

JOINT MEETING
LOVELAND CITY COUNCIL AND
PLANNING COMMISSION
STUDY SESSION
TUESDAY, OCTOBER 23, 2012
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

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6:30 P.M. STUDY SESSION - City Council Chambers

1. DEVELOPMENT SERVICES (60 minutes)

Regulation of Oil and Gas Development with City of Loveland

This is an information only item. City staff will make a brief presentation to open the public forum. The direction provided to date by City Council in the "Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland" will be reviewed as well as informational resources, recommended areas for regulation and the permit requirements and process.

ADJOURN



CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
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(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 1
MEETING DATE: 10/23/2012
TO: City Council and Planning Commission
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:

A joint City Council/Planning Commission public forum to receive comments from citizens concerning the regulation of oil and gas development within the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

Consider comments from citizens and discuss issues concerning regulations on oil and gas development.

DESCRIPTION:

City staff will make a brief presentation to open up the public forum. The presentation will provide a summary of the following:

- The direction provided to date by City Council in the Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland;
- The informational resources reviewed by City staff in preparation for developing draft regulations for consideration by City Council and the Planning Commission, including approaches taken by other municipalities;
- Recommended areas for regulation, as included in the City Council Statement of Direction, plus other areas based on research and information obtained since August 2012;
- Areas of regulation considered by City staff, but not being recommended due to likely preemption by State law or potential for litigation;
- Permit requirements and process;
- Need for setback and other regulations on new urban development to address potential impacts from existing abandoned wells that could be re-entered/recompleted under current Colorado Oil and Gas Conservation Commission (COGCC) rules;
- Schedule for future Planning Commission public hearing and City Council study session and public hearing.
- Review of map showing areas within the City's Growth Management Area where new wellheads could be located in accordance COGCC wellhead setback rules and map showing existing wells within and in the vicinity of the City of Loveland.

SUMMARY:

- On May 15, 2012, City Council adopted an emergency ordinance enacting a nine-month moratorium on the acceptance and processing of land use applications and other approvals related to oil and gas extraction and related operations within the City; pursuant to Council's request at its May 1, 2012 meeting;
- On June 7, 2012, City Council attended a presentation, including a field trip, by officials from the City of Greeley to learn more about oil and gas development in that city;
- On June 8, 2012, the Loveland City Attorney provided a memorandum to City Council explaining the legal parameters of local regulations on oil and gas development;
- On June 12, 2012, a panel of six individuals representing different stakeholder groups provided City Council with information on oil and gas development and its potential impacts on public health and safety;
- In early July 2012, City staff asked City Council members to complete a questionnaire to identify Council priorities regarding regulations on oil and gas development;
- Based on the results of that questionnaire, on August 21, 2012 City staff presented a Statement of Direction to City Council describing a general approach for the development of regulations on oil and gas development. Included with that statement was a memorandum from the Loveland City Attorney analyzing the City of Greeley's regulations on oil and gas development compared to the more recent regulations adopted by the City of Longmont. At the August 21 meeting, City Council adopted the Statement of Direction, as presented by City staff, by a unanimous vote.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

A. City Council / Planning Commission staff memorandum



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TO: City Council / Planning Commission
FROM: Greg George, Development Services Director
DATE: October 23, 2012
RE: **Public forum on regulations for oil and gas development**

I. Attachments:

- A. Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland
- B. Potential Areas for Future Oil and Gas Wellhead Locations
- C. Existing Well Heads

II. Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland: On August 21, 2012, City Council unanimously adopted a document titled “Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland” (see **Attachment A**). The following is a summary of the direction contained in the Statement of Direction:

A. Generally:

- 1. Adopt an ordinance to impose minimum regulations and standards for oil and gas activities and enhanced regulations and standards through voluntary “operator agreements”;
- 2. Care will be taken in the drafting of ordinances to address critical health and safety concerns and minimizing impacts of oil and gas development on neighborhoods, while at the same time providing for access to mineral rights and harmonizing with State law and regulations;
- 3. Draw upon the successful experiences of other jurisdictions and avoid conflicts with State law and regulations that would draw legal challenge;

B. Method: A special review permit would be required to conduct oil and gas activities in all zoning districts in the City. The process for a special review permit requires notice to property owners within a prescribed notice area and a neighborhood meeting. The City may place conditions on the permit provided any such conditions are not in operational conflict with State law and regulations.

