



STAFF REPORT

Planning Commission

Ordinance #2235

PC Date:	October 30, 2019	Case Planner:	Domenic Martinelli
CC Date:	November 4, 2019		
Location:	City-Wide		
Applicant:	The City of Commerce City		
Address:	7887 E. 60 th Avenue, Commerce City, CO 80022		

Case Summary

Request:	Commerce City staff is requesting to amend various sections of Article III of the City's Land Development Code (LDC), modify section 21-5266, and establish a new section 21-6280, as it pertains to subsurface extraction operations in the city. Staff is also requesting to establish a supplemental Best Management Practices Document to apply to all Oil and Gas Facilities
Project Description:	The proposed ordinances shall modify significant portions of the city's Oil and Gas regulations, in response to Senate Bill 19-181, and various COGCC rulemakings that have occurred since 2012.
Staff Recommendation:	Approval

Attachments for Review:

- | | |
|---|---|
| ☒ Proposed Language of Amendment. | ☒ Public Outreach Materials |
| ☒ Focus Group Summary Document | ☒ Senate Bill 19-181 |
| ☒ Copy of Regional Operator Agreement | ☒ COGCC Director's Criteria |

Oil and Gas Overview

Background

Colorado is well-known for its natural resources and history of oil and gas exploration. Commerce City has numerous permitted oil and gas well sites within and adjacent to Commerce City, many of which were established in the late 1970s. In the last 10-15 years, new technology advancements have led to an entirely new form of oil and gas development which involves drilling wells horizontally for multiple miles at depths around 6,000-7,000 feet below the surface, and using hydraulic fracturing methods to access previously difficult to access resources trapped within shale rock formations. This technology has drastically altered how wells are distributed in terms of surface use, with more wells (anywhere from 12-36) being concentrated in less frequent locations, but with greater surface impacts overall.

This form of oil and gas development has taken over as the primary method in the state of Colorado (70% of wells permitted in 2016 utilize this method), and has become an issue that has received significant community interest and attention. Prior to 2019, local regulation of oil and gas development was pre-empted by state law in many areas. Generally speaking, implementation of regulations that far exceed the requirements of the state often resulted in litigation from the industry.

Senate Bill 19-181

In April of 2019, the Colorado State Legislature passed Senate Bill 19-181 into law, which expressly gave local governments more authority to regulate the surface impacts of resource extraction. The bill expressly modified 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, which previously were pre-empted by the state:

- 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 regulations
- Receive technical assistance from the COGCC

The bill primarily tasked the COGCC with reforming their current regulations through a series of rulemakings, which would cover the following aspects of regulation at the state level:

- Mission Change
- 500 Series (notification)
- Alternative Location Analysis
- Cumulative Impacts
- Flowlines

These rulemaking hearings will occur throughout the remainder of 2019 and through 2020. As it relates to proposed operations in Commerce City, the COGCC has established an additional review process and protections for sites within 2,000 feet of a home, and several other criteria. The city has also coordinated with the state, such that any state permits that have been submitted to the COGCC within Commerce City boundaries would need to undergo the local permitting process, prior to the state rendering a decision on a permit.

