

ORDINANCE #24-409

**AN ORDINANCE AMENDING TITLE 8, CHAPTERS 2, 6, AND 13 OF THE
DUCHESNE COUNTY ZONING ORDINANCE REGARDING
OIL & GAS DRILLING AND PRODUCTION FACILITIES**

WHEREAS, Duchesne County issues conditional use permits to allow the proper integration of uses which may be suitable only in specific locations in a zoning district, or only if such uses are designed, arranged, or conducted on the site in a particular manner; and,

WHEREAS, Duchesne County regularly reviews its zoning ordinance to promote effective regulation of land use and effective implementation of the General Plan; and,

WHEREAS, energy development is part of both the cultural and economic “backbone” of Duchesne County; and,

WHEREAS, Duchesne County continues to experience unprecedented energy development and its associated impacts on County roads and public health, safety and welfare; and,

WHEREAS, the Duchesne County Planning Commission conducted a public hearing on April 3, 2024 regarding these proposed amendments to the Zoning Ordinance and recessed the public hearing to June 26, 2024; and

WHEREAS, the Duchesne County Planning Commission re-opened the public hearing on June 26, 2024 and recommended that the County Commissioners approve the ordinance; and

WHEREAS, the Duchesne County Commissioners opened their public hearing to consider the proposed ordinance on July 8, 2024 and accepted the recommendation of the Planning Commission;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS that:

SECTION 1. A definition is amended in Section 8-2-1 of the Duchesne County Code as follows:

~~OIL AND GAS DRILLING FACILITIES/ PRODUCTION~~ **OIL AND GAS DRILLING AND PRODUCTION FACILITIES**: Any operation utilizing equipment which advances a bore hole ~~onto~~ **into** the earth’s substrata for the purpose of discovery, development and/or production of oil or gas, including, but not necessarily limited to, ~~wells, tanks or tank batteries, natural/propane gas storage and distribution, petroleum refining, access roads for ingress and egress, and pipelines~~ **well pads and their associated equipment, compressor stations and water handling facilities.**

SECTION 2. The Table of Uses in Section 8-6-1 of the Duchesne County Code is amended as follows:

8-6-1: TABLE OF USES

	<u>A-10/A-5</u>	<u>A-2 ½</u>	<u>R-1</u>	<u>R -½</u>	<u>C</u>	<u>I</u>
OIL AND GAS DRILLING FACILITIES/ PRODUCTION <u>OIL AND GAS DRILLING AND PRODUCTION FACILITIES</u>	<u>P CU</u>	<u>CU</u>	<u>CU</u>	<u>CU</u>	<u>P-CU</u>	<u>P CU</u>

SECTION 3. Section 8-13-5-4 of the Duchesne County Code is amended to read:

8-13-5-4: OIL AND GAS DRILLING **AND PRODUCTION** FACILITIES/~~PRODUCTION~~

All construction and development ~~for energy~~ **of oil and gas drilling and** production **facilities** ~~purposes~~ on private lands in the county shall be carried out in accordance with the following standards and specifications. In the event of conflict between this section and the statutes, rules, orders and decisions of the Utah Division of Oil, Gas and Mining (DOG M) and Utah Board of Oil, Gas and Mining (BOGM), the statutes, rules, orders and decisions of DOGM/BOGM will control.

