



CITY OF LOVELAND
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AGENDA ITEM: 1
MEETING DATE: 2/12/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Greg George

TITLE:
 Regulations for oil and gas development

RECOMMENDED CITY COUNCIL ACTION:
 Consider information presented by City staff, ask questions and provide feedback

DESCRIPTION:
 A study session to allow City staff to present and receive feedback on draft regulations for oil and gas development within Loveland city limits

BUDGET IMPACT:
 Positive
 Negative
 Neutral or negligible

SUMMARY:
 On May 15, 2012, City Council adopted an emergency ordinance imposing a nine-month moratorium on oil and gas development in the City of Loveland. The primary purpose of the moratorium was to give City staff and City Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas development occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the public's health, safety and welfare and the environment.

At a study session on June 12, 2012, City Council received information from six panelists representing different stakeholder groups on issues related to oil and gas development.

On August 21, 2012, City Council adopted a Statement of Direction (see Attachment A) for the development of regulations on oil and gas development. City staff was directed to develop an ordinance that would impose minimum regulations not likely to be preempted by State law and enhanced regulations and standards that would be voluntary.

On October 23, 2012, a joint City Council/Planning Commission public forum was held to receive comments from citizens on oil and gas development.

On December 18, 2012, City Council adopted an ordinance extending the moratorium on oil and gas development until an ordinance is adopted by City Council to enact local oil and gas regulations becomes legally effective on April 15, 2013, whichever is later. The primary reason for extending the moratorium was to allow time for the Colorado Oil and Gas Conservation Commission to complete their rule making which was expected to be completed in early January 2013, but is now not expected to be completed until later this month.

REVIEWED BY CITY MANAGER:

A handwritten signature in black ink, appearing to read "William D. Cahill". The signature is written in a cursive style with a large initial "W".

LIST OF ATTACHMENTS:

1. City Council Statement of Direction
2. Staff report
3. Power Point Presentation

FIRST READING: _____

SECOND READING: _____

ORDINANCE #

AN ORDINANCE ADDING A NEW CHAPTER 18.77 TO THE LOVELAND MUNICIPAL CODE FOR THE REGULATION OF OIL AND GAS OPERATIONS WITHIN THE CITY OF LOVELAND

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, .

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to read in full as follows:

Sections:

- 18.77.010 Authority.**
- 18.77.015 Purpose.**
- 18.77.020 Applicability.**
- 18.77.025 Rules of Construction and Definitions.**
- 18.77.030 Zoning.**
- 18.77.035 Alternative Permit Processes.**
- 18.77.040 Conceptual Review.**
- 18.77.045 Planning Commission Review Process.**
- 18.77.050 Administrative Review Process.**
- 18.77.055 Baseline Standards for Planning Commission Review Process.**
- 18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.**
- 18.77.065 Enhanced Standards for Administrative Review Process.**
- 18.77.070 Application Requirements.**
- 18.77.075 Prohibited Oil and Gas Facilities.**
- 18.77.080 Variances.**
- 18.77.085 Transfer of Permits.**

- 18.77.090 Other Applicable Code Provisions.**
- 18.77.095 Emergency Response Costs.**
- 18.77.100 Application and Inspection Fees.**
- 18.77.105 Capital Expansion Fees.**
- 18.77.110 Reimbursement for Consultant Costs.**
- 18.77.115 Adequate Transportation Facilities**
- 18.77.120 Insurance and Performance Security.**
- 18.77.125 Inspections and Right to Enter.**
- 18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.135 Conflicting Provisions.**

18.77.010 Authority.

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. However, it is not the intent of this chapter that these powers and authority be exercised in a manner that would create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict would arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. It is therefore the intent of this chapter that its provisions be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid any operational conflict.

18.77.015 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that will negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

18.77.020 Applicability.

Except as otherwise provided in this section, the provisions of this chapter shall apply to all oil and gas operations occurring within the city's boundaries. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil

and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 15, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 15, 2013. It shall also not apply to any oil and gas operations occurring on real property annexed into the city on or after April 15, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other oil and gas operations occurring within the city's boundaries after April 15, 2013.

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations and in chapter 18.04 of this code. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or legal holiday, that day shall be excluded in the count.

C. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

D. "Adverse effect" or "adverse impact" shall mean the impact of an action, after mitigation, that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

E. "Administrative review process" shall mean the expedited review process set out in section 18.77.050.

F. "APD" shall mean an application for a permit to drill, deepen, re-enter or recomplete and operate under the COG regulations.

G. "Applicant" shall mean any person possessing the legal right to develop oil or gas underlying land located within the city's boundaries and who has applied for an oil and gas permit under this chapter.

H. "Application" shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

I. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

J. “Best management practices” shall mean practices that are designed to prevent or reduce impacts caused by oil and gas operations to air, water, soil or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

K. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

L. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

M. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. T. 400.

N. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

O. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging and abandonment are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

P. “Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

Q. “Current planning” shall mean the city’s current planning division.

R. “Designated agent” shall mean the designated representative of any operator.

S. “Development review team” or “DRT” shall mean the city’s development review team.

T. “Director” shall mean the director of the city’s development services department or his or her designee.

U. “Enhanced standards” shall mean those review standards and operation requirements set out in section 18.77.065.

V. “Flow line” shall mean a pipeline connecting individual well sites to gathering lines.

W. “Fracking” shall mean the technique of using explosive charges and water, sand and certain chemicals injected under pressure into an oil and gas well to create fractures that extend from the well bore into rock, shale or coal formations thereby allowing oil and gas to travel more easily from those formations, where the oil or gas is trapped, to the production well.

X. “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Y. “Gathering line” shall mean a pipeline transporting produced gas, oil or water from multiple well sites to a centralized facility.

Z. “Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

AA. “Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

BB. “Most effective performance technologies and practices” shall mean the application of proven emerging techniques and technologies or other best management practices used in conducting oil and gas operations which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on- and off-site impacts to the public health, the environment, landowners, and natural resources, and which may reduce conflicts between operators and potentially affected landowners.

CC. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

DD. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas.

EE. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment

or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

FF. “Operator” shall mean a person who has the legal right to drill into and produce from a pool and to appropriate the oil or gas produced either for the operator or for the operator and an owner.

GG. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

HH. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

II. “Person” shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

JJ. “Pit” shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils.

KK. “Planning commission” shall mean the city’s planning commission as established in code section 2.60.210.

LL. “Planning commission review process” shall mean the review process set out in section 18.77.045.

MM. “Seismic operations” shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

NN. “Setback” shall mean the distance between the following: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a residential or non-residential building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.

OO. “Significant degradation” shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

PP. “State” shall mean the State of Colorado.

QQ. “Surface owner” shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

RR. “VOC” shall mean volatile organic compounds.

SS. “Well” shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

TT. “Well blowdown” shall mean the maintenance activity designed to remove unwanted fluids from mature wells during which time gas is often vented to the atmosphere.

UU. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and fracking, allows for the flowback of petroleum or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

VV. “Wellhead” shall mean the equipment attached to the casing of an oil, gas or injection well above the surface of the ground.

18.77.030 Zoning.

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city’s zoning districts, planned unit developments, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and an APD has been issued by the commission for those oil and gas operations.

18.77.035 Alternative Permit Processes.

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city’s development review team. Current planning shall schedule such meeting within fourteen (14) days after a written request for the meeting has been received. At least fourteen (14) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy sets of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission

under the COG regulations to obtain an APD for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited administrative review process rather than the planning commission review process. Within five (5) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have three (3) months thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations.

18.77.045 Planning Commission Review Process.

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fourteen (14) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fourteen (14) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application is filed with current planning, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within fifteen (15) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be

provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations and how the operations will be regulated under this chapter and the COG regulations.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within thirty (30) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. *Appeal of Planning Commission Decision.* The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and

any “party in interest” as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission’s final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council’s decision in the appeal hearing to grant, grant with conditions or deny the applicant’s request for an oil and gas permit shall, like the planning commission’s decision, be based on the applicable provisions of this chapter and any other applicable provisions of this code. The council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council’s appeal hearing.

18.77.050 Administrative Review Process.

A. *Applicant’s Election to Use Administrative Review Process.* As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant’s application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards could reasonably be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that the applicant is waiving any such operational conflicts for the purpose of pursuing this expedited approval of its application under this administrative review process; and (3) that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. *Application Completeness Review.* An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant’s representatives to discuss the application and to present the DRT’s questions, concerns and recommendations. Within thirty (30) days after the application is filed with current planning, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city’s website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT’s report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted in the same manner as under the planning commission review process as set out in section 18.77.045.E., but with one addition. The notices

mailed under section 18.77.045 shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until ten (10) days after the neighborhood meeting is held in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within ten (10) days after the neighborhood meeting is held, any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within ten (10) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director may, in his or her discretion, negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit.

G. *Director's Decision.* Within ten (10) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed by the applicant or a "party in interest," as defined in section 18.80.020, to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

18.77.055 Baseline Standards for Planning Commission Review Process.

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with COG rule 604, as amended, for setbacks and mitigation measures, in addition to the standards and requirements in code section 18.77.060.

18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado Parks and Wild Life is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for soil protection and plugging and abandonment.*

1. All permits for oil and gas operations shall comply with the requirement for soil protection and plugging and abandonment set forth in COG rule 706, as amended.

2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.
 3. The operator shall notify the Loveland Fire and Rescue Authority not less than two (2) hours prior to commencing plugging operations.
- F. *Anchoring.* All mechanized equipment associated with oil and gas operations shall be anchored so as to minimize transmission of vibrations through the ground.
- G. *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.
- H. *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.
- I. *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.
- J. *COG regulations for hydraulic fracturing chemical disclosure.* All permits for oil and gas operations shall comply with COG rule 205.A, as amended. The operator shall provide copies of the commission's chemical disclosure registry form to the Loveland Fire and Rescue Authority at the same time as it is provided to the commission.
- K. *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.
- L. *Cultural and historic resources standards.* The installation and operation of any oil and gas operation shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.
- M. *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.
- N. *Electric equipment.* The use of electric-powered motors for pumping or drilling systems shall be required if a provider of electric power agrees to provide electric service to an oil and gas facility and the oil and gas facility is located in reasonably close proximity to available electric distribution lines. Electric service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of generators may be used until electric service is provided.
- O. *Emergency response standards.*

1. In General. Oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks,

ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to develop an emergency preparedness plan for each specific facility site, which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency preparedness plan shall contain at least all of the following information:

(a) Name, address and phone number, including 24-hour emergency numbers, for at least two persons responsible for emergency field operations.

(b) An as-built facilities map in a format suitable for input into the city's geographical information system depicting the locations and type of above and below ground facilities, including sizes and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency. The city shall deny the right of inspection of the as-built facilities maps to the public pursuant to C.R.S. § 24-72-204.

(c) Detailed information addressing each potential emergency that may be associated with the operation, which shall include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. For each potential emergency, threshold/trigger levels shall be pre-identified to determine when a state of emergency should be declared.

(d) A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state shall be reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and the director immediately.

(e) Detailed information identifying access or evacuation routes and health care facilities anticipated to be used.

(f) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

(g) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency.

(h) Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

(i) A provision obligating the applicant to have immediately available on each oil and gas operation site a current Material Safety Data Sheets (MSDS) for all chemicals used or stored on the site. The MSDS sheets shall be provided immediately upon request to the director, a public safety officer or a health professional.

(j) The plan shall include a provision establishing a process by which the operator engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with the operator.

P. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.

2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:

(a) Nature and proximity of adjacent development;

(b) Prevailing weather patterns, including wind direction;

(c) Vegetative cover on or adjacent to the site; and

(d) Topography.

3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. One (1) or more of the following additional noise mitigation measures may be required:

(a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;

(b) Vegetative screens consisting of trees and shrubs;

(c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;

- (d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and
- (e) Lowering the level of pumps or tank batteries.

Q. *Fencing.* Permanent perimeter fencing six (6) feet in height shall be installed around the entire perimeter of the oil and gas operations site, including gates at all access points. Such gates shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety.

R. *Flammable material.* All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

S. *Land disturbance standards.* The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.
4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.
6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operations. The analysis shall include a written description of the

species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.

T. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

U. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and
2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

V. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

W. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

X. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

Y. *Recordation of flow lines.* The legal description of all flow lines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow lines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Z. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

AA. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

BB. *Signs.* A sign permit shall be obtained for all signs at the oil and gas operations site or otherwise associated with the oil and gas operations in accordance with code chapter 18.50, except as otherwise required by the COG regulations.

CC. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall notify the affected or potentially affected water well owner immediately following discovery of the release, and the spill or release shall be reported to the director within twenty-four (24) hours of becoming aware of the spill or release.

DD. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

EE. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

FF. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

GG. *Water supply.* The operator shall identify on the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the city shall be documented and this record shall be provided to the city annually or sooner, upon request of the city's Water and Power Department director, or his or her designee. The disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water, and the final destination for water used in operation.

HH. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until

abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

II. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

JJ. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

KK. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

LL. *Floodplains.* All oil and gas operations shall comply with code chapter 18.45.

MM. *Temporary housing.* Temporary housing at any oil and gas operations, including without limitation, trailers, modular homes, and recreational vehicles shall be prohibited.

