Mayor Jeni Arndt
Council member Tricia Canonico
Council member Emily Francis
Council member Susan Gutowsky
Council member Kelly Ohlson
Council member Shirley Peel
Council member Julie Pignataro

February 23, 2023

Re: Fort Collins Draft Oil and Gas Regulations

Dear Mayor Arndt and City Council members,

The Larimer Alliance for Health, Safety, and the Environment; Sierra Club Poudre Canyon Group; 350 Colorado; Fort Collins Sustainability Group; and Colorado Rising respectfully offer the following additional comments regarding the City of Fort Collins draft Oil and Gas (O&G) regulations.[1] These groups collectively represent thousands of Fort Collins and Larimer County residents committed to protecting our community's public health, environment, natural resources, and wildlife resources from significant threats posed by inadequately regulated O&G development.

We urge the City to prepare a substantially revised and enhanced regulatory package consistent with our recommendations; with meaningful opportunities for public input before proposed regulations are brought forward for Council action.

This letter incorporates and expands upon the comments and recommendations made in our letter to you dated Dec. 17, 2022. Its primary purpose is to identify specific regulatory approaches that would significantly strengthen the City's draft O&G regs. There is nothing new or unproven here: Every one of the approaches we recommend has been adopted by at least one local government in the Front Range. Moreover, none of the regulatory approaches we recommend have been successfully challenged in Colorado by O&G industry advocates.

Fort Collins residents and voters have expressed their desire for effective protection from the threats, dangers, and harms associated with O&G development; and the need to upgrade the current under-protective draft O&G regs cannot be overstated. However, based upon our communications with City

[1] These comments are based on the most recent public version of the draft regs (ver. 2 dated Dec. 12, 2022). We note that ver. 2 did not address most of the concerns pertaining to ver. 1 identified in the Air Quality Advisory Board's Dec. 15, 2022 memo to City Council and the Dec. 17, 2022 Joint Environmental Organization letter to City Council.

staff, strengthening the draft regs will not occur unless City Council expressly directs staff to broaden the regulatory approach and adopt protective standards.[2]

To help ensure that future O&G development within Fort Collins, or in areas over which the City may exert regulatory jurisdiction, proceeds in a manner that sufficiently protects the public interests set forth in SB 19-181, we recommend modifying the draft O&G regulations by including the following provisions:[3]

- **Financial Assurance:** Establish operator financial assurance requirements, including insurance and indemnification requirements, sufficient to ensure adequate resources are available to provide for proper maintenance, decommissioning, removal, response, and remediation of O&G operations and facilities; and be adequate to guarantee operator performance of all conditions of approval. Insurance should include pollution liability and control of well coverage.
- **Cumulative Impacts:** Require the operator to provide a cumulative impacts analysis and a natural habitat / natural feature review in the O&G development application for all O&G facilities and operations (including pipelines).
- **Setbacks:** The setback should be a non-waivable minimum of 2500' with a discretionary option to expand the setback to 3200' (as required in California) where necessary to protect public health, public welfare, or the environment.[4]
- **Water Use, Source Documentation, and Recycling:** Require the operator to provide an up-front Water Use, Source Documentation, and Recycling Plan as part of the O&G development application showing that water supply for the proposed O&G operation will be adequate for the project's needs; to disclose the amounts and sources of the water utilized; and to maximize use of produced water recycling to the maximum extent possible.
- **Air Quality and Emissions Modeling and Monitoring:** Require an independent air quality modeling study that assesses existing air quality at the proposed site, predicts the anticipated

[2] At the Dec. 20, 2022, City Council meeting, City staff publicly recommended adoption of the current draft regulations without significant changes. In recent discussions, staff verbally reaffirmed the intent to recommend that City Council adopt the current draft as is.

