

PAYETTE COUNTY, IDAHO
ORDINANCE NO. 2013-02

AN ORDINANCE OF PAYETTE COUNTY, IDAHO, ADOPTING A NEW CHAPTER 20 IN TITLE 8 OF THE PAYETTE COUNTY CODE ENTITLED "OIL & GAS DRILLING"; PROVIDING FOR A SEVERABILITY CLAUSE; ESTABLISHING A REPEALER CLAUSE; ESTABLISHING A PENALTY; ALLOWING FOR PUBLICATION IN SUMMARY FORM; PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

BE IT ORDAINED BY THE PAYETTE COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:

SECTION 1. Adoption of New Chapter 20 to Title 8, Zoning.

The Payette County Code of Ordinances is hereby amended to add the following new Chapter 20 under Title 8, Zoning:

Chapter 20
OIL AND GAS DRILLING

- 8-20-1. Purpose
- 8-20-2. Definitions
- 8-20-3. Zoning Classification
- 8-20-4. Permit Requirement
- 8-20-5. Oil and Gas Well Permit Application
- 8-20-6. Issuance of Permit
- 8-20-7. Site Design and Installation
- 8-20-8. Water Quality Testing

8-20-1. Purpose.

The purpose of this ordinance is to provide, through zoning provisions, for the reasonable development of land for Oil and Gas drilling while providing adequate health, safety and general welfare protections of the residents of Payette County. Oil and Gas exploration, drilling and extraction operations involve activities that are economically important and will impact Payette County. Accordingly, it is necessary and appropriate to adopt reasonable requirements for Oil and Gas resource development so that these resources can be obtained in a manner that is economically remunerative, and that minimizes the potential impact on the residents of Payette County.

Local governments are preempted from regulating the same features of Oil and Gas Well operations or accomplishing the same purposes regulated by the State under Idaho Statute 47-317. Local zoning can regulate surface land use as authorized under the Local Land Use Planning Act (I.C. 67-65).

8-20-2. Definitions.

For the Purposes of this Chapter, all terms used that are defined in the IDAPA regulations and are not defined in this Chapter are defined as provided in the IDAPA regulations as of the effective date of this Chapter. The following definitions shall apply unless the context clearly indicates or requires a different meaning.

Administrative: A regulatory review and/or action performed by an employee or contractor of Payette County and not deemed a legislative or quasi-judicial action.

Applicant: Any person, owner, operator, partnership, company, corporation and its subcontractors and agents who has an interest in real estate for the purpose of exploring or drilling for, producing, or transporting Oil or Gas.

Department: The Idaho Department of Lands.

Development: Any work which actively promotes bringing in production.

Field: The general area underlaid by one (1) or more pools.

Gas: Any petroleum hydrocarbon existing in the gaseous phase.

Geophysical or Seismic Operations: Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth which may contain oil or gas and inclusive of but not limited to the preliminary line survey, the acquisition of necessary permit, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis.

Oil and Crude Oil: Petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and are not the result of gas condensation before or after it leaves the reservoir.

Oil and Gas: Oil or gas or both.

Oil and Gas Well: A hole drilled into the earth for the purpose of exploring for or extracting oil, gas or other hydrocarbon substances.

Oil and Gas Well Site: A defined area of surface operations surrounding a proposed or existing oil and gas well or wells where an operator has disturbed or plans to disturb the

land surface in order to locate an oil and gas well, and accessory structures and equipment necessary for drilling, completion, recompletion, work over, development and production activities.

Owner: The person who has the right to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom, either for himself or for himself and others.

Person: Any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders.

Pool: An underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool.

Producer: The owner of a well or wells capable of producing oil or gas or both.

Reservoir: A subsurface volume of porous and permeable rock in which oil or gas has accumulated.

Roadway: Any street, avenue, boulevard, road land, parkway, place, viaduct, easement for access, or other way which is an existing state, county, or municipal roadway; or a street or way shown in a plat heretofore approved pursuant to law or approved by official action; or a street or way in a plat duly filed and recorded within the right-of-way boundaries whether improved or unimproved and may be comprised of pavement, shoulder, curbs, gutters, sidewalks, parking areas, and lawns.

- A. "Arterial Route" – A general term including expressways, major and minor arterial streets; and interstate, state or county highways having regional continuity
- B. "Collector Street" – A street that provides for traffic movement within neighborhoods of the County and between major streets and local streets and for direct access to abutting property.
- C. "Local Street" – A street that provides direct access to residential, commercial, industrial, or other abutting land for local traffic movements and connects to collector and/or arterial streets.
 - 1. "Marginal Access Street" – A minor street parallel and adjacent to an arterial route and intercepts local streets and controls access to an arterial route.
 - 2. "Cul-de-sac Street" – A short local street having one end permanently terminated in a vehicular turnaround.

