



**City Manager's Office**  
City Hall  
300 LaPorte Ave.  
PO Box 580  
Fort Collins, CO 80522  
**970.221.6505**  
970.224.6107 - fax  
fcgov.com

## **Oil and Gas Panel Regarding Proposed Changes to the City's Land Use Code**

---

The purpose of this attachment is to provide City Council with insights into the conversations about proposed changes to the City's Land Development Code related to limitations on approvals for Oil and Gas Facilities and Pipelines. These conversations took place at a virtual Zoom panel March 9<sup>th</sup>, 2023. This panel spoke to new code updates that our City Council will consider for a second reading on April 4, 2023. This proposed code addresses land use restrictions for new oil and gas wells. Even with restrictions on new wells, there are still concerns about operational standards for existing or potential future operations for oil and gas wells. Regarding operational standards, the panel included City, County and State representatives who spoke to the regulations and resources already in place that have recently been adopted for oil and gas operations, as applicable in Fort Collins.

### **Panelists**

- City of Fort Collins
  - Ginny Sawyer - Panel Facilitator, Senior Project and Policy Manager, City Manager's Office
  - Cassie Archuleta – Air Quality Program Manager, Environmental Services
  - Noah Beals – Development Review Manager, Community Development and Neighborhood Services
- Larimer County
  - Matt Lafferty, AICP – Principal Planner, Community Development Department
  - Lea Schneider, REHS – Environmental Health Planner Air Quality & Zoonotic Supervisor, Health and Environment Department
- State of Colorado
  - Kate Fury, Air Quality Oil and Gas Liaison, Colorado Department of Public Health and Environment

### **Context and Proposed Land Use Code in City of Fort Collins**

The City is discussing oil and gas regulations due to the adoption of SB19-181 which changed the mission of the Colorado Oil and Gas Conservation Commission (COGCC) from fostering oil and gas development to protecting the environment. This legislation created more local control over oil and gas development.

Colorado is one of the top producers of oil and gas in the Nation.

- In Colorado, Weld County is the highest producing county.
- Larimer County has several wells.
- Within the Growth Management Area (GMA) and the City, there are 17 wells.

There is one oil and gas operator, Prospect Energy, within the City limits

- These wells have been in place since the early 1900s

- There are 10 active wells and 20 inactive wells

### **Initial Public Outreach**

Initial public outreach was completed from 2019 – 2020 with Boards and Commissions, open houses, and an online forum. The consensus from this outreach was that there is a desire by the community to have no new oil and gas development within City limits or natural areas. The top concerns were regarding sub-surface water quality, traffic, leaks and spills, regional air quality, odors and emissions, and climate change impacts. Community members have expressed concerns that the proposed regulations do not exercise the full authority granted through SB-181 to address these top concerns.

### **Areas of Focus for Proposed Oil and Gas Land Use Code**

Building off the initial public outreach, staff created three areas of focus for the proposed Oil and Gas land use code.

- **New Oil and Gas Facilities**
  - Objective: Limit new oil and gas development within City limits
  - This can be achieved through the use of zoning and Land Development Code to limit oil and gas development to industrial zones only.
  - Current Status
    - 1<sup>st</sup> reading passed unanimously.
    - 2<sup>nd</sup> reading scheduled for April 4<sup>th</sup>.
- **Operational Standards for Existing and New Facilities**
  - Objective: Mitigate or eliminate impacts from existing and potential future wells
  - The City was involved in a State rulemaking process where the City identified gaps where if the State was regulating, the City would not.
  - Enforcement and actions:
    - Financial Assurances
    - Requests to plug and abandon existing wells
    - Purchase optical gas imaging camera for leak detection – there is an Intergovernmental Agreement (IGA) with Larimer County for shared resources and enforcement needs
- **Reverse Setbacks**
  - Objective: Distance for new development from existing wells
  - Minor code refinements for this focus area will be coming in 2023

### **Development Review Process**

To address these areas of focus, the proposed code went through the three parts of the development review process. This process included reviewers from multiple departments and some City partners

- Type II development review with Planning and Zoning as the final decision maker
- Project Development Plan
- Final Plan

- Building Permit

### **Next Steps**

The City would like to clarify the objectives for the proposed oil and gas code. The current objectives are as follows:

- **Restrict locations for new oil and gas locations**
  - Pending adoption of proposed Land Use Code
- **Identify and address gaps in regulations for local operations**
  - Address through engagement on State rulemaking
- **Identify and address gaps in enforcement**
  - In progress through Larimer County Health Department of Public Health and Environment

There are discussions of a new objective to be included that considers redundancy for increased local control. Additional community engagement and Council Work session is recommended to discuss this objective.