NN. *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

OO. *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

PP. *Domestic water supply.* Oil and gas operation sites shall be connected to a domestic water supply if a domestic water supplier agrees to make such a connection and the site is located in reasonably close proximity to such connection. Domestic water service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of imported water may be allowed until such water service is provided.

QQ. *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

RR. *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as

specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

SS. *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:

- (a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;
- (b) Located to avoid crossing hills or ridges;
- (c) Located to avoid the removal of trees; and
- (d) Located at the base of slopes to provide a background of topography and/or natural cover.

2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.

3. One (1) or more of the landscaping practices may be required on a site specific bases:

- (a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;
- (b) Shaping cuts and fills to appear as natural forms;
- (c) Cutting rock areas to create irregular forms; and
- (d) Designing the facility to utilize natural screens.

TT. *COG regulations for odor.* All permits shall comply with COG rule 805.

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060:

A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building.

1. All oil and gas operations shall be located at least five hundred (500) feet from any occupied building, or such greater distance as may be required by the commission.
2. All oil and gas operations shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.
3. All oil and gas operations shall be located at least five hundred (500) feet from: (i) the property line of any natural area, any property managed by the city’s Parks and Recreation Department and any city park; (ii) the operating high water line of any surface water body including, but not limited to, rivers, streams, ditches, wetlands, reservoirs and lakes; (iii) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and (iv) any “Designated Outdoor Activity Area” as defined in COG regulations, or such greater distance as required by the commission.
4. All oil and gas operations shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.
5. All oil and gas operations shall be located at least one thousand (1,000) from any “High Occupancy Building” as defined in the COG regulations.

B. *Commission mitigation regulations.* Permits for oil and gas operations to be located within city limits, whether within or outside any “Designated Setback Location” as defined in the COG regulations, shall comply with the mitigation measures required under Commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table 1 below, shall be established around the entire perimeter of the oil and gas operation sites, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided for xeriscape plant types.

Table 1 - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	

4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer’s data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer’s recommendations, instruction and operating manuals.

2. *Combustion devices.* All flares shall be designed and operated as follows:
 - (a) The combustion devices shall be designed and operated in a manner that will ensure it complies with 40 Code of Federal Regulations (“CFR”) §60.18 (General control device and work practice requirements);
 - (b) The combustion device shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and
 - (c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.

3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.

4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.

5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:

(a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;

(b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;

(c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and

(d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency's Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.

6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.

7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.

8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.

E. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

1. Flow lines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential and non-residential buildings or the high water mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;

2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;

3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and
4. Operators shall use boring technology when crossing streams, rivers or irrigation ditches with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

18.77.070 Application Requirements.

All applications submitted to current planning shall contain the information required for an APD and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 Prohibited Oil and Gas Facilities.

Notwithstanding any provision in this chapter or code to the contrary, the following oil and gas operations and oil and gas facilities shall be prohibited within the city:

- A. Pits;
- B. Commercial disposal facilities regulated by the Colorado Department of Public Health and Environment;
- C. Centralized exploration and production waste management facilities; and
- D. Temporary housing at any oil and gas operations, including without limitation trailers, modular homes and recreational vehicles, except for such housing customarily required during twenty-four hour drilling and fracking operations.

18.77.080 Variances.

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section shall be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.

2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.
3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.
4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.
5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

18.77.085 Transfer of Permits.

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter, the ADP and the COG regulations. The existing operator shall assign the permit to the new operator on a form provided by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

18.77.090 Other Applicable Code Provisions.

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code, 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

18.77.095 Emergency Response Costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous

materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

18.77.100 Application and Inspection Fees.

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter.

18.77.105 Capital Expansion Fees.

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution.

18.77.110 Reimbursement for Consultant Costs.

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

18.77.115 Adequate Transportation Facilities.

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

18.77.120 Insurance and Performance Security.

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars (\$1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars (\$10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the

insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursal, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the operator and the city and shall provide that although the city is named as additional insured, the city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a _____ (\$ _____) performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and any damage to the public right-of-way. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.125 Inspections and Right to Enter.

A. *Inspections.* In recognition of the potential adverse impacts associated with oil and gas operations in an urban setting, all oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code.

B. *Right to Enter.* Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Designated Agent.* The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four hours a day for the purpose of being notified of any proposed city inspection under this section or in case of an emergency.

18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.

A. *Violations.* It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any condition of a permit; or
3. Violate any applicable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe than an operator is in violation of any provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty one (21) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any provision of this chapter shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a

term not exceeding one (1) year, or both such fine and imprisonment. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

18.77.135 Conflicting Provisions.

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

Section 2. That a new Chapter 18.78 is hereby added to the Loveland Municipal Code to read in full as follows:

18.78.010 Purpose.

The purpose of this chapter is to generally protect the public’s health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.

18.78.020 Building Setbacks from Oil\and Gas Facilities.

All buildings intended to be occupied shall be setback a minimum distance of five hundred (500) feet and all “High Occupancy Building Units,” as defined in the rules and regulations of the Colorado Oil and Gas Conservation Commission, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned “oil and gas facility,” as defined in code section 18.77.025.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland

Generally

City staff will promptly develop an approach to oil and gas regulation which includes regulation by ordinance, and also incorporates operating agreements to be negotiated with oil and gas companies. Care will be taken in the drafting of the ordinance to ensure critical health and safety concerns and minimize impacts of oil and gas on neighbors, while at the same time providing for access to mineral rights and harmonizing with state law and regulation. The draft ordinance will draw upon the successful experience of other jurisdictions, and avoid conflicts with state law or regulation that would draw legal challenge from the State of Colorado.

Regulations by Ordinance

Method: Oil and gas development shall be listed in all City zoning districts as a special review use. This process requires notification of affected property owners and a neighborhood meeting. The current provisions for obtaining a special review permit, which provide for ultimate denial of the permit, will be amended to avoid legal preemption based on an operational conflict.

Standards: The City staff will explore and develop standards in the draft ordinance to address the following areas:

1. Closed loop/pitless wastewater disposal systems
2. Hazardous materials disclosure
3. Road damage/repair
4. Odor
5. Visual Screening
6. Setbacks (not in excess of those allowable by State law and regulation)
7. Construction traffic and routing
8. Safety and spill prevention
9. Emergency preparedness plan
10. Fire inspections

Fees: The draft ordinance shall include the development of a fee structure for permitting to recover City costs of service, to the extent not in conflict with State law and regulation. These will include System Impact Fees as well.

Use of Operator Agreements

The City will incorporate into its practice the use of individually negotiated agreements with individual oil and gas companies, as recommended by the Colorado Oil and Gas Association. These agreements can result in the application of more stringent standards than might otherwise be preempted by state law, in addition to the minimum standards mentioned above. The Colorado Oil and Gas Commission will typically include the requirements of any such agreement as conditions on permits it issues.



Development Services Department

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To: City Council

From: Greg George, Development Services Director
 John Duval, City Attorney

Date: February 12, 2013

Re: Regulations for oil and gas development

I. ATTACHMENTS

- A. Oil and Gas Drilling Activities map
- B. Groundwater Baseline Sampling Analysis
- C. January 28, 2013 Planning Commission public hearing staff report
- D. January 28, 2013 Planning Commission minutes (draft)
- E. January 14, 2013 Planning Commission minutes (draft)

II. EXECUTIVE SUMMARY

City staff has prepared draft regulations on oil and gas development to be consistent with the Statement of Direction adopted by City Council on August 21, 2012, address concerns raised by Loveland citizens concerning impacts on public health, safety and welfare and the environment, and the City's legal authority to regulate oil and gas development.

City staff proposes to create a new Chapter 18.77, which will contain all the review procedures, regulations, and standards applicable to oil and gas development. Oil and gas operators would be required to obtain a permit from the City for any oil and gas development within Loveland city limits. To avoid redundancy, please refer to Section I (page 1 of 12) in the attached January 28 Planning Commission staff report for a description of the two different procedures (Planning Commission Review and Administrative Review) for obtaining a permit from the City and the nature of the two sets of standards (Baseline Standards and Enhance Standards) that would apply to each process. Section V (page 3 of 12) of the Planning Commission staff report explains why it is necessary for the City to amend its zoning code. The key issues, and the remainder of this memorandum, have been updated from the Planning Commission report.

City staff is also proposing a new Chapter 18.78 to establish building setbacks for new development from existing and abandon oil and gas facilities.

III. SCHEDULE

Planning Commission: 1st public hearing - January 28, 2013
 City Council study session: February 12, 2013
 Planning Commission: 2nd public hearing - February 25, 2013

City Council: public hearing - Ordinance 1st reading - March 5, 2013
 City Council: Ordinance 2nd reading - March 19, 2013
 Legally effective: April 2, 2013

IV. KEY ISSUES

A. Baseline Standards for Planning Commission Review: The intent of the Baseline Standards in Section 18.77055 is to apply standards that mitigate adverse impacts to the extent possible, while not being preempted by State law. Baseline Standards include Colorado Oil and Gas Commission (the “Commission”) rules dealing with impacts typically addressed by current City standards on heavy industrial uses. Commission rules dealing with the technical aspect of oil and gas development are not included in these Baseline Standards.

B. Baseline Standards for Planning Commission and Administrative Review: The intent of the Baseline Standards in Section 18.77.060 is to apply standards to mitigate impacts that are either not addressed in Commission rules or to mitigate impacts to a higher standard. In either case, the intent is to not create an operational conflict and, therefore, avoid a standard being preempted by State law.

C. Enhanced Standards for Administrative Review: The standards in Section 18.77 065 are voluntary standards intended to mitigate impacts to a higher level than those of the Commission. These standards would likely be preempted by State law if they were not voluntary. Successful implementation of enhanced regulations will depend on the extent to which the standards are economically practicable and technically feasible for the applicant and the ability of the City to provide an incentive sufficient to achieve voluntary compliance. City staff has collaborated with representatives from Anadarko to create standards that are technically feasible and economically practicable. One possibility for increasing the incentive for compliance with these standards is to reduce or waive the filing fee or specific Capital Expansion Fees that might otherwise be applicable. Another possibility is that the surface owner may participate in the cost to implement the enhanced standards to reduce setbacks for new development in the future (see paragraph D, below concerning “no build” areas)

D. Creation of “no-build” areas within city limits: City Council has directed City staff to recommend zoning restrictions to establish setbacks for new development from existing or abandoned oil and gas facilities (see *Attachment A*). Any such setbacks could create significant “no-build” areas within the city and, in the future, within our Growth Management Area. A 500 foot setback would create an 18 acre “no-building” zone and a 1,000 foot setback a 72 acre “no-building” zone around an oil and gas facility. The Commission’s new rules on building setbacks require a significant number of new mitigation measures (i.e. closed loop drilling system, higher standards for containment berms, consolidation of well sites and blowout prevention equipment) if the oil and gas facility is within 500 from a Building Unit or 1,000 feet from a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. However, there are locations with the current city limits and, more so, within the Growth Management Area where Commission rules would not require these new mitigation measures.

E. Setbacks for new development: For those oil and gas facilities that are not required to adhere to the Commission’s new mitigation rules, City staff would recommend a 1,000 foot setback for new development and a 500 foot setback from those facilities that do include the new mitigation measures. To minimize the size of potential “no-build” areas within the city and better protect public health, safety and welfare and the environment, City staff is recommending, as an Enhanced Standard, that all oil and gas facilities within city limits adhere to the Commission’s new mitigation rules regardless of how close the

facility might be at time of permit issuance to an existing Building Unit or High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. This requirement would minimize obstacles for new development and provide more land area available for development in the future.

F. Additional inspection services: It may be necessary for the City to inspect oil and gas sites to ensure compliance with standards adopted by the City, particularly with respect to requirements that are not included in a Commission permit. Standards agreed to by an applicant and a local government may, at the discretion of the Commission, be placed as conditions on the Commission's permit. Since most of the Baseline Standards are regulations included in the Commission's rules, the City could decide to rely on inspections by Commission personnel to ensure compliance. However, to ensure compliance with the Enhanced Standards, the City may have to inspect oil and gas sites. One option would be to contract with a qualified inspector, on an as-needed basis, to perform the necessary inspections.

V. COMMISSION'S NEW RULES

A. Groundwater baseline sampling and monitoring: The Commission adopted new rules for groundwater baseline sampling and monitoring on January 7, 2013. The new rules will become legally effective on May 1, 2013. The new rules that apply state-wide, except within the Greater Wattenberg Area (GWA), require operators to collect water samples from all available water sources, up to a maximum of four, within a one-half mile radius of a proposed oil and gas well. The first sample must be taken within twelve months prior to drilling and again between sixty and seventy-two months following completion of the well. The City of Loveland and surrounding area in Larimer County are located within the GWA. In this area, operators are required to sample one available water source within the quarter section in which the proposed well is to be located. The first samples must be taken within twelve months prior to drilling and the second between six and twelve months following completion of the well. The official press release from the Commission states that the rules in the GWA were adjusted due to the combination of energy development, agricultural and other industrial and residential uses unique to the area. The required analysis for all baseline sampling is described in *Attachment B*.

