

ORDINANCE NO. 1144

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, AMENDING
TITLE OF THE BERTHOUD DEVELOPMENT CODE TO ADD REGULATIONS AND
PROCEDURES FOR DEVELOPMENT AND OPERATION OF OIL AND GAS WELLS AND
STORAGE WITHIN THE TOWN:

WHEREAS, the Town Board for the Town of Berthoud (the "Town") desires to protect and preserve the health, safety and welfare of its citizens through the implementation of an ordinance of the Town of Berthoud; and

WHEREAS, existing land use rules and regulations have been found to be inappropriate, inadequate and ineffective relative to the oil and gas drilling and production within the Town of Berthoud,

WHEREAS, it is the desire of the Town to clearly establish a process and guidelines for development of drilling and storage operations within the Town;

WHEREAS, the Town Board of Trustees desires to add a section to the Berthoud Development Code specifically addressed to such uses and developments

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO THAT THE FOLLOWING CHAPTER 30, SECTION 10, OIL AND GAS DRILLING AND PRODUCTION IS ADOPTED AND FULLY IN FORCE AS A SUPPLEMENT TO ALL EXISTING LAND USE REGULATIONS OF THE TOWN OF BERTHOUD, AND ALL EXISTING REGULATIONS OR ORDINANCES INCONSISTENT HEREWITH ARE HEREBY REPEALED:

CHAPTER 30 – BERTHOUD DEVELOPMENT CODE

SECTION 10 – OIL AND GAS DRILLING AND PRODUCTION

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30-10-101. Purpose.

These regulations are enacted to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the present and future residents of the Town. It is the Town's intent by enacting these regulations to facilitate the development of oil and gas resources within the Town, while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that, under Colorado law, the surface and mineral estates are separate and distinct interests in land and that one (1) may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests, subject to compliance with the provisions of these regulations and any applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources, and in the prevention of waste and protection of the correlative rights of common source owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner, and municipal governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction. These regulations are intended as an exercise of this land use authority.

30-10-102. Definitions.

(a) All terms used in this Section that are defined in the Act or in Commission regulations, and not otherwise defined in this Section, are defined as provided in the Act or in such regulations as of the effective date of this Section. All other words used in this Section are given their usual customary and accepted meaning; and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in the oil and gas industry. When not otherwise clearly indicated by the context of the matter, the following words and phrases used in this Section have the following meanings:

Act means the Oil and Gas Conservation Act of the State.

Commission or *OGCC* means the Oil and Gas Conservation Commission of the State.

Day means a period of twenty-four (24) consecutive hours.

Injection well means any hole drilled into the earth into which fluids are injected for the purposes of secondary recovery, storage or disposal, pursuant to authorizations granted by the Commission.

Inspector means any person designated by the Town or the Town's designee, who shall have the authority to inspect well sites to determine compliance with this Section and other applicable ordinances of the Town.

Oil and gas well means any hole drilled into the earth for the purpose of exploring for or extracting oil, gas or other hydrocarbon substances.

Operating plan means a general description of a well site or a production site identifying purpose, use, typical staffing, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure and any other information related to regular functioning of that facility.

Operator means the person designated by the working interest owners as operator and named in Commission Form 2 or a subsequently filed Commission Form 10.

Owner means a person possessing a mineral interest or a leasehold interest in minerals.

Production site means the area surrounding proposed or existing production pits or other accessory equipment required for oil and gas production, at which may also be located tanks and tank batteries, exclusive of transmission and gathering pipelines.

Reentering means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

Sidetracking means entering the same well head from the surface, but not necessarily following the same well bore, throughout its subsurface extent when operations deviation from such well bore is necessary to reach the objective depth because of an engineering problem.

Twining means the drilling of a well within a radius of fifty (50) feet from an existing well bore when the well cannot be drilled to the objective depth or produced because of an engineering problem, such as a collapsed casing or formation damage.

Use tax means the tax paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the Town.

Well means an oil and gas well or an injection well.

Well head means the equipment attaching the surface equipment to the well bore equipment at the well.