Previous & Current Regulations

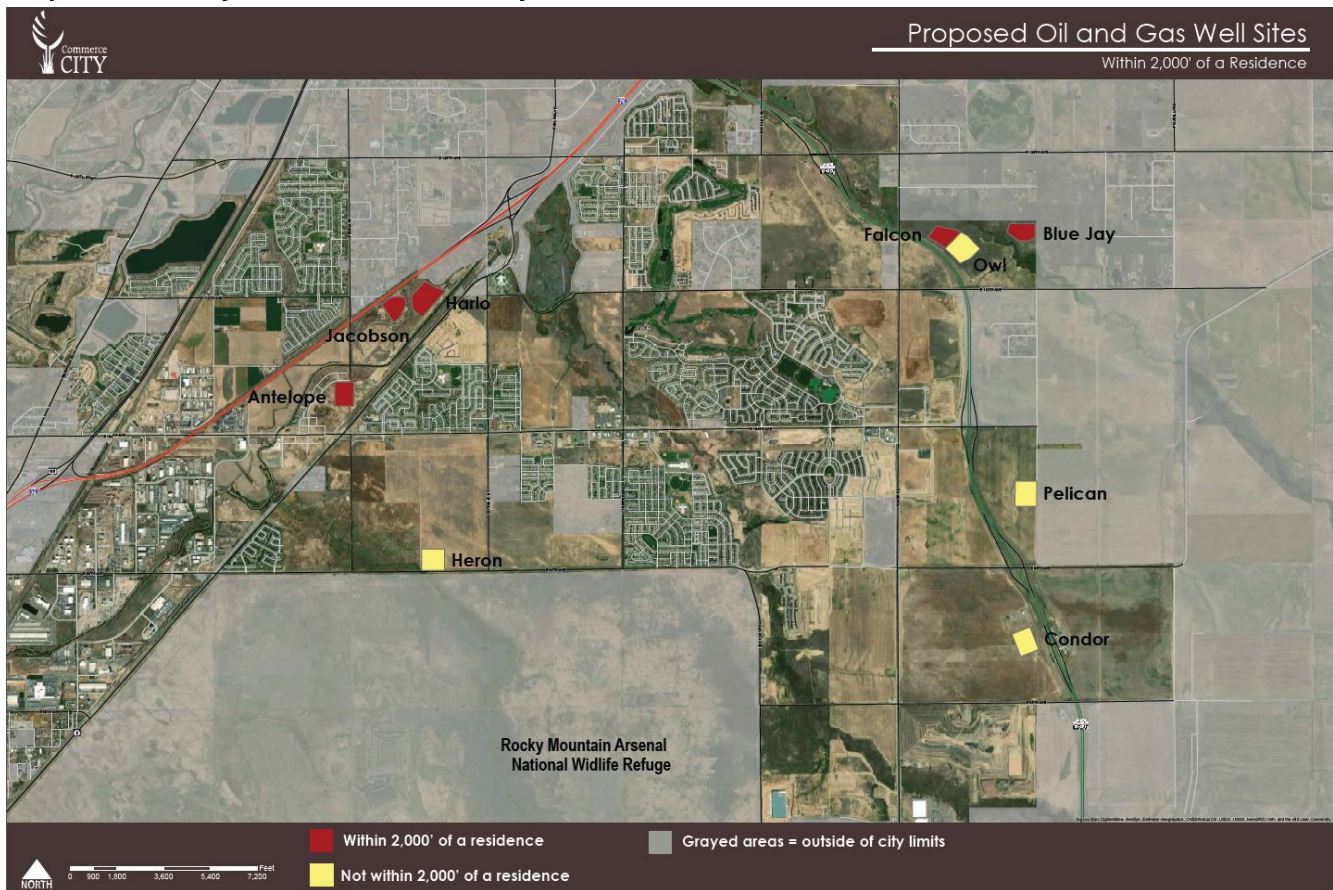
Prior to 2009, Commerce City had no city-wide oil and gas regulations of any kind. Occasionally, some language would be found within a PUD zoning district, but little regulation was included. Then, in the 2009 zoning ordinance rewrite, the new Land Development Code provided for some basic regulations entitled “21-5266 Subsurface Extraction.” Regulations generally mimicked COGCC regulations at the time, and limited new Oil and Gas operations to I-1, I-2, and I-3, and AG zone districts, and only with approval of a Use-by-Permit granted by the Board of Adjustment.