3. "Loop Street" – A minor street with both terminal points on the same street of origin.
4. "Alley" – A public service way used to provide secondary vehicular access to properties otherwise abutting upon a street.

Road Repair Agreement: A written agreement between the owner/operator and the local highway jurisdiction obligating the operator to repair damage, excluding ordinary wear and tear, if any, to public streets, including but not limited to bridges, caused by the operator or its employees, agents, contractors, subcontractors or representatives in the performance of drilling or production of any wells authorized by the city or county.

Well: An oil and gas well or an injection well, including but not limited to directional drilling wells (for example, any well hole drilled into the ground).

8-20-3. Zoning Classifications.

Subject to the provisions of this ordinance, an oil or gas well site shall be considered a permitted use within any Zoning District (s), subject to the standards listed herein.

8-20-4. Permit Requirements.

- A. No oil or gas well site, or an addition to an existing oil or gas well site, shall be constructed or located within Payette County unless an Oil or Gas Well Permit subject to the provisions under this ordinance has been issued by the County to the applicant approving the construction or preparation of the site for oil or gas development.
- B. Each application shall be submitted with the fee established pursuant to resolution of the County as adopted. Such fee shall be reasonably related to the cost of administering this Chapter of the Payette County Code.
- C. Any modification to an existing and/or permitted oil or gas well site that materially alters the size, location, number of wells or accessory equipment or structures, shall require a modification of the permit under this ordinance. Like-kind replacements shall not require a permit modification.
- D. Wells that were permitted and constructed prior to the adoption of this ordinance shall not be required to meet the requirements of this ordinance. Any modification to an existing or permitted oil or gas well site that occurs after the effective date of this ordinance and materially alters the size, type, location, number of wells and other accessory equipment or structures, shall require compliance with this ordinance.

- E. Upon receiving notice from the Department that an application has been submitted, the County will publish a summary of the proposal in the official newspaper or paper of general circulation within the jurisdiction that an application for a new oil and gas well has been filed with the County Planning & Zoning Department. The notice is for informational purposes only and will not solicit any public comments on the application.
- F. An oil or gas well permit shall not be required for exploration for oil or gas. Exploration of oil and gas means geologic or geophysical activities, including, but not limited to surveying and seismic exploration, related to the search for oil, gas, or other sub-surface hydrocarbons.
- G. If an applicant does not conduct said business for a period of two (2) years, the Oil and Gas Well Permit shall be null and void. Permits issued under this ordinance shall not be transferable to any other applicant, except by a majority vote of the Board of County Commissioners, and the filing of an application by the applicant to whom such license is, or may be, transferred or assigned.

8-20-5. Oil and Gas Well Permit Application.

The applicant shall provide to the County at the time of permit application:

- A. A narrative describing an overview of the project including the number of acres to be disturbed for development, the number of wells to be drilled including Department permit number(s) for all wells, if available, at the time of submittal and provided when issued later, and the location, number and description of equipment and structures to the extent known.
- B. The address of the oil or gas well site and a legal description of the parcel as determined by the County and information needed to gain access to the well site in the event of an emergency.
- C. The contact information of the individual or individuals responsible for the operations and activities at the oil or gas well site shall be provided to the County and all applicable Emergency Responders as determined by the County. Such information shall include a phone number where such individual or individuals can be contacted twenty-four (24) hours per day, three-hundred sixty-five (365) days a year. The responsible individual or individuals shall have immediate access to a current list of all chemicals and hazardous materials on site. Annually, or upon any change of relevant circumstances, the applicant shall update such information and provide it to the County and all applicable Emergency Responders as determined by the County.
- D. A scaled site plan of the oil or gas well site showing the drilling pad, planned

access roads, the approximate location of derricks, drilling rigs, equipment and structures, and all permanent improvements to the site and any post construction surface disturbance in relation to natural resources. Included in this map shall be an area within the development site for vehicles to locate while gaining access to the oil or gas well site.

E. A narrative and map describing the planned access routes to the well sites on public roads including the transportation and delivery of equipment, machinery, water, chemicals, and other materials used in the siting, drilling, construction, maintenance, and operation of the oil or gas well site.

F. The applicant will make the operation's Spill Prevention, Control, and Countermeasures (SPCC) plan available to the County and all Emergency Responders at least twenty-one (21) days prior to drilling of an oil or gas well and notify the County of any changes to the plan thereafter.