### **Larimer County's Role in Regulating Oil and Gas Development**

The City has been working closely with Larimer County to utilize available tools to regulate oil and gas development. The County primarily uses zoning tools to limit oil and gas development to more rural places and industrial zone districts if they meet the threshold for review. With the Intergovernmental Agreement between the City and County, the County would look directly to land use objectives if there were a proposed well in the Growth Management Area (GMA).

Larimer County uses the two following County land use codes to regulate development:

- **Article 11.3.2 – Regulates oil and gas facility locations through the application of setbacks and buffers**
  - All new building facilities need to be 2,000' as measured from the property line of any school facility, hospital, medical clinic, senior or assisted living facility, multi-family dwelling, or state licensed day care as defined by Colorado state law.
  - All other uses must have a 1000-2000' setback.
- **Article 11.2.4 - Larimer County Land Use Code acknowledges the importance and public conservation lands that the County, local municipalities and land trusts have used public funds to purchased fee title or conservation easements to protect conservation values such as natural, cultural, agricultural, or scenic value**
  - This code places a no surface occupancy status upon said properties unless the County Commissioners allow reasonable siting alternatives.
  - Only approving siting locations, including all on-site and off-site mitigation, that will not result in a net loss of any natural, cultural, agricultural, recreational, or scenic values on such lands as determined by the Board of County Commissioners.

The County's regulatory role falls into the following actions:

- Larimer County Health Department (LCDHE) has a contract with the Air Pollution Control Division to investigate complaints and regulated sources of pollution.
- LCDHE supports the County planning department with oil and gas activities under Article 11 of the LUC
- LCDHE has IGA with the City to enhance many activities

### **State of Colorado's Role in Regulating Oil and Gas Development**

Along with working closely with the County, the City has been working with the State to regulate oil and gas development. The State's Air Pollution Control Division (APCD) has identified the City has having one of the best air quality programs in the State and with the passage of SB19-181, the City is in a different position than it was before the passage of the bill for regulating oil and gas development. There is no "rush" to develop oil and gas in Fort Collins and regulating facility siting through land use is one of the best ways for cities and counties to control the amount of oil and gas development in their jurisdictions.

The APCD is aware of problem sites that are within Fort Collins and is working with the City and County to address these sites. The two problem sites are the Krause and Hearthfire facilities.

- Krause
  - Compliance issues include odor complaints and emissions from thief hatches
  - Cease and desist issued in Aug 2022, lifted in Nov 2022 as operator was able to meet terms of the cease and desist
  - Operator agreed to redesign the facility, which included installation of a new enclosed combustion device
- Hearthfire
  - Consists of multiple sites, collectively known as Hearthfire
  - Main issues have been with the enclosed combustion device
  - Hearthfire shares some equipment with Krause

To address these problem sites, the Air Pollution Control Division (APCD) is inspecting and monitoring these sites frequently. Along with this action, the APCD has invested in specialized monitoring equipment.

ACPD monitoring is done through:

- Four mobile monitoring vans, in addition to the air monitoring trailer and solar powered portable total volatile organic compound sensors
  - Two vans are currently operating, and two additional vans are built and should be delivered this year
- Working with the Colorado Oil and Gas Conservation Commission (COGCC) to put conditions into their permits to ensure best management practice
- Working on stronger permitting requirements

The ACPD is continuing to investigate all complaints and plans to conduct a stakeholder process to identify additional emissions controls for oil and gas facilities.

### **Questions and Comments from Panel Participants**

As part of the panel, participants were able to submit questions to any of the panelists along with submitting comments for further consideration.