[3] SB 19-181, §4(1)(h) provides local governments with broad authority to regulate "the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment." In addition to the section's broad "protect and minimize adverse impacts" authorization, the numerous "matters specified" that SB 19-181, §4 expressly authorizes local governments to regulate include: impacts to public facilities and services (§4(1)(h)(III)); water quality and sources ((§4(1)(h)(IV)); air emissions and air quality (§4(1)(h)(IV)); noise and vibration (§4(1)(h)(IV)); financial securities, indemnification, and insurance (§4(1)(h)(V)); and imposition of fines for leaks, spills, and emissions (§4(2)(b)). We note that the City's current draft regulations make virtually no use of these important local government authorities expressly granted under SB 19-181. We also note that the draft regs fail to utilize the full range of inherent regulatory authority available under the City's Home Rule status.

[4] There is no scientific and/or medical evidence that a 2000' setback provides a high level of health protection and safety, and a substantial body of scientific and medical evidence indicates that more than 2000' is needed to protect health and safety. The 2000' setback in the COGCC and Larimer County regulations was a political compromise, and without scientific and/or medical basis.

emissions from the proposed facilities/operations, and models the air quality impacts over the project's projected lifetime.
    - Require compliance with the National Ambient Air Quality Standards (NAAQS); avoidance or minimization and mitigation of methane emissions; and the most protective health-based guidelines for Hazardous Air Pollutants (HAPs) established by EPA and CDPHE.
    - Require continuous emission and ambient air quality monitoring for key air pollutants during all phases of the facility's/operation's pre-production, production, shutdown (including any temporary shutdown), and P&A. Monitoring must be conducted by an independent expert and data generated should meet EPA and CDPHE-APCD standards.
- **Best Management Practices:** Require development plans for all O&G operations and facilities (including all pipelines) to incorporate industry-leading Best Management Practices regarding facility inspection, maintenance, and operation; and require the operator to implement and fully comply with these BMPs.
- **Inspection, Enforcement, and Penalties:** Establish effective inspection, enforcement, and penalty provisions for violations of operational requirements.
    - Enforcement options should include the authority to promptly issue facility shut-down and corrective action orders in response to non-compliance events; to seek judicial injunctive relief in response to an operator's failure to comply with such orders and/or for continuing violations; and to impose meaningful penalties for an operator's repeated, willful, or negligent non-compliance.
    - In addition to civil fines, enforcement authority should include the discretion to mandate, in response to non-compliance events, increased inspection frequencies; facility equipment upgrades; and system audits.
- **Infrastructure and Services Fees:** Establish a schedule of impact fees sufficient to cover all costs for infrastructure and services necessary to serve oil and gas development, including roads, water supply, waste disposal, emergency services, and City planning, inspection, and enforcement costs.
- **Pipeline Leak Detection and Integrity Inspection:** Require the operator to implement state-of-the-art pipeline leak detection leak detection technologies/practices and periodic pipeline integrity inspection protocols.

The currently proposed regulations are not consistent with the full intent of SB 19-181 and as such would neglect the City's opportunity and duty to reduce unnecessary public health, safety, welfare, and environmental risks for Fort Collins' current and future residents.

We urge the City Council to instruct staff to take a more comprehensive vision of what protections are available and needed, and to prepare a substantially revised and enhanced regulatory package consistent with our above recommendations.

We also encourage the City Council to provide timely and meaningful opportunities for public input before final proposed regulations are brought forward for Council action.

As always, we stand ready to assist and work with the City Council and staff toward these very worthwhile and achievable goals.

Thank you for the opportunity to provide these recommendations and for your commitment, time and efforts to the Fort Collins community.

Sincerely,

Tim Gosar, Convener

Larimer Alliance for Health, Safety, and the Environment

Megan Thorburn, Chair

Sierra Club Poudre Canyon Group

Kevin Cross, Convenor

Fort Collins Sustainability Group

Micah Parkin, Executive Director, and Riley Ruff, Northern Colorado Coordinator

350 Colorado

Lauren Petrie, Executive Director

Colorado Rising

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December 20, 2022

VIA EMAIL – NO ORIGINAL TO FOLLOW

City of Fort Collins
300 LaPorte Ave.
Fort Collins, CO 80521

ATTN:
Kirk Longstein, Senior Environmental Planner (klongstein@fcgov.com)
Cassie Archuleta, Air Quality Program Manager (carchuleta@fcgov.com)
City of Fort Collins City Council