B. Building setback rules: The Commission's new rules for building setbacks were given only preliminary approval on January 9, 2013, with the Commission directing their staff to refine the regulations and bring them back for final adoption. On January 24, 2013, the Commission postponed any final decision until a hearing scheduled for February 11, 2013. No date has been established for the new rules to become legally effective. Section VII.B (page 5 of 12) of the Planning Commission report contains a description of the new rules for building setbacks based on the recommendations contained in the Commission's staff report dated January 7, 2013. If the rules change prior to the February 12, 2013, City staff will provide an update at the Council study session.

C. Commission's new mitigation rules: Section VIII (page 9 of 12) of the Planning Commission report includes a table (*Table 2*) that identifies the new mitigation measures (those in the blue cells) that the Commission requires for oil and gas facilities that are within 500 feet of a Building Unit or within 1,000 feet of a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area.

VI. PLANNING COMMISSION RECOMMENDATION

The minutes (draft) for the Planning Commission public hearing on January 28, 2013 are included as Attachment D. The only official recommendation made by the Commission was a motion made by Commissioner Dowding to recommend that City Council consider extending the schedule for completion of City oil and gas regulations and extend the moratorium by 2 months, to permit additional time for finalization of pending state rules and regulations. Upon a second by Vice Chair Middleton the motion was unanimously adopted.

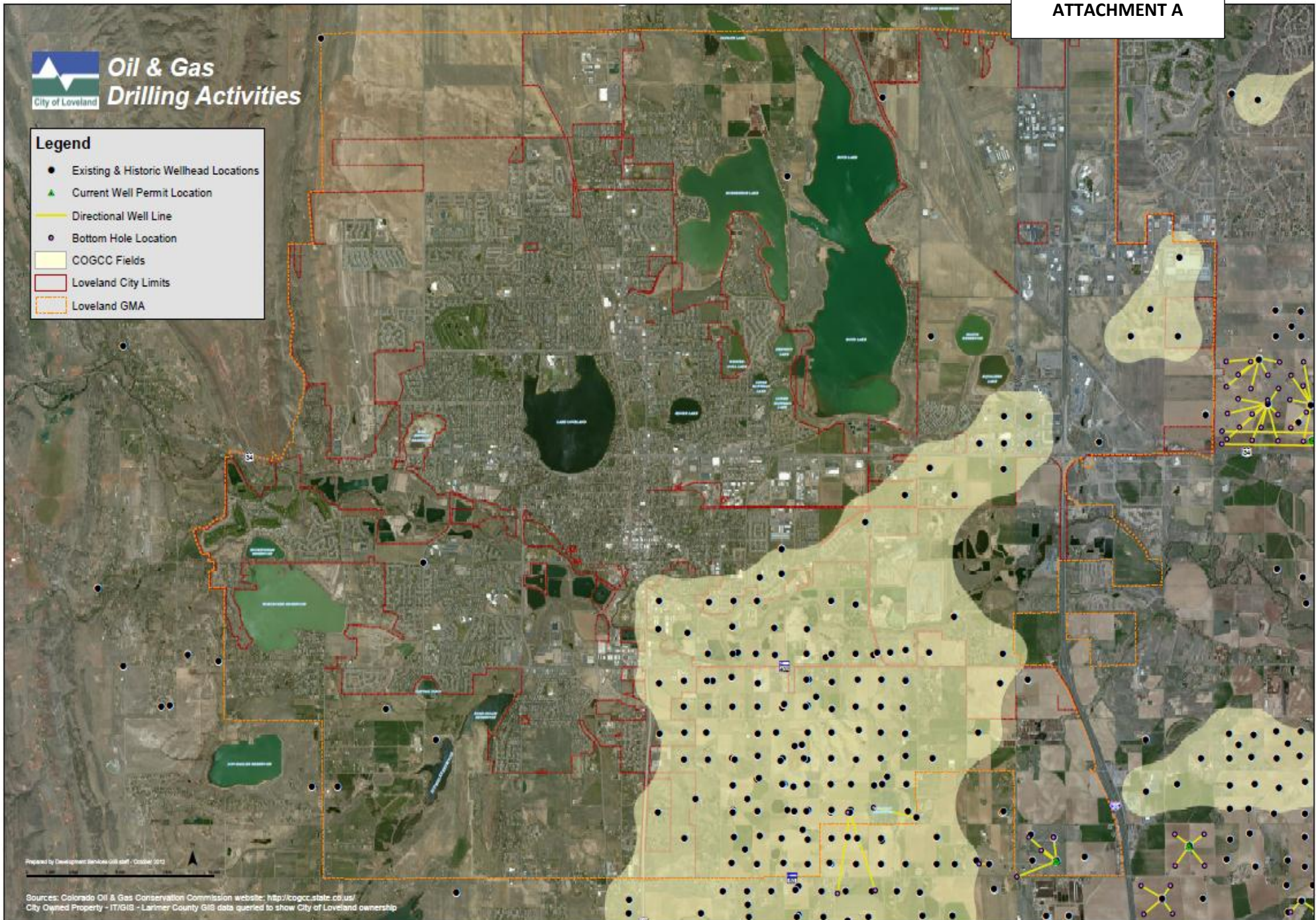
VII. DRAFT REGULATIONS

The regulations on oil and gas development proposed by City staff are in the accompanying ordinance.

ATTACHMENT A

 **Oil & Gas
Drilling Activities**

- Legend**
- Existing & Historic Wellhead Locations
 - ▲ Current Well Permit Location
 - Directional Well Line
 - Bottom Hole Location
 - COGCC Fields
 - Loveland City Limits
 - Loveland GMA



Prepared by Development Services GIS staff - October 2012

Sources: Colorado Oil & Gas Conservation Commission website: <http://cogcc.state.co.us/>
City Owned Property - IT/GIS - Larimer County GIS data queried to show City of Loveland ownership

Groundwater Baseline Sampling Analysis (source COGCC Rule 318A.E)

E. Initial Baseline Sampling Analysis. The initial baseline sampling required pursuant to subpart (4)D.i shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as CaCO₃), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Source shall be surveyed in accordance with Rule 215.

F. Subsequent Sampling Analysis. Subsequent sampling to meet the requirements of subpart (4)D.ii shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as CaCO₃), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

G. Methane Detections. If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H and 2H) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

- i. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;
- ii. the methane concentration increases by more than 5.0 mg/l between sampling periods; or
- iii. the methane concentration is detected at or above 10 mg/l.



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Planning Commission Staff Report

January 28, 2013

Agenda # : Regular Agenda – PUBLIC HEARING

Title: Zoning regulations for oil and gas development

Applicant: City of Loveland

Request: Recommend zoning regulations for oil and gas development to the Loveland City Council

Location: The proposed regulations would apply to all oil and gas development within the incorporated limits of the City of Loveland.

City staff:

Greg George, Development Services Director
 John Duval, City Attorney

Staff Recommendation: Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Action *Review the material presented by City staff and consider testimony received at the public hearing. Provide comments and recommendations to be considered by City Council at their February 12, 2013 study session.*

I. EXECUTIVE SUMMARY

This item is a public hearing to consider amending the Loveland Municipal Code by adding a new Chapter 18.77 to establish zoning regulations for oil and gas development in the City of Loveland. The amendment proposes two different procedures for obtaining a permit for oil and gas development.

- A. Planning Commission Review Process (PCRP):** Applications filed under this process would be required to comply with regulations referred to as Baseline Standards designed specifically to avoid preemption by State law and legal challenges by oil and gas companies. The PCRP would require a neighborhood meeting and approval by the Planning Commission at a fully noticed public hearing. The Planning Commission could grant, grant with conditions or deny the permit. The decision of the Planning Commission could be appealed to City Council by “any party of interest”, defined as the applicant, the Development Services Department Director, two or more City Council members, any person receiving mailed notice of the public hearing or any person who provided written or verbal testimony at the Planning Commission public hearing.
- B. Administrative Review Process (ARP):** Applicants willing to comply with regulations designed to provide a higher level of mitigation for impacts on public health, safety and welfare and the environment, referred to as Enhanced Standards, would receive a permit under the ARP. The ARP would require a neighborhood meeting. The notice for the neighborhood meeting would inform recipients that they have a specified number of days after the meeting to submit written comments to the Director. Any other person may also file comments within a specified number of days for the Director’s consideration. Any comments submitted to the Director must be considered by the Director in his or her decision on the permit. The Director would be allowed to negotiate with the applicant for additional standards to be

added as conditions to the permit to further protect public health, safety and welfare or minimize impacts on surrounding land uses or the environment. The Director’s decision must be based solely on compliance with the Enhanced Standards and any additional standards agreed to by the applicant. The applicant’s refusal to agree to any additional standards may not be used by the Director as a basis to deny the permit. The Director’s final decision may not be appealable to the Planning Commission or City Council. The Director’s decision may only be appealed by the applicant or “any party of interest” to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Compliance with the Enhanced Standards and, therefore, access to the ARP would be strictly voluntary. The primary objective for the Enhanced Standards process is to create an incentive for an applicant to agree to comply with certain higher standards than currently being applied by the Colorado Oil and Gas Conservation Commission (the “Commission”). Absent agreement by the applicant, these higher standards would likely be preempted by State law. Enhanced Standards would include: (i) setbacks from occupied buildings and other sensitive features, such as natural areas, parks, rivers, streams and wetlands; (ii) bufferyards; (iii) mitigation of air quality impacts; (iv) water well and groundwater monitoring; (v) the location of pipelines; and (vi) noise mitigation.

II. ATTACHMENTS

- A. Oil and Gas Drilling Activities Map
- B. City Council Statement of Direction

III. PROPOSED SCHEDULE

- A. Planning Commission 1st public hearing: January 28, 2013
- B. City Council study session: February 12, 2013
- C. Planning Commission 2nd public hearing: February 25, 2013
- D. City Council public hearing - Ordinance 1st reading: March 5, 2013
- E. City Council - Ordinance 2nd reading: March 19, 2013
- F. Ordinance legally effective: April 2, 2013

IV. ABBREVIATIONS

Planning Commission Review Process	PCRP
Administrative Review Process	ARP
Colorado Oil and Gas Conservation Commission	Commission
Greater Wattenberg Area	GWA
Designated Outdoor Activity Area	DOAA
Local Government Designee	LGD
Colorado Department of Public Health and Environment	CDPHE

V. PURPOSE OF AMENDMENT

- A. Zoning conflicts with State law:** Currently, oil and gas development as a land use is only permitted in the Industrial and Developing Resource zoning districts as a special review use. Therefore, under the City's zoning code, oil and gas development would be prohibited in any of the other zoning districts in the City. The absolute prohibition of oil and gas development by a local municipality would be in conflict with existing State law and would be preempted under Commission rules. To resolve this potential conflict with State law, the proposed amendments would allow oil and gas development in all zoning districts, subject to issuance of a permit by the City.
- B. Lack of development standards:** The Loveland Municipal Code contains no development standards specifically for oil and gas development. A municipality may enforce zoning regulations on oil and gas development that do not create an operational conflict with Commission regulations. In general, a regulation adopted by a municipality would be preempted by State law if it were to apply a standard more restrictive than a Commission standard. For example, a municipality could not enforce regulations on setbacks or air quality mitigation greater than those established in Commission regulations. However, a local municipality may adopt and enforce regulations in areas that the Commission does not regulate, provided those regulations do not create an operational conflict. Examples of regulations that would likely not be preempted would be standards for fencing, landscape buffers, lighting, transportation and circulation, and road repair. The proposed amendments would establish two levels of regulations and respective permit processes for oil and gas development designed to protect public health safety and welfare and the environment and not be preempted by State law.

VI. KEY ISSUES

- A. Need for local regulations to supplement the Commission regulations.**
- 1. City Council action and direction:**
 - a. Emergency ordinance:** On May 15, 2012, City Council adopted an emergency ordinance imposing a nine month moratorium on oil and gas development in the City of Loveland. The primary purpose of the moratorium was to give City staff and City Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas development occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the public's health, safety and welfare and the environment.
 - b. Study Session:** At a study session on June 12, 2012, City Council received information from six panelists representing different stakeholder groups on issues related to oil and gas development.
 - c. Statement of Direction:** On August 21, 2012, City Council adopted a Statement of Direction for the development of regulations on oil and gas development. City staff was directed to develop an ordinance that would impose minimum regulations not likely to be preempted by State law and enhanced regulations and standards that would be voluntary.
 - d. Public Forum:** On October 23, 2012, a joint City Council/Planning Commission public forum was held to receive comments from citizens on oil and gas development.
 - e. Extension of moratorium:** On December 18, 2012, City Council adopted an ordinance extending the moratorium on oil and gas development until an ordinance is adopted by City Council to enact local oil and gas regulations becomes legally effective or April 15, 2013. The primary reason for extending the moratorium was to allow time for the Commission to complete their rule making which was expected to be completed in early January 2013.

