

**DATE:** June 5, 2012  
**STAFF:** Karen Cumbo

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**12**

**SUBJECT**

Second Reading of Ordinance No. 048, 2012 Establishing a Moratorium on the Acceptance or Processing of Land Use Applications, Permit Applications, and Other Applications Seeking Approval to Conduct Oil and Gas Extraction or Related Operations Within the City.

**EXECUTIVE SUMMARY**

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Although there has not been a great deal of oil and gas drilling in Larimer County until recently, the discovery of the resource-rich Niobrara formation in this region, and the increased use of horizontal hydraulic fracturing ("fracking") and directional drilling increase the likelihood of oil and gas drilling in the City of Fort Collins. The State of Colorado has largely pre-empted the regulation of oil and gas drilling, even within municipal boundaries, but City staff is monitoring the recent legislative discussions as well as drilling activity, and proposes the development of regulations, and a moratorium on any oil and gas drilling until those regulations are adopted. This Ordinance, unanimously adopted on First Reading on May 15, 2012, establishes a moratorium until February 15, 2013 or upon the receipt by the City Council of a recommendation from City staff and legislative action taken by the City Council, whichever occurs first.

**STAFF RECOMMENDATION**

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Staff recommends adoption of the Ordinance on Second Reading.

**ATTACHMENTS**

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1. Copy of First Reading Agenda Item Summary - May 15, 2012 (w/o attachments)

**DATE:** May 15, 2012  
**STAFF:** Karen Cumbo

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**23**

**SUBJECT**

First Reading of Ordinance No. 048, 2012 Establishing a Moratorium on the Acceptance or Processing of Land Use Applications, Permit Applications, and Other Applications Seeking Approval to Conduct Oil and Gas Extraction or Related Operations Within the City.

**EXECUTIVE SUMMARY**

Although there has not been a great deal of oil and gas drilling in Larimer County until recently, the discovery of the resource-rich Niobrara formation in this region, and the increased use of horizontal hydraulic fracturing ("fracking") and directional drilling increase the likelihood of oil and gas drilling in the City of Fort Collins. The State of Colorado has largely pre-empted the regulation of oil and gas drilling, even within municipal boundaries, but City staff is monitoring the recent legislative discussions as well as drilling activity, and proposes the development of regulations, and a moratorium on any oil and gas drilling until those regulations are adopted.

**BACKGROUND / DISCUSSION**

While Larimer County has not played a significant role in oil and gas industry issues until recently, two recent developments may result in significant changes and have raised considerable public concern. The first is the successful exploration of the Niobrara formation, which lies deep under much of northeastern Colorado, and the second is the advancing technology of hydraulic fracturing ("fracking"), including horizontal fracking, and directional drilling, to extract the resource from within deeply located shale deposits.

Until these recent developments, concern in Fort Collins was largely limited to impacts on the Natural Areas. The City's Natural Areas Department began working with representatives of the oil and gas industry two years ago to develop a permit process and Best Management Practices (see Attachment 2) for use in connection with large City-owned properties in unincorporated Larimer County and Weld County.

Oil and gas exploration and production is regulated by the State in Colorado. Local jurisdictions are extremely limited in their ability to control the location, procedures, and impacts of oil and gas drilling in and around their boundaries. Local regulations cannot present an "operational conflict", and a combination of the state's laws, and several court cases resulted in the preemption of local control of setbacks and many other types of impacts. The City's current regulations in the Land Use Code are minimal, and are outlined in the attached memo (Attachment 1). Attachment 1 also identifies key topic areas for consideration of City regulations.

Given the increasing public concern, City staff formed a multi-disciplinary team to identify the issues of greatest concern and explore options to protect the interests of the City of Fort Collins and its citizens. This team includes representatives from Utilities, Natural Areas, the Office of Sustainability, the City Attorney's office, the City Manager's office, Poudre Fire Authority, and Planning, Development and Transportation.

There is also statewide interest in the impacts, regulation, and enforcement of oil and gas drilling, particularly fracking. Several bills were introduced and subsequently killed during the current (2012) legislative session. The Governor established a task force to address the issues of greatest concern to local governments, the Oil and Gas Commission, and the industry. The President of the Colorado Municipal League (CML) Board represented cities' interest on the task force, and Longmont Councilmember Brian Bagley was also appointed. The task force completed its work without much significant progress.

The City of Fort Collins' staff team researched the regulations of other Colorado municipalities and counties, and is actively participating in the statewide conversation to benefit from the years of experience of other local governments and find the best ways to protect the interests of the City of Fort Collins and its residents. Utilities explored the legal and technical issues around the provision of water or wastewater treatment to the oil and gas industry, and identified

the parameters of such services and any necessary steps for further consideration. No City service is currently provided, and none is recommended at this time.

The City of Fort Collins is also participating in the Local Designee program offered by the Colorado Oil and Gas Conversation Commission (COGCC). This agency, which issues permits and regulates all oil and gas drilling in the state, notifies local representatives of permit applications in their region, and provides an opportunity to comment. Larimer County also forwards notices received by the County's designated contact for permit applications in the City's Growth Management Area.

## **ENVIRONMENTAL IMPACTS**

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Oil and gas drilling within the city could have significant impacts on air quality and water quality, and there is also concern about the increased risk of spills and releases of hazardous materials due to an increase in use, storage and transportation of such materials. In addition to these impacts, well pads and service roads are fragmenting wildlife habitat on a massive scale in northeastern Colorado and in other communities throughout the western United States. The City's Natural Areas are threatened by this fragmentation. In addition, there are high volumes of truck and heavy equipment associated with oil fields. While there is conflicting technical information regarding air and water quality threats, there is little doubt that oil and gas drilling would negatively affect the environment in the community and does not support the City's goals for sustainability.

