

## ORDINANCE NO. 2013-983

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YORBA LINDA, CALIFORNIA, ADOPTING REGULATIONS FOR THE DEVELOPMENT OF PROPERTIES WITH ACTIVE OR ABANDONED OIL WELLS

**WHEREAS**, the Division of Oil, Gas, and Geothermal Resources (“DOGGR”) is the State agency that oversees the drilling, operation, maintenance, plugging, and abandonment of oil, natural gas, and geothermal wells;

**WHEREAS**, since 1989, DOGGR provided a process known as the Construction Site Plan Review Program for property and well owners to abandon and re-abandon wells, and establish standards for active wells in order to allow for the orderly redevelopment of properties containing active or abandon oil wells;

**WHEREAS**, the Construction Site Plan Review Program included a DOGGR certification of the proposed development’s site plan, a letter to the City (“Well Review Letter”), and stamped site plan allowing for structures and improvements to be constructed either adjacent to (within ten (10) feet) or atop of active or abandoned oil wells, based on DOGGR guidelines;

**WHEREAS**, DOGGR in October of 2011, without providing public agency or public notice, terminated their 22-year policy concerning the “Construction Site Plan Review Program, and Well Review Letter,” and providing stamped site plans;

**WHEREAS**, DOGGR now issues a “Well Status Review Letter” instead of the Construction Site Plan Review Program, the Well Review Letter and stamped site plan that can no longer be considered a “certification”;

**WHEREAS**, the Well Status Review letters now generally state that (i) prior abandoned wells are not necessarily abandoned to current or equivalent standards, (ii) dangerous issues may be associated with development near oil and gas wells, (iii) abandonment of wells to current or equivalent standards will not guarantee that they will not leak in the future, (iv) access should be maintained to all wells, but if access cannot be maintained, alternatives should be considered to development on the Site, and (v) the comments by DOGGR are merely advisory to the City;

**WHEREAS**, DOGGR engineers were directed by the State Oil & Gas Supervisor to terminate the Construction Site Plan Review Program, alter the method and practices in how the engineers approached active wells, well abandonment and re-abandonment and not recognize the costs nor the practical difficulties when encountering casing failures and “junk” found in the wells;

**WHEREAS**, in the past, DOGGR engineers implemented a pragmatic policy relying on best efforts or practices and made determinations as to whether

abandonment or re-abandonment efforts could be cost effective and practicable and provided an "abandoned to equivalent standards" finding;

**WHEREAS**, the Well Status Review letter appears to be designed to protect the State from liability for any advice, and the letter is now subject to so many disclaimers that it gives the City and the property owner little useful information on active wells and whether abandonment or re-abandonment should be undertaken, how the development should be designed with respect to active wells, abandoned or re-abandoned wells on the property, and that DOGGR no longer serves to provide the certification; and

**WHEREAS**, the City desires to adopt development regulations in order to ensure the health and safety and for the orderly development of properties with active, abandoned and re-abandoned oil wells.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YORBA LINDA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. The above recitals are true and correct.

SECTION 2. A new Article III is hereby added to Chapter 15.36 of the Yorba Linda Municipal Code to read, in their entirety, as follows:

**Article III. – Development**

**15.36.700 – Development Review Regulations**

Neither the Planning Commission nor the Community Development Director shall grant a Site Plan and Design Review approval relating to development within the City's Oil Field without following the procedures set forth below.

- A. Definition of Area of Development. The area of development means the entire site in the case where a structure or structures is/are proposed on a vacant parcel or in the case of an addition to an existing structure, or construction of new structures on a parcel with existing structures, the area of development shall be the portion of the site which is disturbed for grading as shown on a preliminary grading plan or construction plans.
- B. Site Plan Requirements. The actual location of each well, either active or abandon, and the well designations must be accurately plotted on a site plan. Dimensions shall be shown on the site plan from the well(s) to all property lines, existing or proposed structures, streets or rights of way,

easements or any permanent structure(s) or property limitations. The well shall be identified with the name of the company/operator and well designation. Site plans shall indicate the property boundaries, the proposed and existing structures, existing and proposed roads, streets passing through or adjacent to the property and all easements. The site plan shall plot all existing and proposed oil field facilities (tanks, processing equipment, enclosures, pipelines, etc.) that will be operating or are abandoned on the site after completion of the proposed development.

- C. Location of Abandoned Wells. Each owner or responsible party of property shall consult the records of DOGGR to determine the condition of any well within the development site and the location of any previously abandoned well. The developer shall determine the actual location of all wells and update DOGGR records accordingly. Such investigation shall include, but not be limited to, magnetometric surveys or excavation of the site to determine its exact location. In the cases of additions to developments, the owner or responsible party shall be responsible to locate any abandoned wells within the area of development. The property owner may install monuments over all abandoned wells for future identification. Suggestions for the exact method and type of monumentation shall be provided by the Building Official. If the property owner does install a monument on the abandoned well site, such monumentation may be relied on for the exact location of the abandoned well for any future development.
- D. Surveying of Wells. The owner or responsible party shall submit a licensed survey of all wells as part of the City's site plan and design review process. The survey shall locate all active, idle and abandoned wells to ascertain their locations and/or have the location of the wells surveyed by a licensed surveyor. The well(s) shall be plotted on the site plan and include the NAD 83 well location or equivalent. A copy of the survey shall be filed with the Building Division and included with any application for construction filed with the Building Division for any property containing either an active or abandon well.

