

DATE: December 18, 2012
STAFF: Laurie Kadrich
Dan Weinheimer

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

24

SUBJECT

Second Reading of Ordinance No. 145, 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 of Fort Collins.

EXECUTIVE SUMMARY

On December 4, 2012, Council considered regulation of oil and gas exploration and production and unanimously voted to impose a six-month moratorium on the submission, acceptance, consideration and approval of any all applications for City licenses, permits and other approvals related in any way to oil and gas uses within the City. The moratorium will allow staff and Council time to further investigate the extent of the City's authority to regulate such uses. In order to give the newly seated Council time to consider the regulations to be developed during the moratorium, staff is recommending that the moratorium be extended on Second Reading to seven months rather than six.

BACKGROUND / DISCUSSION

Local governments have considered the use of moratoriums to postpone new oil and gas operations within their jurisdictions, citing the need to craft and adopt local land use regulations and/or to allow the state to address its rulemaking process as it relates to setbacks and water quality regulations.

Current State Efforts Related to Oil and Gas regulation

The Colorado Oil and Gas Conservation Commission (COGCC) is currently considering amendments to existing and proposed area of rulemaking: (1) water sampling and monitoring, and (2) addressing well setbacks and noise. The City secured Party Status for both rulemaking hearings, making Fort Collins the only city with such status. Party Status provides the City with an opportunity to submit written comments on the state's proposals, recommend alternatives, and a greater length of time to speak before the Commission.

Water Quality:

The proposal under consideration adopts an industry-sponsored voluntary program and makes that program mandatory. Under this proposed program, baseline groundwater quality samples would be collected from two existing groundwater features, such as permitted and registered groundwater wells or groundwater seeps and springs, which are located within 1/2 mile of the surface location of new oil and gas well pads, or additional wells on existing well pads. These samples will be collected before drilling begins. A second sample will be collected from each groundwater feature within one to three years after drilling is completed. Fort Collins submitted comments on this proposal, asking that additional samples are collected and for more frequent monitoring of water wells to ensure water contamination does not occur. If the state's rules on water quality monitoring are amended, the City may also need to modify proposed Land Use Code regulations as presented in Option A or B or in development submittal requirements.

Setbacks:

The state is reviewing its existing setback rules, with new rules anticipated by early 2013. Setbacks for new wells from existing homes are an important consideration for several reasons – there is uncertainty about emissions from well sites and the process of drilling and maintaining a well site could cause noise, traffic and lighting impacts. The current setbacks for new wells are 150 feet from an occupied structure, 350 feet from a high density area and 500 feet from some structures like hospitals, schools, and nursing homes. Many groups recommend increasing the state setbacks from homes to 1,000 or even 2,000 feet. At the Commission hearing on setbacks, the City of Fort Collins will seek additional setback distance from occupied buildings, greater powers for residents in influencing site location

proposals, and protection for community assets like natural areas and parks.

City Council direction for additional work during moratorium

- Monitor COGCC and present City Council recommendations (attachment 2) during the rulemaking process as described above. Incorporate, as needed, any changes into proposed Land Use Code (LUC) amendments.
- Monitor COGCC and present City Council recommendations (attachment 2) to any relevant bills considered during the 2013 State of Colorado Legislative Session, especially as any further legislation is considered related to air or water quality.
- Develop maps that address the following:
 - Identify the geological formations present within the City and the Growth Management Area
 - Identify the locations of oil and shale gas deposits including the various formations
 - Map the locations of all wells within those areas and locations currently seeking permits to drill and include mineral ownership information where available
 - Visually extend the setback criteria into the Growth Management Area
 - Identify areas currently exempt from drilling, and areas that would be exempt if additional setback criteria were adopted by the COGCC
- Evaluate the impact of proposed regulations on existing and future oil and gas operations and consider code amendments as needed for addressing the differences in oil extraction compared to gas or methane production. Staff should specifically consider whether soil gas testing is needed for both.
- Update the Best Practice Matrix dated August 27, 2012 to include LUC Option A and B as well as more specific information on street maintenance, financial consequences, local impact fee, cultural resources, reclamation, and water source disclosure.
- Propose an intergovernmental agreement with Larimer County that ensures any oil and gas activity within the GMA would be considered new development and as such annexed into the city and permitted under the city's development process.
- Negotiate and present a proposal for adopting an operator agreement with Prospect Energy, the owner and operator of the Fort Collins Field.
- Re-engage the boards and stakeholder groups and seek their recommendations regarding the proposed LUC amendments (Option A or Option B).
- Provide additional information regarding surface use agreements, especially as the agreement relates to habitat fragmentation and restoration; include examples.
- Identify areas that may be considered for a Designated Outside Activity Area, and have setbacks from oil and gas activities in alignment with High Density Area setbacks.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading. In addition, in order to give the newly seated Council time to consider the regulations to be developed during the moratorium, staff is recommending that the moratorium be extended on Second Reading to seven months rather than six.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - December 4, 2012 (w/o attachments)
2. Copy of Policy Motion, adopted December 4, 2012, regarding COGCC rule-making direction
3. Powerpoint presentation