- B. Feasibility of enhanced regulations:** Successful implementation of enhanced regulations will depend on the extent to which the regulations are economically practicable and technically feasible for the applicant and the ability of the City to provide an incentive sufficient to achieve voluntary compliance. The challenge is to develop a set of enhanced standards that applicants are willing to comply with in order to have access to the ARP. If the enhanced standards are too arduous, then applicants will decide to comply with the Baseline Line Standards and utilize the PCRCP, even though the process would take additional time and is less certain.
- C. Cost for additional inspections:** It may be necessary for the City to inspect oil and gas sites to ensure compliance with standards adopted by the City, particularly with respect to Enhanced Standards. At the discretion of the Commission, standards agreed to by an applicant and a municipality may be placed as conditions on the Commission permit. Since most of the Baseline Standards are regulations included in current Commission rules, the City could decide to rely on inspections by Commission personnel to ensure compliance. However, to ensure compliance with the Enhanced Standards, the City may have to inspect oil and gas sites. One option would be to contract with a qualified inspector, on an as-needed basis, to perform the necessary inspections.
- D. Effective date for new Commission rules:** Initial indications were that the new rules for ground water protection received final adoption by the Commission on January 7, 2013. However, on January 21, 2013, I obtained information from Marc Morton, our staff liaison at the Commission, that the Commission has asked their staff to make some further changes to the new rules for groundwater protection and that those rules will not be legally effective until May, 2013. The Commission's new rules for building setbacks were given only preliminary approval on January 9, 2013, with the Commission directing their staff to refine the regulations and bring them back for final adoption. Final adoption is expected by the end of January 2013. The City's current moratorium expires on April 15, 2013. If applications for oil and gas development are submitted to the Commission and the City after April 15, 2013, but before July 1, 2013, then the Commission would be legally bound to process those applications under their old rules, while the City would apply our rules which have been designed to be in harmony with Commission's new rules. This situation would create uncertainty and confusion in the permit process during this 77 day period.
- E. Creation of "no-build" areas within city limits:** If the City establishes its own setbacks for new development in the vicinity of existing oil and gas facilities, those setbacks, if consistent with the standards set forth herein, could create significant "no-build" areas with our city and/or our Growth Management Area. A 500 foot setback would create an 18 acre "no-building" zone around an oil and gas facility. A 1,000 foot setback would create a 72 acre "no-building" zone around an oil and gas facility.

VII. New Commission Rules

In early 2012 the Commission began a process to develop new rules for oil and gas development. The two areas of focus were: groundwater protection and setbacks from residential and other occupied buildings. However, as mentioned above, the new rules for both groundwater protection and building setbacks are still being revised by Commission staff. Therefore, the information in this report concerning the new Commission rules is based on the information contained in the Commission staff report dated January 7, 2013.

- A. Groundwater protection rules:** The new rules that apply state-wide, except within the Greater Wattenberg Area (GWA), require operators to sample up to four water wells within one-half mile of a

new oil and gas well both prior to drilling and two more samples of each well between six and twelve months and again between five and six years after drilling. The City of Loveland and surrounding area in Larimer County are located within the GWA. Within the GWA, operators will be required to sample one water well per quarter section, pre- and post-drilling. The official press release from the Commission states that the rules in the GWA were adjusted due to the combination of energy development, agricultural and other industrial and residential uses unique to the area.

B. Setback and mitigation rules: The new rules combine: required mitigation measures; expanded notice and outreach to local communities; and greater setback distances between oil and gas facilities and residential and other occupied buildings. The proposed rules would establish a new statewide setback and four new setback areas defined as Designated Setback Locations and Urban Mitigation Areas. The size of each of the setback areas is shown in *Table 1*.

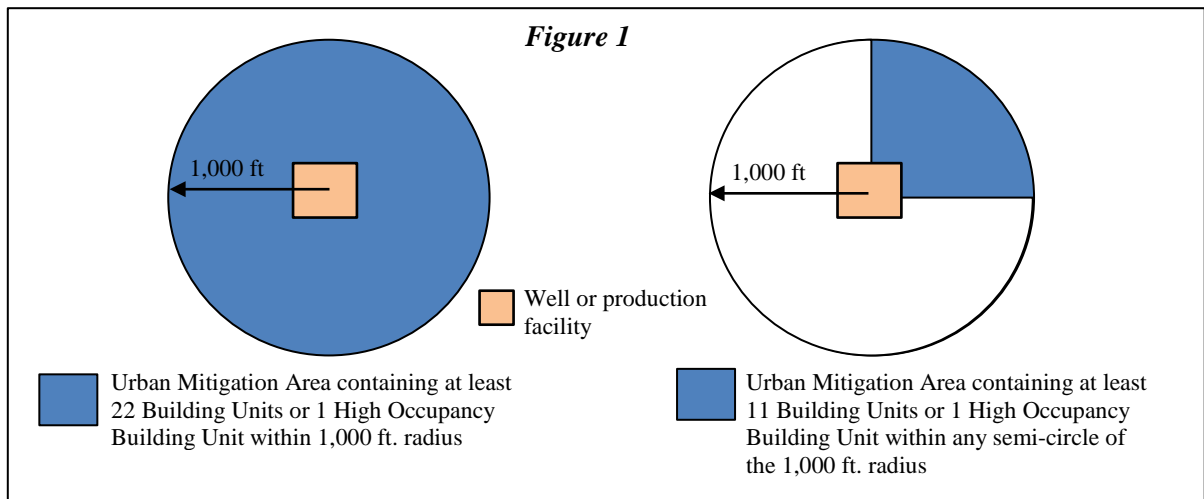
Table 1

Setback	Radius	Size of Circle	Area of Each Zone
Statewide	200'	3 acres	3 acres
Exception Zone	500'	18 acres	15 acres
Buffer Zone	1,000'	72 acres	54 acres

1. Definitions:

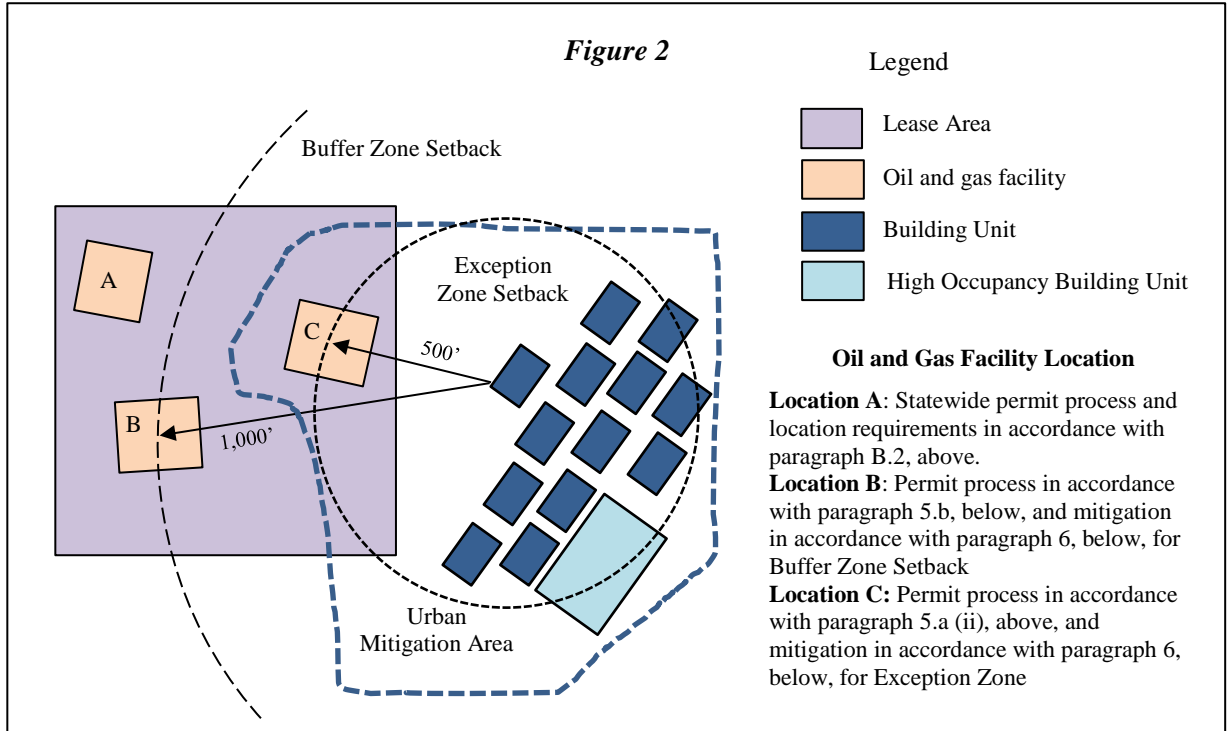
- a. **Residential Building Unit:** A building designed for use as a place of residency by a person, a family or families.
- b. **Building Unit:** A Residential Building Unit and every 5,000 sq. ft. of commercial building floor area or every 15,000 sq. ft. of warehouse building square footage.
- c. **High Occupancy Building Unit:** As all are defined in State Statutes, any operating Public School, Nonpublic School, Nursing Facility, Hospital, Life Care Institution and Correctional Facility, provided the facility or institution serves 50 or more persons, and Child Care Centers.

2. Urban Mitigation Areas: An area where at least twenty-two Building Units or one High Occupancy Building Unit (existing or under construction) are located within a radius of 1,000 feet from the center of the well or production facility or at least eleven Building Units or one High Occupancy Building Unit are within any semi-circle of the 1,000 foot radius (see *Figure 1*).

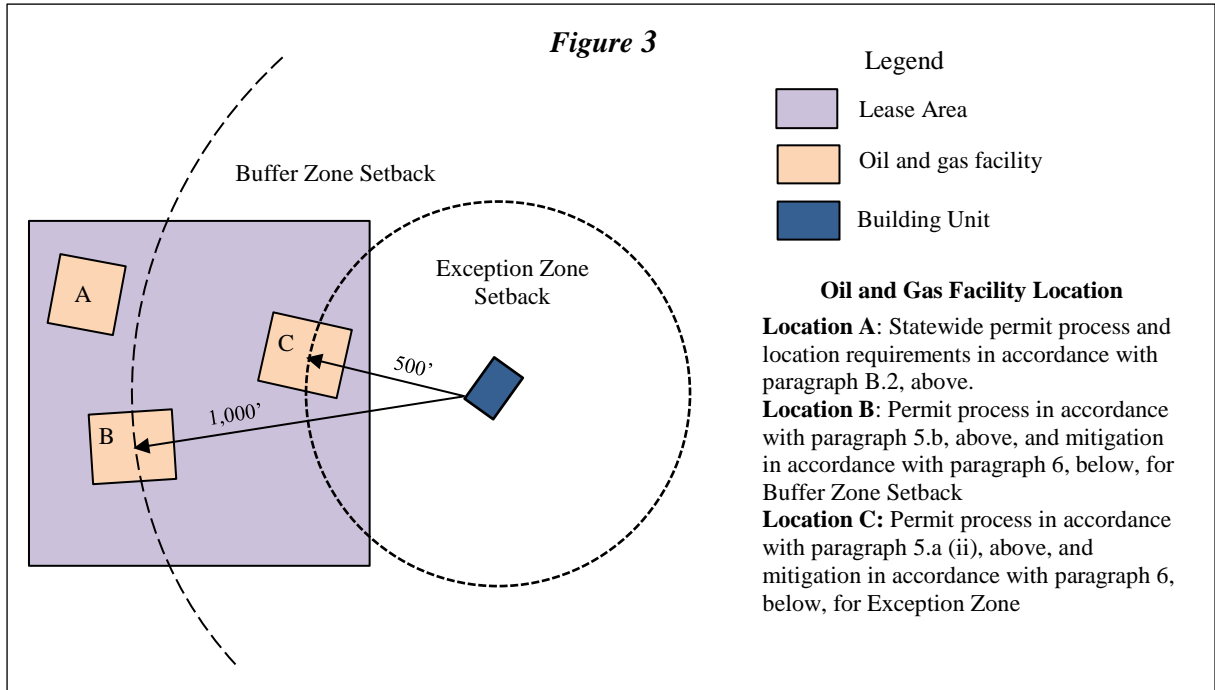


3. **Statewide location requirements:** A well must be a minimum of 200 feet from buildings, public roads, major above ground utility lines and railroads and a minimum of 150 feet from a surface property line. This setback was 150 feet under the previous setback rules.
4. **Designated Setback Locations:**
 - a. **Exception Zone Setback:** An area described as a circle with a radius of 500 feet measured from the center of the well or production facility.
 - b. **Buffer Zone Setback:** An area described as a circle with a radius of 1,000 feet measured from the center of the well or production facility.
 - c. **High Occupancy Building Unit:** An area within 1,000 feet of a High Occupancy Building Unit as measured from the nearest wall or corner of the building.
 - d. **Designated Outdoor Activity Area:** An area within 350 feet of the boundaries of a Designated Outdoor Activity Area (DOAA). Upon application and a hearing, DOAAs and their boundaries are established by the Commission. DOAAs may include outdoor recreation uses, such as playgrounds, sports fields, amphitheatres, or other similar places of public assembly owned or operated by a local government.
5. **Setbacks:** The following description of setbacks is based on the setback regulations recommended to the Commission in their staff report dated January 7, 2013.
 - a. **Exception Zone:** No well or production facility shall be located 500 feet or less from a Building Unit, except:
 - (i) If the well or production facility is located within an Exception Zone Area, but outside an Urban Mitigation Area (*Figure 2*, Locations A and B) a Commission permit may be issued if the:
 - (1) operator certifies that he was available to meet with Building Unit owners if requested to do so by the Local Government Designee (LGD); and
 - (2) Commission permit contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize, or mitigate potential adverse impacts to public health, safety and welfare, the environment and wildlife to the maximum extent technically feasible and economically practicable, in accordance with the mitigation described in paragraph 6, below.
 - (ii) If the well or production facility is located within an Exception Zone Area and an Urban Mitigation Area (*Figure 2*, Location C) a Commission permit may be issued if:
 - (1) the operator submits waivers from each Building Unit owner within 500 feet of the oil and gas facility; and
 - (2) the operator certifies that he was available to meet with Building Unit owners if requested to do so by the Local Government Designee (LGD); and
 - (3) the Commission permit contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize, or mitigate potential adverse impacts to public health, safety and welfare, the environment and wildlife to the maximum extent technically feasible and economically practicable, in accordance with the mitigation described in paragraph 6, below; or
 - (4) the oil and gas location is approved as part of a Comprehensive Drilling Plan (CDP). A CDP is intended to identify foreseeable oil and gas activities in a broad geographic area, facilitate discussions on potential impacts and identify mitigation measures to protect public health, safety and welfare, the environment and wildlife. The operator is required to invite the Department of Public Health and the Environment, the Colorado Division of Wildlife, the Local Government Designee and all surface owners to participate in the development of the plan. The plan may include variances to any Commission rule, is subject to approval only by the Commission and, if the plan

includes information substantially equivalent to that required for a Commission permit, no further permit is required from the Commission.