- E. Leak Testing of Abandoned Wells. All abandoned wells located within the area of development must be tested for gas leakage and visually inspected for oil leakage. The testing shall be processed through the Orange County Fire Authority. Two stamped approved copies of the final report provided by the Orange County Fire Authority shall be provided to the Building Official with the initial submittal of any application for construction on property containing either an active or abandon well. The submitted leak test report shall be prepared by a state licensed geotechnical or civil engineer or state registered environmental assessor, class II. A well shall be considered leaking if the leak test report indicates the meter read is greater than the lower explosive limit which is hereby set at 500 parts per million. An approved leak test report is only valid for 12 months from City acceptance. If a building permit has not been issued within 12 months from the acceptance date of the report, retesting is required.

**15.36.710 – Development Standards**

- A. No structures shall be constructed over the top of any oil wells, either active or abandon.
- B. A developer need not re-abandon a well which does not leak as defined in Section 15.36.700 (E) and to which access is maintained. Owners or responsible parties shall set improvements back at least ten (10) feet from the centerline of the abandoned or re-abandoned oil wells in order to provide access for well service equipment, should the well leak oil or gas in the future. Three adjacent sides may have permanent structure constructed no less than ten (10) feet from the centerline of the well. The fourth side shall remain open for vehicle and/or service equipment access to the well. The City may approve alternative mitigation measures that maintain access to wells. Improvements allowed to be constructed within the ten (10) foot radius from the centerline of a well include concrete slabs on grade, property line walls of any construction materials, landscaping, irrigation lines, electrical, water, sewer or gas piping, fences, retaining walls, benches, architectural features, counters, fire pits or any similar structure not

over 36" in height and any structure determined by the Building Official to not be an obstruction to access to the well. Structures not allowed to be constructed within the ten (10) foot radius from the centerline of the well include any roofed or open lattice structure, any enclosed structure such as a shed or patio enclosure, any fence, retaining wall, counter, architectural feature over 36" in height or any structure determined by the Building Official to be an obstruction to access to the well.

- C. Leaking wells shall be re-abandoned.
- D. The property owner shall record Declaration of Covenants, Conditions and Restrictions, in a form subject to the review and approval of the City Attorney, putting future owners and occupants on notice of the following: the existence of an active, abandoned or re-abandoned oil well(s) on the property; that the well(s) have been leak tested and found not to leak based on the date that testing was performed and that retesting is not required for a period of 12 months subsequent to testing; that the well(s) have been tested, found to be leaking and were re-abandoned in accordance with approved methods; description of any methane mitigation measures employed; disclosure that access to these wells have been provided to address the fact that they may leak in the future causing potential harm; acknowledgment that the State may order the re-abandonment of any well should it leak in the future and releasing and indemnifying the City for issuing project permits.

SECTION 3. Nothing herein is intended to displace any authority of DOGGR under Chapters 2, 3 and 4 of Division 2 of Title 14 of the California Code of Regulations or set aside or annul any action of DOGGR pursuant to its authority. However, these provisions shall control the development of property where DOGGR merely makes advisory recommendations beyond the agency's statutory authority.

SECTION 4. This Ordinance shall not apply to any project which has been previously approved by the City or its constituent boards, commissions or officials so long as such approvals remain valid. The required approvals include a valid approval from DOGGR, but if such approvals have expired, the project shall be governed by this ordinance. Any application for discretionary land use development entitlements under Chapter 20.52 of the Municipal Code which is being processed shall be subject to the requirements hereof.

SECTION 5. The City Council hereby finds that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment. This finding is supported by the fact that any development which may occur pursuant to the adopted standards will not be approved until a complete environmental evaluation of the proposed project has occurred. This Ordinance is therefore exempt from California Environmental Quality Act ("CEQA") review pursuant to 14 California Code of Regulations Section 15061.

The City Council further hereby finds that this Ordinance is an activity taken to maintain, restore, enhance, or protect the environment and therefore categorically exempt from CEQA review as a Class 8 exemption pursuant to 14 California Code of Regulation Section 15308. This finding is supported by the following facts: (i) the standards are more stringent than the current standards imposed; (ii) the regulation addresses the proper handling of the re-abandonment of oil well standards as a result of DOGGR policy changes; and (iii) there is an immediate threat to public health, safety or welfare because the current Oil Code does not sufficiently address the lack of guidance created by recent DOGGR policy changes and DOGGR is not leak testing wells as described in Exhibit A.

SECTION 6. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Yorba Linda hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 7. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 8. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall cause the same to be published within fifteen (15) days after passage in accordance with law and as designated by resolution of the City Council, and shall cause this Ordinance and its certification, together with proof of publication, to be entered into the Book of Ordinances of the City of Yorba Linda.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Yorba Linda on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
TOM LINDSEY, MAYOR  
CITY OF YORBA LINDA

ATTEST:

\_\_\_\_\_  
MARCIA BROWN, CITY CLERK  
CITY OF YORBA LINDA

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

STATE OF CALIFORNIA                    )ss.  
COUNTY OF ORANGE                    )

I, **MARCIA BROWN**, City Clerk of the City of Yorba Linda, California, **DO HEREBY CERTIFY** that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Yorba Linda, held on the \_\_\_\_ of \_\_\_\_\_, 2013, and was carried by the following roll call vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
MARCIA BROWN, CITY CLERK  
CITY OF YORBA LINDA