event of emergencies. Note: The Fire Marshall shall review and approve the Emergency Plan and this approval should take no more than 30 days and be completed concurrent with the Road Plan, Language you may wish to consider: Applicant will submit an emergency response plan for approval to the Sandoval County Fire Department (FD). FD must respond to applicant and provide notice to Sandoval County Planning and Zoning Department with approval or modifications for approval of the road plan within 30 days; if no response is provided within 30 days, the road plan is approved as submitted by applicant and notice shall be provided to Sandoval County Planning and Zoning Department.
- H. Proof of Bond. Certify the OCD's financial assurance requirements, as set forth in 19.15.5 NMAC, have been satisfied.
- I. SOPA Certification. Certify that it will comply with the requirements of the Surface Owner Protection Act as enforced by the New Mexico Oil Conservation Division pursuant to NMSA 1978, § 70-12-1 (2007).
- J. Air Quality Certification. Certify that it will comply with the requirements of the Air Quality Control Act as enforced by the New Mexico Environment Department's Air Quality Bureau pursuant to NMSA 1978, § 74-2-1.
- K. Water Protection Certification. Certify that it will comply with the requirements of OCD and NMED concerning the protection of waters.

ARTICLE V. **DRILLING REQUIREMENTS**

Section 5.1. Light Direction. To the extent practicable, site lighting shall be directed downward and internally to avoid glare on public roads and buildings within seven hundred (700) feet of the drill site.

Section 5.2. Color of Well Site Structures. Oil and gas facilities observable from any public highway shall, to the extent reasonably practicable, be visually harmonious with the surrounding environment and painted with uniform, non-contrasting, non-reflective color tones (similar to the Munsell Soil Color Coding System), and with colors matched to but slightly darker than the surrounding landscape.

Section 5.3. Setback Requirements. No person shall drill or deepen an oil and gas well within five hundred ~~(500)~~ (750) feet of a residence, business, school or church outside an incorporated municipality in the County without the written consent of the owner of such residence, business, school or church.

Section 5.4. Fencing and Exclusionary Protocols. Unless provided for in an agreement with the applicable surface owner, all well site locations following drilling and completion operations shall have fencing or other exclusionary measures to prevent harm to the public and wildlife. Fencing will comply with all OCD and Occupational Safety and Health Administration (OSHA) requirements for the protection of the public, livestock, and wildlife.

Section 5.5. Prudent Operator. Operator shall conduct its operations consistent with best practices of the oil and gas industry as a reasonably prudent operator and comply with all applicable federal and state requirements.

Section 5.6. Trash and Debris. Operator will maintain all locations and well sites upon which operations have taken place clear of all litter, trash, and other waste.

Section 5.7. Water Protection. Operator will utilize best practices of the oil and gas industry to ensure that surface water, subsurface water, and groundwater are protected during operations and comply with all applicable state and federal regulations relating thereto.

Section 5.8. Abandonment, Plugging and Remediation. Operator shall submit to the County copies of all OCD approved plugging and abandonment permits.

ARTICLE VI. **INSURANCE REQUIREMENTS**

Section 6.1. Insurance. In addition to the financial assurance required by the OCD and other laws and subject to the self-insurance option below, the operator shall carry the insurance policy or policies required below provided by an insurance company or companies authorized to do business in New Mexico. In the event such insurance policy or policies are cancelled, the operator will take corrective actions to reinstate the insurance policy or policies.

- A. The County, its officials, employees, agents and officers shall be endorsed as an “additional insured” on the required policies.
- B. Certificates of insurance shall be delivered to the Sandoval County, Planning and Zoning Commission, 1500 Idalia Road, Building D, Bernalillo, NM 87004, evidencing all the required coverage, including endorsements, prior to the commencement of operations requiring notice.

- C. Each policy shall be endorsed to provide the County a minimum thirty-day notice of cancellation, non-renewal and/or material change in policy terms or coverage. A ten days' notice shall be acceptable in the event of non-payment of premium.

Section 6.2. Standard Commercial General Liability Policy. This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources and equipment hazard damage, broad form property damage, independent contractors' protective liability and personal injury. This coverage shall be a minimum combined single limit of \$5,000,000 per occurrence for bodily injury and property damage.

Section 6.3. Self-Insurance Option. Operator may elect to self-insure all or any part of the insurance requirements in this Ordinance if the operator has ownership of unencumbered assets in excess of \$1 billion dollars. In such an event, operator will provide the County with a letter of self-insurance.

ARTICLE VII. **VARIANCES**

Section 7.1. Application for Variance. A written application for a variance from the terms, limitations, and requirements of this ordinance shall be submitted to the Planning and Zoning Commission by operator as part of the notice packet or later as a separate submission along with a \$50.00 review fee per variance.

