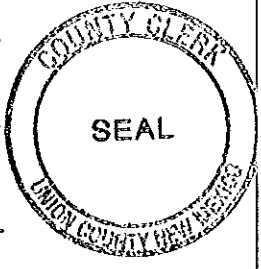


REAL ESTATE RECORDS BOOK 17  
PAGE 845864 UNION CO., N.M.,  
FILED FOR RECORD  
April 16, 1998 AT 9:23 A.  
FREIDA J. BIRDWELL, County Clerk  
Kerri Poling, sp. Dep.  
RECORDER



**ORDINANCE**

NO. 21

**ARTICLE I  
GENERAL PROVISIONS**

**Section 1.1: TITLE:** This ordinance shall be known and may be cited as the "UNION COUNTY SWINE PRODUCTION ORDINANCE" and shall be referred to elsewhere herein as "this ordinance".

**Section 1.2: AUTHORITY:** These regulations are created pursuant to the enabling authority set forth in Section 3-21-1 et sec., NMSA, 1978.

**Section 1.3: PURPOSE:** This ordinance is adopted for the following purposes:

- (a) To provide for and protect the public health, safety and general welfare of the County.
  
- (b) To guide the future growth and development of the County in accordance with any official plans adopted by the County including the Union County Sub-division Regulations.
  
- (c) To provide for controlled development of swine production facilities; to promote a healthy and stable swine production industry in Union County; to insure

density of swine and swine operations do not exceed levels reasonably required to protect the quality of life in Union County; to prevent development of swine production facilities which are or may be offensive to Union County residents or other members of the public;

(d) To protect and conserve the value of land throughout the county and the value of buildings and improvements upon the land and to minimize the conflicts among the uses of land and buildings; to establish reasonable standards of design and procedures for swine production facilities, to further the compatibility of swine production operations with residential, business, recreational and other agricultural and industrial uses of land.

(e) To prevent the pollution of air, streams and ponds; to assure the adequacy of waste disposal facilities; to safe guard the water table and to encourage the wise use and management of natural resources throughout the county in order to preserve the integrity, stability and beauty of the community and value of the land.

**Section 1.4: JURISDICTION:** This ordinance shall govern all swine production operations not within the boundaries of municipalities but within Union County. The county and a municipality shall

exercise concurrent jurisdiction over the territory within the platting jurisdiction of both the county and the municipality as provided in Sections 3-21-2 through 3-21-4 NMSA, 1978.

**Section 1.5: WRITTEN DECISIONS:** Whenever the Board of County Commissioners or its delegate is required by this ordinance to make a decision, the decision shall be in writing and support by findings of fact and conclusions of law which are sufficient for meaningful review.

**Section 1.6: INTERPRETATION:** The provisions of this ordinance are held to be minimum requirements. When ever any provisions of this ordinance conflict with other laws, rules, regulations, covenants, or ordinances, the more restrictive shall govern. This ordinance shall be construed broadly to promote the purposes for which it was adopted.

## **ARTICLE II DEFINITIONS**

**Swine production operation:** A facility which stables, confines, feeds, or maintains swine of any class or kind in numbers in the aggregate of greater than 100 animals for a total of 45 days or more in any 12 month period. Swine operations of less than 100 animals do not come under the regulation of this ordinance.

**Swine production facility:** Any building, corral, pen, feed mill, farrowing barn, nursery, garage or barn in which swine are kept or

confined and any waste disposal pits, lagoons, waste tanks or waste treatment facilities.

**Board of County Commissioners:** Union County Board of County Commissioners, County of Union, New Mexico.

**Designated representative:** A natural person designated by an applicant under this ordinance for a permit to operate a swine production operation.

**Growth plan:** An estimate based upon the best information available of the number of employees required to conduct the business of the swine production operation upon issuance of a permit and completion of construction of swine production facilities, including a realistic schedule of construction and operation. If the construction and operation are to be implemented in phases then a realistic time table for the completion of each phase shall be included. A good faith estimate of classes of occupations which will be made available upon completion of construction of the swine production facilities and anticipated pay scales for swine production operation employees. An estimate based upon past experience of the applicant and operators similarly situated to applicant with respect to the impact upon the schools, housing, county and municipal services within the County, of the construction and operation of the proposed swine production operation. A proposal outlining applicant's offer(s) to help the

impacted schools, county and municipal services economically or otherwise in coping with anticipated impact of introduction of the swine production operation to this county.