RE: Colorado Oil & Gas Association Comment to Draft Oil and Gas Regulations

Dear Ms. Archuleta, Mr. Longstein, and City of Fort Collins City Council,

The Colorado Oil & Gas Association ("COGA") appreciates the opportunity to provide comment on the City of Fort Collins's ("City") draft oil and gas regulations dated December 12, 2022 ("Draft Regulations"). COGA looks forward to providing additional, constructive input as the City moves forward in drafting and ultimately adopting new regulations in accordance with state law, including the legal requirements that local governments may enact regulations pertaining to the siting of an Oil and Gas Facility or Oil and Gas Location and relating to the surficial impacts of oil and gas development only to the extent such regulations are reasonable and necessary and only to the extent such regulations do not prohibit, whether directly or indirectly, oil and gas development. As explained below, COGA is concerned that, among other things, the Draft Regulations do not meet these legal mandates and instead operate as an illegal *de facto* ban on new oil and gas development within the City. COGA encourages the City closely to examine our attached redline of the Draft Regulations for additional detail and input beyond what is contained herein, as this letter does not exhaust COGA's concerns.

I. The Proposed Setbacks and Siting Requirements Are Too Restrictive.

The Draft Regulations' setbacks and siting requirements go well beyond the extremely rigorous rules adopted recently by the state's technical experts in oil and gas, the Colorado Oil and Gas Conservation Commission ("COGCC") and are anticipated to carry unintended consequences. While COGA recognizes that local governments share with COGCC the authority to regulate siting of oil and gas development and to regulate surface impacts of oil and gas development, and COGA acknowledges local governments may exercise their authority to enact regulations more stringent than the state's, local government authority is not unfettered. Local government regulations must still be reasonable and necessary, § 29-20-104(1)(h), C.R.S., and they certainly cannot have the effect of banning oil and gas operations and precluding the state from exercising its exclusive jurisdiction to regulate downhole aspects of oil and gas development.

Indeed, Senator Fenberg, the Senate sponsor of Senate Bill 19-181 (SB 19-181), stated when he introduced the legislation to the Colorado Senate Committee on Transportation and Energy "I want to spend a little bit of time on what this bill is not. **This bill does not allow a de facto ban whether at the state level or at the local level**." Colorado Senate Committee on Transportation and Energy March 5, 2019, audio at 9:50-10:35, available at https://leg.colorado.gov/committee/granicus/1474856 (emphasis added). Senator Fenberg later reiterated to the Colorado Senate Finance Committee floor that the bill does not allow bans, stating, "**What this bill does not do is allow a de facto ban."** Colorado Senate Finance Committee March 7, 2019, audio at 9:15-10:10, available at https://leg.colorado.gov/committee/granicus/1474831 (emphasis added). When Representative KC Becker, another of SB 19-181's sponsors, introduced the legislation to the Colorado House Energy and Environment Committee, she likewise acknowledged that bans are impermissible under SB 19-181, explaining that the bill "**is not a de facto ban at the state level or local level**." Colorado House Energy and Environment Committee March 18, 2019, audio at 19:55-20:50, available at https://coloradoga.granicus.com/MediaPlayer.php?view_id=16&clip_id=13741 (emphasis added).

COGA is concerned that several individual siting restrictions in the Draft Regulations are unreasonable and unnecessary and that the restrictions taken as a whole operate as an illegal *de facto* ban on oil and gas development in Fort Collins.

Beginning with select individual restrictions, imposing a 2,000' setback from all occupiable buildings with no exceptions is unreasonable and unnecessary because distance is not the only relevant metric by which to ensure protection of public health, safety, welfare, and the environment, including wildlife resources. In adopting siting regulations that allow for new oil and gas development locations to be within 2,000' from residential buildings when one or more of several enumerated criteria are present, the COGCC recognized that its rules and operator Best Management Practices can and do protect residents and other receptors at distances shorter than 2,000'. *See* COGCC Statement of Basis, Specific Statutory Authority, And Purpose, Cause No. 1R Docket No.2003002071 at 225 ("[D] istance alone does not directly address any specific potential impacts and that protective measures required by other Commission Rules

which are targeted to a specific impact may provide equal or even greater protections than distance."); *id*. at 226 ("Depending on what type of impact is at issue, and the nature of the potential receptor that would be adversely impacted, [Commission regulations and Best Management Practices] achieve protection [that] may be equally effective or more effective than distance."); *id.* (Stating it is bad policy to "elevate distance as the sole or predominate regulatory tool to protect and minimize adverse impacts.").

