

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 SITES**

WHEREAS, Duchesne County issues conditional use permits to allow the proper integration of land 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 the cultural heritage and is the economic “backbone” of Duchesne County; and,

WHEREAS, Duchesne County continues to experience unprecedented energy development on private lands which has caused damage to County roads, raised public health, safety and welfare concerns and generated a need to reconsider land use standards for siting energy development facilities; 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 recessed the hearing indefinitely pending completion of a road study for the County Transportation Special Service District, with eight (8) weeks given for stakeholder review of said study; and

WHEREAS, the Duchesne County Commissioners, after recessing their hearing on April 15, 2024, re-opened the public hearing to consider the proposed ordinance on July 8, 2024 and found, pursuant to Section 8-3-3 of the zoning ordinance, that the failure of the Planning Commission to make a timely recommendation constitutes a negative recommendation; and

WHEREAS, the Duchesne County Commissioners recessed the public hearing until July 29, 2024 and scheduled work sessions for July 15 and 22, 2024 to seek consensus on the proposed ordinance; and

WHEREAS, the Duchesne County Commissioners recessed the public hearing until September 16, 2024 and conducted work sessions on August 19 and 26, 2024 to seek consensus on the proposed ordinance; and

WHEREAS, the Duchesne County Commissioners recessed the public hearing until October 21, 2024 and conducted work sessions on September 30 and October 7, 2024 to seek consensus on the proposed ordinance; and

WHEREAS, the Duchesne County Commissioners recessed the public hearing until November 18, 2024 to consider amendments proposed by the Utah Petroleum Association.

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

SECTION 1. Definitions in Section 8-2-1 of the Duchesne County Code are amended as follows:

IMPACTED OWNER: The record owner of a primary or secondary dwelling, or building open to the public that is located within six hundred sixty feet (660') of the wellhead of an oil or gas drilling and production site.

~~OFF SITE OWNER:~~ ~~An owner or owners of private surface in the county who owns a primary or secondary dwelling (as defined by the county tax rolls) or a building open to the public located within six hundred sixty feet (660') of the wellhead of a proposed oil or gas well site.~~

~~OIL AND GAS DRILLING FACILITIES/ PRODUCTION~~ **OIL AND GAS DRILLING AND PRODUCTION SITE:** Any operation utilizing equipment which advances a bore hole onto The area of land used for the purpose of advancing a wellbore into the earth's substrata for the purpose of discovery, development and/or production of oil or gas, and all associated surface and sub-surface equipment, 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 casing, tubing, wellhead equipment, production equipment without limitation, pumps, heater treaters, separators, tank batteries, meter houses, and other facilities necessary or convenient for testing, completing and producing oil or gas from a well bore on the site. This definition also includes 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 SITES</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 SITES**
~~FACILITIES/ PRODUCTION~~

All construction and development for ~~energy production purposes~~ **of Oil and Gas Drilling and Production sites** 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 and production activities~~ **Oil and Gas Drilling and Production Sites** 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 sites** ~~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** site owner reasonable use of the surface. Nothing in this subsection shall prohibit **the surface disturbance associated with** oil and gas drilling **and production sites** ~~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 sites** ~~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 Sites** Facilities: Well **Oil and gas drilling and production site equipment**, ~~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 **environmental colors**, with drill site owner concurrence.
- E.** Lighting: Well-site **Oil and gas drilling and production site** 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 **sites** ~~facilities~~ shall control dust at each individual well site and along well access roads, in accordance with the fugitive dust rule contained in ~~R307-205~~ of the Utah administrative code.
- G.** Sanitary Facilities: Well-sites, **Oil and gas drilling and production sites**, 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** site, pipeline and access road survey staking operations affecting their property prior to such staking taking place.
- I.** Noise: Well-site **Motors located on an Oil and gas drilling and production site** ~~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 **within six hundred sixty feet (660') of a primary or secondary**

dwelling or building open to the public 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 site 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 site owner or off-site impacted owner.