Well site means that area surrounding a proposed or existing well and accessory structures and equipment necessary for drilling, completion, recompletion, work-over, development and production activities.

(b) All terms used herein that are defined in the Act or in Commission rules and regulations and are not otherwise defined in Subsection (a) above shall be defined as provided in the Act or in such rules and regulations.

30-10-103. Requirements and procedures.

(a) Proposed new wells, redrilling certain wells and other specific enhancements.

(1) It shall be unlawful for any person to drill a well that has not been previously permitted under this Section, reactivate a plugged or abandoned well or perform initial installation of accessory equipment or pumping systems (in cases where a well is not being drilled) unless a conditional use permit has first been granted by the Town in accordance with the procedures defined in this Section.

- (2) The granting of such conditional use permit shall not relieve the operator from otherwise complying with all applicable regulatory requirements of the Town, the State and the United States.
- (3) When a conditional use permit has been granted for a well, reentry of such well for purposes of sidetracking, twinning, deepening, recompleting or reworking shall not require a separate conditional use permit.
- (4) The conditional use permit is limited to the current proposed facilities as shown in the approved plan. To the extent the applicant desires, after initial completion of a well, to place additional equipment on a tank battery or wellhead location which was not shown in the approved plan, the applicant must, except in a situation where additional equipment is necessary for a period of fourteen (14) days or less, notify the Town of installation of such additional equipment.
- (5) Within thirty (30) days after completion of operations, the applicant shall provide to the Town "as-built" drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit.

(b) Right of Entry. For the purpose of implementing and enforcing this Section, duly authorized Town personnel or contractors may enter onto the subject property upon notification of the operator, permittee, lessee or other party holding a legal interest in the property. If entry is denied, the Town shall have the authority to discontinue application processing, revoke approved permits and applications, or obtain an order from a court to obtain entry.

(c) Inspection.

- (1) The operator or applicant shall provide the telephone number of a contact person who may be reached twenty-four (24) hours a day, seven (7) days a week, for purposes of being notified of any proposed Town inspection under this Section or in case of emergency. Any permitted oil and gas operations and facilities may be inspected by the Town at any time, to ensure compliance with the requirements of the approved permit, provided that at least one (1) hour's prior notice is given to the contact person at the telephone number supplied by the operator or applicant. Calling the number (or leaving a message on an available answering machine or voice mail service at the number) at least one (1) hour in advance of the proposed inspection shall constitute sufficient prior notice if the contact person does not answer. By accepting the Town's approved conditional use permit, the operator or applicant consents to such inspections. The cost of any Town inspection deemed reasonable and necessary to implement or enforce this Section shall be borne by the operator or applicant.
- (d) Use tax. All operators must conform to applicable provisions of this Code and the Municipal Code relating to taxation.
- (e) Application fee. A nonrefundable fee of one thousand dollars (\$1000.00) shall accompany the application.

30-10-104. Application elements.

An application for a conditional use permit pursuant to this Section shall be filed with the Town Clerk and shall include the following information:

(1) Application requirements, site plan. The site plans for a well site submitted with an application for a use by conditional review shall be submitted on one (1) or more plats or maps, at a scale not less than one (1) inch to fifty (50) feet, showing the following information:

- a. The proposed location of production site facilities or well site facilities associated with the well in the event production is established, if applicable. Future development of the resource shall be considered in the location of the tank battery. Existing tank batteries and transmission and gathering lines within six hundred sixty (660) feet of the well site shall be shown.
- b. The location of layout, including without limitation the position of the drilling equipment and related facilities and structures, if applicable.
- c. True north arrow.
- d. Existing improvements, if any, within a radius of six hundred sixty (660) feet of the proposed well.
- e. Existing utility easements and other rights-of-way of record, if any, within a radius of six hundred sixty (660) feet of the proposed well.
- f. Existing irrigation or drainage ditches within four hundred (400) feet of the well site or production site, if any.
- g. The applicant's drainage and erosion control plans for the well site or production site and the area immediately adjacent to such site, if applicable.
- h. Location of access roads.
- i. Well site or production site and existing lease boundaries.
- j. The names of abutting subdivisions or the names of owners of abutting, unplatted property within four hundred (400) feet of the well site or production site.
- k. The name and address of the operator and the name of the person preparing the site plan or map.

