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SUMMARY - OIL AND GAS MODEL ORDINANCE

The Idaho State Legislature passed HB301, amending Chapter 3, Title 47, Idaho Code, during the 2017 session. It recodifies existing law to provide more transparency and oversight. Changes provide that:

- 1) A County Commissioner holds a seat on the Oil and Gas Conservation Commission, and
- 2) Setbacks were adopted.

The statute delineates **extraction** from **post-extraction** development. Extraction development is basically limited to activities at the well site. Post Extraction development includes all activities and improvements beyond the well site. Local government can develop standards and require permits for both types of oil and gas development as part of an **oil and gas ordinance and a CUP/SUP**.

The oil and gas ordinance will address extraction development activities not covered by the state oil and gas conservation rules. These might include, but are not limited to, emergency management coordination, road management coordination, setbacks, dust control, painting, buffering, etc. Under this ordinance, provided the application is complete, **permits will be issued administratively within a 21-day period, without public comment or a hearing.** Keep in mind the permits are limited to extraction only and the ordinance cannot “prohibit” extraction.

The CUP/SUP ordinance will address post-extraction development activities and include public comment and a hearing, as is required by statute. Activities might include, but are not limited to, the siting and conditioning of collection lines and dehydration facilities, road management coordination, noise, odor, height of structures, etc. In other words, the normal CUP/SUP process applies to all post extraction development permitting, which includes the imposition of conditions and provision of exceptions to the development, provided post-extraction is not “prohibited.”

The local permitting process is not the only process an oil and gas developer is required to undergo. The state Department of Lands will issue the state-drilling permit based on rules adopted by the Oil and Gas Conservation Commission. These rules set the technical and environmental standards for drilling. **The rules are helpful to local government, as they eliminate the necessity to develop standards for drilling. The rules are helpful to local government as they eliminate the necessity to develop these standards as part of an ordinance. Although comprehensive, they do not cover other land use issues important to local jurisdictions. That is why local oil and gas ordinance is important. You can access the rules at** <https://adminrules.idaho.gov/rules/current/20/0702.pdf>

The model ordinance presented to you was drafted by IAC, AIC, IDL and industry representatives. It is a non-binding guideline or template that can be used as a reference for creation of your own county oil and gas ordinance. It is focused on extraction development activities only, as post-extraction development activities would be covered in a CUP/SUP. The model ordinance provides a structural format and targets the more universal and use concerns associated with oil and gas extraction with parenthetical explanations. Certainly it is not inclusive of every issue or item a particular county may want to address.

Please review the model oil and gas ordinance and contact staff with any questions you might have. This is intended to be a useful tool to counties who are anticipating oil and gas development within their jurisdiction.

The following framework should be individualized, and all other possibly relevant factors considered, in order to meet the needs of each local jurisdiction.

NOTE: Sections below shown in [brackets] and *italicized* are intended to provide commentary, background and considerations for the subsequent section of the model ordinance and are not intended for inclusion in any adopted ordinance.

MODEL ZONING ORDINANCE FOR OIL AND GAS OPERATIONS

[Insert Appropriate Local Introduction and Recitals]

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

SECTION 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 [LOCAL JURISDICTION] residents. Oil and Gas exploration, drilling and extraction operations involve activities that are economically important and will impact the [LOCAL JURISDICTION]. 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 resident of the [LOCAL JURISDICTION].

Local governments are preempted from regulating the same features Oil and Gas Well operations or accomplishing the same purposes regulated under Idaho Statute 47-314. Local zoning regulates surface land use as authorized under the Local Land Use Planning Act (I.C. 67-65).

[For any terms in Section 2 that also appear in IDAPA's Oil and Gas rules, the States definition is used so as to prevent any potential conflict in terms or interpretation between state and local rules.]

SECTION 2. Adoption of New Chapter ## to Zoning Ordinance

The [LOCAL JURISDICTION ZONING ORDINANCE] is hereby amended to add the following new Chapter [OR ARTICLE OR PART, AS APPROPRIATE]:

SECTION 3. Definitions.

For the purpose 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 [LOCAL JURISDICTION] 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.

(If a jurisdiction retains the “Local Street” term in their ordinance, ensure it does not conflict with any already codified definitions of the same term.)

Local street: A public street or road designed to provide access to abutting lots and to discourage through traffic.

Oil and Gas: Means oil or gas or both. “Oil and Gas” refers to not only to oil and gas in combination with each other but also generally to oil, gas casinghead gas, casinghead gasoline, gas-distillate or other hydrocarbons, or any combination of combinations thereof, which may be found in or produced from a common source or supply of oil, oil and gas, or gas-distillate.

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

Road Repair Agreement: A written agreement between the applicant and the local highway jurisdiction obligating the applicant to repair damage, excluding ordinary wear and tear, if any, to public streets, including but not limited to bridges, caused by 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).