K. Location Of Well Site Equipment: To the extent practical, well-site oil and gas drilling and production site 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 reasonably possible, on the opposite side of the well site from the nearest primary or secondary dwelling or building open to the public owned by a drill site owner or off-site impacted owners, unless such owners waive this requirement in writing. For purposes of siting under this section, construction, structural and engineering requirements such as, without limitation, placement of facilities on cut rather than fill shall be considered and given deference.

L. H₂S H₂S Gas: Operators of well-sites oil and gas drilling and production sites in areas where H₂S H₂S gas is likely to be or is actually encountered shall provide the drill facility site owner and off-site owners with H₂S H₂S gas safety information before drilling commences or upon discovery of H₂S H₂S gas afterward notice to those around the site according to the requirements of the Pipeline and Hazardous Materials Safety Administration (PHMSA) prior to drilling when H₂S gas is likely to be encountered, and as soon as reasonably practicable after H₂S gas is actually encountered or as required by the PHMSA.

M. Well Site Oil and Gas Drilling and Production Sites Located Six Hundred Sixty Feet Or Closer To Dwelling Or Public Building located near impacted owners shall comply with the following: If a well site (measured from the wellhead) 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 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 handing facility, the surface use agreement or alternative arrangement approved by the Utah Board of Oil, Gas and Mining, that satisfies the requirements of the Utah Surface Owner Protection Act, other contractual agreement between the drill site owner and the operator, together with the requirements of this section, or including an administrative conditional use permit granted under this section, shall govern the location and development of the well oil and gas drilling and production site.

2. If the ~~drill~~ **oil and gas drilling and production** 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 **impacted** owners shall be followed:
 - a. The operator shall notify, by certified mail, the off-site **impacted** owners of the operator's intent to locate the well-site **oil and gas drilling and production site** 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 site** location and mitigation measures with the off-site **impacted** owners;
 - b. The operator shall consult in good faith with the off-site **any responsive impacted** owners regarding the location of the well-site **oil and gas drilling and production site** and **take** reasonable actions to mitigate impacts to the off-site **impacted** 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 **impacted** owners ~~does~~ **do** not respond to the operator within ~~fifteen (15)~~ **twenty one (21)** 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 site** location.
 - d. If the **an** off-site **impacted** owner does respond **within the twenty one (21) day period**, 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 **impacted** owners are encouraged to mediate their differences, **if reasonably possible**.

N. 3. Administrative Conditional Use Permit Required: Notwithstanding the dimension of the oil and gas drilling and production site 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 site** shall, **at least thirty (30) days prior to spudding or construction,** apply for an administrative conditional use permit, **which shall be considered subject to** ~~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 **administrative conditional use permits for oil and gas drilling and production sites** 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 **mitigate anticipated adverse impacts.** **The administrator may deny a permit only if it is not possible to impose reasonable conditions of approval to mitigate the anticipated impacts.** 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')~~ **six hundred sixty feet (660')** of the boundaries of the ~~drill~~ **oil and gas drilling and production** 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.**
- ~~Q.~~ 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** site owner and the operator **and the surface owner or impacted owner** shall govern the well **oil and gas drilling and production** site location and mitigation measures to be implemented. The **oil and gas drilling and production site** operator and the ~~drill~~ site **or surface** 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** 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 site**, 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 impacted owner,~~ **or any third party** 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~~ site owner, **surface owner** or off-site **impacted** owner and the operator shall clearly state which party shall cover the costs of implementing the mitigation measures agreed to by the parties.

R. Transportation Considerations: Notwithstanding the dimension of the oil and gas drilling and production site setback; in all zoning districts, Oil and Gas Drilling and Production Sites proposed within Duchesne County shall be reviewed for compliance with the Duchesne County Transportation Master Plan, as amended, including the payment of a transportation service fee as set forth in all applicable ordinances, prior to the commencement of spudding or construction.

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 18th day of November, 2024.

ATTEST:

**DUCHESNE COUNTY
BOARD OF COMMISSIONERS**

Chelise Jessen
County Clerk/Auditor

Irene Hansen, Chairman

Greg Miles, Member

Tracy Killian, Member