

# MEMO

**To:** City Council

Brian McBroom, City Manager

**From:** Chris Cramer, Community Development Director

**Subject:** Oil and Gas Focus Group

**Date:** July 9, 2019

On February 4, 2019, City Council passed resolution 2019-14, establishing a temporary oil and gas focus group. The resolution outlined the nature of this focus group as having the sole purpose of providing non-binding input to City staff regarding proposed state legislation, proposed state administrative rulemaking, potential city regulations, and new form 2a applications. The focus group convened a total of five (5) times, on April 24<sup>th</sup>, May 22<sup>nd</sup>, June 5<sup>th</sup>, June 19<sup>th</sup>, and June 26<sup>th</sup>, 2019. Three meetings were originally scheduled, but staff scheduled two additional focus group meetings to accommodate the proposed topics and additional time for receiving feedback. The focus group was comprised of nine Council appointed members, including: Dan Bruce, Meghan Grimes, Chris Gronquist, Scott Kearney, Laurence Labrie, Lucy Molina, John Myers, Susan Noble, and Kelly Reyos. –

Over the course of the five meetings, city staff discussed with the focus group the topics outlined included within the resolution, and collected feedback and ideas that was generated. Attached to this memo are minutes from all five of the focus group meetings, and the presentations that were given by staff.

## **General Overview**

During the first focus group meeting, the majority of the discussion revolved around a general overview of the process of Oil and Gas development in the State of Colorado, and some of the regulatory challenges surrounding it. The overall background and knowledge of general or specific oil and gas practices varied among the individuals within the group. It became known fairly quickly that the entire range of opinions and ideas concerning oil and gas production within Commerce City were represented within the group.

It is important to note that throughout the discussion, a wide variety of thoughts were presented. This summary helps to describe this variety, but it should be noted that this memo does not attempt to display or describe an individual's thoughts or beliefs to reflect the group as a whole. Finally, where some comments are listed, these lists are

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not meant to be all inclusive or exhaustive of all the discussions which occurred within the group.

### **Potential Land Development Code Changes**

The city discussed potential updates to the Land Development Code that could arise from the passing of Senate Bill 181. The primary discussion was related to the protections contained in the city's draft Best Management Practices (BMP) document proposed with Extraction Oil and Gas, and the potential to include some of these items in a future LDC update. The discussion involved an overview of the main regulations contained within the BMP's, including air quality, water quality, pipeline utilization, transportation and circulation, noise mitigation, community outreach, reclamation, and visual mitigation. Feedback was sought from the group as to which items were most significant to include within the land development code as a *regulation*, rather than negotiated items in a private agreement.

While the main focus of the discussion was tailored towards BMP's being incorporated into future LDC updates, many comments received from the group were related to seeking a better understanding of the process regarding BMP's and the Regional Operator Agreement. Members of the focus group sought clarification on the BMP standards, and whether or not they were being updated to match what would eventually be passed at the state level. Some members felt that the proposed BMP's represented a very good standard for the City while others felt they did not go far enough to represent health and safety. Still others felt like there should be more flexibility within the BMP's to allow for technology and other advances that may not be known about at this time.

Some members felt that it would be appropriate for the city to slow down its LDC drafting process in order to allow the state to have an opportunity to define the new rules of SB-181. Other members of the group felt that slowing down the process was not necessary. Additionally, there were a few members that were concerned that future language regarding certain critical protections for the community utilize the word



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"shall", rather than "as feasible" or "should". Finally, there were questions and comments from the focus group generally included concerns on the city's ability to regulate and enforce BMP's, suggestions on the permitting process, desire for additional community outreach throughout the life cycle of the well, and the overall importance of air and water quality safety.

Some of the comments that various members of the group had regarding BMP's being included in a future code update included the following:

- Use of electric equipment always as a standard;
- Pipeline utilization for all new application to reduce truck traffic and help air quality;
- Standards on pipeline durability, maintenance, and care, if not already handled through a state or federal agency;
- Testing of air quality and water quality (testing could occur at time of production, after production, more at the beginning, constant throughout, etc.)
- Real time air monitoring
- Waste management of trash but also left over oil and gas supplies.
- Post closure care and continued monitoring
- Seismic studies or analysis needed

Some member of the focus group felt the following items should *not* be included in a future code update:

- Health and safety plans for workers (since it's already regulated by OSHA)
- Pipeline removal requirement (some pipelines and flowlines don't necessarily need to be removed and/or it is unsafe to do so)
- Inspection frequency guidelines

### **Zoning**

Zoning was also discussed as a part of the focus group, specifically whether or not the city should explore regulating oil and gas wells specifically in certain zoning districts. A brief introduction on how Senate Bill 181 impacts the ability for jurisdictions to regulate



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the use through zoning was given, as well as an overview of the description and configuration of the city's current zoning districts and future land use plan.

The discussion with the group then focused on potential setbacks from specific uses and/or zoning districts for well sites, and how the impact of existing Planned Unit Developments (PUD's) could alter the potential locations that operators could access minerals and drilling windows.