- A. Compliance With Applicable Regulations: All oil and gas ~~exploration~~ **drilling** and production **facilities** activities shall comply with applicable federal, state and local regulations.
- B. Surface Disturbance: Surface disturbance, including loss or damage to agricultural lands, irrigation systems, crops or surface improvements due to oil and gas drilling **and production** facilities/~~production~~, including roadways and pipelines, shall be limited to that which is reasonably necessary and practical to extract minerals. Operations shall be designed to allow the ~~drill~~ **oil and gas drilling and production facility** site owner reasonable use of the surface. Nothing in this subsection shall prohibit oil and gas drilling **and production** facilities/~~production~~, including roadways and pipelines, when the associated surface disturbance is addressed by the terms of a surface use agreement or other authorization to proceed allowed by law.
- C. Road Encroachment Permits: An encroachment permit is required from the county public works department for new road approaches to a county road, for excavations within the county's road right of way associated with oil and gas drilling **and production** facilities/~~production~~ or for the placement of pipelines (surface or buried) within the county road right of way.
- D. Painting Well **Oil and Gas Drilling and Production** Facilities: Well **Oil and gas drilling and production** facilities, such as pumps, tanks, separators and appurtenances, shall be painted to blend with the surroundings, with the color choice to be made from the standard BLM color palette with drill site owner concurrence.
- E. Lighting: Well-site **Oil and gas drilling and production facility** lighting shall be oriented and/or installed with shielded fixtures so that light is directed toward the work area in accordance with safety standards but reduces glare on nearby roads or on lands used for residential purposes.
- F. Dust Control: Operators of oil and gas drilling and production facilities shall control dust at each individual well **facility** site and along well **facility** access roads, in accordance with the fugitive dust rule contained in R307-205 **309** of the Utah administrative code.
- G. Sanitary Facilities: Well sites, **Oil and gas drilling and production facilities**, during the drilling and completion phases, shall be served by sanitary facilities for employees and/or contractors, as required by the Utah administrative code ~~R614-2.3~~.
- H. Staking: All surface owners shall be notified of well **oil and gas drilling and production facility** site, pipeline and access road survey staking operations affecting their property prior to such staking taking place.
- I. Noise: Well-site **Oil and gas drilling and production** facility motors shall be powered by electricity when located within six hundred sixty feet (660') of a primary or secondary dwelling, or building open to the public provided that the power company has adequate capacity and availability of easements to supply such power. Engines ~~located at well sites (where the wellhead is within 660 feet of a primary or secondary dwelling or building open to the public)~~ that are not served **powered** by electricity shall be muffled or situated to mitigate noise impacts.
- J. Minimum Setback: In the interest of public health, safety and welfare, no **oil or gas drilling and production facility** wellhead shall be located closer than three hundred feet (300') to the exterior wall of a primary or secondary dwelling as defined in the county tax rolls or to the exterior wall of a building open to the public, unless such minimum setback is waived in writing by the ~~drill~~ **facility** site owner or off-site owner.
- K. Location Of Well Site Equipment: To the extent practical, well-site **oil and gas drilling and production** equipment, such as, but not limited to, tank batteries, flares and heater treaters, shall be consolidated at centralized locations. If centralized equipment is not practical, such equipment shall be located, when possible, on the opposite side of the well **facility** site from the nearest primary or secondary dwelling or building open to the public owned by a ~~drill~~ **facility** site owner or off-site owner, unless such owners waive this requirement in writing.

L. H2S Gas: Operators of well-sites **oil and gas drilling and production facilities** in areas where H2S gas is likely to be encountered shall provide the ~~drill~~ **facility** site owner and off-site owners with H2S gas safety information before drilling commences or upon discovery of H2S gas afterward.

M. **Well-Site Oil and Gas Drilling and Production Facilities** Located Six Hundred Sixty Feet Or Closer To Dwelling Or Public Building: If a well-site **an oil and gas drilling and production facility** (measured from the wellhead **or the closest edge of a compressor station or water handling facility**) will be located six hundred sixty feet (660') or closer to an existing primary or secondary dwelling (as designated in the county tax rolls) or from any building open to the public, the following shall apply:

1. If the ~~drill~~ **oil and gas drilling and production facility** site owner owns all dwellings or buildings open to the public within six hundred sixty feet (660') of the wellhead **or the closest edge of a compressor station or water handling facility**, the surface use agreement or other contractual agreement between the ~~drill~~ site owner and the operator, together with the requirements of this section or a conditional use permit granted under this section, shall govern the location and development of the well **oil and gas drilling and production facility** site.
2. If the ~~drill~~ **oil and gas drilling and production facility** site owner is not the owner of all dwellings or buildings open to the public within six hundred sixty feet (660') of the wellhead, **or closest edge of a compressor station or water handling facility**, the following process pertaining to off-site owners shall be followed:
 - a. The operator shall notify, by certified mail, the off-site owners of the operator's intent to locate the well-site **oil and gas drilling and production facility** a minimum of forty five (45) days prior to submitting an application **applying** for a permit to drill (APD) to DOGM and offer to discuss the well-site **oil and gas drilling and production facility** location and mitigation measures with the off-site owners;
 - b. The operator shall consult in good faith with the off-site owners regarding the location of the well-site **oil and gas drilling and production facility** and reasonable actions to mitigate impacts to the off-site owners. Examples of impacts that may need to be mitigated include, but are not limited to, the following:
 1. Noise.
 2. Lighting.
 3. Dust.
 4. Site security.
 5. Emergency notification procedures.
 6. Location of roads, pipelines, and production equipment.
 - c. If the **all** off-site owners **does do** not respond to the operator within fifteen (15) days of the date when the notice above was mailed, the operator may proceed with filing an application for permit to drill (APD) for the proposed well-site **oil and gas drilling and production facility** location.
 - d. If the off-site owners **does do** respond, the operator or designee shall notify the county of the results of the consultation and whether an agreement regarding mitigation has been reached. If an agreement is reached, the operator or designee may proceed to file the application for a permit for drill (APD). If an agreement is not reached, the operator or designee and off-site owners are encouraged to mediate their differences.