(2) Application requirements, vicinity maps. The vicinity maps for a well site or production site submitted with an application for a use permitted by conditional review shall be submitted on one (1) or more plats or maps showing the following information:

- a. Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a four-hundred (400) foot radius of the proposed well.
- b. Location of existing oil and gas wells as reflected in OGCC records. This information shall be submitted on a map and shall include any and all wells within a one-thousand (1000) foot radius of the proposed location for the well.

- c. Location of drill site. The information to be submitted shall be Commission Form 2 and shall include the Parcel Tax Identification Number.
- (3) Application requirement narrative. In addition to the site plans and the vicinity maps required in Subsection (1) and (2) above, the application shall include the following:
 - a. The operator's and surface owner's names and addresses, copies of any required OGCC Form 2 and designation of agent, if applicable.
 - b. An operating plan.
 - c. A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than OGCC.
 - d. An emergency response plan that is mutually acceptable to the operator and the appropriate fire district that includes a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency, the location of the well and provisions for access by emergency response entities.
 - e. A plan for weed control at the well site.
 - f. A fire protection plan that is mutually acceptable to the operator and the appropriate fire district that includes planned actions for possible emergency events and any other pertinent information. Prior to application to the Town, a proposed fire protection plan and emergency response plan shall be submitted to and reviewed by the fire district.
 - g. Sanitary facilities must comply with Section 602(f) of the OGCC regulations.

30-10-105. Review criteria.

- (a) The Board of Trustees shall approve an application for a use permitted by conditional review for a well site if the application submitted by the applicant conforms to the following requirements:
 - (1) The site plans for a well site application comply with the requirements of 30-10-104(1), above.
 - (2) The vicinity maps for a well site application comply with the requirements of 30-10-104(2), above.
 - (3) The narrative for a well site application complies with the requirements of 30-10-104(3), above.
 - (4) When applicable, compliance with the provisions for geologic hazards, floodplains or floodway required in 30-10-110, below.
 - (5) When applicable, compliance with the provisions for wildlife mitigation procedures required in 30-10-113, below.

(b) The Board of Trustees' decision shall be based upon evidence presented in the application and at a public hearing. Following the conclusion of the public hearing, the Board of Trustees may proceed to render its provisional decision orally on the application, or it may take the matter under advisement until an announced date certain not to exceed twenty-one (21) days, at which time it shall orally render its decision. In the event that an application is granted with conditions, the applicant may, within fourteen (14) days of the Board's decision, request a rehearing to demonstrate that removal or modification of one (1) or more of the conditions is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits, or that the decision is otherwise inconsistent with state laws and regulations. Following the Board of Trustees' oral announcement of its decision and any subsequent rehearing, a written resolution shall be adopted as its final action or decision on the application. This written resolution shall set forth the findings of the Board of Trustees. The Town Attorney shall prepare the written resolution for the Board of Trustees' consideration within fourteen (14) days of the oral decision or any subsequent rehearing. Such written resolution shall be adopted within twenty-one (21) days of the announcement of the Board of Trustees' oral decision, unless the applicant requests rehearing, in which case the written resolution shall be adopted within thirty (30) days of the oral decision. For the purposes of judicial review, the Board of Trustees' final action or decision on an application shall be deemed to have been made as of the date upon which the Board of Trustees executes the written resolution, which shall constitute the final decision of the Board of Trustees.

30-10-106. Notice to proceed.

Prior to commencement of operations for which a use permitted by conditional review has been approved, a "Notice to Proceed" shall be obtained from the Town Clerk. The Town Clerk shall issue the "Notice to Proceed" upon receipt of the following:

- (1) A copy of the resolution approving a use permitted by conditional review for a well or wells.
- (2) A copy of the approved site plan.
- (3) A copy of an approved extra legal vehicle or load permit issued by the Town Clerk pursuant to this Code, if applicable.
- (4) Copies of any necessary state or federal permits issued for the operation, if not previously submitted.

30-10-107. Building permit.