In 2012, Commerce City adopted its current set of Oil and Gas regulations, which were generally similar to the standards in the COGCC rules, but addressed traditional home rule issues such as traffic,

flood plain prohibition, landscape standards, a prohibition on injection wells, nuisance controls, financial assurances, and visual mitigation. Due to state level pre-emption, the regulations were designed primarily to provide some base level protections through the Land Development Code, but provide the majority of significant protections through a Model Extraction Agreement. The overall approach of the EA was to act as a supplement to the LDC and provide for standards that were much stricter, than those found within the LDC. Because the EA would be a negotiated agreement that would eventually be signed off by an operator, the approach was that such terms within that agreement would be far less exposed to a legal challenge. The Model Extraction Agreement included a number of provisions and regulations as a starting point for negotiations, but were not adopted as official regulations.

Since the adoption of the 2012 LDC Updates, 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. Because of these changes, and the passing of Senate Bill 181, the current code is significantly out of date.

Proposed Activity within Commerce City



In early 2018, the city started to receive significant interest in Oil and Gas development within its municipal boundaries. Extraction Oil and Gas, LLC approached the city at that time, with plans to explore resource extraction in a significant portion of the City's Northern Range. At the time, city staff received direction to enter negotiations with the Operator, and negotiate a set of Best Management Practices to supplement the city's Model Extraction Agreement template. Throughout the process of negotiation, exploring common wide industry practices that had come into place since 2012, and reviewing other city regulations, it was found that the majority of regulations in the Model Extraction Agreement and code were significantly out of date. Because of this, the negotiation process with Extraction Oil and Gas, LLC took more time than expected, due to the significant amount of time

necessary to incorporate current and up to date practices into the agreement. Due to the scale of Extraction's planned facilities, it was necessary to establish an overall framework document in addition to the Best Management Practices, called a Regional Operator Agreement. Minor code amendments occurred in late 2018 in order to contemplate such an agreement within the city's code.

The negotiation process with Extraction concluded in September 2019, after a 21-day public comment period, and additional revisions and negotiations as a result of public comment. The protections negotiated within the Best Management Practices document represent a significant improvement over current protections that existed in the base code. In addition to all of the proposed facilities by Extraction Oil and Gas, LLC, one additional operator (Petro Operating, LLC) has planned facilities within the city.

Overall Objectives: Code Update

Upon receiving direction to proceed with updating the Land Development Code, the following goals have been identified as part of this 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

Outreach

Feedback is critical for any new process. City staff has been working with both Planning Commission and City Council on this issue for several months and has worked diligently to make suggested changes. In addition to Planning Commission and City Council study sessions, the City hosted several open houses to gather input and feedback from the community. A summary of the feedback is contained in an attachment. Overall, the two tiered review process and initial assessment approaches were well received and the community felt that the proposed regulations were a good step to take to help effectively regulate oil and gas operations within the community.

Community meetings were held on October 2nd and October 3rd at Bison Ridge Recreation Center, and Eagle Pointe Recreation Centers, respectively. Some of the specific feedback that was incorporated into the draft regulations included exploring stringent setbacks from public facilities, prohibiting Oil and Gas development within residential and commercial zone districts, increased notification requirements to the public, and increasing insurance standards.

