

INTRODUCTION TO COMMERCE CITY SUBSURFACE EXTRACTION REGULATIONS

Domestic oil and gas exploration, along with the potential associated pollution and health risks, have increased in proximity to residential areas in urban, suburban, and rural communities across the United States and in Colorado. The Greater Wattenberg Area (“GWA”), which encompasses the City of Commerce City (“City”), and most of Denver, Boulder, Weld, Larimer, Adams, Broomfield, and parts of Arapahoe and Douglas Counties, Colorado, is the focus of a surge in these activities.

There are more than 45,000 active oil and gas wells in Colorado, and exploration and production in the GWA have grown rapidly during the past decade. New processes have been introduced in the GWA that have made exploration and production of “unconventional” oil and gas resources, such as the Niobrara formation, very attractive. As a result, there has been a surge of new wells from vertical, directional, and horizontal drilling which take advantage of the completion practice known as hydraulic fracturing or “fracking.”

Fracking is a process used to stimulate oil and gas production during the completion process after an oil or gas well has been drilled. Its purpose is to improve the productivity and ultimate recovery of a well by creating a pathway from the productive formation to the well bore. A typical fracking operation may involve several million gallons of fluid that is approximately 90% water, 9.5% “proppant” (sand) and .5% other additives, which are pumped into the well under high pressure during the completion process. The “flow back” of the fracturing solution and material from the formation to the surface can either be collected in lined pits, or in impermeable tanks that are part of a “closed loop system” that is intended to prevent the waste from being discharged onto the surface or into the atmosphere. The fracturing solution is usually brought to and taken away from a well site in large trucks. If existing roads are not available or adequate, new roads will be created.

Drill pads must be built, and large drilling and production platforms erected on site. While a single well may be drilled at a well site, it has become increasingly common for multiple wells to be drilled and completed on a drilling pad, often involving multiple completions which may last many weeks or months. Oil and gas drilling and completion can be an around-the-clock activity that involves significant noise, dust, and artificial light. Oil and natural gas development and production are industrial processes that are known to produce a variety of physical and chemical hazards, which may cause negative health effects if they are not properly mitigated.

Oil and gas development and production, particularly in association with horizontal drilling and hydraulic fracturing, entails industrial processes that may occur in close proximity to populated areas of the City for many years to come. In addition to potential health and pollution concerns, there will also be increased heavy truck traffic on City roads, as well as likely increased demand for emergency and other City services, which will come at a cost to the City.

The City has authority pursuant to C.R.S. §31-15-401, §§29-20-101 *et seq.*, 34-60-101

et seq., 30-28-101 *et seq.*, and Colorado Constitution Article XX, Section 6, to adopt reasonable rules and regulations that govern oil and gas development. Cities and counties in Colorado have always had authority to protect their citizens and to zone and regulate land uses, including oil and gas operations, which are simply another industrial land use. As with many aspects of local authority, unless the State Legislature has specifically and clearly provided that a local government may not act, it retains that authority.

Oil and gas facilities are already subject to City review under the subsurface extraction section of the Land Development Code, which was adopted in 2009. The proposed amendments to the City's Code are intended to allow oil and gas development, to insure adequate review of proposed oil and gas facilities within the City's jurisdiction, and to provide adequate protection to the City's citizens and resources to the extent allowed by law. Local government regulation of the impacts of oil and gas operations has been on-going for many years, with local governments successfully exercising that authority by issuing permits for thousands of oil and gas operations within their jurisdiction. The exercise of this local authority has not slowed the number of issued local or state permits for oil and gas operations, which continue to rise. To the contrary, oil and gas exploration and production has risen markedly over the past decade in Colorado.

The Colorado Supreme Court has determined that local governments are not expressly or impliedly "preempted" from regulating oil and gas activities through their local land use and police power authority. However, the courts have determined that state law preempts local regulation where the local regulation materially impedes, frustrates or destroys the state interest in oil and gas activities, and there is no possible construction of the local regulation which can be harmonized with the state regulatory scheme of the COGCC.

The City's regulations are intended to address the health, safety and land use associated with these operations, to protect the health, safety and welfare of the citizens of the City, and to exercise the City's land use and police power authority to the full extent of the law. At the same time, the regulations recognize that the City, under current Colorado laws, may not enact rules which would "materially impede or destroy the [COGCC's] interest" in regulating oil and gas development and operations. The City's regulations respect the current status of the law, while at the same time they implement proven and accepted best management practices which are widely used by the oil and gas industry in the State of Colorado. For instance, the City was advised during the process of preparing these amendments that a high percentage of all oil and gas wells that are completed in Colorado are located at a distance of more than 1,000 feet from any occupied structure. Based upon information provided by the COGCC and local operators, it has been determined that closed loop systems and other "environmentally friendly" drilling and completion techniques have been incorporated into a large majority of recent oil and gas activities. The regulations embrace these practices and encourage companies to use them on any new operations within the City.

The City has undertaken an exhaustive process to create its updated regulations. Starting in late 2011, City Council, staff and retained experts have held numerous study sessions, public meetings, open houses, and informational discussions with many

stakeholder groups, including: citizens of Commerce City, the Colorado Oil and Gas Association (“COGA”), representatives of the Army and the Refuge, employees of the CDPHE, South Adams County Water District, representatives of several oil and gas operators who operate wells in the City or may do so in the near future, staff from the COGCC, and others.

The initial draft of these regulations has been presented to the public and other stakeholders. Revisions have been made to the initial draft based upon written or verbal comments received by staff and the City Council. Many hundreds of hours of staff and Council time have been dedicated to this project, which reflects the City’s best effort to exercise its powers within the confines of its constitutional and statutory authority to do so.