DATE: December 4, 2012
STAFF: Laurie Kadrich
 Dan Weinheimer

AGENDA ITEM SUMMARY
 FORT COLLINS CITY COUNCIL

26

SUBJECT

Items Relating to Oil and Gas Exploration and Production Regulations.

- A. First Reading of Ordinance No. 144, 2012, Amending the Land Use Code Pertaining to Oil and Gas Exploration and Production Regulations (Option A or B).

AND/OR

- B. First Reading of Ordinance No. 145, 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 of Fort Collins (Option C).

EXECUTIVE SUMMARY

City Council directed staff to evaluate methods by which the City may regulate oil and gas exploration and production. Since oil and gas operations are governed primarily by the state and federal governments, staff will provide an overview of what regulations exist and where the City may be effective in both filling existing regulatory "gaps" and strengthening existing regulations in order to better protect the health and safety of residents. Discussion includes development review criteria, water and air quality, environmental protections, and emergency services. Staff also presents information on non-regulatory ways to respond to residents' concerns including options such as surface-use and operator agreements, legislative advocacy, regional cooperation, and active participation in related state and federal rulemaking processes.

Staff is providing three options for Council's consideration:

- Option A: Dual-track development review process
- Option B: Single-track development review process
- Option C: Moratorium

BACKGROUND / DISCUSSION

Existing oil and gas activity in the city:

Oil production is currently limited to the Fort Collins Field, located in the northeast portion of the city. The Fort Collins Field is regulated by the Colorado Oil and Gas Conservation Commission and has been in production since about 1925. In the City limits, the field consists of seven producing wells and seven injecting wells within the City limits, all of which are managed by one operator. Four residential subdivisions have developed around the Fort Collins field, with an additional subdivision planned in the area.

In addition to the Fort Collins field, well development has historically occurred southward along the I-25 corridor. There are no active wells in this area today. As all wells were subsequently annexed into City boundaries, there have been no permits issued to date in the City of Fort Collins.

Two recent developments may result in significant changes in oil and gas exploration in Larimer County. 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 to extract the resource from within deeply located shale deposits. This has raised considerable public concern.

Existing regulations

Because oil and gas exploration and production is regulated by the state in Colorado, local jurisdictions are limited in their ability to control the location, procedures, and impacts of oil and gas drilling in and around their boundaries.

A combination of the state's laws and several court cases have resulted in the preemption of local control over various aspects of oil and gas activities, and the scope of that preemption is the subject of ongoing litigation..

Accordingly, existing oil and gas regulations in the Land Use Code are limited to a single paragraph in Section 3.8.14 and reads as follows:

“Any use that is not permitted under the provisions of Article 4, but that must be allowed because of preemption by a sovereign jurisdiction or because of a court order, shall be processed as a Planning and Zoning Board Review (Type 2 review) and shall be approved, with or without conditions, as necessary to ensure that such use complies with all general standards as set forth in Article 3 and zone district standards as set forth in Article 4 as are or may reasonably be interpreted to be applicable to such use, provided that such standards are not preempted or ordered by a court not to be applied.”

This section indicates that all oil and gas operations are subject to a Type 2, or Planning and Zoning Board review. This paragraph also suggests that oil and gas operations are subject to the standards set forth in the Land Use Code, to the extent that they are not preempted by the state.

DISCUSSION - Proposed Framework for Oil and Gas Operations:

As discussed above, the City has a shared authority with the state and other agencies for controlling how oil and gas operations occur both above and below ground. Typically, the City's Land Use Code serves as the primary mechanism for land development in the City. However, because of the shared authority with the state, staff has identified a number of methods to address specific community concerns and better address oil and gas operations at local levels. Staff recommends that the City engage at the federal, state and regional levels, as well, to better affect regulations or ensure compliance with regulations.