- **Questions and Answers**

- **Question** - City limits and Natural areas excludes GMA --- no new oil and gas in GMA is presumably also an objective? Can the city prevent those as well?
  - **Answer** - New financial assurance rule gives City ability to ask for low and non-producing wells to be plugged and abandoned.
- **Question** - If we zone within the City and less than 1% what happens in the GMA?
  - **Answer** - Under County jurisdiction and will be covered in that presentation.
- **Question** - Given that Prospect Energy has had multiple infractions and was given a cease-and-desist order. After a short period, the state allowed this company to resume operations and, once again, they have shown to capacity to not pollute. Since we cannot depend on the state or county it makes sense to have the city's regulations have more teeth to enforce bad operators. Doesn't it?
- **Question** - The local public has said that high quality air quality monitoring should be required for all oil & gas sites and facilities. Why did staff NOT include air quality monitoring in the City's proposed regulations? There is clear evidence that state and county do not take enforcement action that actually stops emissions violations, so the City would be foolish to rely on state and county for meaningful enforcement
  - **Answer** - For existing sites, odor concerns are at a facility outside of City limits and local regs would not apply. County will be available to response with a camera, but this will not be continuous. This is a concern, and the City's air quality program is planning to install continuous VOC monitoring along the fence line to aid in leak detection and response.
- **Question** - Prospect Energy Krauss site was leaking last week with APCD inspector responding but I don't believe the LCDHE was notified of the inspection so it could be a part of the inspection. Please let us know about this & why this happened?
  - **Answer**- Enforcement is ongoing at the Krause site.
- **Question** - CDPHE never followed through with the water testing. Army Corps of Engineers also didn't follow through. How can we get the GILMORE LAKE tested. It is flammable as evidenced by the chopper that used water to put out the CR 21 fire last fall. Can you follow through with one simple request to test that water. Our area includes thousands of tax-paying households. Some of them million-dollar estates. Thanks!

- **Answer** - If there isn't a lot of circulation- need to consider what is coming from a body of water versus oil and gas development. It is outside of the GMA and is not near a storage facility.
- **Question** - The County stated last year that the LDAR enforcement was estimated to be operational in Q1: when will this happen?
- **Question** - Because the county and city are new at these sort of inspections, and now tethered to serve APCD, how much experience do our workers have, or who will be hired?
  - **Answer** - State has resources and trained professionals, but sometimes this takes time to deploy. The City of Fort Collins and Larimer County are cooperating on this, where City is helping with purchase of equipment, and County will provide trained staff to respond to leaks.
- **Question** - Which agency can we lobby that to plug, and abandon take less than 5 years??
  - **Answer** - The City of Fort Collins and Larimer County are sending these requests to the COGCC. Including public comments and letters would help with these requests.
- **Question** - When there is demonstrable harm to people, why does it take years to correct? Granted we are not seeing fire and brimstone but continuous exposure to the chemicals leaked by oil and gas are harmful, worse for children, seniors and ill individuals.
- **Question** - As near as I can tell, the City/County IGA really only applies to the GMA, but not within Fort Collins city limits. Is that correct?
  - **Answer** - That is correct. The Health Dept has a separate IGA for just O&G facilities within Fort Collins City Limits and GMA.
- **Question** - Fort Collins, like all the other cities on the front range are being polluted by outside wells, mainly in Weld County. Having continuous monitoring can show these harms and hopefully, create mechanisms for regulating surrounding counties pollution (state level).
  - **Answer** - Agreed. Regional pollution from oil and gas is a major concern. The City and County are currently working with the State to install a regulatory ozone monitor to better represent what is transported. Additionally, the City is awaiting funds from an EPA award to deploy more VOC sites.
- **Question** - Are there legal conversations that promote Larimer County having some rights/grievance to address all air pollution drift against foothills from Weld County? Despite few wells here, we are quite affected by the pollution there.
- **Question** - County Health's IGA with Fort Collins would apply to the AQ measurement and OGI camera, once that is acquired, but not enforcement. Is that correct?
  - **Answer** - This will apply to enforcement. The County is a designee of the State and can inspect sites on their behalf.



