

BASELINE DRAFT

**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 1.
GENERAL.**

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

1.2. Statutory Authority. This ordinance is promulgated pursuant to the police powers of Sandoval County and to protect County residents from potential and foreseeable nuisances (moved from Section 1.3). 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. This Ordinance constitutes an exercise of the County's independent and separate but related police, zoning, planning and public nuisance powers for the health, safety and general welfare of the County and applies to all areas within the exterior boundaries of the County that lie outside of (1) the incorporated boundaries of a municipality; (2) any tribal trust lands owned by the Pueblo of Laguna, the Pueblo of Sandia, the Pueblo of Santa Ana, the Pueblo of San Felipe, the Pueblo of Cochiti, the Pueblo of Santa Domingo, the Pueblo of Zia, the Pueblo of Jemez, the Navajo Nation and the Jicarilla Apache Nation; (3) lands owned by the State of New Mexico; and (4) lands owned by the United States, including, but not limited to, lands that are managed by the Forest Service and the Bureau of Land Management. Additionally, this Ordinance does not apply to the construction and operation of oil or gas facilities where the mineral right(s) associated with such facilities are owned partially or in their entirety by the United States government, the State of New Mexico, or a tribe or pueblo.

1.3. Conflicts. 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 does not replace, alter or 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. This list includes, but is not limited to:

- (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. §§ 11001 et 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) The Clean Water Act 33 U.S.C.A §1251 et seq.; and
- (Q) The Occupational Safety and Health Act, 1970, U.S.C.A. 651 et seq.
- (R) The New Mexico Night Sky Protection Act, N.M.S.A. 1978, 74-12-1 through 74-12-11.

ARTICLE 2.
DEFINITIONS.

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 3.
ZONING ORDINANCE AMENDMENT.

3.1. Amending Comprehensive Zoning Ordinance. 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 in AREA A, and as a Conditional Use in within Section 9 (1). RRA – Rural Residential Agricultural District in AREA B, according to the adopted OIL AND GAS MAP (See APPENDIX “A”). The boundaries of this map are designated based on population, geography, and geology.. ~~AND CONDITIONAL USE IN COMMUNITY DISTRICTS: CD-AL, CD-RRE Units 7,8,9 and 22, CD-LC, CD-JV, CD-DT, CD-WP, CD-LP, CD-IASF AND OVERLAY ZONES DOZ-LP, DOZ-125, DOZ-WP, DOZ-LC, DOZ-CORR; and to remove this use from Section 10. SU – Special Use District. FOR A CONDITIONAL USE PERMIT TO BE ISSUED THE PLANNING AND ZONING COMMISSION SHALL ENSURE THAT THE CRITERIA OUTLINED IN THIS ORDINANCE IS THE CRITERIA CONSIDERED WHEN CERTIFYING THAT THE PERMIT IS BEING ISSUED IN CONFORMANCE WITH THE REQUIREMENTS OF THIS ORDINANCE .~~

ARTICLE 4.
RULES OF INTERPRETATION.

A4.1. Rules of Interpretation.

- (1a) Words, phrases, and terms defined in this Ordinance shall be given the meanings set forth below. Words, phrases, and terms not defined in this Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning.
- (2b) The text shall control captions, titles, and maps.
- (3c) The word "shall" is mandatory and not permissive; the word "may" is permissive and not mandatory.
- (4d) Words used in the singular include the plural; words used in the plural include the singular.
- (5e) Words used in the present tense include the future tense; words used in the future tense include the present tense.
- (6f) Within this Ordinance, sections prefaced "purpose" and "findings" may be included. Each purpose statement is intended as an official statement of legislative purpose or findings. The "purpose" and "findings" statements are legislatively adopted, together with the formal text of the Ordinance. They are intended as a legal guide to the administration and interpretation of the Ordinance and shall be treated in the same manner as other aspects of legislative history.
- (7g) In their interpretation and application, the provisions of this Ordinance are considered minimal in nature.
- (8h) In computing any period of time prescribed or allowed by this Ordinance, the New Mexico Rules of Civil Procedure methodology shall apply.

ARTICLE 5.

PERMIT PERMISSIVE USE REVIEW.

5.1. The County hereby establishes a Permissive Use Permit review procedure for applications for oil and gas exploration and production, and the structures and facilities associated with that use. Approval of ~~a request for a Permit for~~ Permissive oil and/or gas facilities shall be granted by the Director upon satisfactory provision by the applicant of all the requirements established in this Ordinance as stated in ARTICLE 6 5.