**Resume:** A list of communities and business partners, including financial institutions, applicant is or has been associated with which the Commissioners or their designees may question about applicant. Applicant will sign a waiver releasing any person, whether corporate, natural or otherwise from liability for true and accurate statements made or documents produced in response to inquiries involving applicant pursuant to this permit process.

**Permit:** License to proceed with construction and operation of a swine production operation approved pursuant to this ordinance and applicable regulations.

**Provisional permit:** License to proceed with construction or operation of a swine production operation approved pursuant to this ordinance and applicable regulations upon satisfaction of conditions spelled out in said permit.

**Terrain management:** Control of floods, drainage and erosion, and measures necessary to adapt proposed development to existing soil characteristics and topography.

**Waste management:** Control of liquid and solid waste in compliance

with all applicable federal, state and local health and environmental laws and regulations and in a manner reasonably guaranteeing freedom from any offensive handling of animal waste to residents of Union County and members of the public in general but not employees of the operator.

**Vacation:** An act of rescinding (cancelling) all or part of an approved swine production operation permit.

**ARTICLE III  
PERMIT APPLICATION PROCESS  
AND  
REQUIREMENTS**

**Section 3.1:** APPLICATION REQUIREMENTS: Any person, corporation, partnership or other business entity seeking to develop a swine production operation in Union County shall submit the following information, in one filing, with the administrative assistant to the Union County Commissioners.

**3.1.1:** A resume and release satisfactory to the administrative assistant to the Union County Commissioners including the identify of natural persons who shall serve as designated representatives for applicant.

**3.1.2:** A growth plan.

3.1.3: A site proposal containing the following information:

(a) The intended location of the swine production operation described by legal description and by reference to landmarks (roads, towns, political boundaries).

(b) A plat of the proposed location, showing all county roads, state and federal highways, recreational areas, municipalities, and water courses, within a five mile radius of the proposed location.

(c) A complete legal description of all lands in which applicant has a fee or leasehold interest in the vicinity of the proposed swine production facilities and an accurate description of the quality of applicants interest (unrestricted fee, 10 year lease, terminable fee...)

(d) A plat demonstrating the location upon the proposed swine production operation site of swine production facilities including all barns, scales, feed mill, office buildings,

other structures and waste management facilities.

(e) A prospectus of the operation, including the number of animals anticipated to be produced, fed, stalled or maintained at the swine production facility at any given time.

(f) A waste disposal plan demonstrating compliance with all applicable federal, state and local health and environmental laws and regulations and demonstrating all animal waste will be processed in accordance with accepted industry standards, designed to protect the air and water quality and to avoid any offensive effects upon neighbors, or the community at large.

(g) An application fee in the amount of \$1,000.00 will be paid upon submission of the application.

(h) The following guidelines and restrictions shall apply:

(1) No swine production facility will be located within three miles of any State or Federal recreational site such as Clayton Lake



or Capulin Monument, nor one mile from any running stream, seasonal creek or spring.

(2) Land space taken up by the actual swine production facilities will not exceed 5% of the swine production operation holdings in connection with its proposed location.

(3) Offices, security check points, vehicle storage and maintenance barns, feed storage and milling facilities and similar structures not designed or used for sheltering or keeping swine or handling waste shall not be subject to the location restrictions in this ordinance.

(4) The maximum number of animals upon the swine production operation premises will not exceed twenty (20) head per acre in the aggregate.

(5) Swine production facilities will be reasonably dispersed in order to help prevent spread of swine disease and to effect the purposes of this ordinance. No swine

production facility will be constructed on less than 160 contiguous acres of land.

(6) Swine Production operations shall be total confinement systems. Animals must be contained in enclosed barns at all stages of the operation. Facilities will be designated to insure compliance with the purposes of this ordinance.

(7) No swine production operation will be built within five miles of the municipal limits of the Town of Clayton, three miles of the municipal limits of the Town of Des Moines and two miles of the Villages of Grenville or Folsom.

(8) No swine production facilities will be located within one-half mile of any paved (black top) road.

(9) No swine production facilities will be located within one mile of any residential dwelling, without the express written consent of the owner of such dwelling.