Federal

The federal level options are aimed at influencing the Environmental Protection Agency and other regulatory bodies to gain more stringent oversight of oil and gas operations. The EPA intends to have a new set of operating criteria for oil and gas in place in 2015 and City of Fort Collins staff intends to comment on whether those policies are implemented at a statewide or local level. Significant costs may be incurred by the City if implemented locally rather than utilizing existing statewide resources.

In addition to influencing governmental agencies at the federal level, the City can also utilize federal research, programs, and services to ensure oil and gas operations both within the City's boundaries and at a regional level do not degrade quality of life.

State

Colorado permits oil and gas activity through the Colorado Oil and Gas Conservation Commission (COGCC). In addition to the COGCC, two other state agencies have a role in oversight of oil and gas operations – the Colorado Department of Public Health and the Environment (CDPHE) and the Colorado Department of Parks and Wildlife (DPW). CDPHE's oversight is focused upon the potential and actual impacts of oil and gas activity on human health, specifically with regards to air and water quality. The DPW, a sister agency of the COGCC under the Department of Natural Resources, has oversight of habitat and wildlife protection.

The state-level options include the following opportunities for City involvement:

- **Engage in stakeholder processes** – As with the federal level engagement opportunities, the City can participate in stakeholder processes to affect the rules at the state level that affect oil and gas operations.
- **Local Government Designee** – This tool establishes a staff representative who participates in the state's review of oil and gas applications and provides local comments onto the oil and gas applications at the state level.
- **Intergovernmental Agreement (IGA) with the state** – An IGA could allow for the City to have inspection authority, which would increase the oversight of oil and gas operations within city limits.

- **Advocating for legislative change** – The City can engage in legislative discussions to influence the state and other municipalities. Fort Collins' Legislative Policy Agenda calls for supporting legislation to provide communities with more tools to address the industry and more power over local land use.
- **Designated Outside Activity Areas** – This tool allows for an area, e.g., City Park, to receive the same 350-foot setback that high density areas receive. The City applies for this designation through the state on areas in the City that meet certain qualifications, e.g., a certain number of users per day or per year. Longmont has successfully received approval for two City park complexes.

Regional

Regional solutions include addressing some impacts of oil and gas activity collaboratively with other local governments. These collaborations include hiring a shared inspector to effectively balance the ability to inspect local wells with the number of existing wells and anticipated activity. Staff initiated conversations with several jurisdictions about sharing an inspector.

The regional level also presents a partnership opportunity with other municipalities, counties, and researchers to address issues that go beyond our city borders, e.g., air quality. Intergovernmental agreements to share monitoring resources and equipment for air quality are one tool the City could explore. From a research perspective, faculty at Colorado State University is examining air emissions from well sites in Garfield County beginning in spring 2013 through fall 2015. The results of this study, funded jointly by the County and industry, are anticipated to provide a better understanding of the toxicity of well emissions. Staff met with the faculty associated with this study, as well as others at CSU who are examining air emissions and regional impacts from oil and gas operations, and will utilize the lessons learned from these research efforts to recommend changes to local regulations.

Local

The local solutions include at least five mechanisms to address oil and gas operations to ensure community concerns are addressed and residents' quality of life is protected:

- **Local Government Designee** – This tool establishes a staff representative who participates in the state's review of oil and gas applications and provides local comments onto the oil and gas applications at the state level.
- **Operator Agreements** – A negotiated agreement between the City and any operator wishing to conduct oil and gas operations in the City. The agreement could include additional, prescriptive requirements such as enhanced baseline and ongoing monitoring.
- **Intergovernmental Agreement with the state** – An IGA could allow for the City to have inspection authority, which would increase the oversight of oil and gas operations within city limits. It also provides opportunities for partnering with our surrounding municipalities on a regional basis for inspection authority.
- **Surface Use Agreements** – A negotiated agreement between the landowner and any operator wishing to conduct oil and gas operations providing another mechanism to obtain enhanced conditions.
- **Land Use Regulations** – A set of regulations and control mechanisms that are protective of public health and the environment. The Land Use Code amendments before Council include Option A (a dual-track development review process) and Option B (a single-track development review process). The regulatory options are described in greater depth below.

Land Use Regulations – Review Processes

Two options are presented related to Land Use Code regulations:

- **Option A:** Dual-track development review process, which includes both an expedited and standard review process
- **Option B:** Single-track development review process – This option combines the prescriptive criteria in the expedited review track with the standard review process. Under this option, all development review

applications would be processed under a single review track and required to meet the same criteria. All decisions would be made by the Planning and Zoning Board.