The Draft Regulations' 2,000' setback from residences also does not consider the fact pattern recognized in COGCC Rule 604.b.(1) that property owners and tenants within 2,000' of a proposed oil and gas location may have no issue with the proposed location. Where this is the case, COGA believes the input of property owners and tenants should be taken into consideration and their position respected.

A 1,000' setback from all conservation easements is also inappropriate and unreasonable. The Draft Regulations prohibit the development of mineral rights within 2,000' of surface parcels encumbered with conservation easements without exception, not recognizing that mineral rights underlying the conservation easement may have been severed prior to the encumbrance or leased prior to the encumbrance, nor recognizing that the conservation easement may not prohibit mineral development. Where mineral rights are severed or leased prior to a conservation easement being placed on the surface of a property, the conservation easement affects only the surface of the property as a matter of law. COGA contends it is unreasonable to restrict mineral development based on the existence of a conservation easement when the conservation easement itself has no legal impact or relationship to the previously severed or leased minerals. Just as a surface owner with severed minerals cannot prohibit reasonable mineral development on the surface of its property due to the reasonable accommodation doctrine, nor can a conservation easement holder prohibit development of minerals severed or leased prior to the conservation easement encumbrance. Additionally, where a conservation easement allows for mineral development, it makes no sense arbitrarily to disallow mineral development. COGA recommends adopting language to clarify that only conservation easements where minerals were not severed or leased prior to conservation easements encumbering the surface would be subject to the 1,000' setback.

Further, zoning is not an appropriate means for regulating oil and gas development. Mineral development is unique among land uses because such development can only take place where subsurface minerals exist. The application of superficial zoning boundaries will do nothing to alter the location of subsurface minerals but may result in an illegal regulatory taking of a mineral owner's property. The Draft Regulations' zoning restrictions for pipelines also may carry unintended consequences. By disallowing pipelines in so many districts, new development may not be able to take advantage of existing pipeline right of way corridors and existing pipeline infrastructure, meaning that new surface disturbance and new pipeline infrastructure would be required, which COGA finds wasteful, unreasonable, unnecessary, and less protective of

the environment. Worse, limiting pipeline right of way options may mean that it is impossible for operators to use pipelines to take away produced hydrocarbons and produced water from oil and gas locations. Without pipeline takeaway, operators must have on site storage tanks, which means more emissions, a bigger location footprint, and significantly more truck traffic.

COGA is concerned that the total effect of all the setbacks proposed is that there is no space for new oil and gas development within Fort Collins, which would render the regulatory framework an illegal ban. COGA requests the City provide a map of the City detailing which surface parcels in the City would meet all the setback criteria outlined in the Draft Regulations and be available for mineral development.

II. It is Unreasonable and Unnecessary for the City to Require the Applicant to Submit a Complete Local Permit Application Before Submitting Applications to the State.

It is unreasonable, unnecessary, and contrary to COGCC's codified preference to require a local completeness determination prior to the submission of a development application to the COGCC. The COGCC prefers state and local permitting processes to run concurrently to improve efficiency for operators and to take advantage of natural opportunities for collaboration. *See* COGCC Rule 301.f.(2)("[T]he Commission prefers operators to follow the concurrent permit review process pursuant to rule 303.a.(6).A. to allow each permitting authority to coordinate sharing its unique expertise and standards."). COGA agrees that a concurrent process can benefit the state and the local government alike and further observes that requiring a sequential process ultimately will cause operators' projects to be delayed without any benefit to Fort Collins. COGA urges the City not to foreclose the opportunities for collaboration and coordination that a concurrent permitting process confers.

