



AGENDA ITEM SUMMARY

City Council

STAFF

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SUBJECT

First Reading of Ordinance No. 151, 2022, Amending the Land Development Code to Regulate Oil and Gas Facilities and Pipelines.

EXECUTIVE SUMMARY

The purpose of this item is to update the Land Development Code to regulate new oil and gas facilities and pipelines within City limits. These regulations include zoning standards, setbacks, development standards and a process for development review. Per new authority granted through Senate Bill 19-181, these local regulations exceed Colorado Oil and Gas Conservation Commission (COGCC) requirements related to surface oil and gas activities and are designed to ensure the protection of public health, safety, welfare, the environment, and wildlife resources.

STAFF RECOMMENDATION

Adoption of Ordinance on first reading.

BACKGROUND / DISCUSSION

In April 2018, with the adoption of Senate Bill 19-181 (SB-19-181), the City gained new authority to regulate the siting and surface impacts of oil and gas operations. Beginning with a City Council Work Session held on September 16, 2019, Councilmembers directed staff to begin exploring policy questions that would inform development of local regulations. At the same time, the State began a comprehensive overhaul of oil and gas regulations, effectively changing the regulatory landscape that sets the floor for local regulations. Most recently, at the October 25, 2022 Work Session, Council provided Policy direction to adopt zoning and setback standards to restrict new development. By necessity, adoption of these standards also requires:

- Defining oil and gas facilities as a use
- Defining the setback and zoning standards
- Outlining the review process that would be used for oil and gas wells and associated facilities

Originally, a proposed adoption schedule to adopt new code related to zoning and setbacks was scheduled for December 6, 2022; this was delayed to December 20, 2022, based on public comments from several interested stakeholders requesting more time to review and understand the code language. The proposed code is included in Attachment 1, and some discussion regarding elements of code is included here.

Setback and Zoning Standards

The key elements of the proposed code are zoning and setback standards, which on their own are highly restrictive for new oil and gas development. These restrictions include:

- Restricting new oil and gas facilities and redevelopment of existing facilities to only the Industrial Zone District
- Requiring a 2,000-foot setback from all buildings designed as Occupiable Space, including residential, commercial, institutional, industrial, and other uses
- Requiring a 2,000-foot setback from areas where people may congregate outdoors, such as parks, trails and natural areas
- Applying Natural Habitat Buffering Standards when a proposed oil and gas development is within 2,000 feet of a natural habitat feature

As previously presented at Council Work Sessions, these restrictions would restrict additional surface operations related to new oil and gas wells, leaving less than 1% of surface area within City limits available for development (Attachment 2).

Key Elements of the New Code

In the event that a new oil and gas facility or pipeline can meet the zoning and setback requirements, the proposed code also includes specific development standards and procedural requirements for new oil and gas operations. The new LDC sections dedicated to oil and gas include the following:

- Procedural requirements that differ from other development projects (alternative location analysis and approval of site location prior to a formal application submittal)
- Procedural steps for neighborhood meetings, hearings, and notification
- Siting regulations (zoning, setbacks)
- Design standards (landscaping, visual mitigation, fencing, pipelines)
- Prohibitions on certain equipment
- Reclamation requirements (restoration, testing, monitoring)

Additionally, some code sections are amended to include oil and gas references and all existing code sections apply, such as lighting, transportation, electric, stormwater and tree protection requirements.

Prior to any new oil and gas development, an operator would still require surface use and down-hole permits from the Colorado Oil & Gas Conservation Commission (COGCC), in addition to Fort Collins' local requirements. The required state-level approvals would include an additional series of plans and requirements including assessments of impacts, financial assurances, an air quality monitoring plan and other requirements. Prior to an oil and gas development seeking a permit from the COGCC, an operator must submit a conceptual review and hold a neighborhood meeting adjacent the proposed development. The proposed Code updates aim to regulate surface activities and are not intended to be redundant with COGCC rules which are heavily focused on "down-hole" activities. As an example: The proposed Fort Collins oil and gas regulations specifies local assurances through a Development Agreement - 6.3.3 (C)(3)(f) "Maintenance guarantee" two-year maintenance guarantee and five-year repair guarantee covering all errors or omissions in the design and/or construction from surface related construction. For an operator to demonstrate its capacity to perform all of its obligations under the COGCC Rules, Rule 700 includes financial assurances for operators, including, a CASH Bond or Surety Bond for a number of operational related activities.