## **STAFF RECOMMENDATION**

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There has been no application for a well permit within the City's boundaries yet, although there is a producing well not far from Natural Areas' property. It is likely that extraction interest in this area will increase. Staff therefore recommends:

1. Establishment of a moratorium on drilling permit applications, by ordinance, for a period of eight months. The purpose of this moratorium is to provide time to develop a permitting process for oil and gas drilling, draft land use regulations, and conduct a robust public discussion on the proposed regulations.
2. Development of a permitting process and appropriate regulations to reflect and protect the community interests of Fort Collins, to the degree allowed by law.

Staff's proposed work plan for this effort includes:

- Initial public outreach to identify the key issues (3-4 weeks - target completion June 30)
- A Council work session on the topic that sets the priorities identified both by staff and in the public outreach efforts (to be scheduled - July)
- Time for staff to draft the regulations (2-3 months - target completion October 10)
- Vetting of the regulations by the public, as well as Boards and Commissions (2 months - target completion December 7)
- Council work session to discuss the regulations (scheduled for December 11)
- Council Hearing to adopt land use regulations (December 18)

## **BOARD / COMMISSION RECOMMENDATION**

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Although some of the City's Boards and Commissions have provided input, and have expressed concerns about the potential impacts of oil and gas drilling, no formal action was taken by any of the City's boards and commissions. They will be active participants in the drafting and review of regulations.

## **PUBLIC OUTREACH**

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Many individuals and groups have expressed their concern about oil and gas drilling, and their involvement will be sought during the development of regulations.

**ATTACHMENTS**

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1. Memo from Lindsay Ex, Environmental Planner
2. Memo from Daylan Figgs, Senior Environmental Planner
3. Powerpoint presentation

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ORDINANCE NO. 048, 2012  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ESTABLISHING A MORATORIUM ON THE ACCEPTANCE OR  
PROCESSING OF LAND USE APPLICATIONS, PERMIT APPLICATIONS,  
AND OTHER APPLICATIONS SEEKING APPROVAL TO CONDUCT  
OIL AND GAS EXTRACTION OR RELATED OPERATIONS  
WITHIN THE CITY OF FORT COLLINS

WHEREAS, the City Council recognizes that the mining industry is important to the Fort Collins community, but believes that it is also important to minimize, through appropriate regulation, the adverse impacts that mining or any other industry may have on the health, safety, and welfare of the City and its citizens; and

WHEREAS, there has been growing interest in oil and gas resources underlying portions of the City; and

WHEREAS, the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities present health, safety, and welfare issues which may currently be inadequately addressed in the City's zoning and land use regulations; and

WHEREAS, the present regulations of the City which relate to oil and gas exploration, extraction, and related operations and activities in the City need to be updated with respect to regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules, and also be brought up to date with the current technologies of the oil and gas exploration and extraction industry, in order to better preserve and protect the public health, safety, and welfare of the citizens and key resources of the City; and

WHEREAS, oil and gas exploration, extraction, and related operations and activities may negatively impact Fort Collins citizens, the use and integrity of water supplies and water infrastructure, air quality, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife and aesthetic values; and

WHEREAS, Section 1.2.2 the City's Land Use Code provides that the purpose and intent of the City's zoning and land use regulations is to, among other things, minimize the adverse environmental impacts of development; and

WHEREAS, the City's land use regulations for oil and gas exploration, extraction, and related operations and activities need to be comprehensively reviewed to determine whether they are sufficient to protect the public health, safety, and welfare, or whether additional regulations are necessary to address the impacts of such activities; and

WHEREAS, if land use applications, permit applications, or any other applications for oil and gas exploration, extraction, related operations and activities are approved within the City limits before City staff and the City Council have an opportunity to thoroughly examine the impact of such activities and take all steps necessary to protect public health, safety, and welfare, irreparable harm may be done to the residents of the City; and

WHEREAS, to address this situation, the City Council finds and determines that an eight-month moratorium on the acceptance or processing of any land use application, permit applications, or any other application requesting approval to conduct oil and gas exploration, extraction, and related operations and activities within the City limits is necessary and reasonable for the purpose of studying the impacts of these types of uses and determining whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby finds that the submittal of land use applications, permit applications, or applications requesting approval to conduct oil and gas exploration, extraction, and related operations and activities within the City limits may be imminent, and that the City's existing regulations in this area are outdated and do not contemplate current industry technologies to properly mitigate impacts of these types of activities to protect and preserve the public health, safety, and welfare.

Section 2. That, to address this situation, commencing June 15, 2012, there shall be a moratorium on the acceptance or processing of any land use application, permit application, or any other application requesting approval to conduct oil and gas extraction, or related operations and activities within the City limits. This moratorium shall terminate as of midnight February 15, 2013, or upon the receipt by the City Council of a recommendation from City staff and legislative action taken thereon by the City Council, whichever shall first occur.

Section 3. That this Ordinance shall control over any conflicting ordinance of the City, but only to the extent of the conflict.

Introduced, considered favorably on first reading, and ordered published this 15th day of May, A.D. 2012, and to be presented for final passage on the 5th day of June, A.D. 2012.

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Mayor

ATTEST:

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Interim City Clerk

Passed and adopted on final reading on the 5th day of June, A.D. 2012.

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Mayor

ATTEST:

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Interim City Clerk