ORDINANCE NO. 629

AN ORDINANCE OF THE CITY OF FRUITLAND, PAYETTE COUNTY, STATE OF IDAHO AMENDING FRUITLAND CITY CODE WITH THE ADOPTION OF A NEW CHAPTER 19 OF TITLE 10 ENTITLED GAS AND OIL OPERATIONS; PROVIDING FOR ADMINISTRATIVE PERMITTING OF GAS AND OIL OPERATIONS WITHIN THE CITY; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, the Fruitland City Council has determined that it is in the public’s best interest to provide regulations for gas and oil operations within the City; and,

WHEREAS, the State of Idaho has set forth the conditions under which a City can regulate gas and oil operations; and

WHEREAS, the City Council desires to amend Title 10, to provide a new Chapter 19, to provide such regulations in compliance with Idaho Code 47-314.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FRUITLAND AS FOLLOWS:

SECTION 1. Purpose.

The purpose of this Chapter 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 City’s residents. Oil and Gas exploration, drilling and extraction operations involve activities that will impact the City and its residents. 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 minimizes the potential impacts on the residents of the City.

SECTION 2. Adoption of New Chapter 19 to Title 10

The Fruitland City Code is hereby amended to add the following new Chapter 19 to Title 10:

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 the City 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.

Local Street: For purposes of this Chapter only, 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.

Operator: The person of record, that is responsible for and actually in charge and control of drilling, maintaining, operating, pumping or controlling any well including, without limitation, a unit operator. If the “operator”, as defined herein, for any well is not the lessee of any premises affected by the provisions of this chapter, then such lessee shall also be deemed to be an operator. In the event there is no oil and gas lease relating to any premises affected by this chapter, the owner of the fee mineral estate in the premises shall also be deemed an operator.

Road Repair Agreement: A written agreement between the applicant and the City 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.

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).

Wellhead: The equipment installed at the surface of the well.

SECTION 4. Zoning Classifications

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

SECTION 5. Permit Requirement

A. No oil or gas well site, or an addition or material modification to an existing oil or gas well site, shall be constructed or located within the City unless an administrative zoning permit under this Chapter has been issued by the City 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 City. Such fee shall be reasonably related to the cost of administering this Chapter.

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 Chapter. Like-kind replacements shall not require a permit modification.

D. Wells that were permitted and constructed prior to the adoption of this Chapter shall not be required to meet the requirements of this Chapter. Any modification to an existing or permitted oil or gas well site that occurs after the effective date of this Chapter and materially alters the size, type, location, number of wells and other accessory equipment or structures, shall require compliance with this Chapter.

E. 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.

F. 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 Chapter shall not be transferable to any other applicant, except by majority vote of the City Council, and the filing of a new application by the applicant to whom such license is, or may be, transferred or assigned.

G. The operator shall provide a copy of any “incident reports” or written complaints submitted to the Idaho Department of Lands, the Idaho Oil and Gas Conservation Commission, or any other state or federal agency within fifteen (15) days after the operator has notice of the existence of such reports or complaints.

SECTION 6. Permit Application:

The applicant shall provide to the City 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 and the location, number and description of equipment and structures to the extent known. In addition to the narrative statement, each application shall contain the following:

   - The surface owner’s name, address, and phone number.
   - The mineral owner’s name, address, and phone number (if different than the surface owner)
2. The address of the oil or gas well site and a legal description of the parcel as determined by the City 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 primarily responsible for the operation and activities at the oil or gas well site shall be provided to the City and all applicable Emergency Responders as determined by the City. 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 City and all applicable Emergency Responders as determined by the City.

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 site plan shall be an area within the development site for vehicles to locate while gaining access to the oil or gas well site. The only items that may be stored and vehicles that may be parked on the operation site are those that are necessary to the everyday operation of the well or associated facilities and do not constitute a fire hazard.

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 City 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 City will be conducted. The cost and expense of the orientation shall be the sole responsibility of the applicant.

8. A narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts shall be provided to the City.

9. The applicant shall submit with application a certificate of comprehensive general liability insurance in the amount of not less than $1,000,000 per occurrence with an aggregate of $5,000,000 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 City prior to termination of coverage for any reason.
SECTION 7. Issuance of Permit:

A. Within 7 business days after receipt of a permit application, the City will determine whether the application is complete and advise the applicant accordingly.

B. If the application is complete and fulfills the requirements of this Chapter, the City 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 Chapter, the City shall return the application to the applicant. After necessary changes have been made, the City shall follow Section 7 (B) of this section.