- **Question** - Unlike the state, I have no confidence in Prospect following the rules or complying. The fox is guarding the henhouse. When will the public see the monitoring and state evaluation of the Prospect site?
- **Question** - How many of these new AQ monitoring stations will operate and provide real time data 24/7, as opposed to needing collected samples to be sent to a lab for analysis?
  - **Answer** - Monitors will track and report total VOC continuously, with canisters collected and analyzed offline. Total VOC could still be indicator for an inspection response (e.g., camera detection of leaks). Detailed plans are awaiting EPA funds and further community discussions.
- **Question** - At the Krause facility, the operator made changes during the cease-and-desist period but it is my understanding that the Division is continuing to document emissions at the facility - if this is the case, are additional changes to the site/operations being considered?
- **Question** - Hello, my question is regarding ozone pollution. How well is it a) measured and b) enforced in our city/ county? As far as I know, the new ozone plan approved Dec 15th 2022 in Colorado won't be enough to meet a federal deadline to improve Front Range air quality. We are a severe air quality violator because of ozone, which is associated with asthma attacks, heart disease, lower birth weights and premature death.
  - **Answer** - We know that oil and gas and transportation are our main contributors- cumulative impacts from all oil and gas operations which goes beyond our limits. State implementation plan- federal requirement to come into attainment and there were sections of plan that was not approved. More conversations are happening around oil and gas and transportation sources, and non-engine sources (i.e. lawn and garden equipment. Locally trying to influence conversations related to electric vehicles, alternative modes of transportation, etc.
- **Question** - Will the slides be made available?
  - **Answer** - Yes, slides and the video recording will be posted.  
<https://www.fcgov.com/oilandgas/>
- **Question** - In December 2022 the City's Air Quality Advisory Board, joint environmental groups, and local residents called on the City for public engagement that really listens to and considers public input regarding the proposed O&G regulations, and to revise the draft regs in response to public input. City Council extended the period before 2nd reading for 4+ months to allow more public engagement. Both AQAB and the public have also made substantial recommendations to strengthen the City's draft O&G regs. This panel is 1-way communication (City to the public) and is not public engagement that really listens to and considers public input. So far the City has refused to consider substantial recommendations to strengthen the City's draft O&G regs. Why is the City so intentionally deaf to the AQAB and to public input?

- **Answer** – The current path has been from Council direction from back in October. There have been a lot of letters asking for more local regulations. What we are hearing is that new objective that the City of Fort Collins should consider more redundancy for increase local control should be included. Staff are not in a position to add a whole regulatory section between 1st and 2nd reading of the ordinance. This panel was trying to meet the intention to explain more about why the City is addressing oil and gas the way it is in the codes. Staff hopes that community members use more open communication options available.
- **Question** - Why aren't the producers simply mandated to set up real time monitoring?
- **Question** - BoulderAir has the state of art technology that captures signature O&G emissions. Please talk about whether this is being considered for air quality monitoring?
  - **Answer** - Some sites that can measure continuous streams of pollutants related to oil and gas are very expensive sites to operate and maintain. There are conversations around objectives and what we are trying to do but it is a huge investment so need to determine if it meets objectives. BoulderAIR monitors costs about \$1 million to run and for an area like Fort Collins, that doesn't have as many wells, there is a cost benefit analysis related to this. The State shared that operators hire 3rd party companies to monitor and they don't do it themselves
- **Question** - Are you leveraging operators with bonds (or other financial security tools) before they are permitted to break ground in order to protect residents when disasters occur? (worst case scenario is bankruptcy, etc.)
- **Question** - Do any of the oil and gas operators believe that their facilities release dangerous chemicals and take monitoring and control seriously? My guess is they will only do what they are forced to do or if they get caught
- **Comments**
  - **Comment** - The Larimer Alliance coalition sent a letter listing many recommended provisions. I would like to hear each of those recommendations be addressed.
    - Follow-up comment to the above comments - Relevant letters as mentioned by Mr. Walters:
      - <https://www.larimerallianceblog.org/letter-submitted-by-larimer-alliance-and-other-allied-groups-to-fort-collins-city-council-regarding-draft-oil-and-gas-regulations/>
      - <https://www.larimerallianceblog.org/for-reference-december-memo-of-the-air-quality-advisory-board-on-fort-collins-draft-oil-and-gas-regulations-and-response-from-mayor-arndt/>
      - <https://www.larimerallianceblog.org/follow-up-letter-submitted-by-larimer-alliance-and-other-allied-groups-to-fort-collins-city-council-regarding-draft-oil-and-gas-regulations/>



