



## Legislation Text

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**File #:** Ord 2235, **Version:** 1

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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

### **Summary and Background Information:**

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 of 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.

Study sessions were held with City Council on September 9, and October 14th, to discuss the overall framework and concepts for the regulation changes, and to receive policy direction. The stated objectives of the code update were presented as follows:

- 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

In response to the study sessions with Council, along with a Planning Commission Study Session held on October 1st and various other public and stakeholder meetings, draft amendments have been proposed to Articles III, V, VI, and XI of the City's Land Development Code, and Chapter 3 of the City's Revised Municipal Code. Additionally, as part of this ordinance, council will also be voting to establish a Best Management Practices document, which will supplement the Land Development

Code Regulations. On October 30, 2019, the city's Planning Commission voted 5-0 to recommend approval to City Council.

Process revisions to the LDC include establishing a two tiered approval process, create an initial assessment process and alternative location analysis, establish new approval criteria, modify the lapse & forfeiture provision, application requirements, and address transferability. Changes to land use standards include modifying allowed zone districts, more stringent setbacks, site development standards, environmental standards, noise standards, traffic mitigation requirements, establishing an air quality monitoring program, defining inspections authority, financial assurances, and reverse setbacks from existing wells to new homes. Additionally, the definitions section (article XI) includes revised, removed, and new added terms. The complete final language for the proposed amendments is within the council packet.

Understanding that technologies associated with Oil and Gas development are constantly changing and evolving, staff will continue to monitor issues and development that arise in the future and track those issues in order to make necessary changes in the future. Therefore, City Council should expect to see additional amendments in the future in order to ensure that the LDC is meeting the needs of the community.

**Update:** *Staff met with industry stakeholders on Friday, November 1st, to discuss the proposed code updates published on Monday, October 28th. As a result of these meetings, minor amendments have been made to Articles III, V, and the proposed BMP Document. No comprehensive changes were made to the overall policy direction proposed. These amendments include 1) adding an opportunity to request a one-year extension on the lapse period regarding forfeited wells for up to one year; 2) adding an Assignability Clause which governs the transferability of Operatorship and required permit modifications, 3) adding an opportunity to abandon existing and unused flowlines in place, if removal would result in adverse effects to public health, safety, welfare, or the environment; 4) clarifying hazardous air pollutants, as defined by the EPA as it relates to ongoing air quality monitoring; 5) clarifying public disclosure requirements for frack fluid chemicals; 6) requiring disclosure of all chemicals utilized on an Oil and Gas site; 7) revising the required setback from residential properties to be from existing residential or platted residential properties; 8) removing "intermittent streams" from setback requirements; and 9) clarifying that Oil and Gas Operations are permitted in PUDs that include Oil & Gas Operations (ie Subsurface Extraction) as an allowed use.*

**Staff Responsible (Department Head):** Roger Tinklenberg, Interim Community Development Director

**Staff Member Presenting:** Domenic Martinelli, City Planner, Local Government Designee (LGD)

**Financial Impact:** N/A

**Funding Source:** N/A

**Staff Recommendation:** Approval

**Suggested Motion:** I move to introduce Ordinance 2235 and approve on first reading by council as seated.