D. As a condition of permit approval, applicant shall provide all permits and plans from the Idaho Department of Lands 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 City. Temporary housing plans shall be in compliance with all applicable City regulations.

SECTION 8. Site Design and Installation

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. City adopted standards pertaining to minimum traffic sight distances for all access points shall be adhered to. A stabilized construction entrance shall be installed between the site and the access road pursuant to the Idaho Standards for Public Works Construction.

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 City shall be provided a copy of any required Approach Permit.

4. Access directly to City local streets shall require a Road Repair Agreement with the City prior to initiating any work at well site. Operator shall comply with any generally applicable bonding and permitting requirements for City roads that are to be used by vehicles for site construction, drilling activities and site operations. The Road Repair Agreement must be signed by the operator prior to the beginning of seismic testing or to the issuance of a drilling operations permit. The Road Repair Agreement shall cover permitting for any desired use of the City rights of way, requirements for road revisions such as for safe driveway approaches, and fees and notice regarding damages or obstructions to City roadways used. A mud shaker for truck traffic may be required for
some access roads. The operator may also be required to pay for traffic control during times of inordinate traffic disturbances that keep people from accessing their homes and businesses.

5. No operator shall excavate or construct any lines for the conveyance of fuel, water, oil, oil and gas or petroleum liquids on, under or through the streets, alleys or other properties owned by the City without an easement or right of way permit from the City, pursuant to Resolution No. 2009-05, as such may be amended, and then only in strict compliance with other City ordinances and all requirements of the City’s Department of Public Works.

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 redrilling of an oil or gas well or pad drilling.

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 the City residents’ enjoyment of their property and future City development activities as authorized by the City’s applicable regulations.

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, Industrial or Commercial Zones, security fencing, acceptable to the landowner, the operator, and the City shall be installed within 10 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 vehicular openings no less than 20 feet wide, pursuant to International Fire Code requirements for minimum fire lane access. Additional lockable gates used to access oil and gas well sites by foot may be allowed or required, as necessary. The Fire Chief shall be provided with a method to access the drill site in the case of an emergency, preferably by use of the Knox system.

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 the State rules governing Oil and Gas Conservation.

E. Lighting.

Lighting at the oil or gas well site, either temporary or permanent, shall be directed downward and inward toward the activity so as to minimize glare on public roads and prevent direct illumination of adjacent properties. Lighting shall be adequate to ensure safety while minimizing the disturbance to adjacent properties.

F. Noise.

The City recognizes 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 operator shall comply with the City’s noise regulations unless the operator can prove to the City that such noise regulations prohibit operations.

G. Dust Control, Vibrations and Odors.

1. To prevent injury or nuisances to persons living and working in the area surrounding the operation site, the operator shall conduct drilling and production in a manner that minimizes dust, vibrations, or odors, and in accordance with industry best practices for drilling and production of gas and other hydrocarbons.

2. The operator shall adopt proven technological improvements in industry standards for drilling and production of reducing dust, vibration, and odor.

3. If the City determines that the dust, vibrations, or odors related to the drilling
and production use present risk of injury or have become nuisance persons living and working in the area, the City shall require the operator to adopt reasonable methods for reducing the dust, vibrations, and odors. This may include a requirement to install a mud shaker with construction of access roads for vehicles exiting the site.

4. Operator shall control fugitive dust arising from operations. Operator shall follow dust control methods approved in the dust control plan. Brine water, sulfur water, water in mixture with any type of hydrocarbon, including used motor oil may not be used for dust suppression.

5. Any unpaved gravel areas shall be covered by a final layer of washed aggregate.

H. Work Hours

Site development, other than initial 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, drill stem testing, workovers, fracturing, 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,

SECTION 9. This ordinance shall be in full force and effect immediately upon passage and publication as required by the laws of the State of Idaho. Publication of this ordinance by summary is hereby approved.

SECTION 10. Any ordinances or resolutions which are in conflict with the Ordinance are hereby repealed, but only insofar as the conflict exists.

SECTION 11. If any portion of this Ordinance should be found to be unconstitutional or unenforceable the remainder or the Ordinance shall be applied to effectuate the purpose of the Ordinance.

PASSED by the City Council and APPROVED by the Mayor of Fruitland this _____ day of ____________, 2017.

CITY OF FRUITLAND, IDAHO

___________________________
Ken Bishop, Mayor

ATTEST:

___________________________
Rick Watkins, City Clerk