C. Development Standards: City Council has directed City staff to research development of local regulations in the following areas:

- 1. Closed loop/pitless wastewater disposal systems
- 2. Hazardous materials disclosure
- 3. Road damage/repair
- 4. Odor
- 5. Visual Screening
- 6. Setbacks (not in excess of those allowable by State law and regulation)

- 7. Construction traffic and routing
- 8. Safety and spill prevention
- 9. Emergency preparedness plan
- 10. Fire inspections
- D. **Fees:** Fees, including capital expansion fees and utility system impact fees, where appropriate, will be charged on oil and gas development to recover the cost to the City of providing services to the development site, to the extent that such fees are consistent with State law.
- E. **Operator Agreements:** The City will incorporate into its regulations a voluntary process to impose enhanced regulations and standards on individual oil and gas companies through the use of voluntary “operator agreements.” The intent will be to provide a mechanism for oil and gas companies to agree to more stringent regulations than might otherwise be preempted by State law. These more stringent requirements would be in addition to the base-line regulations and standards adopted in the code. Information provided by the Colorado Oil and Gas Conservation Commission (COGCC) confirms that any such enhanced regulations and standards would be added as conditions to the COGCC permit.

III. Informational Resources Reviewed by City Staff: City staff has been reviewing regulations on oil and gas development from the following municipalities and counties: (i) Aurora; (ii) Broomfield; (iii) Commerce City; (iv) Erie; (v) Firestone; (vi) Greeley; (vii) La Plata County; (viii) Longmont; (ix) Thornton; (x) Northglenn; (xi) Colorado Springs; (xii) Durango; and (xiii) Boulder County.

IV. Recommended Areas for Regulation:

- 1. Traffic Impacts (i.e., truck routing and construction of needed street improvements)
- 2. Use of City Streets and Access Roads
- 3. Emergency Response Plans
- 4. Building Code (i.e., building and grading permits)
- 5. Fire Code
- 6. Financial assurances related to City regulations
- 7. Impact fees
- 8. Other fees (i.e., land use application fees and building and fire code inspection fees)
- 9. Cultural resources impact (sensitive historical and archeological sites)
- 10. Floodway regulations
- 11. Water use requirements
- 12. Electricity use requirements
- 13. Special review process and permit
- 14. Fencing requirements
- 15. Setbacks for new development near existing and abandoned oil and gas wells
- 16. Erosion and stormwater control

These are areas that the City can regulate, to a greater or lesser degree, without creating an operational conflict with State law.

V. Recommended Areas for Voluntary Enhanced Regulations:

- 1. Setbacks
- 2. Wildlife mitigation
- 3. Reclamation
- 4. Open storage pits / Close looped systems
- 5. Noise abatement

6. Visual mitigation (i. e., color and height of facilities, landscaping and lighting)
7. Spill control
8. Waste disposal
9. Air quality
10. Water quality
11. Floodplain regulations
12. Chemical and hazardous material disclosure requirements
13. Requiring directional drilling

These areas are directly and, in some cases, extensively addressed in the COGCC's regulations. Consequently, these are areas where any City regulation is likely to be in operational conflict with State law. Therefore, City regulations in these areas are being recommended for inclusion in the City's voluntary process for operator agreements.

VI. Areas Not Recommended for Regulation:

1. Well siting
2. Hydraulic fracturing
3. Duplication of financial assurances required by the State
4. Injection wells
5. Exploration and production waste management facilities

These areas are not being recommended for City regulation for two reasons. First, any City regulation in these areas would almost certainly be in operational conflict with State law. Second, in all of these areas, except financial assurances, the City has neither the expertise nor resources to regulate these areas, which areas are already substantially regulated by the State.

VII. Permit Requirements and Process: The City's zoning code currently allows oil and gas development only on property zoned Developing Resource (DR) or Industrial (I). Zoning regulations prohibiting oil and gas development in certain City zoning districts would likely be preempted by State law. Therefore, to avoid preemption, the zoning code must be amended to allow, as a special review use, oil and gas development in all zoning districts in the City.

Special review uses require a neighborhood meeting and approval of a special review permit. Under current code provisions, a special review permit can be approved by the City only if it is determined that the proposed use is compatible with the surrounding uses of property and whether special conditions and restrictions on the proposed use can adequately mitigate the off-site impacts of the proposed use on surrounding properties, the public and the environment. The code now requires that a special review permit be denied unless it can be determined that the proposed use is compatible with the surrounding uses of property.