5.2. Each ~~permit~~ Approval shall authorize the drilling of only one (1) well as identified by its API well number. For the purposes of this Ordinance, a “well” is defined as a boring into the earth that is designed to bring petroleum hydrocarbons to the surface.

5.3 When an Approval ~~permit~~ has been issued for the drilling of a well, such Approval ~~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.

5.4 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 AREA A of the County and jurisdiction of this chapter without Approval of a Permissive Use Review Packet ~~a well drilling permit~~.

ARTICLE 6.

PERMIT APPLICATION PERMISSIVE USE REVIEW PACKET. 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 in AREA A as shown in the adopted OIL AND GAS MAP (see APPENDIX “A”), an operator is required to provide the County a Permissive Use Review Packet containing the following information:

6.1 Applicant Information. The name and contact information of (i) operator and any contractors known as of the date of the Application and (ii) property owner(s) and (iii) lease owner(s) and mineral rights owner(s). The County shall be notified if any changes to the applicant information occurs. For the purposes of this Ordinance, “applicant” is defined as surface land owner, mineral rights owner, and/or operator who applies for a Permit.

6.2. An approved NMOCD C-101 and C-102 APD (Application for Permit to Drill) for exploration activities. An approved NMOCD Oil and Gas Form C-104 (Request for Allowable and Authorization to Transport) from the NMOCD shall be submitted to the County prior to commencement of production activities.

6.3. Scope of Operations. A brief description of the scope of operations contemplated by the operator, including the estimated depth of each proposed well and the estimated commencement date of the operations.

6.4. 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.

6.5. Property Details. The legal property description and a map or plat depicting (i) the location of the proposed well and/or facility equipment, (ii) occupied dwellings, schools, churches, hospitals, cultural resources as verified by the State Historic Preservation Office (SHPO), or cemeteries within one thousand (1,000) feet for a single well, and one thousand (1,000) feet of each well, (iii) fresh water supply wells and subsurface fresh water storage reservoirs within one thousand (1,000) feet of the proposed well(s). One hundred fifty (150) feet distance of the proposed well from any public roads.

6.6. Noise Control Plan. Estimate the noise levels from expected operations requiring notice, which shall not exceed sixty (60) decibels as measured from a distance of seven hundred fifty (750) feet from the well or associated operations, including noise from traffic, and describe the manner in which operator intends to limit the noise levels associated with such operations below that threshold. Noise levels may exceed sixty (60) decibels, up to eighty (80) decibels, for a period of time not to exceed thirty (30) calendar days for each calendar year.

6.7. Road Plan. The applicant shall submit an Oil and Gas road route plan that identifies adequate roads for oil and gas related truck traffic for exploration and production. The Planning and Zoning Division Director or designee shall convey the Road Plan to the Public Works Department Director or designee for review, and may revise as required. The Public Works Department Director or designee may require modification of affected County roads consistent with County Standards and Regulations prior to utilization by the Applicant. The Public Works Department Director or designee shall issue a determination to accept or deny the Road Plan within 30 days to the Planning and Zoning Division Director. The applicant may file for a Variance on the determination of the Public Works Director or designee to the Planning and Zoning Commission.

In the event that the Public Works Department Director or designee does not provide a determination on the submitted Road Plan to the applicant within 30 days, via electronic email and/or certified mail/return receipt, the Road Plan shall be deemed approved.

6.8. Emergency Response Plan. The applicant shall submit an Emergency Response Plan identifying all fire, police, and emergency response services in the County that are closest to the well site. The plan shall include a description of standard operating procedures, including applicable health, safety and environment protocols, used by the operator in the event of a contingency situation. The Emergency Response Plan shall include a section for fire protection and when the permittee will call emergency responders. The Planning and Zoning Division Director or designee shall convey the Emergency Response Plan to the Fire Department Fire Chief or designee for review, and may revise as needed. The Fire Department Fire Chief or designee shall issue a

determination to accept or deny the Emergency Response Plan within 30 days. The applicant may file for a Variance on the determination of the Fire Department Fire Chief or designee to the Planning and Zoning Commission.

In the event that the Fire Department Fire Chief or designee does not provide a determination on the submitted Emergency Response Plan to the applicant within 30 days, via electronic email and/or certified mail/return receipt, the Emergency Response Plan shall be deemed approved.