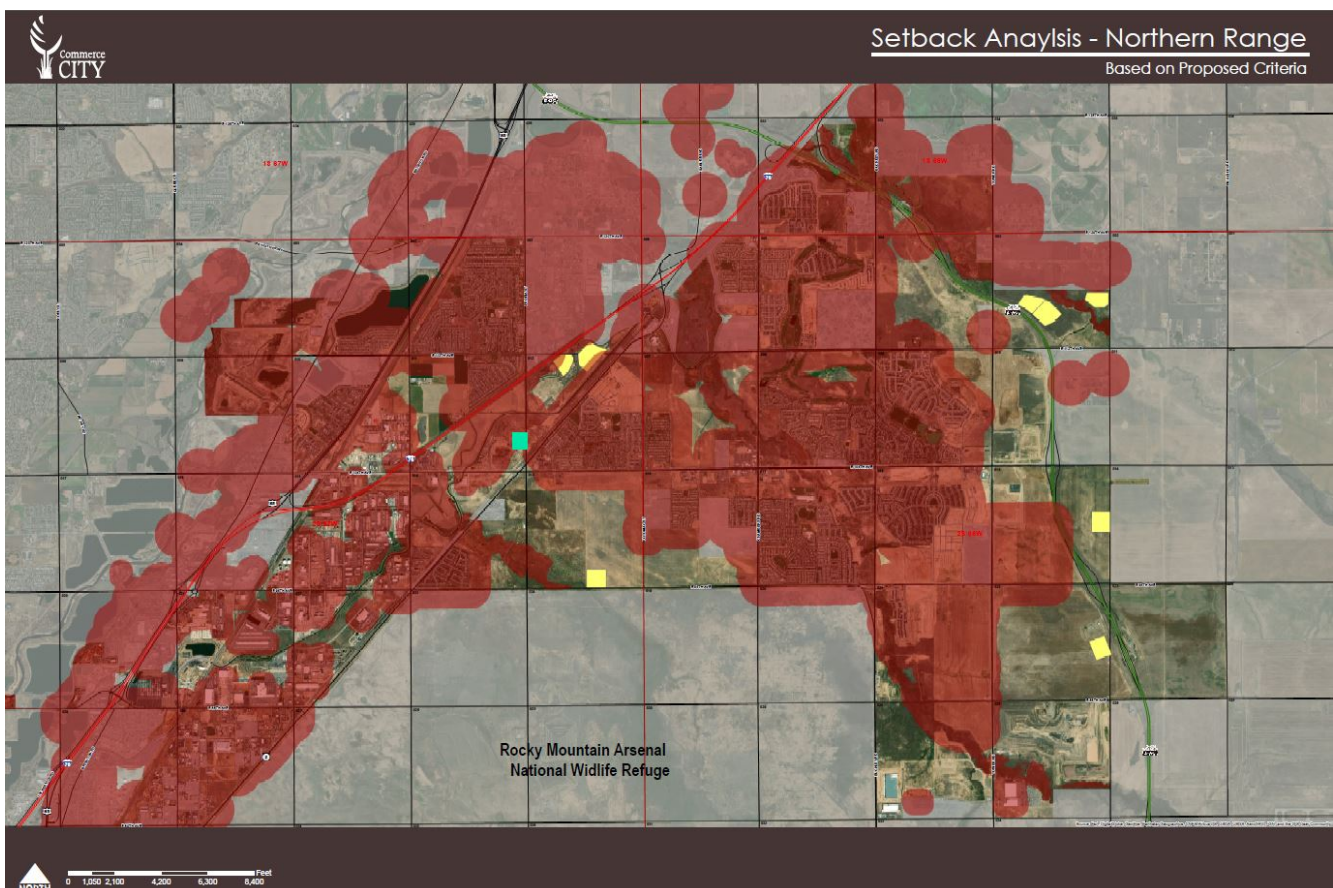
Stakeholder meetings were held with a number of regulatory agencies and industry groups, to get feedback on the overall concepts of the city's proposed updates. Feedback was given on overall concepts, and are reflected in the draft ordinances published today. Due to the expedited timeline of the code update, industry feedback on the specific ordinance has not been received, but will be evaluated, noted, and incorporated prior to the City Council adoption hearing on November 4th, 2019.

Potential Areas for New Drilling Activity in Commerce City

As a part of staff's analysis of the potential impacts of new oil and gas drilling activity in Commerce City, staff mapped potential new oil and gas well locations based on the COGCC standards, which include a minimum 500-foot setback from "building units", which are defined as commercial structures over 5,000 square feet, and industrial buildings over 15,000 feet. Additionally, based on Council feedback and general public feedback, a minimum 1,000' setback is proposed from the following features:

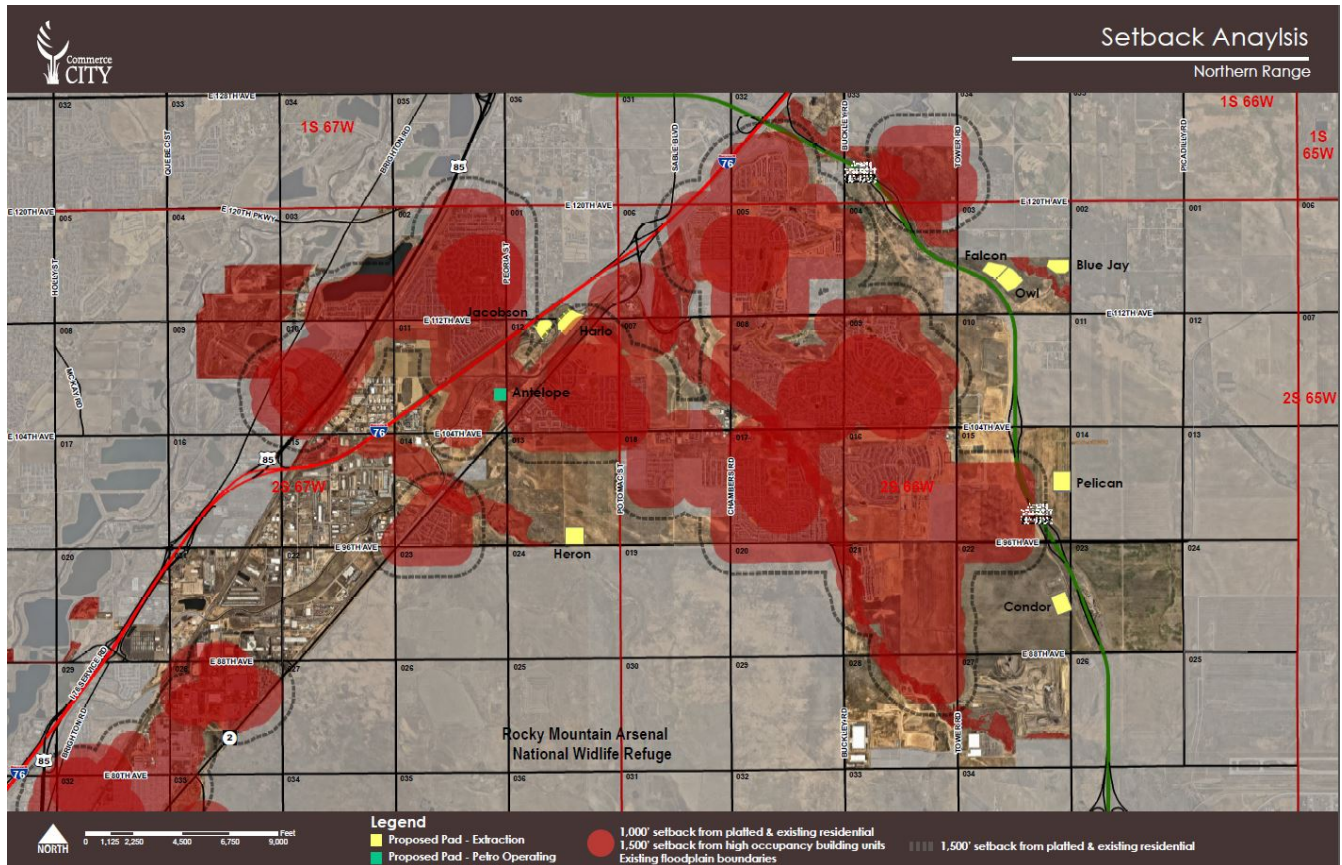
- Existing or platted residential
- Any building defined as a High Occupancy Building Unit by the COGCC
- Any Public Park or public recreation facility, not including trails or open space
- Outdoor venues, playgrounds, permanent sports field, or similar places of public assembly
- Senior living or assisted living facilities

Additionally, development would be prohibited within floodplains, and within 500' of a public water supply well or reservoir. The following two maps are an approximation of what these standards would yield for Commerce City and more specifically the Northern Range. Areas in red would not be available for development based on proposed city regulations, and existing COGCC setback rules. The yellow squares are proposed pad locations from Extraction, and the blue square is the proposed Petro Operating, LLC location. A variance process exists with the state to waive the building setback rule, while no variance process is proposed in the changes to the LDC. The first map shows the areas that would be prohibited from development under current state regulations, plus the proposed city setbacks:



The second map (see below), for context shows the areas that are prohibited from development only based on the proposed city setbacks. This distinction is noted, since a waiver process exists at the state level from defined “building units.”