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(10) Roads within a swine production operation shall be constructed and maintained at the sole expense of the operator.

**Section 3.2: COMPLETE APPLICATION:** Applications shall not be submitted piecemeal but will be submitted in one package. The original and nine copies of the application will be submitted to the administrative assistant for the Union County Commissioners and will be time stamped upon complete submission. The administrative assistant shall point out any deficiencies in the application, in writing, to the applicant within fifteen (15) business days of submission. Failure to timely notify applicant of deficiencies shall not bar the county commission from requiring strict compliance with this ordinance.

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**Section 3.3: AGENCY DISTRIBUTION:** Within twenty (20) days of submission of a complete permit application the county administrative assistant shall forward a copy of the application and supporting documentation to the following state and local agencies by certified mail, return receipt requested, with a request for review and opinions:

- (a) New Mexico State Engineer's Office.
- (b) New Mexico Environment Department.

(c) The applicable Soil and Water Conservation District.

(d) Appropriate School District Board.

(e) Union County Water, Agricultural and Wildlife Boards.

(f) Any other public agencies the County considers necessary or convenient in determining whether the permit application comports with the letter and spirit of this ordinance.

**Section 3.4: AGENCY RESPONSE:** The State and Local agencies shall have thirty (30) days from their receipt of the application to review and return an opinion regarding the permit application.

**Section 3.5: ADVERSE OPINION:** If an opinion from a public agency is adverse to the applicant the county administrative assistant shall forward a copy of the adverse opinion to the applicant and request that additional information be provided to the County within thirty (30) days to respond to the concern raised in the adverse opinion. The county administrative assistant shall forward such additional information upon receipt to the appropriate agency which shall have thirty (30) days after the date the applicant submits the additional information in order to revise its opinion. The county administrative assistant shall obtain receipts and other

proof showing the date the additional information was received by each state or local agency.

**Section 3.6: HEARING DEADLINES:** Following an opportunity to respond to any adverse opinions, but no earlier than forty-five (45) days following the posting of applications to applicable authorities pursuant to Section 3.3 of this ordinance, the County shall schedule a public hearing for consideration and action on the application. Hearings shall occur no later than forty-five (45) days from the submission of the last formal information or request for information. Upon the request of applicant, if any adverse response is deemed to be without merit or interposed solely to delay applicant's progress, in the opinion of the administrative assistant, then, upon a minimum of five (5) days actual notice to all interested parties, the merit of the response will be considered at a regular or special meeting of the County Commission and if the response is deemed to be without merit the application may be considered at the next Commissioner's meeting.

**Section 3.7: PUBLIC HEARINGS ON APPLICATIONS:**

**3.7.1: Scheduling:** The County shall conduct a public hearing within the time periods specified in this ordinance. Notice of the public hearing shall be given at least fourteen (14) days before the hearing date. Hearings may be held in conjunction with

regularly scheduled commission meetings or may be held at special meetings at the discretion of the county commission.

**3.7.2: Notice:** The notice of public hearing shall be published in a newspaper of general circulation in Union County no less than fifteen (15) days and no more than thirty (30) days prior to the scheduled hearing and shall contain the following information:

- (a) Subject of the hearing.
- (b) Time and place of the hearing.
- (c) Manner for interested persons to present their views.
- (d) Place and manner for interested persons to get copies of the application or any portion thereof or any favorable or adverse opinion of the application. Reasonable fees assessed for copying shall be charged and notice of fees provided.

**3.7.3: Expense of Publication:** Publication shall be at the expense of applicant. Billings for publication shall be paid in full prior to hearing.

**3.7.4: Notification:** Copies of the notice of public hearing shall be transmitted via first class mail to the following:

(a) The applicant.

(b) Those public agencies which initially received copies of the application.

(c) Any interested person who previously requested such notice and provided a stamped, self-addressed envelope for such purpose.

(d) Owners of property contiguous to land sought to be used in connection with a swine production operation.

**Section 3.8: Participation/Record.** At the public hearing, the County shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing. A record of the public hearing shall be kept. The opinions of the public agencies shall be made a part of the record.