- b. Buffer Zone:** (Figure 3, Location B) No well or production facility can be located within 1,000 feet of a Building Unit until:
 - (i) the operator certifies that he was available to meet with Building Unit owners if requested to do so by the Local Government Designee (LGD); and
 - (ii) the Commission permit must contain conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize, or mitigate potential adverse impacts to public health, safety and welfare, the environment and wildlife to the maximum extent technically feasible and economically practicable, in accordance with the mitigation requires described in paragraph 6, below.
- c. High Occupancy Buildings:** No well or production facility can be located within 1,000 feet of a High Occupancy Buildings without:
 - (i) Commission approval following a public hearing before the Commission; and
 - (ii) exception Zone mitigation measures being included as conditions of approval on the Commission permit, as described in paragraph 6, below, unless determined otherwise by the Commission.
- d. Designated Outdoor Activity Areas:** No well or production facility can be located within 350 feet of a Designated Outdoor Activity Areas. The Commission may establish a setback greater than 350 feet based on the totality of the circumstances. If the well or production facility is to be located within 1,000 feet of a Designated Outdoor Activity Areas, then Buffer Zone Setback mitigation measures must be required as conditions of approval on the Commission permit, as described in paragraph 6, below, unless determined otherwise by the Commission.



- e. **Maximum Achievable Setback:** If the applicable setback would extend beyond the area on which the operator has a legal right to locate, then the operator may seek a variance from the Commission to reduce setbacks to the maximum achievable.
- 6. Mitigation Measures:**
- a. **Within Designated Setback Locations:** Commission mitigation measures in the blue cells in *Table 2*, below, must be incorporated as conditions on any Commission permit for a well or production facility within: (i) a Buffer Zone Setback (1,000’); (ii) an Exception Zone Setback (500 feet); and (iii) 1,000 feet of a High Occupancy Building Unit or a Designated Outdoor Activity Area.
 - b. **Outside Designated Setback Locations:** Oil and gas development outside Designated Setback Locations (beyond 1,000 feet from a Building Unit) are subject to the Commission statewide permit process and mitigation measures. Commission mitigation measures in the white cells in *Table 2* are required outside Designated Setback Locations.
 - c. **Regulation comparison:** *Table 2* also provides a comparison of Commission regulations on mitigation measures to regulations in the Loveland Municipal Code that apply to heavy industrial uses in the Industrial zoning district.
- 7. Consultation with Colorado Department of Public Health the Environment (CDPHE):** At the request of the Local Government Designee (LGD), the Commission shall consult with the CDPHE in the Commission’s consideration of an oil and gas permit application based on concerns regarding public health, safety, welfare, or impacts to the environment.
- 8. Notices:**
- a. **Pre-application notices:**
 - (i) Within Urban Mitigation Area or Buffer Zone Setback notice to the LGD;
 - (ii) Within Buffer Zone Setback notice to surface owner and Building Unit owners.
 - b. **Comment period notices:**
 - (i) Surface owners;
 - (ii) Building Unit owners within the Exception Zone Setback and Buffer Zone;

- c. **In advance of commencement of operations:** Notice to surface owner and LGD is required not less than 30 days in advance of the commencement of operations.
- 9. **Consultation with Colorado Department of Public Health the Environment (CDPHE):** At the request of the Local Government Designee (LGD), the Commission shall consult with the CDPHE in the Commission’s consideration of an oil and gas permit application based on concerns regarding public health, safety, welfare, or impacts to the environment.

VIII. PROPOSED REGULATIONS

The regulations proposed by City staff are in the accompanying ordinance, which establishes a new Section 18.77 in the Loveland Zoning Code. The regulations are in three categories: (i) Baseline Standards (Section 18.77.055) that apply to the PCRCP; (ii) Baseline Standards (Section 18.77.060) that apply to both the PCRCP and the ARP; and (iii) Enhanced Standards (Section 18.77.065) that apply to the ARP. The recommended standards are only preliminary at this point, due to the new Commission rules for groundwater protection and building setbacks not having received final approval by the Commission.

Table 2
Regulations Comparison

Commission Rule	Current City Code Regulations
Noise	
1. During well site development involving pipeline or gas facility installation or maintenance or use of a drilling rig noise levels shall not exceed 70 dB(A) day, 65 dB(A) night, measured at nearest building unit.	1. Measured at property line of adjacent land use: - Residential: 55 dB(A) day, 50 dB(A) night - Commercial: 60 dB(A) day, 55 dB(A) night - Industrial: 75 dB(A) day, 70 dB(A) night
2. Measured 350 feet from sound source: - Adjacent land use: ✓ Residential: 55 dB(A) day, 50 dB(A) night ✓ Commercial: 60 dB(A) day, 55 dB(A) night ✓ Light Industrial: 70 dB(A) day, 65 dB(A) night ✓ Industrial: 80 dB(A) day, 75 dB(A) night	
3. All facilities within 400 feet of a Building Unit with engines or motor which are not electrically operated shall be equipped with quiet design mufflers.	

(Continued)

Commission Rule	Current City Code Regulations
Water Quality	
4. Closed loop drilling system and pit restrictions shall be required.	None
5. Containment berms meeting the following standards shall be required: <ul style="list-style-type: none"> ✓ Constructed around crude oil, condensate, and production water storage tanks ✓ Within the Exception Zone, berms shall be constructed of steel rings ✓ Secondary containment areas shall be constructed with synthetic or engineering liners ✓ Within 500 feet of a surface water body, an earthen berm shall be required around the entire production facility ✓ Within an Urban Mitigation Area, no more than 2 crude oil or condensate storage tanks shall be located within a single berm. 	
Air Quality	
6. Closed loop drilling system and pit restrictions shall be required.	None
Traffic	
7. If required by local government, a traffic plan shall be coordinated with the local government prior to commencement of move in and rig up.	2. Compliance with Larimer County Urban Area Street Standards.
Multi-Well Pads	
8. Where technologically feasible and economically practicable, wells shall be consolidated to create multi-well pads located as far from building units as possible.	None
Leak Protection	
9. The oil and gas facility operator shall develop a plan to monitor production facilities on a regular schedule to identify fluid leaks.	None
Blowout Preventer Equipment	
10. Blowout prevention equipment shall be required.	None
Pit Level Indicators	
11. Pit level indicators shall be used.	None
Drill Stem Tests	
12. Closed chamber drill stem tests shall be allowed	None
Well Services Operations	
13. Adequate blowout prevention equipment and backup stabbing valves shall be used on well servicing operations.	None
Security	
14. Well sites shall be adequately fenced to restrict access by unauthorized persons.	None
Surface Trash	
15. All surface trash, debris, scrap or discarded material shall be removed from the site and disposed of in a legal manner.	Title 7: Accumulation of Waste Material

(Continued)

Commission Rule	Current City Code Regulations
Tank Specifications	
16. All crude oil and condensate storage tanks shall be designed, constructed and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version).	None
Emergency Access	
17. All leasehold roads shall be constructed and maintained to accommodate local emergency vehicle access.	International Fire Code
Well Site Clean Up	
18. Within 90 days after a well is plugged and abandon, the well site shall be cleared of all non-essential equipment, trash and debris.	None
Identification of Plugged and Abandon Wells	
19. Operator shall identify the location of the well bore with a permanent monument with the well number and date of plugging imbedded on the monument.	None
Development of Existing Well Pads	
20. Where possible, operators shall provide for the development of multi reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores.	None
Visual	
21. Production facilities, regardless of construction date, that can be seen from any public highway shall be painted a uniform, non-contrasting color tone that matches but is slightly darker than the surrounding landscape.	<p>3. Bufferyards – Type EX. Plant density and width unspecified, allowing City to require bufferyard in excess of Type E as necessary to buffer high intensity uses, such as an industrial batch plant or gravel mine from residential or commercial uses.</p> <p>4. Screening of unsightly areas – Such areas shall be screened from view from public sidewalks, streets, and other public areas. Whenever plants are used for screening, the plants should be coniferous and provide an opaque screen within three years.</p>
Lighting	
22. To the extent practicable, site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units within 1,000 feet.	<p>5. Elimination:</p> <ul style="list-style-type: none"> (i) Minimum horizontal luminance – 0.2 foot candles (ii) Maximum uniform ratio – 10:1 (iii) Maximum average luminance – 1 foot candle (iv) Minimum vertical luminance – 0.1 foot candle (v) Maximum on-site lighting levels: 10 foot candles – 20 foot candles for vehicle display lots (vi) Light shall be glare-shielded or directed away from residential zones (vii) Light spill-over levels shall not exceed 0.1 foot candles measure 20 feet from property line as a result of on-site lighting.

(Continued)

Commission Rule	Current City Code Regulations
Structure Height	
None – drilling rigs are typically 150 feet in height, or less.	6. In the Industrial zone – East of County Road 9 – 50 feet. Other locations in the Industrial zone - 40 feet 7. It is unlawful to construct any tower or other structure which may constitute a hazard to the safe navigation of aircraft at the Fort Collins/Loveland Airport
Vibration	
None	8. Vibration at the level of human perception shall not be permitted beyond the lot lines.
Floodplain	
Best practices	9. Flood Fringe – Non-residential structures shall be placed on fill so that the lowest portion of the structure is at or above the regulatory flood protection elevation or comply with the floodproofing requirements set forth in the International Building Code. 10. Floodway – No use shall limit or restrict the floodway capacity, include fill or storage of material or equipment, increase flood heights during base flood, any well shall be protected from inundation from flood discharge and no new mobile home shall be permitted.
Stormwater quality	
	11. Compliance with City of Loveland Storm Criteria Manual
Odors and Dust	
23. Odor: (i) Compliance with Department of Public Health and Environment Air quality Control and odor Emissions regulations, plus specific regulations on crude oil, condensate, and produced water tanks, glycol dehydrators, pits, and pneumatic devices. (ii) Green completions practices required on wells that are likely to produce naturally flowing hydrocarbon gas in flammable concentrations. 24. Fugitive dust: Operator shall employ practices such as speed controls, regular road maintenance, restrictions on construction activity during high-wind conditions, silica dust controls when handling sand, road surfacing, wind breaks and automation of well site to reduce truck traffic.	12. Odor: Title 7: Nuisance Abatement
Weed Control	
25. All well and surface production facilities shall be kept free of weeds, rubbish, and other waste material.	13. Compliance with Title 7: Weed Control Ordinance

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
January 28, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on January 28, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and Commissioners Molloy, Ray, Dowding, Crescibene, Krenning and Prior. City Staff present: Bob Paulsen, Current Planning Manager; Greg George, Director of Development Services; John Duval, City Attorney; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

COMMITTEE REPORTS

There were no committee reports.

ELECTION OF OFFICERS

Commissioner Middleton made a motion to nominate Commissioner Meyers as the Chairman. Upon a second by Commissioner Dowding the motion was unanimously adopted.

Commissioner Crescibene made a motion to nominate Commissioner Middleton as Vice Chair. Upon a second by Commissioners Ray the motion was unanimously adopted.

Commissioner Ray made a motion to nominate Commissioner Crescibene as the Zoning Hearing Officer and Commissioner Dowding as the alternate hearing officer. Upon a second by Vice Chair Middleton the motion was unanimously adopted.

CONSENT AGENDA

1. Mirasol Green House Homes Preliminary Development Plan.

This is a public hearing to consider a preliminary development plan (PDP) to construct skilled nursing units within the Mirasol Community PUD. The PUD has been developed by the Housing Authority of the City of Loveland and is designed as an affordable senior housing development.