(I.C. 47-314 (410) (b) states that a local ordinance or standard cannot “actually or operationally prohibit the extraction of oil and gas, subject to reasonable provisions.” As such, not only should any new local ordinance not prohibit or conditionally allow oil and gas operations in particular zones but it is suggested that existing zoning ordinances be reviewed, and, if necessary, amended to comply with the new law.)

Section 4. Zoning Classifications

Subject to the provisions of this ordinance:

A. An oil or gas well site shall be considered a permitted use by right within any Zoning District(s), subject to the standards listed herein.

Section 5. PERMIT REQUIREMENT

(The emphasis on any “administrative” permit in Section 5 is partially driven by the 21-day rule adopted in I.C. 47-314 (410) (b). It is not feasible to require a CUP/SUP application and also comply with the 21-day rule because I.C. 67-6512 (b) has minimum public noticing requirements for these hearings.)

A. No oil or gas well site, or an addition to an existing oil or gas well site, shall be constructed or located within [LOCAL JURISDICTION] unless an administrative zoning permit under this ordinance has been issued by the [LOCAL JURISDICTION]

to the applicant approving the construction or preparation of the site for oil or gas development or construction of natural gas compressor stations or natural gas processing plants.

B. Each application shall be submitted with the fee established pursuant to resolution of the [LOCAL JURISDICTION] as adopted. Such fee shall be reasonable related to the cost of administering this (SECTION OF 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.

(The section below is optional. The local authority is not required to notify property owners. It is included as potential language because even though the Oil and Gas Commission will notify a local jurisdiction that an application has been submitted, they will not notify local or affected property owners.)

E. Upon receiving notice from the Department that an application has been submitted, the local jurisdiction will notify all property owners with _____feet of the affected tax parcel that an application for a new Oil and Gas operation has been filed with the (City, 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 or gas means activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. The activities related to the search for oil and gas include without limitation aerial, geological and geophysical surveys and studies, seismic work, core drilling and the drilling of test wells.

G. If an applicant does not conduct said business for a period of one (1) year, the administrative zoning permit shall be null and void. Permits issued under this ordinance shall not be transferable to any other applicant, except by majority vote of the [LOCAL JURISDICTION], and the filing of an application BY the applicant to whom such license is, or may be, transferred or assigned.

(Section 6 - Under I.C. 47-314, the Department is required to remit, electronically, a copy of all state application materials to the respective local jurisdiction. The intent of this section is to require those application materials of particular interest and import to the land use impacts of an oil and gas operation and not necessarily require duplicative material already being sent to the State.)

Section 6. PERMIT APPLICATION:

The applicant shall provide to the [LOCAL JURISDICTION] at the time of permit application:

1. 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.
2. The address of the oil or gas well site and a legal description of the parcel as determined by the [LOCAL JURISDICTION] and information needed to gain access to the well site in the event of an emergency.
3. The contact information of the individual or individuals responsible for the operation and activities at the oil or gas well site shall be provided to the [LOCAL JURISDICTION] and all applicable Emergency Responders as determined by the [LOCAL JURISDICTION]. 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. Annually, or upon any change of relevant circumstances, the applicant shall update such information and provide it to the [LOCAL JURISDICTION] and all applicable Emergency Responders as determined by [LOCAL JURISDICTION].
4. 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.
5. 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.
6. A statement that the applicant will make the operation's Preparedness, Prevention and Contingency Plan available to the [LOCAL JURISDICTION] and all Emergency Responders at least 30 days prior to drilling of an oil or gas well and at least annually thereafter while drilling activities are taking place at the oil or gas well site.
7. An appropriate site orientation of the Preparedness, Prevention and Contingency Plan for all applicable Emergency Responders as determined by the [LOCAL JURISDICTION]. The cost and expense of the orientation shall be the sole responsibility of the applicant. If multiple wells/well pads are in the same area (covered by the same emergency response agencies), evidence from the appropriate emergency response agencies that a training course was offered in the last 12 month shall be accepted.
8. A narrative describing the environment impacts of the proposed project on the site

and surrounding land and measure proposed to protect or mitigate such impacts shall be provided to the [LOCAL JURISDICTION].

9. The applicant shall submit with application a certificate of comprehensive general liability insurance in the amount of no less than _____ per occurrence with an aggregate of _____ and a company authorized to do business in the state of Idaho shall write the policy. The certificate shall require at least thirty (30) days notice to the county prior to termination of coverage for any reason.

Section 7. ISSUANCE OF PERMIT:

A. Within ____ business days after receipt of a permit application, the [LOCAL JURISDICTION] will determine whether the application is complete and advise the applicant accordingly. (Number of business day must be reasonable.)

B. If the application is complete and fulfills the requirements of this ordinance, the [LOCAL JURISDICTION] shall issue a permit within 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 [LOCAL JURISDICTION] shall return the application to the applicant. After necessary changes have been made [LOCAL JURISDICTION] shall follow Section 7 (B) of this section.