**Section 3.9: Action:** Within thirty (30) days of the public hearing the Board of County Commissioners shall approve, approve with conditions, or disapprove the application at a public meeting, the date, time and place of which shall be announced publically at the conclusion of the public hearing. The county administrative

assistant shall inform the applicant, in writing, of the decision of the Board of County Commissioners.

**Section 3.10: VARIANCES:** A variance may be applied for by written petition submitted with the original application or a supplement thereto. A variance should not be granted which will cause the County to absorb costs over and above costs anticipated to the County in the absence of the requested variance. In granting variances the Board of County Commissioners may require such conditions as will:

(a) Substantially secure the objectives of this ordinance.

(b) Not adversely affect the health, safety and general welfare of the public.

(c) No variance shall be granted unless the characteristics of the land or area procured for development by the swine production operator would result in an undue hardship if literal compliance with this ordinance was required.

(d) Family farmers or small swine production operators raising more than 100 swine, but less than 251 swine, of any class or kind, in the aggregate for a total of forty-



five (45) days or more in any twelve (12) consecutive months may apply for a variance by payment of a \$50.00 application fee, as opposed to the \$1,000.00 fee required of all others. Farmers or operators in this classification who are operating at the time of the adoption of this ordinance may file for a variance free of charge if such filings are received within six (6) months of the adoption of this ordinance. It is not the intent of this ordinance to impair the ability of small operators to continue with or develop small family run swine operations. However, due regard for the purposes of this ordinance and the attention to the quality of life in Union County which this ordinance is designed to foster, shall be used in considering any variance request.

**3.10.1: PROCEDURES:** The following procedures and requirements shall apply to all requests for variances under this ordinance.

(a) Request for variances shall be submitted in writing, prior to or at the time of the submission of a final application or a supplement if conditions not reasonably foreseeable upon the submission of the original application have become apparent.

(b) Variance requests shall be reviewed by the Board of

County Commissioners in public hearings at the same time public hearings are held for approval of the application.

(c) Notice of the request for variance shall be given in the same manner as notices provided for any public hearing required in this ordinance and shall comply with the requirements of the Open Meetings Act of the State of New Mexico. Variance requests shall be submitted to the state or other reviewing agencies which have expertise in the subject matter for which the variance is sought and shall be governed by the same time limits as are applicable to applications hereunder generally.

**Section 3.11: APPEALS:** Any person who is adversely affected by a decision of the Board of County Commissioners in approving or disapproving an application under this ordinance may appeal to the Board of County Commissioners within fifteen (15) days after the date of the action of the Board. The Board of County Commissioners shall hear the appeal and render a decision within thirty (30) days after receiving the notice of appeal.

Any person who is adversely affected by the decision of the Board of County Commissioners in approving or disapproving an application may appeal to the District Court of Union County within thirty (30) days after the date of the action of the Board.

## ARTICLE IV

### ENFORCEMENT, GENERAL PROVISIONS

**Section 4.1:** ENFORCEMENT, PENALTIES AND REMEDIES: Violations of the provisions of this ordinance shall be prosecuted in the manner provided by law to protect the health, safety, and welfare of the public according to the county's authority under Section 3-21-13 NMSA, 1978, or pursuant to any other authority or any other process available under law. A permit violation such as exceeding density requirements, setback requirements, violation of air or water quality standards or any other requirements initially in force as a result of the application and permit process will be deemed to be a new violation for each day such violation continues in existence following delivery of written notice of violation.

**Section 4.2:** INSPECTION: The Union County Sheriff's Office shall have the ability, at reasonable times, to inspect any hog production facilities area to insure compliance with this ordinance. All usual quarantine, sanitation, and isolation procedures followed as a matter of course by a hog production facility shall be complied with by county officers or agents during inspections. Applicants will be deemed to have consented to all reasonable inspections to insure continuing compliance with this ordinance and unreasonable refusal to submit to inspection shall constitute a breach of this ordinance.

**Section 4.3: SEVERABILITY:** The provisions of this ordinance are severable, and if any provision, sentence, clause, section or part hereof is held to be illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability, shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance, or its applicable application to other persons or circumstances.

PASSED, ADOPTED AND APPROVED this 14th day of April, 1998.

UNION COUNTY COMMISSION:

BY D. E. Sparta

BY Ernest Padgett

BY Robert D. Leg



Freida J. Birdwell  
Freida J. Birdwell  
County Clerk