

ORDINANCE NO. 2235

INTRODUCED BY: _____

AN ORDINANCE RELATING TO THE REGULATION AND ENFORCEMENT OF OIL AND GAS DEVELOPMENT BY AMENDING THE COMMERCE CITY REVISED MUNICIPAL CODE, INCLUDING SECTION 3-2304 AND ARTICLES III, V, VI, AND XI OF THE COMMERCE CITY LAND DEVELOPMENT CODE, AND APPROVING AND IMPLEMENTING A BEST MANAGEMENT PRACTICES DOCUMENT, AND ESTABLISHING RELATED PENALTIES AND PROCEDURES

WHEREAS, by virtue of the Article XX, Section 6 of the Constitution of the State of Colorado and the Charter of the City of Commerce City, including but not limited to Sections 2.2 and 10.8, and as further authorized by state law, including, but not limited to, Sections 29-20-101 *et seq.*, 31-15-401 *et seq.*, and 31-23-301 *et seq.* of the Colorado Revised Statutes, Commerce City has broad authority to exercise its zoning and police powers to promote and protect, and minimize impacts to, public health, safety, and welfare of the community and the public and the environment, including with respect to oil and gas exploration and extraction activities and associated land uses;

WHEREAS, Commerce City is one of the fastest growing cities in Colorado and, since Commerce City enacted its regulations in 2012, the city's population has increased by **13% from 48,511 to 55,923 (estimated)**;

WHEREAS, oil and gas companies believe that the geology underlying Commerce City contains marketable amounts of oil and gas resources that can only be accessed through horizontally-drilled, hydraulically fractured wells from well pad locations within or near Commerce City;

WHEREAS, since March 2018, when Commerce City was notified of renewed interest in the oil and gas development in Commerce City, the City Council has received hours of public comment, reviewed studies and reports presented by the City staff, oil and gas industry representatives, and members of the public, and received significant public input in the form of neighborhood meetings, oral comment, and written comment relating to the development of oil and gas resources in Commerce City;

WHEREAS, unregulated, or under-regulated, oil and gas exploration and extraction related operations may represent presents actual and potential adverse impacts to Commerce City with respect to the health, safety, and welfare of the public, the social fabric of the community, the environment, and Commerce City's infrastructure and property;

WHEREAS, the City Council recognizes the importance of the oil, natural gas, and mining industry to the Commerce City community and the State of Colorado, but believes it is important to minimize adverse impacts attributable to any industry proposing to operate in Commerce City on public health, safety and welfare and the environment in Commerce City through zoning, the exercise of the police power, and land use regulations;

WHEREAS, incidents resulting in death, personal injury, and property damage have occurred in Colorado in connection with oil and gas exploration and extraction activity, including

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injury from a fire and explosion at a well site in Weld County, Colorado on December 22, 2017; one death from a fire occurring during work on an oil and gas pipeline near Galeton, Colorado on November 16, 2017; fire occurring from a spill at an oil and gas facility in Weld County, Colorado on November 7, 2017; injury from a fire at an oil and gas facility in Brighton, Colorado on October 12, 2017; tank explosions in Garfield County, Colorado on September 12, 2017; injury from the ignition of fumes from a storage tank in Greeley, Colorado on May 8, 2017; and two deaths in the explosion of a home near a pipeline in Firestone, Colorado on April 17, 2017;

WHEREAS, scientific studies identify potential health risks associated with oil and gas exploration and extraction operations, including a recent study by the University of Colorado found that air pollutant concentrations and associated health risks, including neurological, hematological, and developmental health effects and cancer risks, increased with proximity to oil and gas facilities (McKenzie, L.M. et al. (2018). Ambient Nonmethane Hydrocarbon Levels Along Colorado's Northern Front Range: Acute and Chronic Health Risks. *Environmental Science & Technology*, 52(8), pp. 4514-4525), and an October 17, 2019, released by the Colorado Department of Public Health and the Environment ("CDPHE") entitled "Human Health Risk Assessment for Oil & Gas Operations in Colorado" that implicated potential short-term health impacts in worst-case scenarios for locations under 2,000 feet from wells to building units;

WHEREAS, there exist sizeable deposits of hazardous materials on the surface or in the underground area of the Rocky Mountain Arsenal National Wildlife Refuge, which is surrounded by Commerce City on three sides and stretches from the southern to the northern parts of Commerce City;

WHEREAS, the use of land for the exploration for and extraction of oil and gas, and related operations and activities, presents actual and potential adverse impacts to public health, safety, and welfare and the environment in Commerce City, including substantial adverse impacts to the use and integrity of surface and underground water supplies, water infrastructure, air quality, odor, noise, dust, traffic, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife, vegetation, cultural and historic resources, recreation opportunities, aesthetic values, and citizen health, safety, and security;

WHEREAS, Commerce City's present regulations need to be amended in light of current regulatory best management practices, updated COGCC Rules, pending COGCC rulemaking, Commerce City's growth, the anticipated growth of the industry in Commerce City, current technologies of the oil and gas exploration and extraction industry, and continuing concerns for risks to the community's health, property, general welfare, and the environment, as identified in numerous scientific studies and reports;