Section 7.2. Required Information. The variance shall identify the term, limitation, or requirement with reference to the article, section, and paragraph for which operator seeks the variance. Operator shall also state the grounds upon which the variance is sought and should be granted.

Section 7.3. Criteria. Granting of the variance shall not be detrimental to the public health, safety, or welfare or injurious to the County's resources. Granting of a variance is justified if there is a demonstrable hardship on operator or common benefit to all interested parties based upon articulable conditions upon the site covering the application.

ARTICLE VIII **PROCEDURES AND FEES**

Section 8.1. Review of Permit Application. The Director of the Planning and Zoning Division or the Director's designee shall review the Permit Application for completeness. The review of the Application shall be finished by the Director of the Planning and Zoning Division or the Director's designee within 10 days of submission or else it will be deemed to be complete. If the Permit Application is incomplete, the Director will notify operator within 10 days of receipt and describe the information that was required to be provided but missing in the Application submission. Operator will promptly resubmit the Permit Application to include any required

information that was not already submitted. **Note: considering that Public Works and Fire Marshall approvals will take no more than 30 days the total approval time would be about 40 days.**

Section 8.2. Well Activity Fee. For any new well drilled by operator in the County, operator will pay to the County a fee of \$250 per well with such payment to be included with the **Application** provided for such new drilling operation. For any other operation requiring **Application** to the County as provided in this Ordinance, operator will pay \$100 to the County for each **Application** submitted by operator with such payment included with such Notice.

Section 8.3. Appeal. Any person or company aggrieved by a decision of the Director of the Planning and Zoning Commission or the Director's designee arising by virtue of the provisions of this Ordinance shall have the right to appeal such decision directly to the County Commission.

ARTICLE IX **ENFORCEMENT**

Section 9.1. Non-Compliance. In the event of failure by the operator to comply with this Ordinance, the Director of the Planning and Zoning **Division** or his designee shall issue a written notice to operator stating a time of at least 60 days to comply with the notice. If material compliance has not been made within the timeframe contained in the notice, State Statute Language.

Section 9.2. Violations. If any person knowingly or willfully violates any provision of this Ordinance and such violation directly causes material harm to the public health, safety of county residents, or the environment, the Director of the Planning and Zoning **Division** or his designee shall issue a written **citation** to such person describing the violation and corrective actions required.

Any citation issued for violation of this Ordinance shall state the name of the alleged violator, the date the citation was issued, the type of violation, and the section of this Ordinance under which the violation is issued. The citation shall, if possible, list the action necessary to cure the alleged violation. The citation shall conspicuously and in bold face type state: "If not paid, this fine shall constitute a lawful debt which will be collected pursuant to legal process and may be assessed as a lien upon the property upon which the violation exists. If the violation is remediated by the County or by a contractor hired by the County, the actual costs of remediation may be added to the fine."

Note: include the City of Hobbs enforcement through suspension or revocation for non compliance Section 8.44.080 of Hobbs Code http://www.hobbsnm.org/files/municipal_code.pdf

The violation citation may be issued to the owner of the land where the violation is alleged to exist, the occupier of the land if different from the owner or to both in the discretion of the

Zoning Officer. When possible, the citation shall contain the address of the property on which the violation is alleged to exist, the legal description of the property or both. The citation shall be hand-delivered to the alleged owner or violator if possible, or may be mailed to the alleged violator or owner or posted upon the property. Any of the previously listed forms of notice shall constitute sufficient service of notice under the law.

The fine for violating any provision of this ordinance shall not exceed \$300 and the fine shall be payable to the County. The fine may be waived in the sole discretion of the County if the alleged violator commences and completes satisfactory actions to remediate the alleged violation.

ARTICLE X
SEVERABILITY, EFFECTIVE DATE

Section 10.1. SEVERABILITY.

If any provision of this Ordinance shall be held invalid or non-enforceable by any court of competent jurisdiction for any reason, the remainder of this Ordinance shall not be affected and shall be valid and enforceable to the fullest extent of the law.

Section 10.2. EFFECTIVE DATE.

As necessary to protect the public health and safety, this Ordinance proposed for adoption shall take effect immediately upon approval by the Sandoval County Board of County Commissioners.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SANDOVAL COUNTY

Eileen Garbagni, County Clerk

Don G. Chapman, Chair

David J. Heil, Vice Chair

APPROVED AS TO FORM:

Vacant

Heather R. Smallwood, County Attorney

Jay C. Block, Member

F. Kenneth Eichwald, Member

DRAFT