Public Feedback on Code Language

To date, public outreach has focused on high level policy questions and objectives related to eliminating or mitigating impacts from development. The bulk of outreach occurred prior to 2021 (as summarized in Attachment 5), and efforts since then have focused on development of code language within a constantly changing State regulatory environment. On November 8, 2022, Version 1 of draft code language was

published on the City's oil and gas website (www.fcgov.com/oilandgas/), and provided by request to the following stakeholders:

- Planning and Zoning Commission
- Air Quality Advisory Board
- Colorado Oil and Gas Association (COGA)
- American Petroleum Institute (API)

While policy direction for oil and gas regulations have been under discussion for more than three years, this did not include the actual publication of draft code for review. A list of key questions that have been raised, along with summaries and responses, are listed in the attachments. To respond to the public input on the draft code, several proposed modifications are included in the ordinance proposed for Council consideration (revised since public draft was released), as summarized in Attachment 4.

Can the zoning or setback standards be modified?

As written, setback standards (2000') are not subject to a modification of standards, which means these cannot be reduced.

Without the option for a modification of standards (e.g., to reduce the 2000-ft buffer), the only remaining options for flexibility in siting a new facility is the Addition of Permitted Uses (APU):

- **Addition of Permitted Uses.** The purpose of the Addition of Permitted Use process is to allow for the approval of a particular land use to be located on a specific parcel within a zone district that otherwise would not permit such a use. This process is available to oil and gas facilities pursuant to Division 6.9.1 of the Land Development Code. Under this process, an applicant may submit a plan that does not conform to the zoning, with the understanding that such plan will be subject to a heightened level of review, with close attention being paid to compatibility and impact mitigation. Section 6.9.1(C)(1) outlines eight specific criteria that must be met by the applicant in order for the proposed use to be approved. Additionally, because oil and gas developments are subject to Planning and Zoning Commission approval (Type 2 process), an additional three criteria must be met for the Addition of Permitted Use to be approved.

What about Annexations?

Per the terms of the Intergovernmental Agreement with Larimer County regarding cooperation on Annexation, Growth Management and Related issues, the County will not accept certain development applications for a property which has any contiguity to the City limits unless the City has the opportunity to determine whether to require annexation. In the case of a petition for annexation, oil and gas developments would follow the procedures set forth by Division 6.10 of the Land Development Code in addition to the proposed oil and gas zoning, setback, and development regulations.

What is the public involvement process for a new oil and gas development proposal?

For new wells, the proposed code requires a Type 2 Planning & Zoning Commission review process as outlined in Article 6 of the Land Development Code. Pipelines were originally proposed with a Basic Development Review process (in version 1 of the published draft code) but have also been now updated to a Type 2 Planning & Zoning Commission review process. This type of process includes the following requirements for public notification and involvement during the review process:

- **Notice requirements:** proposed regulations require mailed notifications for all owners and occupants within a 1-mile radius of the proposed site. Notice also includes a 12 square foot yellow sign at the development site to ensure local residents are aware of the proposal.
- **Neighborhood meetings:** one neighborhood meeting is required as a part of a Type 2 development review and includes presentations by both the project applicant and City staff

reviewing the project. Some proposals may benefit from a second meeting after making revisions to receive feedback on plan changes prior to hearing.

- **Planning and Zoning Commission hearing:** The Planning and Zoning commission is the final decision maker on all approved site plans. The Planning and Zoning Commission hearing includes an oral public comment period.
- **Appeals:** All decisions by the Planning and Zoning Commission can be appealed to City Council.

Where are pipelines allowed?