III. Permits Should Not Be Required for Plugging and Abandonment.

COGA also questions the need to obtain City permits to plug and abandon wells and decommission facilities. The Draft Regulations' requiring permitting for these activities and subjecting operators to City review and approval threatens to interject the City's discretion into an area where the COGCC has expertise and, regarding downhole well plugging procedures, primacy. Though other local governments include references to plugging and abandonment within their respective development codes, these references direct operators to the COGCC's rules and merely reiterate that compliance with established statewide rules is required. *See* Boulder County Land Use Code 12-600; Broomfield Municipal Code 17-54-320. To impose additional requirements here adds unnecessary administrative burdens to operators, delays the activities of plugging, abandonment, and decommissioning and is legally inappropriate.

Many of the plugging and abandonment restrictions are also substantively unreasonable and necessary. For example, the City proposes to have operators conduct annual groundwater and soil sampling at the plugged location for a minimum of five years. As a threshold matter COGA does not believe such testing is reasonable or necessary unless there is an issue with the plugging or a wellbore integrity issue, but in any event, after an operator appropriately plugs and abandons a well in compliance with state law, an operator may no longer have permission to access the location and performing such testing would require the operator to trespass. Similarly, the Draft Regulations' requirement for operators to install permanent groundwater wells for future site investigation "if necessary" may be impossible because the operator may not not have permission to install such wells and such installation would constitute a continuing trespass.

The Draft Regulations also require operators to mail notice of the permit application to real property owners and residents within one mile feet prior to commencing plugging and abandonment of wells and pipelines and decommissioning of oil and gas facilities. This requirement risks confusing the general public, who have little knowledge of the technical procedures involved with either plugging and abandonment or decommissioning of facilities, about what is to occur and may mislead the public into thinking that the notice relates to new proposed oil and gas development, particularly because the City's Code primarily requires notice of proposed new development, not notice that development will no longer be present in an area. COGA reckons the intent of requiring notice to surface owners may be to notify surface owners that an oil and gas rig may be visible, and COGA appreciates that surface owners may have questions relating to seeing a visible oil and gas rig. However, rigs used to plug and abandon wells are much shorter than drilling rigs and the plugging, abandonment, and decommissioning process for oil and gas wells and facilities carry very few impacts, none of which extend even remotely close to the proposed notice distance of one mile. As a rig used for plugging and abandonment is approximately 100 feet, COGA suggests a reasonable and necessary notice distance would not exceed 500 feet at the most. Consistent with COGA's position that a permit should not be required for these activities, COGA further suggests that the notice not be related to a permit application but rather only to the activities themselves. Finally, COGA cannot divine any reason why property owners in the notice radius who are not residents would require notice. These persons will not see a rig, because they are not residents, and nor are they impacted in any way by the plugging, abandoning, and decommissioning process.

IV. The Proposed Permitting Process for Pipelines Is Unreasonable, Unnecessary, and Too Administratively Burdensome.

In a shift from the City's prior proposed regulations, the Draft Regulations apply the full suite of steps required for new oil and gas pad development to pipelines. As noted above, pipelines have many benefits and their use should be encouraged. COGA asserts that the Draft Regulations' pipeline permitting process perversely discourages

pipelines by making them difficult to apply for. As well, some permitting steps are unreasonable and unnecessary as applied to pipelines.

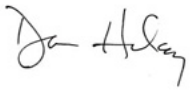
For example, COGA strongly opposes the requirement that pipeline applications be subject to a one mile notice requirement. Impacts from pipelines are essentially limited to surface disturbance during construction and maintenance, and it is unreasonable and unnecessary to notice persons who are not impacted. Furthermore, because pipelines can traverse miles, a one mile notice requirement could also mean an operator is required to notice thousands of persons, perhaps tens of thousands or even hundreds of thousands, along the pipeline alignment. Obtaining addresses for this many people and then mailing notice would be a very time-intensive exercise and expensive, deterring operators from utilizing pipelines.

