



Legislation Text

File #: Ord 2183, **Version:** 1

AN ORDINANCE AMENDING SECTIONS 21-3200, 21-3425, 21-3216 AND 21-5266 OF THE LAND DEVELOPMENT CODE OF THE CITY OF COMMERCE CITY RELATING TO THE OIL AND GAS PERMITS AND SUBSURFACE EXTRACTION REQUIREMENTS AND RELATED PROCEDURAL MATTERS

Summary and Background Information:

Local governments throughout Colorado are seeking to address the potential adverse impacts of proliferating oil and gas exploration and extraction uses in urban and suburban environments on their citizens' health, safety, and welfare, their communities, and their public infrastructure.

Authority & Existing Regulation: Commerce City, as a home rule municipality, has broad authority to exercise zoning and police powers to promote and protect the health, safety, and welfare of the community and its citizens, including with respect to oil and gas exploration and extraction activities and land uses. Through Ordinance 1891, Commerce City enacted regulations relating to Oil and Gas Permits and Subsurface Extraction in 2012, which regulations were codified primarily at Section 21-3216 and 21-5266 of the Land Development Code. All subsurface extraction activities in the city require an Oil and Gas Permit. Commerce City also has established generally applicable regulations relating to zoning and land use, building safety, nuisances, streets and public rights-of-way, storm drainage, and motor vehicles and traffic.

Oil and gas development, production, and utilization is also regulated by the State of Colorado by the Department of Natural Resources, Oil and Gas Conservation Commission ("COGCC") under the authority of the Oil and Gas Conservation Act, C.R.S. §§ 34-60-101, et seq. ("Act"). The COGCC has implemented regulations, 2 C.C.R. 404-1, amended effective May 1, 2018, and 2 C.C.R. 404-3, amended effective August 21, 2009.

Recent Developments: Since March 1, 2018, Commerce City has been notified of approximately numerous discrete applications to the COGCC relating to proposed oil and gas development within Commerce City, including spacing applications, Form 2 (Permit to Drill) applications, and Form 2A (Location Assessment Permit) applications. Before that date, Commerce City had received no similar applications indicating impending oil and gas exploration or extraction development within the city. To date, no applications for any Oil and Gas Permit or Subsurface Extraction have been received by the city.

Since Commerce City enacted its regulations in 2012:

- 1) the city's population has increased by 13%;
- 2) several Colorado court decisions have called into question the regulations of other home rule cities seeking to address the direct local impacts of oil and gas development on the communities in which the development occurs, including the decision in *City of Longmont v. Colorado Oil and Gas Association*, 369 P.3d 573 (Colo. 2016) and recent decisions in *Colorado Oil and Gas Association and American Petroleum Institute v. City of Thornton*, 2017-CV-31640, District Court, Adams County,

State of Colorado;

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

4) Commerce City remains adjacent to the Rocky Mountain Arsenal National Wildlife Refuge, which contains sizeable deposits of hazardous materials.

Effect: Ordinance 2183 makes minor revisions to Commerce City's current regulations relating to oil and gas exploration and extraction operations with respect to recent and anticipated court decisions, current best management practices, updated COGCC Rules, and Commerce City's growth. These revisions generally restate, clarify, or relocate existing provisions between Sections 21-3216 and 21-5266. Other provisions are deleted to avoid potential conflict with State law.

The changes are shown in the attached "redlined" exhibits and references for the changes are included in the attached spreadsheet ("Summary of Minor Oil and Gas LDC Amendments (Proposed 10/15/18)").

More substantive revisions include: 1) an express requirement to consult with federal agencies for operations adjacent to or within federal wildlife or natural areas; 2) authorization of a direct appeal of administrative approvals of Oil and Gas Permits to district court under Rule 106 of the Colorado Rules of Civil Procedure; and 3) authorization of staff to negotiate and enter a "Regional Operator Agreement" to establish high-level best management practices for all activities of an operator within Commerce City (in addition to site specific Extraction Agreement already required by the regulations).

Action Options:

- 1) Consider the ordinance first reading.
- 2) Amend the ordinance.
- 3) Postpone the ordinance to a future Council meeting.
- 4) Refer the ordinance to a Council study session for further discussion.

Staff Responsible (Department Head): Robert Sheesley, City Attorney

Staff Member Presenting: Robert Sheesley, City Attorney

Financial Impact: N/A

Funding Source: N/A

Staff Recommendation: Approve

Suggested Motion: I move to approve Ordinance 2183