The PDP site is located at the southeast corner of South St. Louis Avenue and Bunting Place and represents the final phase of development within the PUD. This is a quasi-judicial matter. Barring

1 appeal, the Planning Commission's decision is final.

2
3 **Commissioner Krenning** expressed his displeasure with this item being listed on the Consent
4 Agenda, however, seeing that there were no citizens in the audience who wanted to remove it he
5 would leave it on the Consent Agenda.

6
7 *Vice Chair Middleton made a motion to adopt the Consent Agenda, upon a second by*
8 *Commissioner Crescibene the motion was unanimously adopted.*

9
10 **REGULAR AGENDA**

11
12 **1. Oil and Gas Regulations.**

13
14 This is a public hearing to consider amending the Loveland Municipal Code by adding new
15 Chapter 18.77 to establish zoning regulations for oil and gas development within the municipal
16 limits. This a legislative matter. The Planning Commission is tasked with making a
17 recommendation on the proposed regulations to the City Council upon the completion of one or
18 more public hearings.

19
20 **Greg George, Director of Development Services**, summarized his staff report and spoke of the
21 major issues surrounding oil and gas development. He reported after City Council heard
22 testimony from citizens regarding air quality, water quality, noise and visual pollution they
23 directed staff to develop oil and gas regulations that would not be preempted or subject to
24 litigation by oil and gas operators. He outlined the 2-tiered regulation system:

25
26 **Baseline Standards**

- 27 • Mandatory
- 28 • Protect public health safety and welfare and the environment:
 - 29 ○ Complying with the State law and avoiding litigation

30
31 **Administrative Review Process: Enhanced Standards**

- 32 • Voluntary
- 33 • Higher level of mitigation of impacts on the public health, safety and welfare and
34 the environment

35
36 He outlined the Planning Commissions review process for the baseline applications and stated
37 the only incentive for an operator to agree to the enhanced standards is the expedited review. He
38 further stated he did not believe there would be any operators, other than Anadarko, that would
39 take advantage of the enhanced standards, commenting that the enhanced standards are in-line
40 with Anadarko's best practices.

1 **Mr. George** commented that the Oil and Gas Commission has not taken final action on water
2 quality (ground water), setbacks or air quality mitigation (currently being heard at the legislative
3 level).

4
5 He spoke of the new ground water protection rules that is being considered by the commission is
6 that we are treated differently in the Wattenburg area than anywhere else in the State. He stated
7 that he has not gotten any explanation of why that is and that statewide the tentative regulations
8 require testing of 4 wells within a ¼ mile of a drilling site, but in the Wattenburg area it would be
9 one well in a ¼ Section. Mr. George understood that the monitoring is not for groundwater but
10 monitoring the well itself and emphasized they have not adopted the groundwater protection
11 rules at this time.

12
13 **Mr. George** stated the Wattenburg area is apparently classified as being unique because of
14 having rural areas, city development and industrial development. He responded to questions
15 regarding baseline testing. He stated that in the draft of the preliminary rules baseline testing was
16 required twice after the drilling has been completed. He highlighted the setback definitions
17 stating that we only had three zones, buffer zone, exception zone and urban mitigation zone and
18 this zone would require additional mitigation measures.

19
20 He reported he is the Local Government Designee and that the approach for the Director to take
21 is that the Director would be acting in a manner that is consistent with will act as he should with
22 any sanity is to assume the director takes action with the spirit of the regulations and make sure
23 that the operator is actually available. He commented that we have adopted the Commissions
24 regulations as our baseline regulations.

25
26 After a discussion regarding costs associated with permitting and monitoring the drilling, Mr.
27 George stated that a fee structure would be developed and responded to Commission comments
28 reporting that operators are not required to comply with the City Code with the exception of
29 noise and lighting standards. He responded to Chairman Meyers and clarified due to setbacks
30 drilling in the southeast portion of the city off Highway 402 would make that quadrant of the city
31 unbuildable.

32
33 There was discussion regarding opening abandoned wells, creating a separate process for oil and
34 gas permits and identifying the active wells in the city. Mr. George clarified currently there is no
35 procedure to permanently close an existing or an abandoned well.

36
37 **(Secretary's Note: There was a 15 minute recess)**

1 **Public Comment**

2
3 **Chair Meyers** reported that staff received an email from Kate Colby who was unable to attend
4 the meeting and a copy of her email has been provided for staff and the Commission.

5 **(Secretary's Note: Exhibit A)**

6
7 **Kim Orr, 1854 Piney River**, requested that certain equipment be used as part of the Best
8 Management Practices:

- 9
- 10 • VRUs – Vapor Reduction Units which are efficient in burning the emissions
 - 11 • Flaring – which encloses the flares to prevent birds from flying into the flares, especially
 - 12 night migrating birds
 - 13 • Requesting soil testing before, during and after, around the well site and along the site
 - 14 where direction drilling would occur
 - 15 • Consider the compressors that are used to enhance under-producing wells and the noise
 - 16 that they create.

17 **Matthew Fredricey, 1316 20th Street SW**, a member of Frack Free Loveland stated he was
18 adamantly opposed to fracking in the city limits of Loveland due to the negative impacts on
19 health, air quality, water supply and property values. He reported that Frack Free Loveland
20 would be circulating a petition opposing fracking to be placed on the April ballot. He spoke of
21 how much water is used to frack a well and expressed concerns regarding the current and future
22 water shortage.

23
24 **Commissioner Ray** explained to Mr. Fredricey that the Planning Commission does not have the
25 ability to direct voting initiatives clarifying the Planning Commission could make that
26 recommendation. He challenged Mr. Fredricey to work to get the issue on the ballot.

27
28 **Dawn Olson, 1316 20th Street SW**, stated she was fearful of the effects that fracking would have
29 on our air and water quality. She urged the Planning Commission to help stop the oil and gas
30 companies from fracking in the Loveland.

31
32 **Sharon Carlisle, 439 E. 7th Street**, commented she did not believe that local government was
33 doing enough to stop the oil and gas commission and indicated that they were powerless to stop
34 them. She supported placing the issue on the ballot and let the voters voices be heard.

35
36 **Chairman Meyers** responded to Ms. Carlisle by suggesting that she talk to her state and local
37 representatives as well the Governor emphasizing the need to express concerns to the policy
38 makers. He stated that the City is working within the limitations that they have and that this was
39 the first step in the process.

40
41 **Judy Freeman, 1641 Pinyon Street**, thanked the Planning Commission for the work that they
42 are doing. She expressed concerns regarding air quality issues and ground water pollution. She

1 urged the Planning Commission to ask City Council to extend the moratorium until all the health
 2 risks are known. She stated that the oil and gas industry produces the most negative impacts than
 3 positive impacts than any other industry.
 4

5 **Dustin Bruson, 536 W. 5th Street**, urged the Planning Commission to ask the City Council to
 6 extend the moratorium on fracking.
 7

8 **Moses Street, 217 N. Jefferson**, stated the consequences of fracking are unknown and urged that
 9 the Planning Commission to help stop it.
 10

11 **Daniel Organ , 2830 Corina Drive**, thanked the Planning Commission for all their work and
 12 urged that they request City Council extend the moratorium to December giving the Oil and Gas
 13 Commission time to complete their standards. He stated that he supported placing the item on
 14 the ballot letting the citizens decide on the issue.
 15

16 **Nicholas Fredricey, 1316 20th Street**, spoke of his concerns regarding air, water and land
 17 pollution and urged the Planning Commission to recommend that City Council extend the
 18 moratorium allowing time to assess risks involved with fracking.
 19

20 Commissioner Questions

21
 22 **Commissioner Ray** commented the majority of testimony was in reference to fracking he asked
 23 if the regulations being considered cover the larger issue of oil and gas drilling or do they also
 24 include fracking.
 25

26 **Mr. George** stated the permit that would be required covers the entirety of all oil and gas
 27 development, which would include fracking, horizontal drilling. He stated that they were not
 28 looking at a different permit process for fracking. He clarified the city would be preempted if it
 29 prohibited fracking or regulation air quality testing beyond what the state requires.
 30

31 **Commissioner Ray** asked if we would be preempted for air quality and ground water quality
 32 regulations beyond state requirements.
 33

34 **Mr. George** responded to Commissioner Ray that we would be preempted for air and ground
 35 water quality as well as height limitation. He stated that they may comply with lighting
 36 standards.
 37

38 **Commissioner Krenning** questioned why City Council wanted to lift the moratorium before the
 39 state has finalized their regulations, commenting it would be wise for the city to wait to write its
 40 local rules.
 41

42 **Mr. George** stated extending the moratorium would be helpful and give staff more certainty

1 when writing regulations.

2 **Commissioner Krenning** proposed offering an alternative recommendation to City Council to
3 extend the moratorium. He stated it was his opinion that the City would be in a better position to
4 make informed decisions by waiting and learning more about the issues.

5
6 **Mr. George** commented that staff is not looking for a recommendation at this time, but
7 clarifying City Council is very interested in the Planning Commissions deliberations.

8
9 **Commissioner Molloy** concurred with Commissioner Krenning commenting he believed the
10 schedule was too aggressive and that it was important to know what the state regulations are
11 prior to attempting to write a process.

12
13 **Commissioner Ray** stated rather than setting a time limit on the moratorium he would like to see
14 a task limit moratorium on certain items (air quality, water quality, and setbacks) and when those
15 regulations are finalized at the state level we the City can move forward with writing its
16 regulations.

17
18 **Commissioner Crescibene** concurred with previous comments and supported a task limited
19 moratorium.

20
21 **Susan Aldridge, 1099 18th Street Denver, Colorado**, Counsel for Anadarko introduced herself
22 and reported that public comment on the setback rule closed at 5 p.m. today and anticipated a
23 final vote in February or March. She responded to questions regarding permits clarifying they
24 would not be submitting for any permits before the final state regulations are adopted, giving
25 Loveland time to develop their regulations. She stated additional staff experts will be available
26 at future meetings.

27
28 **Mr. George** clarified that City Council expects staff to have the zoning issues resolved, and
29 emphasized that there is currently no permit process for oil and gas exploration. He reported that
30 he would pass along their recommendation in the form of a motion to City Council at the Study
31 Session.

32
33 **Commissioner Krenning** stated he would like the City Council to consider waiting until the
34 State completes their work until they make any decisions.

35
36 **Chairman Meyers** concurred stating he does not have enough knowledge to make any
37 recommendations.

38
39 **Commissioner Ray** clarified that the existing code allows for drilling in only two zoning
40 districts and Mr. George is trying to communicate that to comply with state law, a new section of
41 the Municipal Code needs to be written to allow for drilling in all zone districts.

42

1
2 **Commissioner Dowding** commented if the State rules are not in effect until July, how can we
3 apply rules that are not effective until July in April.
4

5 **City Attorney John Duval**, stated that all regulations that they are recommending would not
6 preempt the City. He clarified we need to continue to write the regulations so that we have the
7 ability to apply them if and when a permit is submitted. He stated that we could wait on those
8 regulations that are currently being reviewed by the State.
9

10 **Commissioner Krenning** commented he didn't think that the moratorium needed to be extended
11 but would recommend that the timetable that City Council developed be moved back six-weeks.
12

13 **Mr. Duval** stated there are no rules or regulations in place to process a permit and emphasized
14 the moratorium needs to be extended so that we do not receive an application under our current
15 code.
16

17 **Commissioner Ray** wanted to inform City Council that Frack Free Loveland will be circulating
18 a petition to place the initiative on the April ballot.
19

20 **Commissioner Dowding** stated in reference to the draft ordinance she suggested that the
21 language in
22

23 **Section 18.77.065 D 1. (f) *Water well and groundwater monitoring:*** She
24 suggested that the acronym for GPS be spelled out and suggested that the same
25 language be inserted for "well testing" in a section for "the areas around the wells"
26 to verify the positioning around the well head.
27

28 She stated that the biggest issue would be who the responsibility should be with either
29 Development Services or Current Planning, not both.
30

31 **Chairman Meyers** made the following recommendations:
32

33 **18.77.125 Inspections and Right to Enter** he suggested that there be a security
34 procedure in place and that city personnel be both trained and given a badge to
35 identify them as an inspection for security purposes.
36

37 **18.77.110 Reimbursement for Consultant Costs** he suggested clarification on
38 how the funds would be procured.
39

40 **18.77.066 Enhanced Standards for Administrative Review Process – M.**
41 **Fencing** – he questioned who decides what materials are "similar materials".
42

1 **18.77.060 K(i) Emergency response standards.** He recommended the outside of
 2 the facility be properly placard with signage on the gate identifying any and all
 3 hazardous materials.
 4

5 **Commissioner Molloy** expressed concerns and frustration that the oil and gas can come in and
 6 do what they want it is a disruption to the Comprehensive Plan and disrupts the process for the
 7 southeast and northwest areas of the City. He urged the City Council to consider the health,
 8 safety and welfare of the citizens.
 9

10 After some discussion **Commissioner Krenning** stated he was reluctant to support a process
 11 where one city official make a "non-appealable" decision where the only option to appeal that
 12 officials is to go to district court. He did not think it was fair to the citizens.
 13