Building permits must be obtained for all aboveground structures to which the *International Building Code* applies.

30-10-108. Development setbacks from wells and facilities.

- (a) When wells are existing, buildings shall not be constructed within the following distances:
 - (1) Buildings not necessary to the operation of the well shall not be constructed within two hundred (200) feet of any such well.
 - (2) Any building to be used as a place of assembly, institution or school shall not be constructed within three hundred fifty (350) feet of any well.

(b) When wells are existing, lots and roads shall not be platted within the following distances:

- (1) Lots shall not be platted within one hundred fifty (150) feet of an existing oil or gas well or its production facilities.
- (2) Lots intended to be used as a place of assembly, institution or school shall not be platted to allow a building site within three hundred fifty (350) feet of an existing oil or gas well or its production facilities.
- (3) Streets shall not be platted within seventy-five (75) feet of an existing oil or gas well or its production facilities; provided, however, that streets may cross collection flowlines at right angles.
- (4) Lots and streets may be platted over well and production sites that have been abandoned and reclaimed. Such platting shall only occur after the completion of the abandonment and reclamation process.

30-10-109. Compliance with state environmental requirements.

The approval of an oil and gas conditional use permit shall not relieve the operators from complying with all current applicable state and federal regulations and standards concerning air quality, water quality and waste disposal.

30-10-110. Geologic hazard, floodplain, floodway location restrictions.

All equipment at well sites and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement or subsidence and to the extent necessary to comply with the Federal Emergency Management Act.

30-10-111. Access roads.

All private roads used to maintain access to the tank batteries or the well site shall be improved and maintained according to the following standards:

- (1) Tank battery access roads. Access roads to tank batteries shall be subject to review by the Town Engineer in accordance with the following minimum standards:
 - a. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course as specified for aggregate base course materials in the Colorado Department of Transportation's "Standard Specifications for Road and Bridge Construction," latest edition.
 - b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Town Engineer.
 - c. Maintained so as to provide a passable roadway free of ruts at all times.

(2) Wellhead access roads. Access roads to wellheads shall be subject to review by the Town Engineer in accordance with the following minimum standards:

- a. A graded, dirt roadway compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures and approved by the Town Engineer.
- b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval by the Town Engineer.
- c. Maintained so as to provide a passable roadway generally free of ruts.

(3) Public access roads. An extra-legal vehicle or load permit shall be required for all extra-legal vehicles or loads as defined in Sections 42-4-401 through 42-4-414, C.R.S., as amended, which use Town streets. Said permit, if required, shall be obtained from the Town Clerk prior to such use. The applicant shall comply with all Town and state regulations regarding weight limitations on streets within the Town, and the applicant shall minimize extralegal truck traffic on streets within the Town.

30-10-112. Public roads impact.

- (a) Every permit issued by the Town shall require the applicant or operator to pay a fee that is sufficient to pay the estimated cost for all impacts which the proposed operation may cause to facilities owned or operated by the Town or used by the general public, including, but not limited to:
 - (1) Repair and maintenance of roads,
 - (2) Bridges and other transportation infrastructure;
 - (3) Improvements made or to be made by the Town to accommodate the operations and to protect public health, safety and welfare;
 - (4) Costs incurred to process and analyze the application, including the reasonable expenses paid to independent experts or consultants;
- (b) The Town shall establish a mechanism to assess and obtain payment of such fees, subject to the right of the Town to request additional funds if the fees prove to be insufficient, or to refund surplus funds to the operator if the fees paid exceed the true cost of the impacts.
- (c) The Town may further require that the applicant or operator, or both, post a bond in an amount to be set during the site plan phase, as security in the event additional damages occur to facilities owned or operated by the Town or used by the general public.
- (d) As a condition of issuance of the permit and on an as-needed basis, the Town may require that additional site-specific measures be undertaken by the applicant or operator in order to protect and preserve facilities owned or operated by the Town or used by the general public.

30-10-113. Wildlife impact mitigation.