- **Comment** - It is also a major objective to shut down 100% of the ones that already do exist, since they are harming health, safety and environment.
- **Comment** - Here's everything I see about leak detection & repair in the regs. This is not detailed enough.
  - Follow-up comment to the above comment - 6.262.14.3 - Inspection The City Manager is hereby empowered to cause any building, other structure or tract of land to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this Land Development Use Code. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct such violation or comply with the order. With regards to inspections of oil and gas facilities, the operator of any oil and gas facility or oil and gas pipeline that has been inspected shall pay to the City the costs for such inspection within sixty (60) days of receiving an invoice for the cost of the inspection. Inspections of oil and gas facilities and oil and gas pipelines may be conducted by City staff or non-City inspectors authorized by the City to conduct such inspections.
- **Comment** - Comment during the County's portion of the presentation - Absolutely useless map unless you are familiar with the bodies of water. The Growth Management Area is where I live and already the Gilmore Lake smells like Hydrogen Sulfide from the water table which is polluted. I've been requesting a water test for over a year. BEFORE any approvals for drilling in the GMA are allowed, we need baseline testing to be conducted including seismic tests. Thank you.
- **Comment** - Ms. Fury, small amounts H<sub>2</sub>S cause irritation to the lungs, throat, eyes, and skin. It causes headaches and there are NO long-term studies of minute amounts has been made on feed lots. It stinks and people will not reside with an irritating odor and properties will lose value. So please do NOT minimize its effect.
- **Comment** - Speaking of financial assurance (FA) & Prospect Energy this is what was asked of them to restart operations here. This isn't anywhere close to enough protection for our community! Amount of Financial Assurance Required per Rule 702: \$133,750.00 Amount of Financial Assurance Required per Rule 703: \$0.00 Amount of Financial Assurance Required per Rule 704: \$100,000.00 Total Amount of Financial Assurance the Operator will provide to the Commission no later than 90 days from the Commission's approval of the Financial Assurance Plan: \$233,750.00
- **Comment** - Any monitoring of these facilities cannot allow the operators to chose those contractors who measure. An unbiased monitoring company is the only way to get accurate data.
- **Comment** - BoulderAIR has established that sort of 24/7 monitoring, and yes, it is expensive. But the value of the data which can be seen in real time and viewed digitally over given periods of time, can still pinpoint events as they happen. Numerous

communities along the Front Range utilize that technology. Granted, not a code consideration perhaps, but something that needs to be addressed.

- **Comment** - What you are describing is a nice patchwork of initiatives and hopes for things that might happen to address problems from oil & gas. But it is NOT a substitute for good regulations that will protect public health, safety, welfare, financial security, and the environment from known and possible future harm by oil & gas development.
- **Comment** - Boulder air is operational. Where are the city or counties monitors - conceptual only.
- **Comment** - Continuous monitoring would show how much pollution is coming from other sites. The air is still bad.
- **Comment** - Networking with the other communities would point up where the emissions are coming from. . . which may well be coming from Weld County. Could help us deal with consequences of emissions out of our jurisdiction that are still impacting us. It would be the air quality equivalent of an air defense radar network. Just a thought
  - **Response:** 100 percent agree. Right now we are in the process of developing an aerial survey monitoring program that could measure emissions on a per facility, per basin, and per state basis. In addition, we have partnered with CSU for a grant from the Department of Energy to install a series of monitoring towers across various basins. The hope is that will fill some of the gaps.
- **Comment** - Kate - Sorry but permitting these CAPs & mega CAPS isn't the answer to address the harms of O&G, air quality, spills & harmful emissions & destroying tons of water...
  - **Response:** The CAPs are useful in that they force the operator to account for the cumulative impacts of multiple facilities and allow the public and decision makers to account for the full scope of impacts, instead of the operator submitting one facility at a time which can obscure the overall impacts of multiple facilities. The benefits of the CAPs are that it allows the operator to make long-term plans which include things like pipelines (so the facilities can be tankless, reduce truck trips to and from sites, and other benefits that reduce emissions), work with the utilities to install power lines and transformers to electrify most of pre-production, etc. In addition, the CAPs typically include commitments to plug and abandon large numbers of older wells, even ones that don't belong to the operator that is filing the CAP.
- **Comment** - Ms. Fury, spudding still takes an ENORMOUS amount of water. There are also lined treatment beds and fracking involves proppants which are carcinogens. The earth has to be restored after being extracted.
- **Comment** - As the City expands eastward as it will in the coming decade, and with changes in oil & gas development, it is entirely plausible that the only O&G in Ft Collins will not only the existing Prospect facilities. The City's regs should be looking ahead so the City is well prepared, and not just left to react.

### **Next Steps**

During this panel, staff outlined a variety of next steps for the proposed oil and gas code.

- **2<sup>nd</sup> Reading April 4<sup>th</sup>, 2023 Council will consider adoption of land use restrictions**
- **Compiling recommendations by advocacy groups and the Air Quality Advisory Board (AQAB)**
- **Continue to share information related to what occurred during the panel**