14 **Commissioner Prior** concurred with Commissioner Krenning and also did not think the stakes
 15 were high enough and he would like to hear opinions from both sides.
 16

17 **Chair Meyers** stated he would like for an appeal to go to City Council and not to Municipal
 18 Court.
 19

20 **Vice Chair Middleton** thanked the Frack Free Loveland group for attending and their testimony.
 21 He commented that it is important for them to get their movement going as time is running out.
 22

23 *Commissioner Dowding made a motion to recommend City Council consider extending the*
 24 *schedule for completion of City oil and gas regulations and extend the moratorium by 2*
 25 *months, to permit additional time for finalization of pending state rules and regulations.*
 26 *Upon a second by Vice Chair Middleton the motion was unanimously adopted.*
 27

28 **Commissioner Krenning** commented the testimony heard by the citizens has been emotional
 29 and antidotal he suggested that they also take a scientific approach or an evidence based approach
 30 for their cause.
 31

32 *Vice Chair Middleton made a motion to review the material presented by City staff and*
 33 *consider testimony received at the public hearing. Provide comments and recommendations to*
 34 *be considered by City Council at their February 12, 2013 study session. Upon a second by*
 35 *Commissioner Crescibene the motion was unanimously adopted.*
 36

37 ADJOURNMENT

38
 39 *Vice Chair Middleton made a motion to adjourn. Upon a second by Commissioner Crescibene*
 40 *the motion was unanimously adopted.*
 41
 42

- 1 _____
- 2 Buddy Meyers, Chair
- 3
- 4 _____
- 5 Vicki Mesa, Secretary
- 6

DRAFT

1
2
3
4
5

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
January 14, 2013**

6 A meeting of the City of Loveland Planning Commission was held in the City Council Chambers
7 on January 14, 2013 at 6:30 p.m. Members present: Vice Chairman Middleton; and
8 Commissioners Molloy, Ray, Dowding, Crescibene, Krenning and Prior. Commissioners absent:
9 Chairman Meyers. City Staff present: Karl Barton, Community and Strategic Planning; Greg
10 George, Director Development Services; Robert Paulsen, Current Planning Manager; Judy
11 Schmidt, Deputy City Attorney.

12
13 *These minutes are a general summary of the meeting. For more detailed information, audio and*
14 *videotapes of the meeting are available for review in the Community Services office.*

15
16 **STAFF MATTERS**

17
18 **Robert Paulsen, Current Planning Manager**, introduced Adam Prior as the newest member of
19 the Planning Commission. He reported the annual Holiday Dinner for the Planning Commission
20 would be held on February 11th prior to the meeting and that more details would be coming soon.
21 He stated at the next meeting the Commission would hold the Election of Officers.

22
23 **Mr. Paulsen** noted that Chip Leadbetter, past Planning Commission member, was in the
24 audience and invited him to the podium. Mr. Leadbetter spoke to staff and the Commission
25 thanking them for the time they shared together and for all that he learned during his tenure.

26 **Vice Chairman Middleton** thanked Mr. Leadbetter for his past service on the Planning
27 Commission and presented him with a plaque for his years of service.

28
29 **CITIZEN REPORTS**

30
31 There were no citizen reports.

32
33 **COMMITTEE REPORTS**

34
35 There were no committee reports.

36
37 **COMMISSIONER COMMENTS**

38
39 **Vice Chairman Middleton** wished everyone a happy new year and thanked staff for displaying
40 the 2012 City of Loveland's accomplishments.

1 **REGULAR AGENDA**

2
3 **1. Process for adoption of zoning regulations for oil and gas development.**

4 This is an informational item about the process for review and adoption of new regulations on oil
5 and gas development in the City. A Planning Commission public hearing on this matter is
6 scheduled for January 28th.

7
8 **Greg George, Director of Development Services**, introduced the item and noted that the
9 Planning Commission is not being asked to make a recommendation at this time and his
10 presentation would be informational in nature.

11
12 **Mr. George** provided an overview of the approach being taken by the City in the development of
13 oil and gas regulations and the effort being made to monitor new rule-making by the state Oil and
14 Gas Commission. He emphasized that the state Commission had not completed their rule-
15 making process. He further explained that City staff is developing a regulatory approach that
16 would provide oil and gas developers two options for pursuing a permit from the City for oil and
17 gas development; the options were summarized as follows: .

- 18
19 • **Baseline Standards** are designed to specifically avoid preemption by State law and legal
20 challenges by oil and gas companies. This procedure would require a neighborhood
21 meeting and approval by the Planning Commission at a fully noticed public hearing, at
22 which time the Planning Commission could approve the permit, approve the permit with
23 conditions or deny the permit. The decision of the Planning Commission could be
24 appealed to City Council by “any party of interest”, defined as the applicant, the
25 Development Services Department Director, two or more City Council members, any
26 person receiving mailed notice of the public hearing or any person who provided written
27 or verbal testimony at the Planning Commission public hearing.
28
- 29 • **Enhanced Standards** would involve an optional process designed to achieve higher
30 standards that might include greater setbacks from occupied buildings and other sensitive
31 features such as natural areas, parks, rivers, streams and wetlands; bufferyards; mitigation
32 of air quality impacts; water well and groundwater monitoring; the location of pipelines;
33 and noise mitigation.

34
35 He explained that compliance with these standards would be voluntary and that the
36 purpose is to create an incentive for an applicant to agree to comply with certain higher
37 standards than currently being applied by the Colorado Oil and Gas Conservation
38 Commission (the “Commission”). Mr. George stated that this option represents the more
39 desired procedure and that it would be considered a more expedited process.
40

1 **Mr. George** presented a map outlining potential areas for future oil and gas wellhead
2 locations and commented the map will be updated due to the most recent setback ruling.
3

4 **Commissioner Ray** asked if the general content of the regulations would change after
5 the study session and questioned if there would be voluntary air quality monitoring and
6 if that would create an issue with the potential operators.
7

8 **Mr. George** stated that depending on what is heard at the public hearing, the content of
9 the regulations may change. He stated that he believed that the voluntary air quality
10 monitoring may be an issue and commented staff has been collaborating with Anadarko
11 Oil Company's legal department to discuss and review the City's enhanced regulations.
12 He further stated that the enhanced regulations will only work if an oil company will
13 agree to follow them.
14

15 **Commissioner Ray** questioned how funding for personnel and/or equipment would be
16 managed.
17

18 **Mr. George** stated that costs may be funded under Capital Expansion fees and it would
19 depend on what regulations were adopted and of how inspections on air quality issues
20 might be handled. He stated that setback requirements are very complicated and that he
21 was not prepared to discuss setback requirements at this time. He spoke of open pit
22 drilling stating there are very few locations that might be available for that type of
23 drilling but none of those would be in the City limits.
24

25 **Commissioner Ray** asked if Mr. George thought the City Council would expect the
26 Planning Commission to look at existing regulations as it pertains to new development
27 relevant to well heads in certain areas. He stated it was not the Planning Commission's
28 duty to do so when reviewing development plans, unless directed by City Council to do
29 so.
30

31 **Mr. George** commented that it was likely that the Planning Commission would be
32 asked in the future to consider building setbacks for existing and abandoned oil wells.
33

34 Mr. George concluded his remarks, thanking the Planning Commission for their interest
35 and indicating that he would be presenting a complete proposal for the regulation of oil
36 and gas development within the City at the January 28th Planning Commission hearing.
37 He indicated that the staff report would be provided to the Commission a week prior to
38 the hearing due to the complexity of the matter.
39
40
41

1 **2. Comprehensive Plan Future Land Use Plan Amendment.**

2 This is a public hearing to consider an amendment to the City of Loveland Future Land Use Plan.
 3 The amendment proposes to change the land use designation of the property west of I-25, east of
 4 County Road 60, and north of County Road 7. Currently, the land use designation for this
 5 property on the Future Land Use Plan is DR – Development Reserve. This amendment proposes
 6 to change the DR designation to a combination of RAC – Regional Activity Center and E –
 7 Employment. These proposed land use designations foresee a mix of commercial, employment
 8 and residential uses typical for an area located adjacent to I-25. The land area subject to the
 9 proposed amendment is currently within both the Town of Johnstown and City of Loveland
 10 Growth Management Areas. This amendment is being proposed by City staff as part of a larger
 11 strategy to resolve GMA conflicts between the Town of Johnstown and City of Loveland. The
 12 proposed land use designations for the City of Loveland Future Land Use Plan would align with
 13 those currently shown on the Town of Johnstown Comprehensive Plan.

14
 15 **Karl Barton, Community and Strategic Planning**, gave a staff presentation on the future land
 16 use plan amendment and outlined the location of the proposed amendment in the southeast
 17 portion of the City’s growth management area. He reported that the City of Loveland and the
 18 Town of Johnstown have been working cooperatively over the past year on the issues of
 19 annexation and growth management, specifically in the areas where their growth management
 20 areas overlap.

21
 22 **Mr. Barton** stated part of the strategy is to craft a future intergovernmental agreement between
 23 the two municipalities establishing procedures for annexing land within the overlap area and
 24 pursuing other cooperative planning opportunities. He stated this strategy would then lay the
 25 ground work for the two municipalities to collaborate in the development of a corridor plan for
 26 State Highway 402. He stated that property owners would benefit from being located in a growth
 27 management area.

28
 29 **Mr. Barton** responded to questions and clarified the RAC land use designation in that area
 30 around the Hwy. 402 and I-25 interchange is being proposed because of its flexibility and
 31 believed that is was appropriate for the location. He stated this land use designation pattern is
 32 similar to the pattern seen in the area that has developed as the Centerra commercial area.

33
 34 ***Commissioner Dowding made a motion to adopt Resolution 13-01 of the Planning***
 35 ***Commission of The City of Loveland Recommending Amendment of The Land Use Map Set***
 36 ***Forth in Section 4.7 of The City of Loveland 2005 Comprehensive Master Plan. Upon a***
 37 ***second by Commissioner Ray the motion was unanimously adopted.***

38
 39

1 **ADJOURNMENT**

2

3 *Commissioner Ray made motion to adjourn. Upon a second by Commissioner Crescibene the*
4 *motion was unanimously adopted.*

5

6

7 _____
Rich Middleton, Vice Chair

8

9

10 _____
Vicki Mesa, Secretary

11

12

13

DRAFT

1 **ADJOURNMENT**

2
3 The meeting was adjourned.

4
5 _____
6 Rich Middleton, Vice Chair

7
8 _____
9 Vicki Mesa, Secretary

10
11
12

DRAFT

REGULATIONS for OIL AND GAS DEVELOPMENT

City of Loveland
CITY COUNCIL STUDY SESSION
February 12, 2013

Purpose

- Zoning conflicts with State law
- Lack of development standards

Significant Events

- May 15, 2012 - Moratorium
- June 12, 2012 - City Council/Planning Commission study session
- August 21, 2012 - City Council Statement of Direction
- October 23, 2012 - City Council/Planning Commission public forum
- December 18, 2012 - Extension of moratorium

Two Types of Standards/Processes

- Baseline Standards
 - Mandatory
 - Planning Commission review process
 - Protect public health, safety and welfare and the environment, while
 - Being in harmony with State law
 - Avoiding litigation
 - A
- Enhanced Standards
 - Voluntary
 - Administrative review process
 - Higher level of mitigation of impacts on public health, safety and welfare and the environment

Planning Commission Review Process

- Mandatory
- Baseline standards
- Review by Development Review Team
- Neighborhood meeting - standing to appeal
- Planning Commission approval at fully noticed public hearing
- Could be appealed to City Council
- City Council approval at fully noticed public hearing

Administrative Review Process

- Voluntary
- Enhanced standards
- Neighborhood meeting
- Review by Development Review Team
- Public comment period
- Negotiation with applicant
- Mitigation in addition to Enhanced Standards, only if agreed to by applicant
- Approval by director
- No appeal to Planning Commission or City Council
- Only appeal to Larimer County district court

Commission's New Rules

- Groundwater baseline sampling and monitoring
 - Adopted January 7, 2013
 - Legally effective May 1, 2013
 - Greater Wattenberg Area
- Building setbacks
 - New hearing date set for February 11, 2013
 - No date set for becoming legally effective
- New mitigation rules
 - Required if within 500 feet of Building Unit or 1,000 feet of High Occupancy Building Unit (Table)