- (a) Wildlife. When a well site or production site is located within a designated moderate (blue) or high impact zone (red) on the 1987 Cumulative Impact Maps prepared by the Colorado Division of Wildlife, the applicant shall consult with the Colorado Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. The operator shall implement such mitigation procedures as are recommended by Colorado Division of Wildlife after consultation with the Town.
- (b) Endangered species. The applicant shall not engage in activities which, in the opinion of the Colorado Division of Wildlife, threaten endangered species.

30-10-114. Emergency response costs.

The operator shall reimburse the Town or the responsible fire district for any emergency response costs incurred by the Town or the responsible fire district in connection with activity at the well site or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by the mistake of the Town.

30-10-115. Violation and enforcement.

- (a) Unlawful to construct or install unapproved oil and gas facilities. Except as otherwise provided in this Section, it is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the Town unless approval has been granted by the Board of Trustees. The unlawful drilling or redrilling of any well or the production therefrom is a violation of this Section.
- (b) Penalty. Any person, firm, corporation or legal entity which constructs, installs or uses or causes to be constructed, installed or used, any oil, gas or injection well, well site or production site, or commits any act or omission in violation of any provision of this Section or of the conditions and requirements of the oil and gas conditional use permit, may be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each day of such unlawful operation constitutes a separate violation.
 - (1) Suspension of Permit. If the Town determines at any time that there is a violation of the conditions of the conditional use permit or that there are material changes in an oil and gas operation or facility as approved by the permit, the Town may, for good cause, temporarily suspend the conditional use permit. In such case, upon oral or written notification by the Town, the operator shall cease operations immediately. The Town shall provide the operator with written notice of the violation or identification of the changed condition(s). The operator shall have a maximum of fifteen (15) days to correct the violation. If the violation is not timely corrected, the permit may be further suspended pending a revocation hearing. The operator may request an immediate hearing before the Town Board or committee regarding the suspension, which shall hold the hearing within ten (10) days of the operator's written request.

(2) Revocation of Permit. The Town Board or committee may, following notice and hearing, revoke a Town approved conditional use permit granted pursuant to this Section if any of the activities conducted by the operator violates the conditions of the permit or this Section, or constitutes material changes in the oil and gas operation approved by the Town. The Town shall provide written notice to the operator of the violation or the material changes, and the time and date of the hearing. No less than thirty (30) days prior to the revocation hearing, the Town shall provide written notice to the permit holder setting forth the violation and the time and date for the revocation hearing. Public notice of the revocation hearing shall be published in a newspaper of general circulation not less than thirty (30) days prior to the hearing. Following the hearing, the Town may revoke the permit or may specify a time by which action shall be taken to correct any violations of the permit to avoid revocation.

(3) Transfer of permit. A conditional use permit may be transferred only with the written consent of the Town.

(4) Judicial review. Any action seeking judicial review of a final decision of the Town shall be initiated within thirty (30) days after the decision was made, in the district or county court in and for the Town of Berthoud, Colorado.

- (c) Civil action. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of any provision of this Section or the conditions and requirements of the oil and gas conditional use permit, the Town Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.
- (d) False or inaccurate information. The Board of Trustees may revoke an oil and gas conditional use permit if it is determined after an administrative hearing held on at least ten (10) days' notice to the applicant that the applicant provided information and/or documentation upon which approval was based, which the applicant, its agents, servants or employees knew, or reasonably should have known, was materially false, misleading, deceptive or inaccurate.
- (e) Prospective application. Unless specifically provided otherwise, this Section shall apply only to wells which are drilled in the Town on and after the date that this Section is adopted. The reentering of a well in existence prior to the date of adoption of this Section for purposes of deepening, recompleting or reworking shall not require approval of a use permitted by conditional review.
- (f) Recovery of fees. Should the Town prevail in any action for legal or equitable relief for a violation of the provisions of this Section, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover any damages, costs of action, expert witness fees and reasonable attorneys' fees incurred.

Health, safety and welfare.

The Board of Trustees hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Berthoud and the inhabitants thereof, and shall become effective immediately upon final adoption after its second reading.

Passed and approved this 25th day of September 2012.

TOWN OF BERTHOUD

By: Mary K Cowdin
Mary Cowdin, Town Clerk

By: J. Dowker
Jan Dowker, Mayor Pro-Tem