The review processes for the dual-track development review processes are outlined in Table 1 below (see Table 2 for the single-track review process). The Standard Review process requires the operator to locate a well and operate in a manner that does not degrade quality of life (e.g., adjacent land uses, natural resources, water quality, air quality, visual and scenic resources, etc.). The Standard Review process also requires operators to attend a neighborhood meeting and a hearing in front of the Planning and Zoning Board, pursuant to the Type 2 standards currently outlined in the Land Use Code. The regulations outlined in the Standard Review process however, are more goal-based than prescriptive.

Alternatively, the Expedited Review process requires operators (who voluntarily choose this option) to meet specific, objective criteria prescribed in the review process. By meeting these more prescriptive standards, staff proposes that public comments only be taken in a written format and that the Director of Community Development and Neighborhood Services has the final decision-making authority.

This dual-track review process is a model utilized by other local governments to address oil and gas development and has achieved some success in engaging operators in meeting specific objective criteria.

Table 1: Option A: Dual-track review process, including the standard and expedited review processes, notice requirements, and decision-making authority.

Element	Standard Review Process (Type 2 Review)	Expedited Review Process (Basic Development Review)
Regulations	Must locate a well and operate in a manner that does not degrade quality of life	Must meet ALL specific, prescriptive criteria
Notice Requirements	Notification sent when an application is received, prior to a neighborhood meeting and prior to the hearing	Notification sent when an application is received and if an application is approved
Public Comments	Written comments can be provided prior to or at the public hearing Residents and affected parties can testify at the public hearing	Written comments can be provided after the notification that an application has been received
Decision-making authority	Planning and Zoning Board approval	Director approval
Setbacks		If not located on an existing well pad, all operations must be 500' from an occupied structure, water well, Natural Area or City Park and 150' from any property line
Appeals	Decisions are appealable to City Council	Decisions can be appealed in District Court

Table 2: Option B: Single-track review process

Element	Review Process
Regulations	Must meet ALL specific, prescriptive criteria
Notice Requirements	Notification sent when an application is received, prior to a neighborhood meeting and prior to the hearing
Public Comments	Written comments can be provided prior to or at the public hearing Residents and affected parties can testify at the public hearing
Decision-making authority	Planning and Zoning Board approval
Setbacks	If not located on an existing well pad, all operations must be 500' from an occupied structure, water well, Natural Area or City Park and 150' from any property line

Appeals	Decisions are appealable to City Council
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Land Use Regulations – Proposed Standards

All new oil and gas operations will be subject to the requirements in either the standard review or expedited review track, (Table 3) unless Option B is adopted by Council and then the standards in expedited review will prevail.

Common areas for oil and gas operators to address in submittals include air quality, water quality, and natural resource protection. Within each area the standards differ based upon the review process. The conditions offered for standard review consist largely of plans and information about proposals for preventing or mitigating community impacts.

Table 3: This table outlines the standards for air quality, water quality, natural resources standards, general standards and reciprocal setbacks associated with both the standard and expedited reviews.

Regulation	Option A		Option B
	Standard Review	Expedited Review	
Air Quality			
Minimize all emissions	95% VOC (Volatile Organic Compounds) destruction	98% VOC destruction	98% VOC destruction
Flares and combustion devices	-No open flares -Automatic flame ignition system	-No open flares -Automatic flame ignition system with surveillance	-No open flares -Automatic flame ignition system with surveillance
Pollution Prevention	-Leak Detection Program Required	-Air Quality Mitigation plan required - Leak Detection Program required -Reduce methane emissions during maintenance	-Air Quality Mitigation plan required - Leak Detection Program required -Reduce methane emissions during maintenance
Containment	Must ensure no significant degradation	Require Closed Loop Pitless systems	Require Closed Loop Pitless systems
Pneumatic Controllers	Must ensure no significant degradation	Use no or low bleed devices	Use no or low bleed devices
Electric Engines	Required for pumping units and compressors	Required for pumping units and compressors	Required for pumping units and compressors
Green Completions	Must ensure no significant degradation	Capture gas during completion or use completion combustion devices rather than flare or vent	Capture gas during completion or use completion combustion devices rather than flare or vent
Air Quality Monitoring	Must ensure no significant degradation of air quality	Baseline and well completion monitoring required, <u>and</u> additional post-completion testing may be required if changes in air quality are identified	Baseline and well completion monitoring required, <u>and</u> additional post-completion testing may be required if changes in air quality are identified