Conclusion

COGA is proud the Colorado oil and gas industry leads the technological and safety advancements that make our state a national and global leader in developing the resources we use every day. The state's rules and regulations have set a high bar for our employees and companies to protect public health, safety, welfare, the environment, and wildlife, while also preserving jobs and opportunities for tens of thousands of Coloradans and their families. Going beyond the state's rules without a demonstration for their need and reasonableness flouts the law. COGA encourages the City to revise its Draft Regulations in a manner consistent with state law, that is, to revise the provisions discussed herein and in the attached such that they are reasonable, necessary, and do not operate as an *de facto* ban. Given COGA's grave concerns that the setbacks and siting requirements do indeed carry the illegal effect of banning new oil and gas operations, COGA respectfully reiterates its request for mapping that clearly illustrates where oil and gas development would be possible under the Draft Regulations.

Thank you for your consideration of our comments and the included redline of the Draft Regulations.

Sincerely,



Dan Haley
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December 20, 2022

City Council
City of Fort Collins
300 Laporte Avenue
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Delivered via email: Kirk Longstein, Senior Environmental Planner, klongstein@fcgov.com
Cassie Archuleta, Air Quality Program Manager, carchuleta@fcgov.com

RE: Draft Oil and Gas Regulations

Dear Council Members,

The American Petroleum Institute Colorado (API Colorado) respectfully submits the following comments on the proposed oil and gas regulations put forth by the City of Fort Collins (the city). API Colorado appreciates the efforts by the city to consider stakeholder feedback and we look forward to continuing to work with city staff on this matter.

The American Petroleum Institute (API) represents all segments of America's oil and natural gas industry. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency and sustainability. Its nearly 600 members produce, process, and distribute most of the nation's energy. Member companies are producers, refiners, suppliers, marketers, and pipeline operators as well as service and supply companies that support all segments of the industry.

Our state continues to be home to some of the most stringent regulations in the oil and gas industry. API Colorado encourages alignment with the Colorado Oil and Gas Commission's (COGCC) rules including the use of consistent definitions, standards, and practices. Clear guidance and feasible requirements will help ensure operators continue to meet requirements in an efficient and effective manner. For these reasons, API Colorado suggests the following revisions.

5.17.3 Oil and Gas Project Development Plan Review Procedures

Conceptual Review, Alternative Location Analysis

In current draft regulations, the city is requesting operators submit an alternative location analysis. We note COGCC permitting rules already require alternative location analyses in many cases including proximity to water courses. To meet these requirements, operators typically evaluate multiple alternative locations, which are thorough and exceed the city's proposed requirements. To prevent unnecessary duplication, we recommend the city defer to the COGCC for alternative location analysis. Additionally, COGCC's rules provide multiple opportunities for local governments to collaborate with the COGCC on things such as alternative analyses, and we strongly encourage the city to avail itself of those opportunities.

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Neighborhood Meeting
The draft ordinance requires operators to send written notice for a neighborhood meeting to all addresses within one mile of the property line of the parcel of land. Since the term parcel is not defined, it could include far more than the proposed location. This could cause the distance between a proposed location and other buildings to be well in excess of one mile. We recommend that the ordinance use the term proposed location rather than a parcel of land.

Development Application Submittal
As local governments have developed their own submission processes, many jurisdictions allow, or even encourage, operators to submit concurrent filings with the COGCC. Allowing this avoids duplication and local governments can gain insight from the forms submitted to the COGCC. As noted above, we strongly recommend that the city allow concurrent applications to reduce unnecessary duplication for operators and undue burden for city staff.

5.17.4 Oil and Gas Facility Development Standards
Location Restrictions, Setbacks
API Colorado notes several concerns with the proposed setback provisions that raise legal concerns. We first question the applicability of these setbacks to existing facilities. As written, the draft ordinance states that the use of equipment to recomplete an existing well would be considered expansion, but we are aware of no circumstances where it would be possible for an existing facility to meet these setbacks. This provision appears to have the practical effect of rendering an economic asset unviable. We also note that the draft regulations state that setbacks will be measured from the edge of a working pad to the nearest wall of any existing or platted building approved, or to be approved, as occupiable space. For operators to satisfy this requirement, the city must maintain a list of platted buildings awaiting approval. We seek to understand if the city manages a such list. Without one, operators would be unable to determine measurements from a platted building awaiting approval. API Colorado also seeks additional information on steps an operator would be required to take should a building application be filed during the review of an oil and gas location.