Feedback from the group regarding zoning really varied depending on the member, with some members feeling that Oil and Gas facilities were appropriate only in straight industrial districts, some suggesting industrial and agricultural (depending on the future land use), other members suggested adding commercial districts, and some members believing Oil and Gas facilities were not appropriate for any zoning district. Some members also felt that all sites (regardless of the underlying zoning) should be looked at on a case by case basis. It was noted from the group that due to the large percentage of north Commerce City regulated through PUD's and pockets of unincorporated enclaves, that regulating through zoning may not have as great of an impact.

The follow up conversation regarding setbacks from certain uses led to the following commentary:

- Reciprocal setbacks were desired from a number of the focus group members, regarding not only setbacks from new wells to existing houses, but from *existing* wells to newly constructed homes
- Define and distinguish in the LDC whether setbacks apply from the property line, or building/structure
- Disclosure for new homebuyers, notifying them of mineral right ownership (if present), potential wells, pipelines, flowlines, etc.
- Have a greater setback (at least 1,000') for parks and other "healthy uses" – recreation centers, certain food production, etc.
- No additional setback for industrial properties

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### Process

Existing and potential City processes, review, and approval criteria were discussed as it relates to Oil and Gas. A brief overview was given on the Land Development Code regulations for approval of an oil and gas permit, when certain permits would require conditional approvals, review of the CUP process, and an overview of the boards and commissions that review land use cases (Board of Adjustment, Planning Commission, and City Council).

Some of the main takeaways from the process discussion were as follows:

- Some members of the focus group felt that administrative approvals were adequate, and some wanted all permits to be reviewed by City Council.
- A major component of the discussion surrounded notification and outreach, including larger notice radiuses for public meetings,
- Some members of the group who had previously attended city open houses, and felt that this type of format would be effective for neighborhood meetings.
- There was some discussion about allowing unique conditions on different locations, since the impacts could be varied.
- There was desire for outreach to the Spanish speaking community, including translation of documents, translators present at meetings, and an extra level of effort of communication – not just those in proximity to the wells.
- Desire to have fees built into the application (all inclusive), rather than various points in the process, where the operator may not know all fees going into the application.

### Enforcement

Staff then provided an overview summary of the city's current enforcement provisions within the Land Development Code for Oil and Gas well sites. Staff also described what the draft Regional Operator Agreement is proposed to include, and what additional enforcement powers were granted to local governments under SB-181. Feedback was then given on which enforcement provisions would be most critical to include within

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an LDC update, which should not, and what other items staff may not have previously considered.

Several times throughout the session, the group brought up concerns related to staffing capacity, specifically in its ability to review, monitor, and analyze some of the more technical components of the BMP's (such as air quality and water quality samples, etc.). In addition, some members of the group felt that industry should be required to pay for additional costs to city services that well sites generate (including road impacts, additional staff resources, etc), an appropriate number of inspectors and inspection frequency per well site should be evaluated (maybe dedicated city staff), and that all community members (regardless of location) should be notified and made aware of operator violations. There were also ideas raised about the most effective methods for communicating violations or dangers to the public.

Some themes related to ongoing enforcement and monitoring were as follows:

- There is a sense of concern that the city does not have currently employed subject matter experts on the oil and gas industry to help navigate, implement, and hold accountable the rules and process that are being developed (especially technical data- air and water quality, being able to review technical reports, etc.). There was some desire for the City to hire necessary staff, and pass costs onto operators in the form of application or other related fees.
- Desire for total transparency of fines and actions: If a company is fined, would like to know what the fine was for, the number of fines, the corrective measures that happened and what the restitution was
- There is a lack of community education – especially for the Hispanic community. Would like more information about the ongoing operations to be put out via bilingual information

### **COGCC Rulemakings**

Finally, the discussion focused on future COGCC rulemakings, as a result of Senate Bill 181. Staff's presentation began with an overview of the provisions of the senate bill that



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required additional rulemakings from the COGCC, which included alternative location analysis, cumulative impacts, wellbore integrity, flowlines, and inspections. Staff then described the COGCC's anticipated rulemaking schedule through the end of 2020, and detailed specific ways that members of the focus group could get involved in the rulemaking process.

A couple of members of the focus group brought up concerns that the COGCC process was not citizen friendly and lacked transparency. In addition, several members expressed a desire for City Council to clearly state the city's values and priorities regarding oil and gas. Finally, there was a suggestion to see city participation as an active member in future rulemakings but there was caution as to not represent a certain side or outcome.

### **Conclusion and Next Steps**

At the conclusion of the process, focus group members had the opportunity to seek clarifications or ask follow up questions, or bring up any additional items that they wanted to discuss. Those items were included within the final meeting minutes.

Following the conclusion of the focus group, staff then consolidated comments and feedback into a minutes summary, and collected recordings of the focus group meetings. Staff will take the feedback and information received during the focus group, and utilize it while beginning the initial process of drafting LDC amendments. As the LDC amendments move forward, there will be an opportunity for additional public feedback. Staff has provided the minutes summary as an attachment to this memo. Additional information, including the presentations can be found at the city's oil and gas page: [www.c3gov.com/oilgas](http://www.c3gov.com/oilgas)

Enclosed:

Focus Group Minutes (Sessions 1-5)  
Resolution 2019-4