Regulation	Option A		Option B
	Standard Review	Expedited Review	
Water Quality			
Water Quality Monitoring Plan	Must ensure no significant degradation of water quality	Baseline monitoring within ½ mile: -Sample four sites -Sample multiple aquifers -Sample up and down gradient	Baseline monitoring within ½ mile: -Sample four sites -Sample multiple aquifers -Sample up and down gradient
Conduct Subsequent Monitoring	Must ensure no significant degradation of water quality	Monitor at same locations 1, 3, and 6 years after well completion	Monitor at same locations 1, 3, and 6 years after well completion
Soil Gas Monitoring	Must ensure no significant degradation of water quality	-Monitor soil gas within 90 days of well completion -Results may trigger additional groundwater monitoring	-Monitor soil gas within 90 days of well completion -Results may trigger additional groundwater monitoring
Natural Resources			
Natural Resources Protection	Must ensure no significant degradation	-Must be set back 500 feet from a waterbody, stream, wetland, Natural Area or Park -Compliance with all buffer standards	-Cannot qualify if within 500 feet of a waterbody, stream, wetland, Natural Area or Park -Compliance with all buffer standards
Existing Vegetation	Minimize disturbance	Preservation of existing vegetation, mitigation requirements	Preservation of existing vegetation, mitigation requirements
General Conditions that apply to all oil and gas operations, regardless of the review track selected			
Emergency Response	Must have a plan in compliance with the International Fire Code - Include emergency contact information for the operator - Trigger/threshold levels identified to determine when a state of emergency should be declared - Spills shall be immediately reported - Establish a process for the operator to notify neighbors regarding risks and establish a communication process		
Transportation	- Access roads and access points shall be provided, reviewed, and approved by the City - A traffic impact analysis shall be submitted; all street frontage shall be improved in accordance with the Larimer County Urban Area Street Standards, including street trees, sidewalk, curb and gutter - Transportation fees and securities, i.e., bond or letter of credit, provided to ensure no damage to City streets, including any access routes		
Lighting	Except during drilling, completion or other activities where worker safety is a concern, all lighting shall be fully shielded and not spill off the site		
Spills	Chemical spills and releases shall be reported in accordance with local, state, and federal laws		
Chemical Disclosure	All Material Safety Data Sheets (MSDS) shall be provided to the City and Emergency Personnel		

Regulation	Option A		Option B
	Standard Review	Expedited Review	
Noise	Use an acoustically insulated cover to enclose the motor or engine All production equipment used shall comply with the noise levels in our Municipal Code in residential zones		
Reciprocal setbacks – applies to future residential development proposals in proximity of oil and gas operations			
Abandoned and plugged wells	Setback ranges from 20-50 feet from the abandoned and plugged well, based on screening, berming, and fencing options		
Any oil and gas well that has not been plugged and abandoned	Setback ranges from 150-250 feet from all other wells, based on screening, berming and fencing options From a safety perspective, the minimum setback should never be less than 150'		

FINANCIAL / ECONOMIC IMPACTS

Adoption of the Land Use Code regulations, in either Option A or Option B will require interdisciplinary oversight in the development review process beyond the typical development review process. For example, additional staff time from representatives from Environmental Sustainability and Utilities will be required to evaluate the air and water quality elements of any proposed oil and gas operation.

If Council indicates staff should continue to pursue the non-regulatory options, e.g., the Local Government Designee, Intergovernmental Agreements for inspection authority, etc., then the financial requirements from the City will increase. Funds for these efforts have been allocated through the 2013-2014 Budget (Offer 197.2 Oil and Gas Liaison).

ENVIRONMENTAL IMPACTS

While the proposed Land Use Code regulations are designed to protect the City’s quality of life, sense of place, and public health, oil and gas drilling within the city still 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, there are high volumes of truck and heavy equipment associated with oil fields.

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, both within and outside of the City, are threatened by this fragmentation. 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

Staff presents the following options to the Council for consideration:

Option A: Dual-track development review process

This option includes both expedited and standard review.

- The expedited review track requires operators to meet specific, objective criteria and agree to increased setbacks, e.g., 500 feet from an occupied structure, water body, natural area, or City park and 150 feet from any property line. By electing to meet these more prescriptive standards, a public hearing and neighborhood meeting are not required. Instead, notification is provided when an application is received, and if an

application is approved. Written comments can be submitted to the Director during the review process. The Director has the final decision-making authority.