While the City has an overall size of approximately 35 square miles, the area available for new well sites is 21.5% of the available city land area. Based on the analysis, it is evident that due to full buildout in the core city, there is virtually no location to place a facility within city limits, regardless of any setback distance, while the most potential for new well sites exists further east along the E-470 corridor. It is important to note that these maps reflect current conditions only. As increased development occurs throughout the city, the potential drilling areas will continue to shrink in size, due to the setback requirements.



Proposed Regulatory Framework

When Council directed staff to modify the city's current regulations, it was clear that Council intended to strengthen the protections for the Commerce City community and its residents. With the significant work that went into establishing the Regional Operator Agreement with Extraction and the level of protections that were gained, council provided feedback to staff that new regulations should generally be equivalent to these protections. Adams County recently adopted new regulations, being the first local government since SB-181 to do so, and council provided additional direction that the city's regulations should generally achieve a rough equivalency to these, so that the city does not become a magnet for Oil and Gas development due to having relaxed regulations compared to other adjacent municipalities. At the same time, Council also requested that this proposed solution have a limited potential for legal action from the State or the Industry.

- *Mandatory Initial Assessment Process* – Based on future COGCC rulemakings, and feedback from various stakeholder groups, city council, and the public, a mandatory pre-application process is proposed to evaluate potential locations that have the least impact on public health, welfare, safety, and the environment. Operators would need to hold a minimum of one initial consultation meeting with the city to discuss their planned operations. The operator would then need to submit a minimum of three potential locations within a drilling and spacing unit (DSU) for the city to review. The city would then review the proposed location against the stated review criteria, and provide a written assessment (eligibility letter) of which, if any, sites are eligible to submit for a permit. Only the most protective site of health, welfare, and public safety submitted in the analysis will be deemed eligible to submit. The operator would be exempt from the alternative site location analysis requirement if their proposed facility is at least 2,000 feet from the setback criteria defined in the code, as well as 500' from public water supply wells, perennial and intermittent streams, public water supply wells, reservoirs, and land unsuitable for development.
- *LDC Standards* – Staff has produced a series of amendments to the LDC that would act as a baseline set of standards that would apply to all new or “recompleted” wells in Commerce City. The LDC standards generally exceed many COGCC rules, and generally achieve rough equivalency to regulations recently adopted by Adams County. The provisions in the LDC generally include non-technical regulations and general standards, such as setbacks, insurance requirements, and platting requirements, among other regulations.
- *Best Management Practices (BMP’s)* - In addition to items regulated within the code, more specific, technical regulations are included within a separate Best Management Practices Document. The BMP Document would not be included within the Land Development Code, but would be adopted by Council as a standalone document, similar to the city’s construction standards or drainage standards. As technology is rapidly advancing in the Oil and Gas industry, a standalone BMP document is proposed, to allow for more flexible and rapid update of the document in response to changing technologies.
- *Municipal Code Revisions* – Revisions are proposed to section 3-2304 of the City’s Revised Municipal code, in order to impose additional fines for violations of Article III and Article V of the LDC, as it applies to Oil and Gas regulations.

Additionally, the city is also proposing to remove the requirement for an Extraction Agreement within the code. Since the passing of Senate Bill 181, many of the protections that would have otherwise been achieved through negotiation previously, can now be mandated as a code requirement, without the previous risk of litigation. Overall, the framework provided represent a significant increase in the protections provided the Commerce City community and its residents compared to the previous code.