D. As a condition of permit approval, applicant shall provide all permits and plans from the Department and all other appropriate regulatory agencies within 30 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 [LOCAL JURISDICTION]. Temporary housing plans shall be in compliance with all applicable [LOCAL JURISDICTION] regulations.

Section 8. SITE DESIGN AND INSTALLATION

(Section 8 A addresses 1) access and road maintenance permitting during the oil and gas extraction process for state and local roads. A road repair agreement or road management plan, created through the local road jurisdiction (city, county, highway district) will set standards (ex. dirt, dust, debris control and other standards unique to the location), and provide bonding for mitigation of impacts to local roads.)

A. Access.

1. Vehicular access to a natural gas well, oil well or well pad solely via a residential street is prohibited unless it can be proven that the only viable vehicular access to the well site is via the residential route. The use of collector streets is required, unless no viable alternative exists.

2. [LOCAL JURISDICTION] adopted standards 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 [LOCAL JURISDICTION] shall be provided a copy of any required Approach Permit.

4. Access directly to [LOCAL JURISDICTION] local streets shall require a [LOCAL JURISDICTION] Road Repair Agreement prior to initiating any work at well site. Operator shall comply with any generally applicable bonding and permitting requirements for [LOCAL JURISDICTION] 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 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 [title 10](#), "Airport Hazard Zoning", of this code.

(Section 8 c addresses well site setbacks. The Rules Governing Oil and Gas Conservation set minimum well spacing standards. Local jurisdictions may set minimum setback requirements from structures, roads and property lines. The customary industry minimum is 3200' but may be adjusted as seems reasonable.)

C. Setbacks/Location.

1. Except as provided in I.C. 47-319, oil and gas wells, tank batteries and gas processing facilities shall not be constructed within three hundred (300) feet of an existing occupied structure, domestic water well, canal, ditch or the natural or ordinary high-water mark of surface waters or within fifty (50) feet of a highway.

2. Oil and gas wells, tank batteries and gas processing facilities may be constructed less than three hundred (300) feet but more than one hundred (100) feet from an existing occupied structure, domestic water well, canal or ditch if the operator has obtained the express written permission from the owner of the occupied structure, domestic water well, canal, or ditch.

3. 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 [LOCAL JURISDICTION] residents' enjoyment of their property and future [LOCAL JURISDICTION} development activities as authorized by the [LOCAL JURISDICTION] applicable ordinances.

D. Screening and Fencing

1. Security fencing shall not be required at oil or gas well sites during the initial drilling, or redrilling operations, as long as manned 24-hour on-site supervision and security are provided.

2. Upon completion of drilling or redrilling in Residential or Commercial Zones, security fencing, acceptable to the landowner and the operator, shall be installed within 60 days after the completion of the well, at the oil or gas well site to secure well heads, storage tanks, separation facilities, water or liquid impoundment areas, and other mechanical and production equipment and structures on the oil or gas well site.

3. Security fencing shall be at least 6 feet in height equipped with lockable gates at every access point and have openings no less than 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 fencing surrounding the oil or gas well site providing notice of the potential dangers and the contact information in case of an emergency. During drilling and hydraulic fracturing, clearly visible warning signage must be posted on the pad site.

5. In construction of oil or gas well sites, the natural surrounding 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,

D. Lighting.

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.

E. Noise.

The [LOCAL JURISDICTION] recognized that oil and gas development is accompanied by inherent noise. However, the operator shall consider, the extent possible, mitigation of noise resulting from the oil or gas well development.

(The local jurisdiction may already have noise levels already established in ordinance for different zones. If this section is used, it should be consistent with existing ordinance and should provide for an exception to noise levels during drilling operations.)

G. Dust Control

Operator shall control fugitive dust control arising from operations. Operator shall dust proof work area by sprinkling with water or water/calcium chloride mixture where necessary.

H. Work Hours

Site development, other than drilling shall be conducted only between 7:00 a.m. and 7:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday. Truck deliveries of

equipment and materials associated with drilling and well servicing, site preparation and other related work conducted on the site shall be limited to the above same work hour restrictions except in cases of an emergency. The operator may request an exception to this section for good cause shown,

(The local jurisdiction may already have work hours established in ordinance. If this section is used, it should be consistent with existing ordinance and should provide an exception to work hours during drilling operations.)

Section 8. 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 9. Any ordinances or resolutions which are in conflict with the Ordinance are hereby repealed, but only insofar as the conflict exists.

Section 10. If any portion of this Ordinance should be found to be unconstitutional or unenforceable the remained or the Ordinance shall be applied to effectuate the purpose of the Ordinance.

PASSED and APPROVED by the [LOCAL JURISDICTION], Idaho this _____ day of _____, 20__.