G. An appropriate site orientation for all applicable Emergency Responders as determined by the County. The cost and expense of the orientation shall be the sole responsibility of the applicant. If multiple wells/well sites are in the same area (covered by the same emergency response agencies), evidence from the appropriate emergency response agencies that a site orientation was offered in the last 12 months shall be accepted.

H. A narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts on public health, public safety, public order or which prevent harm to public infrastructure or degradation of the value, use, and enjoyment of private property shall be provided to the County.

I. Indemnification. Each County Oil and Gas Well Permit issued by the County shall include the following: "Operator does hereby expressly release and discharge all claims, demands, actions, judgments, and executions which it ever had, now has or may have, or claim to have, against the County and/or its department, its agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the actions or inactions of the Operator or its agents, or caused by or arising out of, that sequence of events which occur from the Operator's or its agents' actions or inactions. The Operator shall fully defend, protect, indemnify, and hold harmless the County and/or its departments, agents, officers, servants, successors, assigns, sponsors, or volunteers, or employees from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees and expenses incurred in the defense of the County and or its departments, its agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, including, without limitations, personal injuries and death in connection therewith which

may be made or asserted by Operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the Operator under any permit, and the Operator agrees to indemnify and hold harmless the County and/or its departments, its agents, officers, servants, successors, assigns, sponsors, volunteers, or employees from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the County and/or its departments, its agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of their acts or omissions occurring on the oil or gas well site or in the course and scope of inspecting, permitting, or monitoring the oil or gas well site.”

J. The Applicant shall submit with application a certificate of comprehensive general liability insurance in the amount of no less than three million dollars (3,000,000) per occurrence with an aggregate of five million dollars (5,000,000). The policy shall be written by a company authorized to do business in the State of Idaho. The certificate shall require at least thirty (30) days notice to the County prior to termination of coverage for any reason.

8-20-6. Issuance of Permit.

A. Within five (5) business days after receipt of a permit application, the County will determine whether the application is complete and advise the applicant accordingly.

B. If the application is complete and fulfills the requirements of this ordinance, the County Planning and Zoning Administrator shall issue a permit within twenty-one (21) days following the date the complete application was submitted.

C. If the application is incomplete or does not fulfill the requirements of this Ordinance, the County will notify the applicant of the missing and/or inadequate material and, upon receiving said material, shall issue the permit within twenty-one (21) days following the date the complete application was submitted.

D. As a condition of permit approval, applicant shall provide all permits and plans from the Department and all other appropriate regulatory agencies within twenty-one (21) days of receipt of such permits and plans.

E. If temporary housing for well site workers is proposed on the well site, a plan showing the number and location of the units shall be provided to the County. Temporary housing plans shall be in compliance with all applicable County regulations.

8-20-7. Site Design and Installation.

A. Access.

1. Vehicular access to a natural gas well, oil well or drilling site solely via a local street is discouraged unless it can be proven that the only viable vehicular access to the well site is via the local route. The use of collector streets is preferred.
2. Payette County Roadway Standards and Development Procedures pertaining to minimum traffic sight distances for all access points shall be adhered to.
3. Access directly to State roads from a well site may require an Idaho Transportation Department (ITD) Approach Permit. Prior to initiating any work at a drill site, the County shall be provided a copy of any required Approach Permit.
4. Access directly to County local streets shall require a Payette County Road Development, Replacement or Repair Agreement prior to initiating any work at a well site. Operator shall comply with any generally applicable bonding and permitting requirements for County roads that are to be used by vehicles for site construction, drilling activities and site operations.

B. Height.

1. There shall be an exception to the height restrictions contained in this section for the temporary placement of drilling rigs, drying tanks, pad drilling and other accessory uses necessary for the actual drilling or re-drilling of an oil or gas well. The duration of such exemption shall not exceed the actual time period of drilling or re-drilling of an oil or gas well or pad drilling.
2. If applicable, application will meet standards as defined in Chapter 10 of the Payette County Code, Airport Hazard Zoning Ordinance.

C. Setbacks/Location.

1. Setback distances shall be a minimum of 200 feet from the residence of the mineral interest owner and a minimum of 200 feet from the property line, unless stated otherwise in a written agreement signed by all affected parties, including adjacent landowners affected by the reduction of the setback.
2. Recognizing that the specific location of equipment and facilities is an integral part of the oil and gas development, and as part of the planning

process, operator shall strive to consider the location of its temporary and permanent operations, where prudent and possible, so as to minimize interference with Payette County residents' enjoyment of their property and future County development activities as authorized by the Payette County applicable ordinances.