Pipelines (sometimes called flowlines) are primarily used to transport oil, gas, and produced water from a production site (e.g., a well) to a storage facility. Location requirements for pipelines include:

- 50-150-foot setback from buildings
- 150-foot setback from surface water
- Operator's emergency response plan addressing gathering line spills and ruptures

The original proposed draft (v1) included pipelines as a permitted use in all zone districts. This was intended to discourage truck traffic and storage on-site and would have required specific approvals from each property owner and requirements to align with existing easements where possible. In v2 (proposed for Council consideration), the zones where pipelines would be permitted have been updated as follows, in response to public feedback and a recommendation from the Planning and Zoning Commission:

- Permitted Use: Commercial; Employment and Industrial; Downtown; Overlay Zone districts.
 - D, CC, CCN, CCR, CG, CS, NC, CL, HC, E, I
- Not a Permitted Use: Mixed-Use; Residential; Public Open Lands Zone Districts.
 - POL, RC HMN, LMN, MH, MMN, NCL, NCM, NCB, RL, UE, RF, and RUL

How are Natural Habitats Protected?

Oil and gas development have the potential of impacting wildlife and natural habitats by increased exposure to risk from collisions with infrastructure and risk of entrapment or exposure to toxic chemicals in trenches, open pits, and storage ponds. The COGCC Rule 1201 outlines the State's requirements for a wildlife plan including High Priority Habitats subject to this Rule 1202. State rules for oil and gas operations include:

- 500 foot No Surface Occupancy (NSO) buffers for all aquatic High Priority Habitat (HPH) streams identified by Colorado Parks and Wildlife, including designated cutthroat trout habitat, Gold Medal streams, sportfish management waters, and native species conservation.
- Spill prevention measures within 1000' of aquatic high priority habitats
- Big Game protections including a Wildlife Mitigation Plans when drilling in migration corridors, including plans to minimize impact on wildlife and habitat and plans to offset adverse impacts through mitigation projects or fees.

In many cases, the Colorado Parks and Wildlife high priority habitat buffer overlaps with the City Natural Habitat Features highlighted by Section 5.6.1 of the Land Development Code. The current Land Development Code standards apply to any development with 500' of a natural habitat feature. In the proposed Oil and Gas regulations additions to the Code, the standards of section 5.6.1 apply when the proposed oil and gas development is within 2,000 feet of a natural habitat feature. If the oil and gas development causes any disturbance within the buffer zone, the applicant is required to undertake mitigation measures to restore any damaged or lost natural resource either on-site or off-site. Any such mitigation or restoration shall be at least equal in ecological value to the loss suffered by the community because of the disturbance and shall be based on such mitigation and restoration plans that have been approved by the Planning and Zoning Commission.

Why do these regulations not include all of the elements from Larimer County regulations or other communities?

Fort Collins is in a different position than many other communities, as the city currently contains only 10 active wells, with only three currently producing, and no storage facilities within City limits. Full authority of SB19-181 would include the ability to regulate ongoing operations, which would also require new elements of the City's compliance programs and local enforcement resources. As discussed at the October 25, 2022, work session, the City is instead working jointly with Larimer County to ensure regulation, monitoring and inspection elements of new State regulations are enforced. These efforts include:

- **Leak Detection.** Odors and leaks are a primary concern at oil and gas operations and are already prohibited per COGCC standards. Resources for enforcement of these requirements are the limitation. Related to this, the City is purchasing an Optical Gas Imaging (OGI) camera to support leak detections at existing facilities, and the camera will be used per a new Intergovernmental Agreement (IGA) with Larimer County. Larimer County is an authorized designee of the State to investigate any oil and gas concerns within City limits.
- **Plugging and Abandonment of Wells.** The City and County are working jointly on an application to the COGCC to consider plugging and abandonment of low and non-producing wells in the Fort Collins Field. This is new authority granted by the State and may ultimately reduce or eliminate existing operations within City limits. Staff will report back to Council regarding outcomes of COGCC decisions when available, currently expected in Q1 of 2023. While the plugging and abandonment of wells is desirable and will be encouraged, proposed code updates do require a Basic Development Review process for plugging and abandonment to ensure that reclamation meets locally relevant reclamation standards.
- **Financial Assurances.** As of April 30, 2022, COGCC has new Financial Assurance requirements designed to ensure that every operator of every well is financially capable of fulfilling obligations to properly remediate and reclaim all active wells. The City did participate and provide comment during these rulemakings and is currently working with Larimer County to review and ensure adequacy of the Financial Assurances Plan required of the sole operator within city limits. If it is determined inadequate (e.g., does not cover all possible remediation and reclamation requirements), the City can request a Hearing with COGCC to strengthen requirements.