Current code provisions allowing the City to deny a special review permit based on a determination that the proposed use is incompatible with the surrounding uses of property must be amended for oil and gas development to avoid creating an operational conflict with State law. The amendment would establish that the permit could be denied only if it is determined that the proposed use does not comply with City regulations that themselves have not been preempted by State law. It is likely the courts would uphold denial of a special review permit for oil and gas development that did not comply with City regulations, provided such regulations are not preempted by State law. However, if

an application for oil and gas development complies with City regulations that are not preempted, then the City would be legally obligated to approve a special review permit.

VIII. Regulations on New Development in Vicinity of Abandoned Wells: The COGCC has established specific rules concerning the plugging of abandoned oil and gas wells and for shutting-in and temporary abandonment of wells. There are several such abandoned wells within Loveland's current city limits. Some of these abandoned wells are even under existing buildings and parking lots. Others are located in areas of the City that are likely to be developed in the future. The COGCC issues permits to allow oil and gas companies to reenter/recomplete abandoned wells, including use of directional drilling and horizontal fracturing. COGCC regulations contain wellhead setback requirements from "building units", as defined in their regulations, for new wellheads. However, the COGCC setback requirements do not apply to applications proposing to reenter/recomplete an abandoned well. Currently, the City code contains no specific provisions requiring setbacks from existing and abandoned wells for new development. To protect public health, safety and welfare, City staff plans to propose code amendments to establish setbacks from existing and abandoned wells for new development.

IX. Schedule for Adoption: The following is the tentative schedule for adoption of an ordinance establishing regulations on oil and gas development:

- November 19, 2012 - Planning Commission public hearing (special meeting);
- November 27, 2012 – City Council study session
- December 4, 2012 – City Council regular meeting – ordinance first reading; and
- December 18, 2012 – City Council regular meeting – ordinance second reading

X. COGCC Wellhead Setbacks and Existing Wellhead Locations: City staff has developed a map ([Attachment B](#)) that illustrates those areas within the City's Growth Management Area where new wellheads could be located in accordance with COGCC regulations on wellhead setbacks. [Attachment C](#) is a map developed by the COGCC showing the location of existing wellheads within and in the vicinity of the City of Loveland.

**Statement of Direction for the
Development of Regulations on Oil and Gas Development in the City of Loveland**

Generally

City staff will promptly develop an approach to oil and gas regulation which includes regulation by ordinance, and also incorporates operating agreements to be negotiated with oil and gas companies. Care will be taken in the drafting of the ordinance to ensure critical health and safety concerns and minimize impacts of oil and gas on neighbors, while at the same time providing for access to mineral rights and harmonizing with state law and regulation. The draft ordinance will draw upon the successful experience of other jurisdictions, and avoid conflicts with state law or regulation that would draw legal challenge from the State of Colorado.

Regulations by Ordinance

Method: Oil and gas development shall be listed in all City zoning districts as a special review use. This process requires notification of affected property owners and a neighborhood meeting. The current provisions for obtaining a special review permit, which provide for ultimate denial of the permit, will be amended to avoid legal preemption based on an operational conflict.

Standards: The City staff will explore and develop standards in the draft ordinance to address the following areas:

1. Closed loop/pitless wastewater disposal systems
2. Hazardous materials disclosure
3. Road damage/repair
4. Odor
5. Visual Screening
6. Setbacks (not in excess of those allowable by State law and regulation)
7. Construction traffic and routing
8. Safety and spill prevention
9. Emergency preparedness plan
10. Fire inspections

Fees: The draft ordinance shall include the development of a fee structure for permitting to recover City costs of service, to the extent not in conflict with State law and regulation. These will include System Impact Fees as well.