N. **3. Conditional Use Permit Required: Notwithstanding the dimension of the oil and gas drilling and production facility setback; in** In the A-2.5, R-1, R-1/2 zones **all zoning districts**, the following additional requirements shall apply:

- 1.** ~~a.~~ The operator **of a proposed oil and gas drilling and production facility** shall apply for an administrative conditional use permit that addresses the standards and mitigation measures outlined above.
 - 2.** ~~b.~~ Notwithstanding the requirements of sections 8-13-2 and 8-13-3 of this chapter, the zoning administrator is given the authority to grant or deny conditional use permits for oil and gas drilling **and production** facilities/~~production~~ in the ~~A-2.5, R-1, and R-1/2 zones~~ **all zoning districts**. If an operator's conditional use permit application complies with the provisions of this chapter the administrator shall approve the conditional use permit. If an operator's conditional use permit application does not comply with the provisions of this chapter, the administrator may deny the conditional use permit or approve the conditional use permit ~~providing additional~~ **with** conditions **designed** to reasonably address the noncompliance. If the conditional use permit does not comply with the provisions of this chapter due to a conflict with the statutes, rules, orders and decisions of the DOGM/BOGM, the administrator shall approve the permit. Such administrative decisions may be made after seven (7) days' mailed notice to property owners within three hundred feet (300') of the boundaries of the ~~drill~~ **oil and gas drilling and production facility** site owner's property. Decisions of the zoning administrator made under this section may be appealed to the planning commission within ten (10) days of the date the decision is mailed. Decisions of the planning commission may be appealed to the county commissioners as set forth in section 8-16-3 of this title. **An exception to this administrative conditional use permit requirement shall be granted by the Zoning Administrator when an oil or gas well has been spudded, or construction of a compressor station or water handling facility has commenced, prior to the effective date of this ordinance.**
 - O.** ~~4.~~ In addition to the requirements of the conditional use permit, the surface use agreement or other contractual agreement entered into between the ~~drill~~ **oil and gas drilling and production facility** site owner and the operator shall govern the well **oil and gas drilling and production facility** site location and mitigation measures to be implemented. The operator and the ~~drill~~ **oil and gas drilling and production facility** site owner shall not be required to disclose the provisions of any surface use agreement or other contractual agreement to the administrator nor may the conditional use permit application require an operator or ~~drill~~ **oil and gas drilling and production facility** site owner to include such agreement or the provisions of the same.
 - ~~5.~~ The provisions of this chapter shall not apply to any current or pending oil and gas drilling facilities/~~production~~ (already subject to an existing contractual agreement [e.g., surface use agreement, lease] that specifies the location of well pads or associated with an application for a permit to drill filed with the Utah division of oil, gas and mining). The provisions of this chapter apply only to oil and gas drilling facilities/~~production~~ which are applied for and contractual agreements entered into after the effective date hereof.
 - P.** ~~6.~~ Notwithstanding the foregoing, if future development of any primary or secondary dwelling (as designated in the county tax rolls) or any building open to the public, encroaches within six hundred sixty feet (660') of an existing well pad **oil and gas drilling and production facility**, the requirements of this section shall not apply.
 - Q.** ~~7.~~ Nothing in this chapter shall require an operator to compensate a drill site owner or off site owner for any mitigation pursuant to this chapter. However, all surface use agreements or other contractual agreements between the ~~drill~~ **oil and gas drilling and production facility** site owner or off site owner and the operator shall clearly state which party shall cover the costs of implementing the mitigation measures agreed to by the parties.
- R. Road Access and Improvement Requirements: Notwithstanding the dimension of the oil and gas drilling and production facility setback; in all zoning districts, the following shall apply:**

