



MEMORANDUM

To: Chairman Popiel and Members of Planning Commission
From: Domenic Martinelli, City Planner, Local Government Designee
Date: October 1, 2019
Subject: Oil and Gas LDC Updates

In 2012, Commerce City adopted its current set of Oil and Gas regulations, which require any potential operators to obtain an Oil and Gas Permit, and execute an Extraction Agreement. Since the adoption of these rules, the landscape of oil and gas regulation at the state level has increased significantly. Since 2012, the Colorado Oil and Gas Conservation Commission (COGCC) has conducted a number of rulemaking procedures, which have modified requirements such as school setbacks, flowline regulations, spill reporting, and many other items. Most significantly, on April 16th, 2019, Governor Polis signed Senate Bill 19-181 into law, which expressly gave local governments more authority to regulate the surface impacts of resource extraction. The bill expressly modifies state pre-emption by authorizing local government regulation that is more stringent than state standards. This now allows local governments to regulate the following items:

- Location and siting of O&G facilities and locations
- Impacts on government facilities and services
- Water quality and source, noise, vibration, odor, light dust, emergency preparedness, security, traffic, transportation impacts
- Financial securities, indemnification and insurance
- All other nuisance-type effects of O&G development
- Inspect all O&G facilities
- Impose fees for both the direct and indirect costs of monitoring and inspections programs to address impacts and enforce local regs
- Receive technical assistance from the COGCC

Staff has been negotiating a Regional Operator Agreement with Extraction Oil and Gas since last year, and through this process, a number of these protections have been incorporated into the current draft agreement. Staff additionally has received direction to update city regulations, and intends to achieve the following goals through such a code update:

- Utilize SB-181 authority to regulate location and siting of facilities
- Incorporate other powers granted to local governments through SB-181

- Define approval criteria for alternative location analysis
- Evaluate current process and approval process
- Incorporate feedback received during the Oil and Gas Focus Group
- Evaluate additional feedback provided from the public, industry, and regulatory agencies
- Evaluate financial assurances and fees
- Codification of Best Management Practices (BMP's)
- Incorporate meaningful health, safety, and general welfare protections

Additionally, Adams County recently adopted new regulations, which include a number of provisions authorized by SB-181, including an increased setback from existing and platted residences, limitation on what zone districts facilities are allowed in, establishing an alternative site location analysis, noise provisions, air quality monitoring requirements, among other items. The study session will cover how these regulations may impact Commerce City.

A significant amount of staff resources to this point have been dedicated to negotiation of the Regional Operator agreement, organization of the Focus Group meetings, and ongoing management of Oil and Gas in general. Now that the Regional Operator Agreement negotiations are coming to a close, and the focus group has conducted its final meeting, staff has the capacity to shift towards a major revision of the Oil and Gas Updates.

Two community wide public meetings are scheduled for Wednesday, October 2nd from 5PM – 7PM, and Thursday, October 3rd from 10AM – Noon to receive input and feedback from the public. To date, three stakeholder meetings have been conducted on Oil and Gas Regulations:

- **Government Stakeholder Meeting** – included a variety of attendees, representing the Colorado Oil and Gas Conservation Commission (COGCC), Tri-County Health Department, South Adams County Fire Protection District, and School District 27J. Feedback was received from attendees on setbacks from residences, schools, and reverse setbacks for encroachment of residential construction near existing wells, methodologies for conducting an alternative site location analysis, coordinating with the state on their proposed rulemakings, and potential air quality monitoring regulations.
- **Industry Stakeholder Meeting** – included the industry trade groups Colorado Petroleum Council and the Colorado Oil and Gas Association, and operators with planned operations in or around Commerce City, including Extraction Oil and Gas, Petroshare, and Great Western Operating. The operators raised questions as to what setbacks would be proposed, and what rationale would be used in justifying them, how setbacks would be measured (to the building, or to the property line, etc), how feedback from the Focus Group meetings would be incorporated into the code, and how air quality would be regulated. The operators provided additional feedback on proposed code provisions, including a setback waiver from property owners that willingly approve an oil and gas facility closer than the minimum setback incorporated in the code, evaluation criteria to be included within the alternative site location analysis including feasibility to access pipelines, and evaluating the specific fine schedule that would be proposed as part of the updates.
- **Adams County** – A separate, standalone meeting was held with Adams County Staff regarding their recent code updates. Topics of discussion included insight into their code update process, and how the regulations have been received, shared inspection services between the city and the county, coordination between Oil and Gas permit reviews, and safety standards and regulations.

All three meetings were intended to be a starting dialogue for feedback moving forward through the code process. Staff anticipates receiving specific comments from these stakeholders once a draft ordinance is published.

To summarize, staff is seeking input from the Planning Commission on the overall approach that is contemplated with the proposed updates. This includes feedback on the proposed methodology for regulating the location and siting of facilities, criteria for alternative site location analysis, current approval processes, financial assurances and fees, proposed best management practices, and meaningful health, safety, and general welfare protections. The study session is for discussion and feedback only, and no vote or formal action needs to be taken at this time. A study session is also scheduled with City Council to discuss this topic on October 14, and any amendments are tentatively scheduled for public hearings with Planning Commission on October 30th, and with City Council in November for formal adoption.