- The standard review track requires the operator to locate a well and operate in a manner that does not significantly degrade our quality of life. All standard review applications are subject to a neighborhood meeting and a public hearing before the Planning and Zoning Board. All Board decisions are appealable to the City Council.

Option B: Single-track development review process

This option combines the prescriptive criteria in the expedited review track with the standard review process. Under this option, all development review applications would be processed under a single review track and be required to meet the same criteria. All decisions would be made by the Planning and Zoning Board.

Option C: Moratorium

Local governments have considered the use of moratoriums to prevent new oil and gas operations within their jurisdictions, citing the need to craft and adopt local land use regulations and/or to allow the state to address its rulemaking process as it relates to setbacks and water quality regulations.

Current State Efforts Related to Oil and Gas regulation

The Colorado Oil and Gas Conservation Commission is currently addressing its rules by considering amendments to water sampling and monitoring as well as addressing well setbacks and noise. The City secured Party Status for both rulemaking hearings, making Fort Collins the only city with such status and providing the City with an opportunity to submit comments on the state's proposals, recommend alternatives, and a greater length of time to speak before the Commission.

The state is reviewing its existing setback rules. New rules are anticipated to be in place early in 2013. Setbacks for new wells from existing homes are an important consideration for several reasons – there is uncertainty about emissions from well sites and the process of drilling and maintaining a well site could cause noise, traffic and light impacts. The current setbacks for new wells are 150 feet from an occupied structure, 350 feet from a high density area and 500 feet from some structures like hospitals, schools, and nursing homes. Many groups recommend increasing the state setbacks from homes to 1,000 or even 2,000 feet. The City of Fort Collins will seek additional setback distance, greater powers for residents in influencing site location proposals, and protection for community assets like natural areas and parks.

Water quality is another area that the Commission is currently addressing. The proposal under consideration adopts an industry-sponsored voluntary program and makes that program mandatory. Under the program, baseline groundwater quality samples will be collected from two existing groundwater features, such as permitted and registered groundwater wells or groundwater seeps and springs, which are located within 1/2 mile of the surface location of new oil and gas well pads, or additional wells on existing well pads. These samples will be collected before drilling begins. A second sample will be collected from each groundwater feature within one to three years after drilling is completed. If the state's rules on water quality monitoring are amended, the City may also need to modify proposed Land Use Code regulations as presented in Option A or B or in development submittal requirements.

Staff also requests direction on suggested state, regional, and "other" local options, including:

- Engage in stakeholder processes
- Continue with Local Government Designee
- Pursue an intergovernmental agreement with the State for inspection authority
- Pursue an intergovernmental agreement with the County for the GMA
- Advocate for more legislative change
- Consider entering into an operator agreement with the producer of the Fort Collins Field
- Develop a "model" surface use agreement that can be used for any city-owned lands

BOARD / COMMISSION RECOMMENDATION

City staff presented the proposed Land Use Code regulations and associated non-regulatory options to numerous City boards and commissions.

Formal recommendations were made by the Water Board (8-1), the Natural Resources Advisory Board (6-1), and the Air Quality Advisory Board (7-0) to support the Standard (Type II) and Expedited (Basic Development Review) processes and associated regulations.

The Land Conservation and Stewardship Board voted 6-0 to support the use of standard review when considering applications on City-owned Natural Areas. The Board further recommended a six month temporary moratorium on new oil and gas applications to provide staff with additional time to develop additional options.

While the Air Quality Advisory Board indicated support for the Standard and Expedited review, the Board also expressed additional non-regulatory options that staff should pursue. These recommendations are included in Attachment 14.

PUBLIC OUTREACH

A multidisciplinary City staff team worked to develop an understanding of the oil and gas industry, community concerns related to industry practices, and the statewide regulatory processes in place. This group researched industry exploration and extraction practices, working closely with peer municipalities throughout the Front Range to identify and incorporate the best practices of other Colorado municipalities into local regulation of the industry. The research process included local focus group meetings, formation of an Oil and Gas Advisory Committee that included representatives from eight City boards and commissions, talking with state experts and meetings with Colorado State University professors and researchers, Colorado Oil and Gas Conservation Commission staff, and the local oil and gas operators.

The Oil and Gas Advisory Committee was created to gather input from a diverse group of boards and commissions. The group met three times as public meetings and provided input to staff on draft regulations. The Committee included self-selected representatives from eight City boards and commissions, including the Air Quality Advisory Board, Economic Advisory Commission, Energy Board, Land Conservation and Stewardship Board, Natural Resources Advisory Board, Parks and Recreation Board, Planning and Zoning Board, and Water Board.