Key Issues

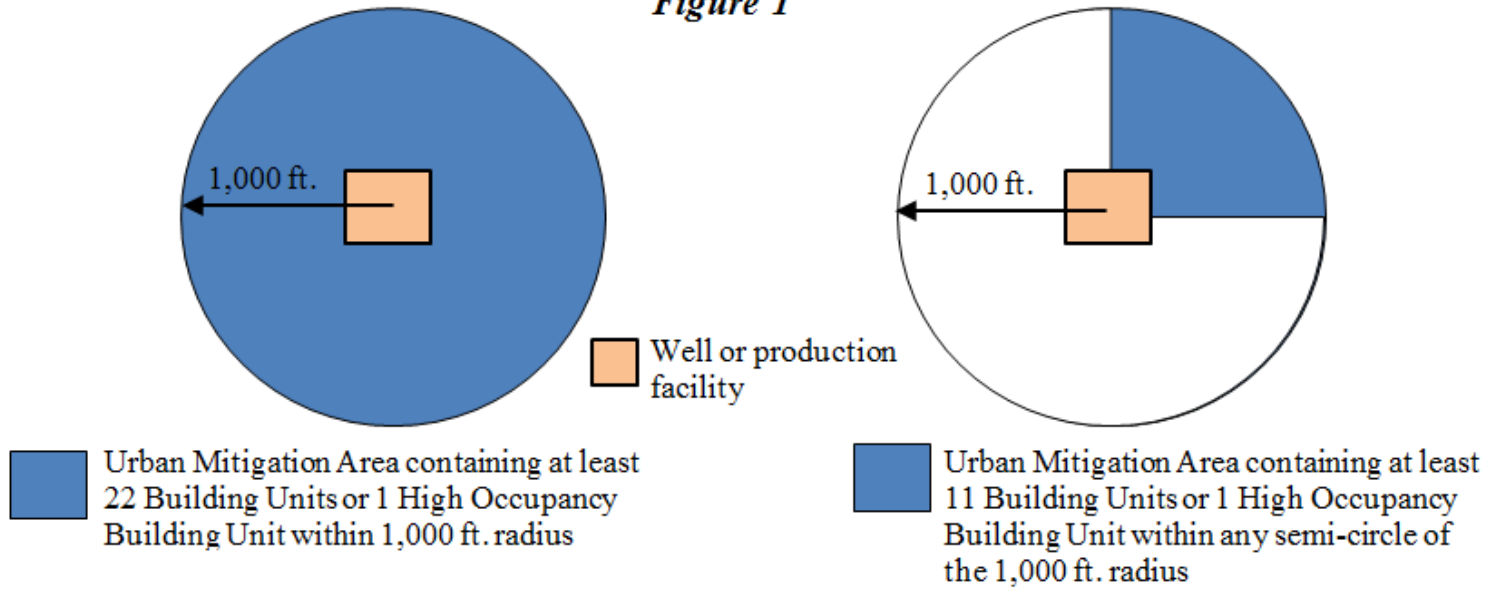
- Feasibility of Enhanced Regulations
- Additional inspection services
- Setbacks for new development from existing and abandoned oil and gas facilities
 - 500 foot radius = 18 acres
 - 1,000 foot radius = 72 acres
- Creation of “no-build” areas within City limits and Growth Management Area

New COGCC Setback Rules

- Definitions
 - Residential Building Unit: Building designed for use a place of residency
 - Building Unit: Residential Building Unit, every 5,000 sq. ft. commercial building and every 15,000 sq. ft. of warehouse building
 - High Occupancy Building Unit: Public school, non-public school, nursing facility, hospital, life care institution, correctional facility (50 or more persons)
 - Urban Mitigation Area: Intent to recognize urban level densities within cities
 - Designated Outdoor Activity Areas:
 - Designated by Commission upon application
 - Playgrounds, permanent sports field, amphitheaters and other similar places of public assembly owned or operated by a local government

Urban Mitigation Area

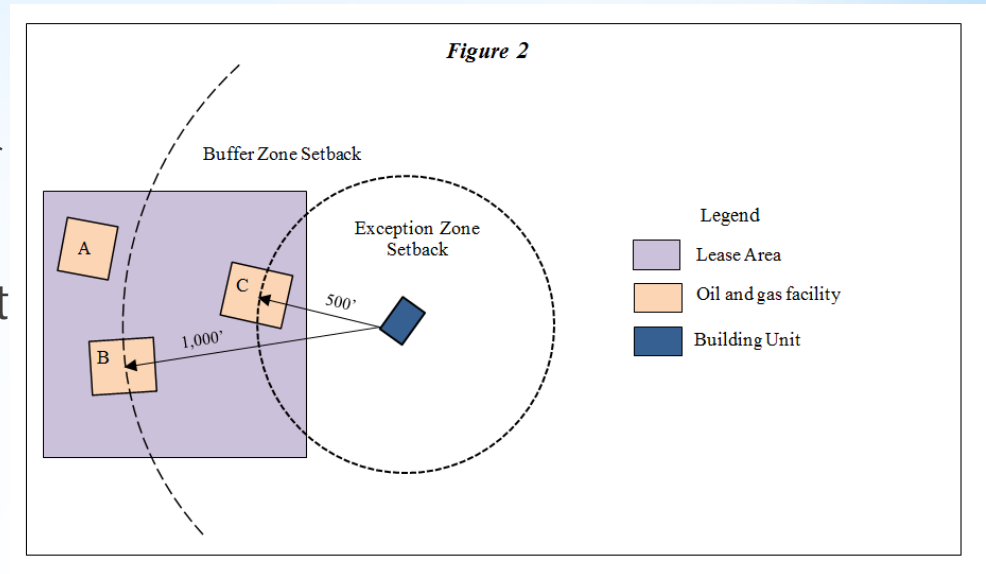
Figure 1



Buffer Zone and Exception Zone

- Mitigation Measures

- Site A: State-wide
- Site B: New mitigation rules if HOBV. If BU, site specific mitigation to maximum extent technically feasible and economically practicable
- Site C: New mitigation rules



- Permit Requirements

- Site A: State-wide
- Site B: Operator must meet with Building Unit owners
- Site C: Operator must meet with Building Unit owners

Urban Mitigation Area

● Mitigation Measures

- Site A: State-wide
- Site B: New mitigation rules if HOBUs. If BU, site specific mitigation to maximum extent technically feasible and economically practicable
- Site C: New mitigation rules

● Permit Requirements

- Site A: State-wide
- Site B: Operator must meet with Building Unit owners
- Site C: Operator must obtain waiver from all Building Unit owners

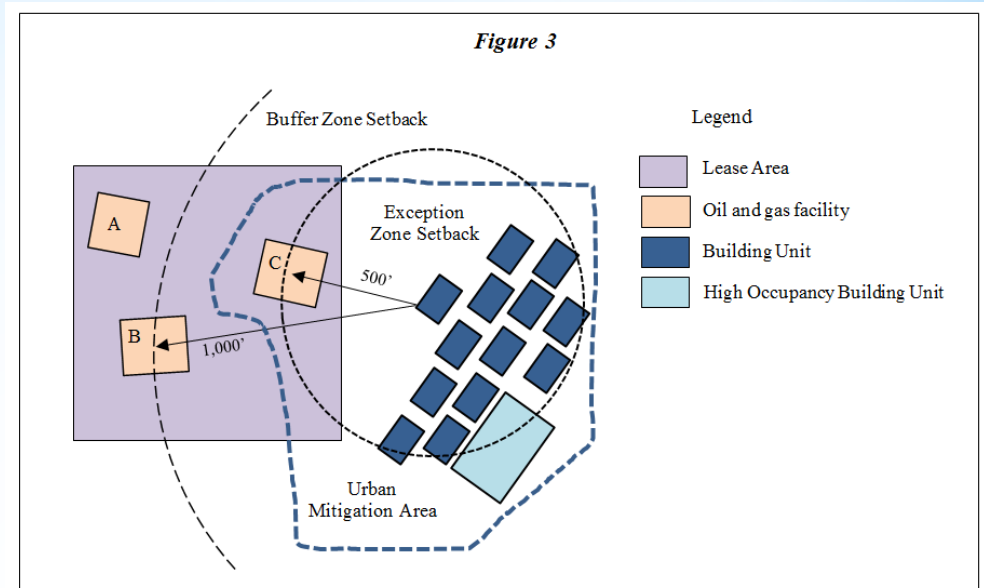


Table 1

Regulations Comparison

Commission Rule	Current City Code Regulation
Noise	
<p>1. During well site development involving pipeline or gas facility installation or maintenance or use of a drilling rig noise levels shall not exceed 70 dB(A) day, 65 dB(A) night, measured at nearest building unit.</p>	<p>1. Measured at property line of adjacent land use:</p> <ul style="list-style-type: none"> • Residential: 55 dB(A) day, 50 dB(A) night • Commercial: 60 dB(A) day, 55 dB(A) night • Industrial: 75 dB(A) day, 70 dB(A) night
<p>2. Measured 350 feet from sound source:</p> <ul style="list-style-type: none"> • Residential: 55 dB(A) day, 50 dB(A) night • Commercial: 60 dB(A) day, 55 dB(A) night • Light Industrial: 70 dB(A) day, 65 dB(A) night • Industrial: 80 dB(A) day, 75 dB(A) night 	

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Noise	
<p>3. All facilities within 400 feet of a Building Unit with engines or motor which are not electrically operated shall be equipped with quiet design mufflers.</p>	
Water Quality	
<p>4. Closed loop drilling system and pit restrictions. 5. Containment berms meeting specific standards. 6. Within an Urban Mitigation Area, no more than 2 crude oil or condensate storage tanks shall be located within a single berm.</p>	None
Air Quality	
Closed loop drilling system	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Traffic	
7. If required by local government, a traffic plan shall be coordinated with the local government prior to commencement of move in and rig up.	2. Compliance with Larimer County Urban Area Street Standards.
Multi-Well Pad	
8. Where technologically feasible and economically practicable, wells shall be consolidated to create multi-well pads located as far from building units as possible.	None
Leak Protection	
9. The oil and gas facility operator shall develop a plan to monitor production facilities on a regular schedule to identify fluid leaks.	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Blowout Preventer Equipment	
10. Blowout prevention equipment shall be required.	None
Pit Level Indicators	
11. Pit level indicators shall be used.	None
Drill Stem Tests	
12. Closed chamber drill stem tests shall be allowed	None
Well Services Operations	
13. Adequate blowout prevention equipment and backup stabbing valves shall be used on well servicing operations.	None
Security	
14. Well sites shall be adequately fenced to restrict access by unauthorized persons.	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Surface Trash	
15. All surface trash, debris, scrap or discarded material shall be removed from the site and disposed of in a legal manner.	Title 7: Accumulation of Waste Material
Tank Specifications	
16. All crude oil and condensate storage tanks shall be designed, constructed and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version).	None
Emergency Access	
17. All leasehold roads shall be constructed and maintained to accommodate local emergency vehicle access.	4. International Fire Code

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Well Site Clean Up	
18. Within 90 days after a well is plugged and abandon, the well site shall be cleared of all non-essential equipment, trash and debris.	None
Identification of Plugged and Abandon Wells	
19. Operator shall identify the location of the well bore with a permanent monument with the well number and date of plugging imbedded on the monument.	None
Development of Existing Well Pads	
20. Where possible, operators shall provide for the development of multi reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores.	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Visual	
<p>21. Production facilities, regardless of construction date, that can be seen from any public highway shall be painted a uniform, non-contrasting color tone that matches but is slightly darker than the surrounding landscape.</p>	<p>3. Bufferyards - Type EX. Plant density and width unspecified, allowing City to require bufferyard in excess of Type E as necessary to buffer high intensity uses, such as an industrial batch plant or gravel mine from residential or commercial uses.</p> <p>4. Screening of unsightly areas - Such areas shall be screened from view from public sidewalks, streets, and other public areas. Whenever plants are used for screening, the plants should be coniferous and provide an opaque screen within three years.</p>

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Lighting	
<p>22. To the extent practicable, site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units within 1,000 feet.</p>	<p>5. Comprehensive standards for illumination:</p>
Structure Height	
<p>None - drilling rigs are typically 150 feet in height, or less.</p>	<p>6. In the Industrial zone - East of County Road 9 - 50 feet. Other locations in the Industrial zone - 40 feet</p> <p>7. It is unlawful to construct any tower or other structure which may constitute a hazard to the safe navigation of aircraft at the Fort Collins/Loveland Airport</p>
Vibration	
<p>None</p>	<p>8. Vibration at the level of human perception shall not be permitted beyond the lot lines.</p>

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Floodplain	
None	<p>9. Flood Fringe - Non-residential structures shall be placed on fill so that the lowest portion of the structure is at or above the regulatory flood protection elevation or comply with the floodproofing requirements set forth in the International Building Code.</p> <p>10. Floodway - No use shall limit or restrict the floodway capacity, include fill or storage of material or equipment, increase flood heights during base flood, any well shall be protected from inundation from flood discharge and no new mobile home shall be permitted.</p>
Stormwater	
Best Management Practices	11. Compliance with City of Loveland Storm Criteria Manual

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Odors and Dust	
<p>23. Odor: (i) Compliance with Department of Public Health and Environment Air quality Control and odor Emissions regulations, plus specific regulations on crude oil, condensate, and produced water tanks, glycol dehydrators, pits, and pneumatic devices. (ii) Green completions practices required on wells that are likely to produce naturally flowing hydrocarbon gas in flammable concentrations.</p> <p>24. Fugitive dust: Operator shall employ practices such as speed controls, regular road maintenance, restrictions on construction activity during high-wind conditions, silica dust controls when handling sand, road surfacing, wind breaks and automation of well site to reduce truck traffic.</p>	<p>12. Odor: Title 7: Nuisance Abatement</p>

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Weed Control	
25. All well and surface production facilities shall be kept free of weeds, rubbish, and other waste material.	13. Compliance with Title 7: Weed Control Ordinance