3. Exception from the standards established in this subsection may be granted by the County upon good cause by the operator that it is not feasible to meet the setback requirements from surface tract property lines and that adequate safeguards have or will be provided to justify the exception.

D. Screening and Fencing.

1. Security fencing may be required when hazardous materials are stored on site for a period in excess of fourteen (14) days.

2. The County may use its discretion to determine whether fencing requirements shall be enforced for well heads, storage tanks, and other mechanical and production equipment and structures on the oil or gas well site.

3. Security fencing shall be at least six (6) feet in height, equipped with lockable gates at every access point and have an opening not less than twelve (12) feet wide. Additional lockable gates used to access oil and gas well sites by foot may be allowed, as necessary.

4. Warning signs shall be placed on the oil or gas well site, providing notice of the potential dangers and the contact information in case of an emergency.

5. During construction of oil or gas well sites, the natural surroundings should be considered and attempts made to preserve existing trees and other native vegetation. Existing trees and respective root systems should not be disturbed whenever possible. Re-forestation/re-vegetation of the well site will be provided by the owner/operator as required by rules governing Oil and Gas Conservation.

6. Lighting at the oil or gas well site either temporary or permanent shall be directed downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and adjacent properties.

7. Noise: The County recognizes that oil and gas development is accompanied by inherent noise. However, the operator shall consider, to the extent possible, mitigation of noise resulting from the oil and gas well

development.

8. Dust Control: Operator shall control fugitive dust arising from operations. Operator shall dust proof work area by sprinkling with water where necessary.

9. Weed/Debris Control: The site shall be kept in a clean condition, free from weeds, debris and rubbish of every character. The well site should remain vegetation free.

8-20-8. Water Quality Testing.

As a condition of permit approval, applicant must provide to County, prior to any drilling activity, documentation of baseline water testing on a minimum of two (2) domestic wells, down gradient, or up gradient if two (2) down gradient wells do not exist, for the protection of public health and safety. The two (2) wells shall be located within a fixed radius of one quarter (1/4) mile of the well site. If only one (1) domestic well is found within a fixed radius of one quarter (1/4) mile of the well site, it shall be the only domestic well required for test. Applicant shall send written notification to the County and all landowners, including municipalities and government agencies, within one quarter (1/4) mile of the drill site advising of the intent to drill and providing the results of the baseline water testing.

Tests shall be completed for all items listed below:

- a. Field parameters
 1. Water temperature
 2. PH
 3. Specific conductivity

- b. Specific conductivity and total dissolved solids

- c. Major ions
 1. Chloride
 2. Fluoride
 3. Sulfate
 4. Nitrate
 5. Silica
 6. Alkalinity
 7. Calcium
 8. Sodium
 9. Potassium
 10. Magnesium

- d. Trace elements
 1. Aluminum

2. Arsenic
3. Barium
4. Boron
5. Iron
6. Manganese
7. Selenium
8. Uranium

e. Radiochemical

1. Gross alpha/gross beta radioactivity, in addition to uranium listed above

f. Organics

1. BTEX (benzene, ethylbenzene, toluene, and xylene)
2. Methane; carbon isotopic composition for samples with sufficient methane

Baseline water testing shall be completed every twenty four (24) months while the well is in production. Copies of baseline water quality test results shall be provided by the applicant free of charge to owners of the wells tested and to the County within thirty (30) days of receipt of the testing results.

Section 2. This ordinance may be published in summary form as permitted by the State of Idaho.

Section 3. This Ordinance shall be in full force and effect immediately upon passage and publication as required by the laws of the State of Idaho.

Section 4. Any ordinances or resolutions which are in conflict with this Ordinance are hereby repealed, but only insofar as the conflict exists.

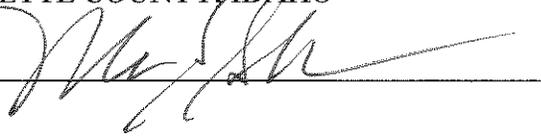
Section 5. If any portion of this Ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the Ordinance shall be applied to effectuate the purposes of this Ordinance.

Section 6. Any violation of this Ordinance shall be a misdemeanor punishable by fine and/or imprisonment up to but not exceeding the maximum penalties set forth in Idaho Code §18-113 and §50-302.

PASSED and APPROVED by the Board of County Commissioners of Payette County, Idaho this 5th day of August, 2013.

BOARD OF COUNTY COMMISSIONERS
PAYETTE COUNTY, IDAHO

By _____



ATTEST: Betty J. Dressen
Betty J. Dressen, County Clerk