6.9. Proof of Bond. Certify the OCD's financial assurance requirements must be satisfied as required under 19.15.5 NMAC.

6.10. SOPA (Surface Owners Protection Act) Certification. The applicant shall certify that it has complied with the requirements of the SOPA as required and enforced by the New Mexico Oil Conservation Division pursuant to NMSA 1978, § 70-12-1 (2007).

6.11. Air Quality Certification. The applicant shall certify that it has complied, and will continue to comply, with the requirements of the Air Quality Control Act as required and enforced by the New Mexico Environment Department's Air Quality Bureau pursuant to NMSA 1978, § 74-2-1.

6.12. Water Protection Certification. The applicant shall certify that it will comply with the requirements of OCD and NMED concerning the protection of water, will provide estimates on how much water is to be used, the type of water to be used, where the water is planned to be sourced, and the applicant shall take reasonable measures necessary to avoid the pollution of surface water, ground water, and the use of non-potable water wherever possible.

The operator will conduct a pre-drill water sample quality test on any public drinking water well within ~~three thousand seven hundred fifty (3,750)~~ five thousand two hundred eighty (5,280) feet of the drill site, and shall conduct quarterly water sample quality tests thereafter for so long as the well is not plugged and abandoned in accordance with NMOCD and NMED requirements. Such test results shall be made available within ten (10) working days following verification of the results by a laboratory licensed in the State of New Mexico for water quality analysis as soon as practicable to the P&Z administrator to the Planning and Zoning Division Director or his designee.

ARTICLE 7.

CONDITIONAL USE PERMIT REVIEW.

7.1. Conditional Use Permit review for oil and gas exploration and production, and the structures and facilities associated with that use, in AREA B as shown in the adopted OIL AND GAS MAP (see APPENDIX "A") shall be conducted according to Conditional Use Permit review procedures as established in Section 17, Conditional Uses, Sandoval County Comprehensive Zoning Ordinance. For a conditional use permit to be issued, the Planning and Zoning Commission shall ensure that the criteria outlined in this

Ordinance is the criteria considered when certifying that the Conditional Use Permit is being issued in conformance with the requirements of this Ordinance .

ARTICLE 7 8.

DRILLING GENERAL REQUIREMENTS.

78.1. Light Direction. To the extent practicable, site lighting shall be directed downward and internally to the pad to avoid glare on buildings within seven hundred fifty (750) feet of the drill site.

78.2. 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.

78.3. Setback Requirements. No person shall drill or deepen an oil and gas well within one thousand (1000) feet of occupied dwellings, schools, churches, cultural resources as verified by the New Mexico State Historic Preservation Office (SHPO), or cemeteries outside an incorporated municipality in the County without the written consent of the owner of such occupied dwellings, businesses, schools or churches.

78.4. 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 ARTICLE 7, 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.

78.5. Best Practices. Operator shall conduct its operations consistent with best practices of the oil and gas industry as defined by the American Petroleum Institute (API) Overview of Industry Guidance and Best Practices and comply with all applicable federal and state requirements.

78.6. Trash and Debris. Operator shall maintain all locations and well sites upon which operations are currently taking place or have taken place to ensure the removal of all litter, trash, and other waste as reasonably practicable.

78.7. Water Protection. Operator shall utilize best practices to ensure that surface water, subsurface water, and groundwater are protected during operations and comply with all applicable state and federal regulations relating thereto. Operator will utilize best practices to assure efficient use of water.

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

ARTICLE 89.
INSURANCE REQUIREMENTS.

89.1. 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 as soon as reasonably practicable to reinstate the insurance policy or policies, and notify the County of said corrective action. The County, its officials, employees, agents and officers shall be endorsed as an “additional insured” on the required policies. 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. 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.

89.2. 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, fire, independent contractors’ protective liability and personal injury. This coverage shall be a minimum combined single limit of \$5,000,00.00 per occurrence for bodily injury and property damage.

ARTICLE 810.
VARIANCES.

810.1. 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.

810.2. 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.

810.3. Criteria. Granting of the variance shall not be detrimental to the public health, safety, or welfare or injurious to the County’s interests. 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 911.
PROCEDURES AND FEES.

