

ORDINANCE TO PLACE A TWO-YEAR MORATORIUM ON THE USE OF HYDRAULIC FRACTURING WITHIN SANDOVAL COUNTY OR LANDS UNDER ITS JURISDICTION TO EXTRACT OIL, GAS OR OTHER HYDROCARBONS AND TO STORE AND DISPOSE OF ITS WASTE PRODUCTS IN ORDER TO FULLY STUDY THE IMPACTS OF HYDRAULIC FRACTURING ON JEMEZ AND RIO GRANDE WATER BASINS, HUMAN HEALTH, PUBLIC SAFETY AND PROPERTY VALUES, AND OTHER AFFECTED PARTIES, INCLUDING BASELINE STUDIES, AND ENTER INTO A FORMAL TRIBAL CONSULTATION PROCESS WITH THE PUEBLOS, AND TRIBES, AND THE UNITED STATES WITHIN AND NEAR SANDOVAL COUNTY.

WHEREAS, the New Mexico Constitution confers on all individuals in the state, including the residents of Sandoval County, “certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness,” NM. Const. Art. II, Sec. 4;

WHEREAS, Sandoval County must enter into a formal Tribal Consultation process with the tribes and pueblos located within the boundaries of Sandoval County; that tribes and pueblos have inherent sovereignty recognized by the United States Supreme Court over developments affecting them and their lands, territories and resources, which will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs; in accordance with the Organization of American States (OAS) American Declaration on the Rights of Indigenous Peoples AG/RES. 2888 (XLVI-0/16) adopted June of 2016, Federal Executive Order 13175 requiring relevant parties to consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities, as well as in the State of New Mexico Tribal Collaboration Act; in the United Nations Declaration of the Rights of Indigenous People (UNDRIP) passed in 2007, Article 19, states shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

WHEREAS, the United States has trust responsibilities to protect tribal and federal lands for water resources and water rights, and faces monetary damages claims by tribes and pueblos for failure to do so by litigation or by any means necessary; Any County ordinance must provide for consultation and cooperation with the United States prior to any permit being issued under the ordinance;

WHEREAS, the well stimulation process known as hydraulic fracturing, or fracking, is used to stimulate the flow of and thereby extract liquid and gas phase hydrocarbons (e.g. oil and gas) through the underground injection of mixes of water, gels, acids or gases; sands or other propellants; and chemical additives, many of which are known to be toxic;

WHEREAS, many of the chemicals used in the process of fracking, as well as the wastewater, wastewater solids or sludge, drill cuttings and/or other byproducts from the fracking process have been known to contain toxic contaminants such as benzene, naphthalene, toluene, formaldehyde, diesel, cadmium, mercury, arsenic, heavy metals, radioactive material, and numerous additional carcinogenic and endocrine-disrupting chemicals, as well as unknown quantities of undisclosed chemical additives;

WHEREAS, Physicians, Scientists & Engineers for Healthy Energy conducted an analysis of peer-reviewed studies on the impacts of fracking and shale gas development and found that 21 of 25 papers published on the health impacts show potential risks or actual adverse outcomes, that 33 of 48 focused on water quality find either the potential for, a positive association with, or direct evidence of water contamination, that 30 of 34 focused on air quality found elevated levels of air pollution, and that children are especially vulnerable to exposure to such pollution;

WHEREAS, a comprehensive study of birth outcomes in Pennsylvania published in October of 2015 by researchers at Johns Hopkins, Brown University, and the University of California, found that the odds of premature births rise with increased pre-natal exposure to shale gas development;

WHEREAS, another study by researchers at the Colorado School of Public Health found higher incidences of birth defects in close proximity to hydraulic fracturing sites;

WHEREAS, hydraulic fracturing sites are exempt from key statutes of the landmark environmental laws intended to protect public health, specifically sections of the Clean Water Act, Clean Air Act, Safe Drinking Water Act, Superfund, National Environmental Policy Act, and the Resource Conservation and Recovery Act;

WHEREAS, there are dozens of outstanding questions related to harms associated with hydraulic fracturing within counties such as Sandoval, including threats to public health and safety, property damage and diminished property values, poor air quality, destruction of landscape, and pollution of underground and surface sources of drinking water;

WHEREAS, the confirmed number of earthquakes exceeding 3.0 magnitude has skyrocketed in our neighboring state of Oklahoma, from an average of less than 2 a year to 585 in 2014 widely attributed to the injection of fracking byproduct fluid into deep wells;

WHEREAS, the process of hydraulic fracturing, transportation of chemicals and disposal of waste, wastewater solids and drill cuttings, exposes air, aquifers and adjacent land and surface waters to the risk of contamination through spills and accidents, open pit storage, truck transport on roadways, and activities during well development; and

WHEREAS, the New Mexico Constitution includes an environmental protection provision, providing that:

“The protection of the state’s beautiful and healthful environment is ...of fundamental importance to the public interest, health, safety, and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water, and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.” (N.M. Const. art. XX, § 21);

WHEREAS, the best way to safeguard our inalienable rights provided under the New Mexico Constitution, is to place a moratorium on hydraulic fracturing within Sandoval County in order to fully study the impacts this process entails on human health, public safety and property values;

WHEREAS, in recent years, several New Mexico municipalities have placed a moratorium on fracking, including Santa Fe County, Mora County and San Miguel County, while creating a process for an ordinance where baseline studies are conducted and evaluated to give direction in the writing of the ordinance process;

WHEREAS, protection of residents of Sandoval County’s public health, air, and water resources is best accomplished by prevention of health harms, contamination and environmental degradation, rather than attempting to clean up contamination and restore degraded environments after the fact;

NOW, THEREFORE, BE IT ORDAINED, that on the ____ day of 2018, drilling for oil or natural gas, using the drilling technique of hydraulic fracturing and exploring for oil or gas natural gas beyond the reconnaissance phase, is prohibited within Sandoval County for a period of two years or until further action of the Commission.

BE IT FURTHER RESOLVED, that the Clerk of this Board shall forward certified copies of this ordinance to Governor Martinez and the Sandoval County Planning & Zoning Commissioners/County Commissioners.

ATTEST:

PASSED, APPROVED, AND EFFECTIVE Adopted this _____ day of _____ 2018, Bernalillo, New Mexico.

David J. Heil, Chairman Commissioner,
District 4 Sandoval County

Don Chapman Commissioner
District 3 Sandoval County

F. Kenneth Eichwald
Commissioner, District 5
Sandoval County

Jay C. Block
Commissioner, District 2
Sandoval County

Dr. James F. Holden-Rhodes
Commissioner, District 1
Sandoval County