Use of Operator Agreements

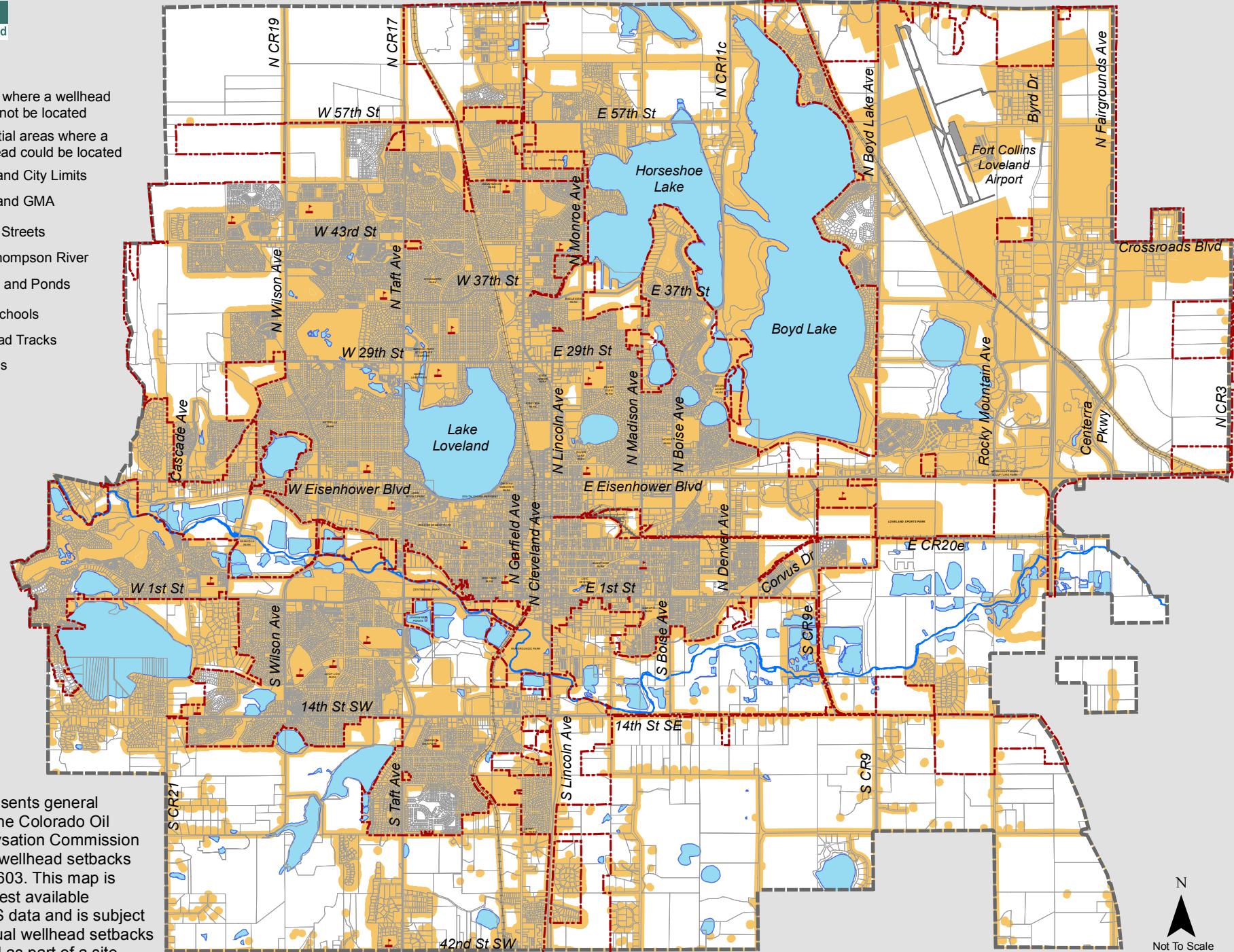
The City will incorporate into its practice the use of individually negotiated agreements with individual oil and gas companies, as recommended by the Colorado Oil and Gas Association. These agreements can result in the application of more stringent standards than might otherwise be preempted by state law, in addition to the minimum standards mentioned above. The Colorado Oil and Gas Commission will typically include the requirements of any such agreement as conditions on permits it issues.



Potential Areas for Future Oil & Gas Wellhead Locations

Legend

- Areas where a wellhead could not be located
- Potential areas where a wellhead could be located
- Loveland City Limits
- Loveland GMA
- Major Streets
- Big Thompson River
- Lakes and Ponds
- R2J Schools
- Railroad Tracks
- Parcels





Oil & Gas Drilling Activities

Legend

- Existing & Historic Wellhead Locations
- ▲ Current Well Permit Location
- Directional Well Line
- Bottom Hole Location
- COGCC Fields
- Loveland City Limits
- Loveland GMA