Staff conducted meetings with small groups of interested citizens. Residents of the Hearthfire subdivision met with staff and continued to communicate over the course of the project. Outreach included a focus group with representatives of local environmental groups before and after the development of draft regulations. Staff met with Don't Frack the Fort, a group generated by mutual concern over hydraulic fracturing in the community, four times.

Staff attended numerous public meetings on the subject of oil and gas development hosted by other groups.

ATTACHMENTS

1. Maps associated with Oil and Gas activity
2. Council Work Session Summary, August 14, 2012
3. Matrix comparing best practices of communities
4. Oil and Gas Manual*
5. Oil and Gas Development Review Guide*
6. Advisory Group Summary
7. Letter to Larimer County
8. Public Comments
9. Planning and Zoning Board minutes, November 1, 2012
10. Water Board minutes, October 18, 2012
11. Water Board memo re: proposed Land Use Code regulations
12. Land Conservation and Stewardship Board minutes, October 10, 2012
13. Land Conservation and Stewardship Board minutes, November 14, 2012

- 14. Natural Resources Advisory Board minutes, October 17, 2012
- 15. Air Quality Advisory Board minutes, October 15, 2012
- 16. Air Quality Advisory Board minutes, November 19, 2012
- 17. Powerpoint Presentation

(*NOTE: Attachment 4, Oil and Gas Manual, and Attachment 5, Oil and Gas Development Review Guide, are draft documents and only illustrate Option A, the dual-track review process. If Option B is adopted by Council, the documents will be revised accordingly.)

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AGENDA ITEM #26**STAFF RECOMMENDATION REGARDING STATE SETBACKS**

I move that the Council direct the staff to recommend to the Colorado Oil and Gas Conservation Commission at its upcoming rule-making proceeding that the setbacks of oil and gas exploration activities from occupied buildings be as follows:

1. New oil and gas facilities must be setback from existing homes at least 1,000 feet unless an applicant obtains local government approval and homeowner consent to locate the operation closer, which approval could be obtained only under the following conditions:
 - a. Cities and operators would have at least one community meeting regarding the application where input could be provided by citizens, which input could alter the location or other characteristics of the proposed oil and gas facility.
 - b. The community meeting would be posted publicly for all interested parties to attend, and residents living within one-half mile would receive written notice of the meeting at least two weeks prior to the meeting.
 - c. If the proposed setback distance conflicted with other community goals such as the protection of natural areas and parks and zoning compatibility, then the City and the operator would have to negotiate an acceptable drilling and operation site.
2. As a heavy industrial process, oil and gas production facilities would have to be sited in industrial zones or other zone districts deemed appropriate by the City.
3. Drilling and production operations in natural areas and community parks should be prohibited.
4. Further study of human and environmental health should be conducted to ensure that setbacks are appropriate.

Second Reading of Ordinance No. 145, 2012, Establishing a Moratorium on Oil and Gas Extraction

Laurie Kadrich, Director, Community Development &
Neighborhood Services

Dan Weinheimer, Policy and Project Manager

City Council Hearing

December 18, 2012

1



Moratorium Summary

- First Reading adopted December 4, 2012
- 6-month duration; 12-28-12 to 6-30-13
- Within the City;
 - Or on City-owned Parks and Natural Areas

Purpose to study impacts, gather new information

- New rules: Colorado Oil and Gas Commission
- Changes and/or amendments to Land Use Code

2



Current Efforts Oil & Gas Regulation Colorado Oil and Gas Commission

- Topics:
 - Water Sampling and Monitoring
 - Well setbacks and noise
- Hearings scheduled; November, December and January, 2013
- City has rule-making status

3



Summary of City Council rule- making direction

- Council direction passed December 4, 2012
 - Notice and meeting required
 - 1000' setback from residential & further study
 - Local control to reduce setback
 - Industrial zoning or others
 - Prohibited in natural areas and parks

4



Recommendation

- Staff Recommends that City Council adopt Ordinance No. 145, 2012 on 2nd Reading

ORDINANCE NO. 145, 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 oil and gas industry is important to the Fort Collins community, and also recognizes the important of minimizing, through appropriate regulation, the adverse impacts that oil and gas exploration and extraction 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 the exploration of oil and gas resources underlying portions of the City, including property owned by the City; and