LDC Amendments

The proposed LDC amendments are a complete overhaul of the existing LDC standards. The current draft version of the LDC oil and gas section is attached for Planning’s Commission’s review. The follow is a summary of the highlights of the LDC amendments:

Article III

- *Review Process* – Establishes a two track process for Oil and Gas Permit review. Permits would be reviewed by Planning Commission, and approved by city council, unless a site is exempt from the Alternative Location Analysis requirement. In such a case, an Oil and Gas permit could be approved administratively.
- *Initial Assessment Process* – Establishes the requirement for one initial consultation meeting, specifies when (and if) an alternative site location analysis is required, the approval criteria for reviewing the analysis, and the process for issuing an eligibility letter for permit submittal.
- *Notification Requirements* – Remain unchanged (2500-foot notification radius of a potential new well site). Further, the LDC requires that notice of the permit application be posted on the property and in a newspaper consistent with the requirements in the LDC.
- *Approval Criteria* – Significant re-work of the approval criteria for which an Oil and Gas Permit is assessed under. Increasingly similar approval criteria to that of a Conditional Use Permit (CUP) and specific language on reducing impacts on health, safety, general welfare, and the environment.
- *Lapse & Forfeiture* – Three-year window to drill all wells approved within the permit. If all wells aren't drilled, operator must amend permit, or forfeit right to drill wells.
- *Best Management Practices* – Reference point linking Best Management Practices Document to the LDC.
- *Transferability* – Stating Oil and Gas permits do not “run with the land”, and any changes in tenancy, ownership, and management require the issuance of an Oil and Gas Permit.

Article V

- *Amendment to Land Use Table* – Previously, Oil and Gas facilities were allowed in all zone districts except public, with an Oil and Gas Permit. This has been reduced to I-1, I-1S, I-2, I-3, and AG (over 10 acres) zone districts only
- *Application Requirements* – Significant modifications to the permit submittal requirements, and plans that operators will need to prepare. Generally, requirements that were within the ROA with extraction were combined with submittal requirements previously required in the code.
- *Third Party Technical Review – Requirement for operators to cover costs associated with third party review of Oil and Gas land use applications*
- *Setbacks – specifying setbacks of 1,000' from the following:*
 - Existing or platted residential
 - Any building defined as a High Occupancy Building Unit by the COGCC
 - Any Public Park or public recreation facility, not including trails or open space
 - Outdoor venues, playgrounds, permanent sports field, or similar places of public assembly
 - Senior living or assisted living facilities
 - Additional setback requirement of 500' from a public water supply wells or reservoirs.

- *Floodplain* – Prohibition from development within a 100-year floodplain
- *Site Development Standards* – Additional visual mitigation, fencing, landscaping, lighting, and sign standards
- *Environmental Standards* – small changes to previous requirements for a wildlife mitigation plan, waste management plan, sanitary regulations, and storm water management requirements. Some standards additionally addressed in BMP's
- *Noise Standards* – establish a minimum decibel level of 55dB, or 4dB over baseline sound conditions
- *Traffic Mitigation Requirements* – The proposed LDC amendments outline a much more thorough review of the traffic impacts of potential wells, primarily through the requirement of a Transportation Impact Study. Through the approval of this study, the City will be able to address a number of issues related to traffic, such as truck routes, access, and road paving materials.
- *Prohibition* – Added prohibition of gas storage wells, in addition to already prohibited items, including disposal pits, commercial disposal facilities, centralized exploration and production waste facilities, subsurface disposal facilities, and injection wells.
- *Air quality monitoring program* – Operator required to provide an air quality monitoring program at its expense, requiring the following:
 - Baseline sampling conducted over a 90 day period
 - Continuous sampling during drilling and completions
 - Continuous monitoring for the lifetime of the well
 - Real-time reporting of air quality data to the city
 - Operator to reimburse city for air quality in the event of an emergency
- *Plugging and abandonment* – Operator must plug and abandon all wells under their ownership that target the same geologic formation as their planned facility
- *Inspections* – Operator required to reimburse the city for the full costs of all inspections. City will have authority to inspect facilities at all times without prior notice.
- *Financial Assurances* - This section requires the operator to submit adequate financial assurances to the City in the case of clean up, abandonment, or non-compliance, of an amount of \$500,000 per well site.