911.1. Review of Permit application. The Planning and Zoning Division Director or designee shall review the Permit application for completeness and THE COUNTY ATTORNEY'S OFFICE SHALL CERTIFY THAT THE APPROVAL OF AN APPLICATION BY THE PLANNING AND ZONING DIRECTOR IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS ORDINANCE. The review of the application shall be completed by the Planning and Zoning Division Director or designee AND CERTIFIED BY THE COUNTY ATTORNEY within 10 working days. In the event that the Planning and Zoning Division Director or designee determines that the Permit application is complete AND THE REVIEW IS CERTIFIED BY THE COUNTY ATTORNEY, the Director or designee shall issue a Permit Approval to the applicant within the 10 working day period.

In the event that the Planning and Zoning Division Director or designee determines that the Permit Application is incomplete AND THE COUNTY ATTORNEY CONCURS, the Director or designee will notify the applicant within 10 working days of receipt of the Permit Application and provide information regarding the Permit Application's insufficient information. In this event, should the Applicant pursue Permit Application approval, the Applicant shall resubmit the Permit Application to include material and information to resolve the insufficiency within 10 working days. The Planning and Zoning Division Director or designee shall have an additional 10 working days to review the Permit Application for completeness.

911.2. Fee. For any new well drilled by operator in the County, the applicant will pay to the County a fee of \$250.00 per well with such payment to be included with the application provided for such new drilling operation. In the event that the applicant is required to provide additional information to resolve Permit application insufficiencies, no additional fees shall be required.

911.3. Appeal. Anyone aggrieved by a decision of the Planning and Zoning Division Director or designee THAT HAS BEEN CERTIFIED BY THE COUNTY ATTORNEY may appeal such decision to the Planning and Zoning Commission. A decision of the Planning and Zoning Commission may be appealed to the Board of County Commissioners. The Appellant is responsible for demonstrating Legal Standing to file an Appeal as determined by the County Attorney. Such appeal must set forth specifically wherein it is claimed there was an error or where the decision was not supported by evidence in the matter.

911.4. Notification. All government and Native American Nation/Pueblo agencies within three (3) miles of the subject site are notified by the County of any request for Oil and Gas Facilities as regulated by this Ordinance. Municipalities within five (5) miles of the subject site, with a population of over fifty thousand (50,000), are also notified by the County.

Government and Native American Nation/Pueblo agencies shall have thirty (30) days from their receipt of this notice to review and return comments regarding a request for development of oil and gas facilities as regulated by this Ordinance.

ARTICLE 1012.
ENFORCEMENT

4012.1. Non-Compliance. In the event of failure by the operator to comply with this Ordinance, the Planning and Zoning Division Director or designee shall issue a written notice to operator stating a time within forty-five (45) days to comply with the notice.

4012.2. Violations. If any permittee 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 Planning and Zoning Division Director or designee shall issue a written citation to such person describing the violation and corrective actions required. When a violation of the Sandoval County Oil and Gas Ordinance results in a significant safety or environmental hazard, the owner or controller, will be sent a Cease and Desist Letter, giving the permittee thirty (30) days in which to set forth reasonable abatement measures. The permittee must immediately cease all nuisance behavior. Failing to do so may result in the permittee receiving a summons for violating the Sandoval County Oil and Gas Ordinance. The violation citation may be issued to the permittee 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 Planning and Zoning Division Director or designee. 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 permittee or violator if possible, or may be mailed to the alleged permittee or violator posted upon the property. Any of the previously listed forms of notice shall constitute sufficient service of notice under the law.

Any citation issued for violation of this Ordinance shall state the name of the alleged permittee or 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."

The fine for violating any provision of this ordinance shall be in compliance with State regulations and not exceed the maximum legally allowable. The fine shall be payable to the County. The fine may be waived in the sole discretion of the County Commission if the alleged permittee or violator commences and completes satisfactory actions to remediate the alleged violation.

ARTICLE 11.3.
SEVERABILITY, EFFECTIVE DATE.

11.3.1. 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.

11.3.2. EFFECTIVE DATE.

As necessary to protect the public health and safety, this Ordinance proposed for adoption shall take effect 30 days upon approval by the Sandoval County Board of County Commissioners.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SANDOVAL COUNTY

Eileen Garbagni, County Clerk

David J. Heil, Chair

F. Kenneth Eichwald, Vice Chair

APPROVED AS TO FORM:

Jay C. Block, Member

Robin Hammer, County Attorney

Don G. Chapman, Member

James F. Holden-Rhodes, Member