- 1. Encroachment Permit Required: An encroachment permit is required from the Duchesne County Road Department for new road approaches to a County road, for excavations within the County's road right of way associated with oil and gas drilling and production facilities, or for the placement of pipelines (surface or buried) within the County road right of way. Additional permitting may be required by the Utah Department of**

Transportation (UDOT) if access to a state route is proposed. The operator or their designee shall provide UDOT's determination of any permit requirements to the Zoning Administrator and Road Department Supervisor as part of the conditional use permit.

2. Road Improvements: Oil and gas drilling and production facilities within Duchesne County and their associated impact mitigation measures shall follow the process specified in the *Duchesne County Transportation Master Plan (2017) Section 4.6 ENERGY/COMMERCIAL DEVELOPMENT IMPACT AND MITIGATION*. This includes:

- a. Determining the Traffic Impact of the Development: An estimate of the development's traffic impact, including total truck haul traffic, shall be provided by the operator or designee to the Zoning Administrator and Road Department Supervisor. The Road Department Supervisor shall determine if said traffic impact estimate is reasonable or not. If not, the Road Department Supervisor shall provide a written response to the Zoning Administrator and operator or designee.**
- b. Extraordinary Use: If the oil and gas drilling and production facilities development increases traffic by more than 25% of normal operating volume, as determined by the Road Department Supervisor, then it will be deemed "Extraordinary Use" and measures will be taken by the operator or designee to improve insufficient pavement structures prior to the development. If the oil and gas drilling and production facilities development is determined not to be an extraordinary use, no further traffic impact mitigation efforts are required. The Road Department Supervisor determines the Extraordinary Use designation for each oil and gas drilling and production facilities development based on the development's traffic impact estimate.**
- c. Mitigation Measures: If an oil and gas drilling and production facilities development is designated as Extraordinary Use, site specific mitigation measures shall be required of the operator or designee. "Site specific" means any mitigation measure to address oil and gas drilling and production facilities development impacts should be specific to those impacts generated by the land use at the project site or in the project area. Mitigation measures are based on, but not limited to, the following criteria:**
 - 1. The length and width of County infrastructure impacted by the oil and gas drilling and production facilities.**
 - 2. The current condition of the pavement.**
 - 3. The current depth of pavement and underlying base material.**
 - 4. The classification and associated estimated strength of the native soil.**
 - 5. Any existing geometric deficiencies or other concerns which could have a detrimental impact on the safety of the traveling public with the increased traffic from the oil and gas drilling and production facilities.**
 - 6. The projected equivalent single axle loads (ESALs) created by the oil and gas drilling and production facilities.**
 - 7. The required pavement structure to handle the increased traffic loading from the oil and gas drilling and production facilities.**
 - 8. Any deficiencies in drainage infrastructure found likely to be impacted by the oil and gas drilling and production facilities.**

3. The operator or designee shall provide to the Zoning Administrator and Road Department Supervisor a written narrative that includes:

- a. An evaluation of existing conditions,**
 - b. A proposal of improvements to mitigate oil and gas drilling and production facilities impacts, and**
 - c. An engineer's preliminary opinion of probable cost.**
- 4. Improvements must be constructed and approved by the Road Department Supervisor and, where applicable, UDOT, prior to the oil and gas drilling and production facilities development impact occurring. If oil and gas drilling and production facilities development is occurring in an area of the County undergoing intense oil and gas drilling and production facilities development pressure, and other developments and/or operators are compounding the impacts on existing County roads, further coordination, commitments, and improvements from these other developments and/or operators may need to be negotiated by the parties. Decisions made by the Road Department Supervisor may be appealed to the Duchesne County Commissioners within ten (10) calendar days of the decision.**

SECTION 4. Severability.

If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.

SECTION 5. Effective Date. This ordinance shall become effective fifteen (15) days after publication.

DATED this 8th day of July, 2024.

ATTEST:

DUCHESNE COUNTY
BOARD OF COMMISSIONERS

Chelise Jessen
County Clerk/Auditor

Irene Hansen, Chairman

Greg Miles, Member

Tracy Killian, Member