Article VI

- *Reverse Setback* – Establishing a reverse setback from existing well sites to newly platted residential lots. Setback increases from 300' to 500' depending on the number of wells on a well site
- *Platting Requirements* – Specifies requirements for final plats, denoting the location of flowlines, easements, surface use agreements, and location of plugged and abandoned wells.

Article XI

Article XI (Definitions) has been expanded to include a variety of new and specific definitions which apply to terms used when referring to oil and gas operations, update existing definitions and terms, as well as remove terms that are no longer specifically defined in the code. The complete list can be found in the attached LDC exhibit.

Best Management Practices Document (BMP's)

As mentioned earlier, the BMP's are the second layer of regulations found within Commerce City's framework. The BMP's would be adopted by City Council, but live outside the Land Development Code. The proposed BMP's are based on the protections negotiated with Extraction Oil and Gas, LLC, and represent increased protections over state requirements:

- *Air Quality Requirements* – 25 specific BMP's, including requirement for electric powered permanent equipment, prohibition on glycol and dessicant dehydrators, low odor drilling muds, and a leak detection and repair program, among other protections.
- *Water Quality* – Specific prohibition on certain chemicals during the hydraulic fracturing stage, requirement for closed loop pitless systems, containment berm standards, and requirement for a water quality monitoring plan.
- *Safety Standards* – Pipelines required where feasible, Braden head monitoring requirement, flowline regulations, plugged and decommissioned well testing, and flowback best management practices.
- *Noise Mitigation Requirements* – Additional measures regarding noise issues that will supplement the LDC standards.
- *Visual Mitigation Methods* – Use of low profile tanks, facility painting standards, berm requirements
- *Landscaping Requirements* – Specifications on irrigation, preservation of existing significant trees
- *Lighting Standards* – Standards specified to ensure no off-site spillage, and reduce impacts
- *Community Outreach* – Maintain a list of "affected residents within ¼ mile, bi-annual update requirement to the city, requirement for a dedicated operator phone line, risk management assessment, incident and accident reporting, safety sign standards, emergency response plan,
- *Insurance Requirements* – stated insurance policy minimums, and specified insurance types operator is required to hold.
- *Reclamation* – requirement for an interim and final reclamation plan
- *Transportation* – traffic control plan requirement, private access road standards, mud tracking requirements

Revised Municipal Code

Revisions to the municipal code were implemented, in order to provide additional fine amounts for Oil and Gas operators compared to the normal fine schedule.

- Minimum \$500 fine for a first time violation
- Second time: \$1,000
- Third time: \$2,000
- Four or more: \$2,650

In addition to the fines above, operators would need to pay any applicable COGCC fines.

Next Steps

The schedule for final adoption is found below:

- October 30 – Planning Commission (Public Hearing)
- November 4 – City Council 1st Reading (Public Hearing)
- November 18 – City Council 2nd Reading (earliest possible date regulations take effect)

Development Review Team Recommendation

Based on the information provided above, the Development Review Team recommends that the Planning Commission forward the requested amendments to the LDC to the City Council with a favorable recommendation.

Recommended Motion

To recommend approval (DRT recommendation):

I move that the Planning Commission recommend that City Council approve Ordinance #2235, an ordinance amending the Commerce City Land Development Code, for Subsurface Extraction and Oil and Gas Permits.

Alternate Motions

To recommend approval subject to condition(s):

I move that the Planning Commission recommend that City Council approve Ordinance #2235, an ordinance amending the Commerce City Land Development Code subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the Planning Commission recommend that City Council deny Ordinance #2235, an ordinance amending the Commerce City Land Development Code because it fails to meet the following criteria:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny Ordinance #2235.