PLUGGING AND ABANDONMENT OF WELLS

If an Oil and Gas well-produced and has reached the end of its lifecycle, COGCC has a standard for plugging the well with cement, cutting the well's pipe 5 feet below the surface, and requiring the operator to reclaim the surface. The proposed regulations requires that an operator submit a basic development review application so that the City may apply regulations to the surface activities associated with plugging and abandoning wells. Furthermore, the City's Sustainability Services Department is pursuing the plugging and abandoning of wells through new COGCC rulemaking. Rather than a Type 2 development review application, the regulations include a basic development review application process in order to provide a process-incentive to reclaiming oil and gas wells. Abandoned wells in Fort Collins vary significantly in age, with some wells abandoned as far back as the 1920s and others abandoned within the last decade. As such, the amount and precision of information about these wells (e.g., exact locations or details about how they were plugged) is an important element for requiring a basic development review process.

CITY FINANCIAL IMPACTS

There are no financial impacts related to adopting oil and gas regulations. Costs related to processing development applications, administering permits, and conducting inspections would be recovered through fees.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Air Quality Advisory Board (AQAB) – a motion was not introduced and a memo to Council will be voted on during the December 12, 2022 meeting. November 14, 2022 regular meeting minutes will be adopted during the December 12, 2022 meeting.

Planning and Zoning Commission - The motion to approve the draft regulations carried 6-1 vote with the following recommended changes:

1. Remove oil and gas pipelines as an allowed use within public open lands and residential zone districts; including, HMN, LMN, MH, MMN, RL, UE, RF, and RUL
2. Oil and Gas developments (new pipelines, oil and gas facilities) would be subject to a Planning and Zoning Commission Review (Type 2). Plugging and abandoning remains Basic Development Review

PUBLIC OUTREACH

Starting in 2019, staff conducted a series of public engagement tactics. Many of those tactics and themes are detailed in Attachment 4. To help understand siting preferences and big-picture concerns about oil and gas development in Fort Collins, staff engaged in numerous meetings and conversations with various City of Fort Collins Departments, City Boards, industry representatives, and environmental and neighborhood groups. Input was gathered through the following outreach activities:

- Direct mailing to property owners within 2000 feet of existing active oil and gas wells, with information on the project, public open houses, City's website, and CDPHE's health study (500 letters mailed)
- Interactive presentation at a Super Board Meeting held in February 2020 (over 50 attended with 14 boards represented)
- Online questionnaire to collect feedback on concerns and thoughts, as advertised through direct mailing, social media, news release, and Nextdoor website (163 completed responses)
- Two interactive public open houses with Larimer County, CDPHE and operator in attendance to answer questions
- Presentations to the Planning & Zoning Board, Natural Resources Advisory Board, Land Conservation and Stewardship Board, and Air Quality Advisory Board work sessions
- Presentations to City departments
- Individual phone calls and emails to discuss questions and concerns as needed

In addition to broad community outreach, staff also consulted with the following targeted groups:

- Colorado Oil and Gas Conservation Commission
- Colorado Oil and Gas Association
- Prospect Energy (local oil and gas operator)
- Country Club Reserve land owner
- Local Government Roundtable: a group of 14 local jurisdictions. Attended biweekly meetings to discuss COGCC rulemakings and local regulations under consideration
- Colorado Department of Public Health and Environment staff
- Larimer County staff

Since the October 25, 2022 City Council work session, representatives of the following organizations has specifically asked to review the draft Ordinance language. Other than the public comments provided during the Planning and Zoning Commission hearing (ATTACHMENT 6), no additional outreach to these organizations has been coordinated.

- Colorado Oil and Gas Association
- American Petroleum Institute
- Larimer Alliance

ATTACHMENTS

1. Ordinance for Consideration
2. Regulatory Scenario Map
3. COGCC Rules & Fort Collins Oil and Gas Regulation comparisons
4. 2020 & 2021 Stakeholder Feedback
5. Fall 2022 Stakeholder Feedback theme
6. Planning and Zoning Commission Regular meeting minutes