WHEREAS, oil and gas exploration, extraction, production, transportation and related operations and activities, including, without limitation, all those oil and gas activities regulated by the Colorado Oil and Gas Conservation Commission (collectively "Oil and Gas Uses") may negatively impact Fort Collins citizens and the use and integrity of local water supplies and water infrastructure, air quality, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife and aesthetic values; and

WHEREAS, the health and safety issues presented by the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities may not be adequately addressed in the City's zoning and land use regulations and it is imperative that those regulations be reviewed in light of current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission ("Commission") Rules and with industry technologies to determine whether they are sufficient to protect the public health, safety, and welfare, or whether different or 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 Uses are approved within the City limits before City staff and the City Council have an opportunity to thoroughly examine the impact of such uses and take all steps necessary to protect the public health, safety, and welfare, irreparable harm may be done to the residents of the City; and

WHEREAS, municipalities throughout Colorado are struggling to address the potential adverse impacts of proliferating Oil and Gas Uses in urban and suburban environments on their citizens' health, safety, and welfare, and several municipalities have enacted moratoria to allow a period of time to evaluate those impacts of Oil and Gas Uses in order to assess and determine the appropriate local regulation of such; and

WHEREAS, although staff has, at the direction of City Council, been diligently researching best practices in this area and has prepared proposed new regulations, additional research and review are necessary in order for the City Manager and City Attorney and their

respective staffs to clarify the extent of the City's legal authority with regard to local regulation of such Oil and Gas Uses and to formulate any recommended amendments to the City Code to deal with those uses in an appropriate manner; and

WHEREAS, the Commission is presently engaged in a rule making proceeding that may result in new regulations being established; and

WHEREAS, in preparing its regulations, the City should consider such new rules as may be promulgated by the Colorado Oil and Gas Conservation Commission; and

WHEREAS, the imposition of a ~~six~~ seven-month moratorium on the submission, acceptance, consideration, and approval of any and all applications for City licenses, permits and other approvals related in any way to Oil and Gas Uses within the City, except on existing well heads, will allow City staff and the City Council the time needed to further investigate the extent of City's authority to regulate such uses, to consider any new regulations adopted by the Commission, and to develop and implement appropriate regulations; and

WHEREAS, ~~six~~ seven months is a reasonable period of time and is no longer than necessary for the City to determine the extent to which Oil and Gas Uses may be locally regulated and to properly investigate, develop, and, if appropriate, adopt and implement any local regulations related to Oil and Gas Uses in Fort Collins in order to protect and preserve the public's health, safety and welfare; and

WHEREAS, existing Oil and Gas Uses in Fort Collins will not be unduly prejudiced by the imposition of such a moratorium, since the ongoing operation of such uses will not be prohibited or terminated by this moratorium; and

WHEREAS, Colorado Revised Statutes Section 31-25-216 provides that the City has "full police power and jurisdiction and full municipal control and full power and authority" to manage, control, and improve and maintain any parks acquired by the City outside of the City's municipal limits; and

WHEREAS, the City's natural areas that are open to the public fall within the purview of Section 31-25-216 C.R.S.; and

WHEREAS, accordingly, the City Council has further determined that this moratorium should apply to all City-owned parks and natural areas outside of the City limits.

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

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the City Council further hereby finds as follows:

a. 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 do not adequately take into consideration current industry technologies so as to properly mitigate the impacts of these types of activities, to protect and preserve the public health, safety, and welfare.

b. That a ~~six~~ seven-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 new rules expected to be promulgated by the Colorado Oil and Gas Conservation Commission, and determining whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare.

Section 3. That, to address this situation, there is hereby imposed, as of midnight December 28, 2012, a moratorium on the acceptance or processing of any land use application, permit application, or any other application requesting approval to conduct an Oil and Gas Use within the City limits and within any City-owned parks or natural areas outside of the City limits that are open to the public; provided, however, that this moratorium shall not apply to applications to conduct maintenance operations on oil and gas wells existing in the City as of December 4, 2012. This moratorium shall terminate as of midnight ~~June 30~~ July 31, 2013, or on such earlier date as may be established by the City Council by ordinance. ~~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 4. That this Ordinance shall control over any conflicting ordinance of the City, but only to the extent of the conflict.

Section 5. That if any section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affecting the validity or constitutionality of and shall be severable from the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts may be declared unconstitutional or invalid.

Introduced, considered favorably on first reading, and ordered published this 4th day of December, A.D. 2012, and to be presented for final passage on the 18th day of December, A.D. 2012.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of December, A.D. 2012.

Mayor

ATTEST:

City Clerk