

ORDINANCE NO. 2213

INTRODUCED BY: DAVIS, DOUGLAS, FORD, FRANK, GUARDIOLA, HURST, HUSEMAN, MADERA, TETER

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE AND ENACTING A NEW SECTION 21-9260 AUTHORIZING THE COLLECTION OF AN OIL AND GAS TRANSPORTATION IMPACT FEE

WHEREAS, the City Council of the City of Commerce City adopted the Land Development Code, effective March 1, 2009, by Ordinance 1720, which has been amended from time to time;

WHEREAS, increased interest in exploration and drilling within the city, has generated the need to establish an impact fee to recover the incremental costs on Commerce City's road network that would result from increased heavy truck traffic associated with oil and gas activity;

WHEREAS, Article XX of the Colorado Constitution grants home rule municipalities, including Commerce City, the authority to enact laws governing matters of local concern, and that authority to enact laws includes the power to enact impact fees;

WHEREAS, C.R.S. §29-20-104.5 authorizes local governments to impose development fees on new development, pursuant to a schedule that is legislatively adopted, applicable to a broad class of property within the City, and intended to defray the projected impacts on the roadway network caused by proposed development;

WHEREAS, the City retained Felsburg, Holt, and Ullevig, a transportation consulting firm, to research and create an objective study and submitted the same to the City Council of the City of Commerce City titled Impact Fee Study dated June 18, 2019, detailing the nexus between Commerce City boundaries and the projected impact that such oil and gas development has on Commerce City's roadway network;

WHEREAS, based on its study, the consultant proposed a development fee to defray the impacts of new development as follows: A minimum of \$996.00 per pad fee and a range per well fee between \$2145.00 per well and \$21,172.00 per well depending on the number of pipelines specified in the development and outlined in Exhibit A;

WHEREAS, the City Council desires to impose a development fee on new oil and gas well development to defray the impacts of such development on Commerce City roadway network to ensure the delivery of adequate roadway infrastructure within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. The City Council hereby finds and determines:

- (a) The City is authorized by law, including but not limited to Article XX of the Colorado Constitution, C.R.S. § 29-20-101 et seq. and the City Charter, to impose an impact fee or other similar development charge as a condition of the issuance of development permit, in order to fund expenditures by the City on the transportation network needed to serve such new development.
- (b) The City will be experiencing new oil and gas development and such development is projected to disproportionately impact and cause damage to the roadway network of the City.

- (c) The protection of the health, safety, and general welfare of the citizens of the City requires that impacts to these roadways be offset by oil and gas development and growth within the City.
- (d) The taxes and other revenues generated from new oil and gas development do not generate sufficient funds to defray the impacts to the roadway network to accommodate and serve new development.
- (e) The adoption of an equitable development fee system consistent with the requirements of state law will ensure new oil and gas development pays to defray their impacts upon the roadway network, allowing the City to make the necessary roadway network expenditures to serve this new development.
- (f) The nexus study presented by Felsburg, Holt, and Ullevig, which relies on reasonable methodologies, analyses, and assumptions, and this section are generally applicable to new oil and gas well sites, quantify the reasonable impacts of new development in the City and recommend a development fee no greater than is necessary to defray the projected impacts on the roadway network of the City directly related to proposed new oil and gas development.
- (g) The imposition of a development fee for the benefit of the City's roadway network as provided herein, is in the best interests of and necessary for the protection of the health, safety, and welfare of the public.

SECTION 2. A new Section 21-9260 of the Land Development Code to be entitled "Oil and Gas Impact Fee" is enacted in the Land Development Code as set forth in Exhibit A, which is attached and incorporated by reference.

SECTION 3. Except as specifically modified herein, the provisions of the Land Development Code shall remain unchanged and in full force and effect.

SECTION 4. This ordinance shall become effective immediately upon passage following second and final reading.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 1ST DAY OF JULY 2019.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 5TH DAY OF AUGUST 2019.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST

Laura J. Bauer, MMC, City Clerk

Exhibit A to Ordinance 2213

(Underlined text indicates new material)

A new section 21-9260 is enacted in the Land Development Code as Follows:

Sec. 21-9260. Oil and Gas Impact Fee

- (1) **Applicability.** An Oil and Gas Impact Fee, as required by this code, shall be assessed on oil and gas Well Sites requiring an Oil and Gas Permit within the jurisdictional boundaries of the City of Commerce City, as may be amended from time to time. The Oil and Gas Impact Fee is limited to defray the projected impacts caused by oil and gas traffic to certain of the City's capital facilities, specifically, the road system inclusive of roadways and bridges.
- (2) **Schedule.** The Oil and Gas Impact Fee is comprised of the two parts. Part one is the fee per pad and part two is the fee per well. The per pad fee is a fixed amount applicable to all Well Sites. The per well fee is based on the maximum number of wells that may be drilled at the Well Site according to an approved Oil and Gas Permit. The Oil and Gas Development Impact Fee shall be imposed according to the following schedule:

<u>Completed Pipelines Servicing Pad (presence indicated by "X")</u>			<u>Impact Fee</u>
<u>Fresh Water Pipeline</u>	<u>Produced Water Pipeline</u>	<u>Product Pipeline</u>	<u>Total</u>
<u>Per Pad Fee</u>			
<u>\$ 996</u>			
<u>Per Well Fee</u>			
<u>=</u>	<u>=</u>	<u>=</u>	<u>\$ 21,172</u>
<u>X</u>	<u>=</u>	<u>=</u>	<u>\$ 20,260</u>
<u>=</u>	<u>=</u>	<u>X</u>	<u>\$ 13,853</u>
<u>=</u>	<u>X</u>	<u>=</u>	<u>\$ 13,217</u>
<u>X</u>	<u>=</u>	<u>X</u>	<u>\$ 12,703</u>
<u>X</u>	<u>X</u>	<u>=</u>	<u>\$ 12,067</u>
<u>=</u>	<u>X</u>	<u>X</u>	<u>\$ 3,295</u>
<u>X</u>	<u>X</u>	<u>X</u>	<u>\$ 2,145</u>

- (3) **Method of Satisfaction.** The Oil and Gas Development Impact Fee shall be payable directly to the City. No alternative means exists to satisfy this obligation except as set forth herein.
- (4) **Collection.** The Oil and Gas Development Impact Fee shall be paid to the City following approval of an Oil and Gas Permit but as a condition precedent to the actual issuance of said permit.
- (5) **Limitation.** Where the applicant for an Oil and Gas Permit is also required to pay the Road Impact Fee pursuant to Sec. 21-9220, then only to the extent the Road Impact Fee defrays the impacts to the same capital facilities as those addressed by this section as determined by the Director, may the Applicant be excused only from the duplicative portion of the Road Impact Fee.
- (6) **Alternative Fee to Oil and Gas Impact Fee.** An Applicant for an Oil and Gas Permit may file an objection to the Oil and Gas Impact Fee only at the time of application submission. Concurrent with the filing of the objection, the Applicant must submit an alternative impact fee analysis. If the alternative impact fee analysis, at the discretion of the Director of Community Development,

establishes by clear and convincing evidence that: (a) it is more reasonable than the study underlying this section; (b) it is no less rigorous than that used to establish the fees set forth herein; (c) the fees established herein will substantially impact the viability of the Applicant's development; (d) the fee established herein will have a disproportionate impact on the Applicant's development in relation to other applicants; and (e) the alternative fee analysis study meets all state and city statutory requirements for impact fees, then the Director may adopt the alternative fee set forth by the Applicant which will be applicable only to the application at issue.