Location Restrictions, Buffer Zones
While this section requires operators to protect natural habitats and features, we note natural features are not defined in these regulations. While natural communities, habitats, and special features are defined in the city's code, Article 3, Division 3.4.1, there is no language specific to defining a natural feature. Due to the vague nature of this term, and to best ensure operators can meet requirements in an effective manner, we request the term natural feature be defined.

5.17.5 Oil and Gas Pipelines
Oil and Gas Pipelines
Current draft regulations require operators to share oil and gas pipeline easements and consolidate new corridors for oil and gas pipeline easements in order to minimize surface impacts. This draft also requests the coordinates of all oil and gas pipelines. The U.S. Department of Homeland Security Department treats pipelines, including above-surface facilities, as sensitive information and limits access beyond a specific level of granularity. COGCC approaches this issue in a similar manner and the newly

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issued rules from the Colorado Public Utilities Commission also limit access to detailed information about pipeline location for natural gas lines. While Senate Bill 19-181 granted local governments significant authority over siting oil and gas facilities, it must be both necessary and reasonable. At this time, we do not feel it is necessary and reasonable to make such sensitive information publicly available. For these reasons, we strongly recommend the city use the same protocol developed by COGCC.

API Colorado also reminds the city that disturbing an existing right-of-way can entail significant safety risk since pipeline locations cannot be precisely known even when mapped. The city should consider whether co-locating rights-of-way merits the risk of excavation accidents with their attendant human health implications.

5.17.6 Plugging and Abandonment of Wells and Pipelines and Decommissioning of Oil and Gas Facilities

While we appreciate the city's efforts to ensure wells are properly plugged and reclaimed, we remind the city of the authority granted through Senate Bill 19-181 to the COGCC to plug and abandon oil and gas facilities. As such, the city does not have regulatory authority over this matter. This section also requires operators to provide a removal plan for flowlines and wastewater pipelines; however, the city also lacks the decision-making authority to remove or abandon pipelines in place. This, too, is not reasonable or necessary since this is a matter that is currently addressed and regulated by the COGCC.

Reclamation

Currently, the draft ordinance requires operators to reclaim a site within six months after plugging and abandoning a well, a pipeline, or decommissioning an oil and gas facility. We note this differs from the COGCC, which allows 12 months for reclamation.[1] Due to limited growing seasons, it would be difficult to complete reclamation within six months due to the lengthy work needed to reclaim a site. As written, this requirement would be unreasonable. We recommend the city mirror the COGCC's reclamation timelines.

6.3.3 Development Application Submittal

Development Review Fees and Costs for Specialized Consultants.

This section of the draft regulations allows the city to utilize a specialized third-party consultant with specialized knowledge to address these matters. If the city were to allow concurrent applications to COGCC and the city, the need for specialized, and costly, consultants could be avoided in many cases.

Finally, API Colorado notes that it appears the city is limiting operations to only industrial zones, which could virtually eliminate any usable space for new operations or, potentially, expanded uses as envisioned by the city. We remind the city that the authors of Senate Bill 19-181 explicitly, and consistently, emphasized that their legislation did not and does not authorize a blanket prohibition on oil and gas operations. By adopting an ordinance that eliminates usable space for oil and gas operations, the city would in effect be prohibiting oil and gas operations anywhere and everywhere. The law clearly provides that a governmental entity may not achieve by indirection what it cannot achieve directly. We urge the city to reconsider this part of this proposed ordinance.

[1] Reclamation Regulations, 1004. Final Reclamation of Well Sites and Associated Production Facilities https://cogcc.state.co.us/documents/reg/Rules/LATEST/Complete%20Rules%20(100%20-%201200%20Series).pdf

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Many of the recommendations set forth by the city are duplicative with regulations put forth by the COGCC. Left in its current form, operators could face unclear and duplicative standards. We ask the city to consider the regulations set forth by the state as it continues its efforts. API Colorado once again appreciates the opportunity to provide comments on these proposed changes, and we look forward to working with the city and its staff in developing standards for safe and reliable operations.

Sincerely,

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