WHEREAS the City Council desires to regulate the surface impacts of oil and gas operations in Commerce City by:

- Amending its procedure, requirements, and standards for the submission, processing, review, public notification of, and approval of permits for oil and gas development;
- Establishing minimum standards and restrictions for land use and the location and siting of oil and gas facilities, including an initial assessment of site, a restriction of such facilities to certain zone districts, a prohibition on such facilities in a floodplain, the establishment of a distance restriction for oil and gas facilities from certain properties and structures; and the establishment of distance restrictions for new residential lots

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from existing or approved oil and gas sites;

- Addressing impacts to public infrastructure and public services;
- Addressing impacts to water quality and source, noise, vibration, odor, light, air emissions and air quality, land disturbance, cultural and environmental resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts, and to establish reclamation procedures;
- Amending regulatory conditions for oil and gas permits and site development standards for oil and gas sites;
- Amending prohibitions on specific types of facilities associated with oil and gas development;
- Amending and establishing terms for the provision of financial securities, indemnification, insurance, fines, and penalties as this City Council deems appropriate to ensure compliance with Commerce City's regulations and to address the potential impacts of operations;
- Establishing regulations for the inspection of oil and gas operations and the enforcement of this ordinance;
- Authorizing and adopting a standalone regulatory document for best management practices; and
- Establishing and amending definitions in its code;

and other establishing other provisions all in a manner that is both reasonable and necessary to avoid and to minimize the adverse impacts of oil and gas operations;

WHEREAS, on September 18, 2019, Commerce City and Extraction Oil & Gas, Inc. ("Extraction") executed an Oil and Gas Regional Operator Agreement that, among other things, included provisions seeking to protect and minimize adverse impacts of oil and gas operations, which provisions are similar to those enacted by this ordinance;

WHEREAS, oil and gas operators and owners of mineral rights in Commerce City and other beneficiaries of oil and gas exploration and extraction operations, a highly regulated industry, will not be unfairly prejudiced by the enactment of this ordinance, which are reasonable and necessary given the extent and severity of the potential impacts of the operation of such industry;

WHEREAS, this ordinance is enacted to protect and to minimize adverse impacts to public health, safety, and the environment, pursuant to Commerce City's home rule authority under Article XX, § 6 of the Constitution of the State of Colorado and pursuant to the Commerce City's police powers and land use regulation powers, including, but not limited to, Sections 29-20-101 *et seq.*, 31-15-401 *et seq.*, and 31-23-301 *et seq.* of the Colorado Revised Statutes;

WHEREAS, this ordinance is reasonable and necessary to regulate the surface impacts of oil and gas operations in a reasonable manner, to avoid actual and potential adverse impacts to public health, safety, and welfare and the environment in Commerce City from oil and gas

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operations, to minimize and mitigate the extent and severity of those impacts that cannot be avoided; and

WHEREAS, this ordinance provides a planned and orderly use of land and protection of the environment consistent with constitutional rights.

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

SECTION 1. The recitals to this ordinance are hereby adopted by and incorporated as findings of fact of the City Council.

SECTION 2. Section 3-2304 (Penalties) of the Commerce City Revised Municipal Code is amended as set forth in Exhibit A, attached and incorporated by reference.

SECTION 3. Section 21-3110 (Neighborhood Meetings) of the Land Development Code is hereby amended as set forth in Exhibit B, attached and incorporated by reference.

SECTION 4. Section 21-3200 (Required Review) of the Land Development Code is hereby amended as set forth in Exhibit C, attached and incorporated by reference.

SECTION 5. Section 21-3216 (Oil and Gas Permits) of the Land Development Code is hereby amended as set forth in Exhibit D, attached and incorporated by reference.

SECTION 6. Section 21-5200 (Table V-1) (Land Use Table) of the Land Development Code is hereby amended as set forth in Exhibit E, attached and incorporated by reference.

SECTION 7. Section 21-5266 (Subsurface Extraction) of the Land Development Code is hereby amended as set forth in Exhibit F, attached and incorporated by reference.

SECTION 8. A new Section 21-6280 (Additional Subdivision Standards Relating to Oil & Gas Sites) is enacted in Article VI of the Land Development Code as set forth in Exhibit G, attached and incorporated by reference.

SECTION 9. Section 21-11200 (Definitions) of the Land Development Code is hereby amended as set forth in Exhibit H, attached and incorporated by reference.

SECTION 10. The regulations entitled “Best Management Practices For New Well Sites In Commerce City,” attached as Exhibit I and incorporated by reference (“BMP Document”), is hereby adopted and enacted pursuant to Section 21-3216(____) of the Land Development Code, as enacted by this ordinance. Any violation of the BMP Document shall be enforced in the same manner as any violation of Section 21-5266 of the Land Development Code.

SECTION 11. Except as specifically set forth herein, the provisions of the Commerce City Revised Municipal Code shall remain unchanged and in full force and effect.

SECTION 12. This ordinance shall become effective on immediately upon passage on second and final reading.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED
THIS _____ DAY OF _____ 2018.

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PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS _____ DAY OF _____ 2018.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk