



## Development Services Department

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### Planning Commission Staff Report

February 25, 2013

**Agenda #1:** Regular Agenda – PUBLIC HEARING

**Title:** Zoning regulations for oil and gas development

**Applicant:** City of Loveland

**Request:** Recommend zoning regulations for oil and gas development to the Loveland City Council

**Location:** The proposed regulations would apply to all oil and gas development within the incorporated limits of the City of Loveland.

**City staff:**

Greg George, Development Services Director  
John Duval, City Attorney

**Staff Recommendation:** Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

*Move to recommend that City Council adopt the accompanying ordinance to regulate oil and gas development within the City of Loveland, subject to any revisions recommended by the Commission.*

#### I. ATTACHMENTS

- A. Statement of Direction
- B. Building Setback Areas Map
- C. February 12, 2013 City Council staff memorandum
- D. Groundwater Baseline Sampling Analysis
- E. Oil and Gas Drilling Activities Map
- F. Draft ordinance with redlines

#### II. EXECUTIVE SUMMARY

This item is a public hearing to consider amending the Loveland Municipal Code by adding a new Chapter 18.77 to establish zoning regulations for oil and gas development in the City of Loveland. These new regulations have been drafted to be consistent with the Statement of Direction (see **Attachment A**) adopted by City Council on August 21, 2012, address concerns raised by Loveland citizens regarding impacts on public health, safety and welfare and the environment and recognize the City's legal authority to regulate oil and gas development.

- A. **City Council:** The ordinance considered by the Planning Commission at their public hearing on January 28, 2013 was presented to City Council at a study session on February 12, 2013. A copy of the City Council staff memorandum for the study session is included as **Attachment C**. City Council asked questions concerning the permit process and regulations proposed in the draft ordinance and there was general concurrence from Council to have City staff proceed. The staff memorandum for the study session include the recommendation from Planning Commission that the moratorium be extended for two months to allow the Colorado Oil and Gas Conservation Commission (the "Commission") to complete

their rulemaking on building setbacks, but City Council gave staff direction to proceed under the current schedule (see Section III of this report) for adoption of the ordinance.

**B. Revisions to draft ordinance:** Following the City Council study session, City staff made some revisions to the ordinance to reflect comments made at the study session and to correct technical errors and omissions (see *Attachment F*). The following is a description of the substantive revisions made to the draft ordinance after the City Council study session.

1. **Page 13, paragraph E:** Change an incorrect citation of Commission regulations and require the operator to provide a copy to the Director of the approval granted by the Commission of the plugging method.
2. **Page 21, paragraph TT:** Require the abandonment of pipelines to comply with Commission rules and to file the notice of abandonment with the local governmental designee.
3. **Page 22, paragraph 3:** Require oil and gas facilities to be setback 500 feet from the property line of any property subject to a conservation easement managed by a public or non-profit entity.
4. **Page 22, paragraph 5:** Require a 1,000 foot setback from outdoor assembly areas with a capacity of 50 persons or more.
5. **Page 25, paragraph 4:** Require operators to use boring technology when crossing wetlands.
6. **Page 25, paragraph F:** Require oil and gas facilities to comply with the City's noise limitations after development of the facility is complete and the facility is under production.
7. **Page 30, Section 18.78.020:** Require that land included in development setbacks from existing or abandoned oil and gas facilities be designated as open space and prohibit uses such as open space play fields and parks from being located in these areas.

### III. CURRENT SCHEDULE

Planning Commission 1st public hearing:	January 28, 2013
City Council study session:	February 12, 2013
Planning Commission 2nd public hearing:	February 25, 2013
City Council public hearing - Ordinance 1st reading:	March 5, 2013
City Council - Ordinance 2nd reading:	March 19, 2013
Ordinance legally effective:	April 2, 2013

### IV. ABBREVIATIONS

Planning Commission Review Process	PCRP
Administrative Review Process	ARP
Colorado Oil and Gas Conservation Commission	Commission
Greater Wattenberg Area	GWA
Designated Outdoor Activity Area	DOAA
Local Government Designee	LGD
Colorado Department of Public Health and Environment	CDPHE

## V. PURPOSE OF ORDINANCE

- A. Zoning conflicts with State law:** Currently, oil and gas development as a land use is only permitted in the Industrial and Developing Resource zoning districts as a special review use. Therefore, under the City's zoning code, oil and gas development would be prohibited in any of the other zoning districts in the City. Any absolute prohibition of oil and gas development by a local municipality would be in conflict with existing State law and would be preempted under Commission rules. To resolve this potential conflict with State law, the proposed amendments would allow oil and gas development in all zoning districts, subject to issuance of a permit by the City.
- B. Lack of development standards:** The Loveland Municipal Code contains no development standards specifically for oil and gas development. A municipality may enforce zoning regulations on oil and gas development that do not create an operational conflict with Commission regulations. In general, a regulation adopted by a municipality would be preempted by State law if it were to apply a standard more restrictive than a Commission standard. For example, a municipality could not enforce regulations on setbacks or air quality mitigation greater than those established in Commission regulations. However, a local municipality may adopt and enforce regulations in areas that the Commission does not regulate, provided those regulations do not create an operational conflict. Examples of regulations that would likely not be preempted are standards for fencing, landscape buffers, lighting, transportation and circulation, and road repair.

## VI. PROPOSED PERMIT PROCESS

The ordinance proposes two different procedures for obtaining a permit for oil and gas development.

- A. Planning Commission Review Process (PCRP):** Applications filed under this process would be required to comply with regulations referred to as Baseline Standards designed specifically to avoid preemption by State law and legal challenges by oil and gas companies. The PCRP would require a neighborhood meeting and approval by the Planning Commission at a fully noticed public hearing. The Planning Commission could grant, grant with conditions or deny the permit. The decision of the Planning Commission could be appealed to City Council by "any party of interest", defined as the applicant, the Development Services Department Director, two or more City Council members, any person receiving mailed notice of the public hearing or any person who provided written or verbal testimony at the Planning Commission public hearing.
- B. Administrative Review Process (ARP):** Applicants willing to comply with regulations designed to provide a higher level of mitigation for impacts on public health, safety and welfare and the environment, referred to as Enhanced Standards, would receive a permit under the ARP. The ARP would require a neighborhood meeting. The notice for the neighborhood meeting would inform recipients that they have a specified number of days after the meeting to submit written comments to the Director. Any other person may also file comments within a specified number of days for the Director's consideration. Any comments submitted to the Director must be considered by the Director in his or her decision on the permit. The Director would be allowed to negotiate with the applicant for additional standards to be added as conditions on the permit to further protect public health, safety and welfare or minimize impacts on surrounding land uses or the environment. The Director's decision must be based solely on compliance with the Enhanced Standards and any additional standards agreed to by the applicant. The applicant's refusal to agree to any additional standards may not be used by the Director as a basis to deny the permit. The Director's final decision may not be appealable to the Planning Commission or City

Council. The Director's decision may only be appealed by the applicant or "any party of interest" to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Compliance with the Enhanced Standards and, therefore, access to the ARP would be strictly voluntary. The primary objective for the Enhanced Standards process is to create an incentive for an applicant to agree to comply with higher standards than currently being required by the Commission. Absent agreement by the applicant, these higher standards would likely be preempted by State law. Enhanced Standards require : (i) additional setbacks from residential and non-residential buildings and sensitive natural features, such as natural areas, parks, rivers, streams and wetlands; (ii) that all oil and gas facilities inside city limits comply with the new mitigation measures required by the Commission for oil and gas facilities located within Designated Setback Locations; (iii) bufferyards around oil and gas facility; (iv) mitigation measures for air quality impacts; (v) compliance with locational requirements for pipelines; and (vi) compliance with the City's noise standards. The Building Setback Areas map (see *Attachment B*) shows the setback areas for oil and gas facilities under the Commission's rules in yellow and, in green, the additional setback areas proposed under the Enhanced Standards.

## VII. STAKEHOLDER ENGAGEMENT AND CITY COUNCIL ACTION

- A. **Emergency ordinance:** On May 15, 2012, City Council adopted an emergency ordinance imposing a nine month moratorium on oil and gas development in the City of Loveland. The primary purpose of the moratorium was to give City staff and City Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas development occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the public's health, safety and welfare and the environment.
- B. **Study Session:** At a study session on June 12, 2012, City Council received information from six panelists representing different stakeholder groups on issues related to oil and gas development.
- C. **Statement of Direction:** On August 21, 2012, City Council adopted a Statement of Direction for the development of regulations on oil and gas development. City staff was directed to develop an ordinance that would impose minimum regulations not likely to be preempted by State law and enhanced regulations and standards that would be voluntary.
- D. **Public Forum:** On October 23, 2012, a joint City Council/Planning Commission public forum was held to receive comments from citizens on oil and gas development.
- E. **Extension of moratorium:** On December 18, 2012, City Council adopted an ordinance extending the moratorium on oil and gas development until an ordinance is adopted by City Council to enact local oil and gas regulations becomes legally effective or April 15, 2013. The primary reason for extending the moratorium was to allow time for the Commission to complete their rule making which was expected to be completed in early January 2013.

## VIII. KEY ISSUES

- A. **Feasibility of enhanced regulations:** Successful implementation of enhanced regulations depends on the extent to which the regulations are economically practicable and technically feasible for the operator and the ability of the City to provide an incentive sufficient to achieve voluntary compliance. The challenge is to develop a set of enhanced standards that applicants are willing to comply with in order to have

access to the ARP. If the enhanced standards are too arduous, then applicants will decide to comply with the Baseline Line Standards and utilize the PCRP, even though the process would take additional time and is less certain.

- B. Cost for additional inspections:** It may be necessary for the City to inspect oil and gas sites to ensure compliance with standards adopted by the City, particularly with respect to Enhanced Standards. At the discretion of the Commission, standards agreed to by an applicant and a local government may be placed as conditions on the Commission permit. However, to ensure compliance with the Enhanced Standards, the City may have to inspect oil and gas sites. One option would be to contract with a qualified inspector, on an as-needed basis, to perform the necessary inspections.
- C. Creation of “no-build” areas within city limits:** City Council has directed City staff to recommend zoning restrictions to establish setbacks for new development from existing or abandoned oil and gas facilities. Any such setbacks could create significant “no-build” areas within the City and, in the future, within our southeastern Growth Management Area. A 500 foot setback would create an 18 acre “no-building” zone and a 1,000 foot setback a 72 acre “no-building” zone around an existing or abandoned oil and gas facility. If the oil and gas facility is within 500 feet from a Building Unit or 1,000 feet from a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area, the Commission’s new rules on building setbacks require a significant number of new mitigation measures (i.e. closed loop drilling system, higher standards for containment berms, consolidation of well sites and blowout prevention equipment). However, there are locations with the current city limits and, more so, within the Growth Management Area where Commission rules would not require these new mitigation measures.
- D. Setbacks for new development:** For those oil and gas facilities that are not required to adhere to the Commission’s new mitigation rules, City staff would recommend a 1,000 foot setback for new development and a 500 foot setback from those facilities that do include the new mitigation measures. To minimize the size of potential “no-build” areas within the city and better protect public health, safety and welfare and the environment, City staff is recommending, as an Enhanced Standard, that all oil and gas facilities within city limits adhere to the Commission’s new mitigation rules regardless of how close the facility is at time of permit issuance to an existing Building Unit or High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. This requirement would apply to permits issued to reenter abandoned oil and gas facilities, would minimize obstacles for new development and provide more land area available for development in the future.

## **IX. NEW COMMISSION RULES**

- A. Groundwater baseline sampling and monitoring:** The Commission adopted new rules for groundwater baseline sampling and monitoring on January 7, 2013. The new rules will become legally effective on May 1, 2013. The new rules that apply state-wide, except within the Greater Wattenberg Area (GWA), require operators to collect water samples from all available water sources, up to a maximum of four, within a one-half mile radius of a proposed oil and gas well. The first sample must be taken within twelve months prior to drilling and again between sixty and seventy-two months following completion of the well. The City of Loveland and surrounding area in Larimer County are located within the GWA. In this area, operators are required to sample one available water source within the quarter section in which the proposed well is to be located. The first samples must be taken within twelve months prior to drilling and the second between six and twelve months following completion of the well. The official press release from the Commission states that the rules in the GWA were adjusted due to the combination of energy development, agricultural and other industrial and residential uses unique to the area. The

required analysis for all baseline sampling is described in *Attachment D*. Due to these new groundwater sampling and monitoring requirements, City staff is no longer recommending additional requirements for groundwater sampling and monitoring as part of the proposed Enhanced Standards.

- B. Building setback rules:** The Commission adopted its new rules for building setbacks on February 11, 2013. Section X, below, explains the Commission's new setback rules. The adopted rules are virtually the same as those explained in the January 28, 2013 Planning Commission staff report.
- C. New mitigation rules:** *Table 2* in Section XII identifies the new mitigation measures (those in the blue cells) that the Commission requires for oil and gas facilities that are within 500 feet of a Building Unit or within 1,000 feet of a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. City staff proposes to require these new mitigation rules for all oil and gas facilities within city limits, regardless of how close the oil and gas facility is to existing buildings.

## **X. COMMISSION'S ADOPTED SETBACK RULES**

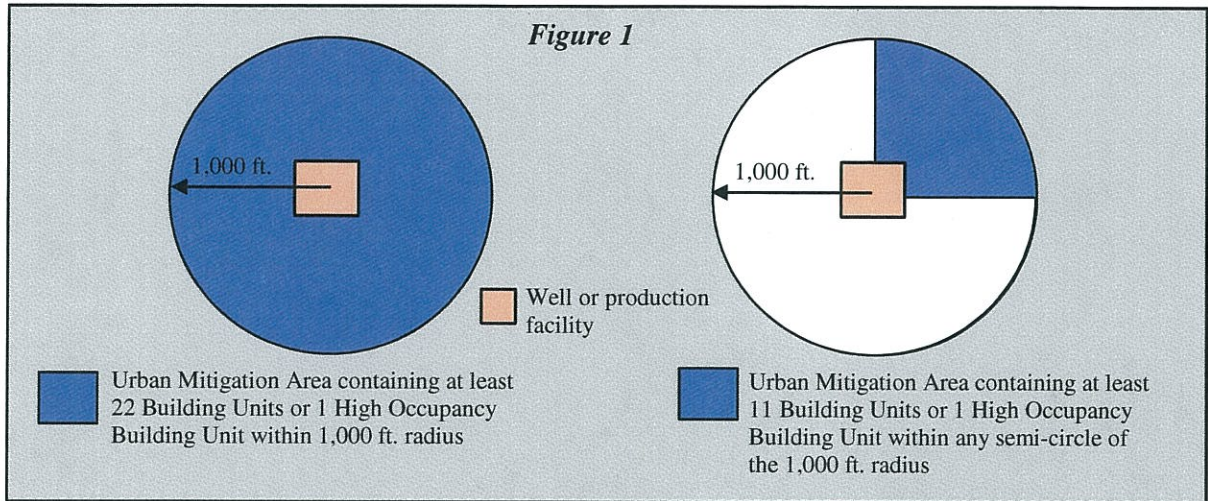
The adopted setback rules require new mitigation measures when oil and gas facilities are located within a Designated Setback Location or Urban Mitigation Area. The new rules expand notice and outreach to local communities; and establish greater setback distances between oil and gas facilities and residential and other occupied buildings. The new rules would establish a new statewide setback and two new setback areas defined as Designated Setback Locations and Urban Mitigation Areas. The size of each of the setback areas is shown in *Table 1*.

*Table 1*

Setback	Radius	Size of Circle	Area of Each Zone
Statewide	200'	3 acres	3 acres
Exception Zone	500'	18 acres	15 acres
Buffer Zone	1,000'	72 acres	54 acres

### **A. Definitions:**

- 1. Residential Building Unit:** A building designed for use as a place of residency by a person, a family or families.
- 2. Building Unit:** A Residential Building Unit and every 5,000 sq. ft. of commercial building floor area or every 15,000 sq. ft. of warehouse building square footage.
- 3. High Occupancy Building Unit:** As all are defined in State Statutes, any operating Public School, Nonpublic School, Nursing Facility, Hospital, Life Care Institution and Correctional Facility, provided the facility or institution serves 50 or more persons, and Child Care Centers.
- 4. Urban Mitigation Areas:** An area where at least twenty-two Building Units or one High Occupancy Building Unit (existing or under construction) are located within a radius of 1,000 feet from the center of the well or production facility or at least eleven Building Units or one High Occupancy Building Unit are within any semi-circle of the 1,000 foot radius (see *Figure 1*).



**B. Statewide location requirements:** A well must be a minimum of 200 feet from buildings, public roads, major above ground utility lines and railroads and a minimum of 150 feet from a surface property line. This setback was 150 feet under the previous setback rules.

**C. Designated Setback Locations:**

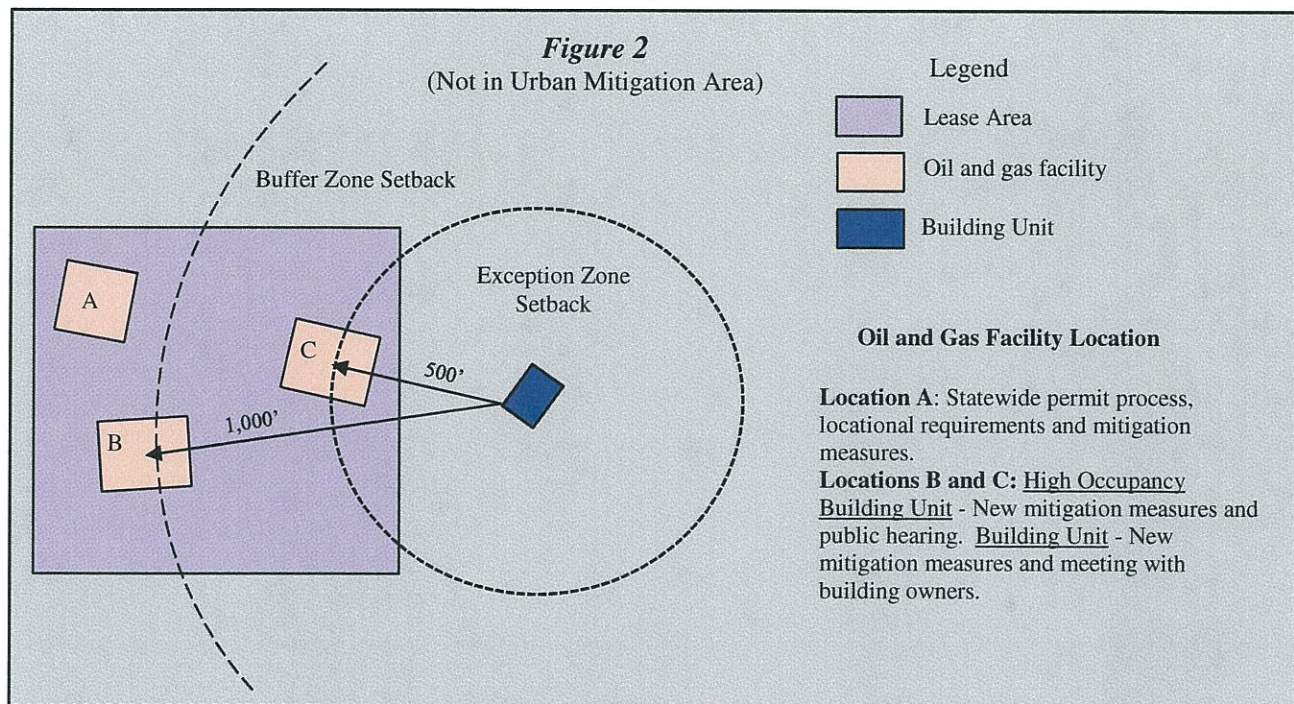
1. **Exception Zone Setback:** An area described as a circle with a radius of 500 feet measured from the center of the well or production facility.
2. **Buffer Zone Setback:** An area described as a circle with a radius of 1,000 feet measured from the center of the well or production facility.
3. **High Occupancy Building Unit:** An area within 1,000 feet of a High Occupancy Building Unit as measured from the nearest wall or corner of the building.
4. **Designated Outdoor Activity Area:** An area within 350 feet of the boundaries of a Designated Outdoor Activity Area (DOAA). Upon application and a hearing, DOAAs and their boundaries are established by the Commission. DOAAs may include outdoor recreation uses, such as playgrounds, sports fields, amphitheaters, or other similar places of public assembly owned or operated by a local government.

**D. Commission's New Mitigation Measures:** The Commission's new mitigation measures, set forth in Commission Rule 604 (c), are required for all oil and gas facilities located within a Designated Setback Location, as listed above.

**E. Setbacks and mitigation:** The following describes building setbacks and mitigation measures adopted by the Commission on February 11, 2013.

**1. Exception Zone (Figure 2, Site C) :**

- a. If the building is a High Occupancy Building Unit, then no oil and gas facility can be located within 500 feet, unless:
  - (1) Commission approval following a public hearing; and
  - (2) The permit is subject to the Commission's new mitigation rules.
- b. If the building is a Building Unit, then no oil and gas facility can be located within 500 feet, unless
  - (1) Operators certify that they met with Building Unit owners if requested to do so by the Local Government Designee (LGD); and
  - (2) The permit is subject to the Commission's new mitigation rules.

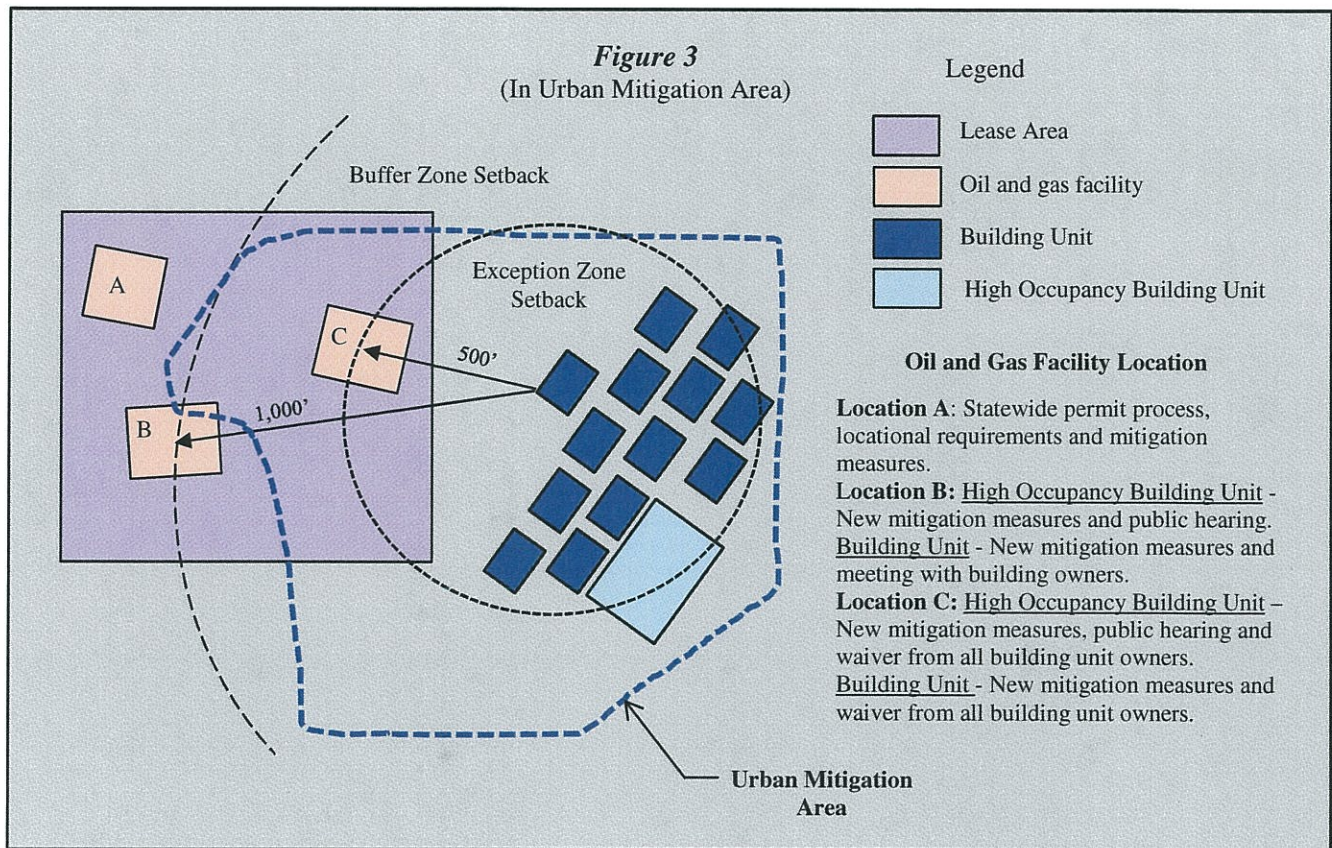


**2. Buffer Zone (Figure 2, Site B):**

- a. If the building is a High Occupancy Building Unit, then no oil and gas facility can be located within 1,000 feet, unless:
  - (1) Commission approval following a public hearing; and
  - (2) The permit is subject to the Commission's new mitigation rules.
- b. If the building is a Building Unit, then no oil and gas facility can be located within 1,000 feet from a the building, unless:
  - (1) Operators certify that they met with Building Unit owners if requested to do so by the LGD; and
  - (2) The permit is subject to the Commission's new mitigation rules.
- c. Oil and gas facilities located beyond 1,000 feet from a High Occupancy Building Unit and a Building Unit (**Figure 2, Site A**) are subject to statewide permit process, locational requirements and mitigation measures.

**3. Urban Mitigation Area (Figure 3):**

- a. If the building is located within an Exception Area and an Urban Mitigation Area (**Figure 3, Site C**) and is a High Occupancy Building Unit, then no oil and gas facility can be located within 500 feet, unless:
  - (1) The operator submits waivers from each Building Unit owner within 500 feet of the oil and gas facility;
  - (2) Operators certify that they met with Building Unit owners if requested to do so by the LGD;
  - (3) The permit is subject to the Commission's new mitigation rules; and
  - (4) Commission approval following a public hearing.



- b. If the building is located within an Exception Area and an Urban Mitigation Area (**Figure 3, Site C**) and is a Building Unit, then no oil and gas facility can be located within 500 feet, unless:
  - (1) The operator submits waivers from each Building Unit owner within 500 feet of the oil and gas facility;
  - (2) Operators certify that they met with Building Unit owners if requested to do so by the LGD; and
  - (3) Permit is subject to the Commission's new mitigation rules.
- c. If the building is located within an Buffer Zone Setback and an Urban Mitigation Area (**Figure 3, Site B**) and is a High Occupancy Building Unit, then no oil and gas facility can be located within 1,000 feet, unless:
  - (1) Commission approval following a public hearing; and
  - (2) The permit is subject to the Commission's new mitigation rules.
- d. If the building is located within an Buffer Zone Setback and an Urban Mitigation Area (**Figure 3, Site B**) and is a Building Unit, then no oil and gas facility can be located within 1,000 feet, unless:
  - (1) Operators certify that they met with Building Unit owners if requested to do so by the LGD; and
  - (2) The permit is subject to the Commission's new mitigation rules.
- e. Oil and gas facilities located beyond 1,000 feet from a High Occupancy Building Unit and a Building Unit (**Figure 3, Site A**) are subject to statewide permit process, locational requirements and mitigation measures.

4. **Designated Outdoor Activity Areas:** No oil and gas facility can be located within 350 feet of a Designated Outdoor Activity Area. The Commission may establish a setback greater than 350 feet based on the totality of the circumstances. If the well or production facility is to be located within 1,000 feet of a Designated Outdoor Activity Areas, then the Commission's new mitigation measures are required.
5. **Maximum Achievable Setback:** If the applicable setback would extend beyond the area on which the operator has a legal right to locate, then the operator may seek a variance from the Commission to reduce setbacks to the maximum achievable.

## XI. PROPOSED REGULATIONS

The regulations proposed by City staff are in the accompanying ordinance (*Attachment F*), which establishes a new Section 18.77 in the Loveland Zoning Code. The regulations are in three categories: (i) Baseline Standards (Section 18.77.055) that apply to the PCRP; (ii) Baseline Standards (Section 18.77.060) that apply to both the PCRP and the ARP; and (iii) Enhanced Standards (Section 18.77.065) that apply only to the ARP. Revisions to the ordinance since the City Council study session on February 12, 2013 are shown in red font.

## XII. COMMISSION MITIGATION MEASURES

*Table 2*  
**Regulations Comparison**

Commission Rule	Current City Code Regulations
Noise	
1. During well site development involving pipeline or gas facility installation or maintenance or use of a drilling rig noise levels shall not exceed 70 dB(A) day, 65 dB(A) night, measured at nearest building unit.	1. Measured at property line of adjacent land use: - Residential: 55 dB(A) day, 50 dB(A) night - Commercial: 60 dB(A) day, 55 dB(A) night - Industrial: 75 dB(A) day, 70 dB(A) night
2. Measured 350 feet from sound source: - Adjacent land use: ✓ Residential: 55 dB(A) day, 50 dB(A) night ✓ Commercial: 60 dB(A) day, 55 dB(A) night ✓ Light Industrial: 70 dB(A) day, 65 dB(A) night ✓ Industrial: 80 dB(A) day, 75 dB(A) night	
3. All facilities within 400 feet of a Building Unit with engines or motor which are not electrically operated shall be equipped with quiet design mufflers.	
Water Quality	
4. Closed loop drilling system and pit restrictions shall be required.	None

(Continued)

Commission Rule	Current City Code Regulations
<b>Water Quality</b>	
5. Containment berms meeting the following standards shall be required: <ul style="list-style-type: none"> <li>✓ Constructed around crude oil, condensate, and production water storage tanks</li> <li>✓ Within the Exception Zone, berms shall be constructed of steel rings</li> <li>✓ Secondary containment areas shall be constructed with synthetic or engineering liners</li> <li>✓ Within 500 feet of a surface water body, an earthen berm shall be required around the entire production facility</li> <li>✓ Within an Urban Mitigation Area, no more than 2 crude oil or condensate storage tanks shall be located within a single berm.</li> </ul>	None
<b>Air Quality</b>	
6. Closed loop drilling system and pit restrictions shall be required.	None
<b>Traffic</b>	
7. If required by local government, a traffic plan shall be coordinated with the local government prior to commencement of move in and rig up.	2. Compliance with Larimer County Urban Area Street Standards.
<b>Multi-Well Pads</b>	
8. Where technologically feasible and economically practicable, wells shall be consolidated to create multi-well pads located as far from building units as possible.	None
<b>Leak Protection</b>	
9. The oil and gas facility operator shall develop a plan to monitor production facilities on a regular schedule to identify fluid leaks.	None
<b>Blowout Preventer Equipment</b>	
10. Blowout prevention equipment shall be required.	None
<b>Pit Level Indicators</b>	
11. Pit level indicators shall be used.	None
<b>Drill Stem Tests</b>	
12. Closed chamber drill stem tests shall be allowed	None
<b>Well Services Operations</b>	
13. Adequate blowout prevention equipment and backup stabbing valves shall be used on well servicing operations.	None
<b>Security</b>	
14. Well sites shall be adequately fenced to restrict access by unauthorized persons.	None
<b>Surface Trash</b>	
15. All surface trash, debris, scrap or discarded material shall be removed from the site and disposed of in a legal manner.	3. Title 7: Accumulation of Waste Material

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Commission Rule	Current City Code Regulations
<b>Tank Specifications</b>	
16. All crude oil and condensate storage tanks shall be designed, constructed and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version).	None
<b>Emergency Access</b>	
17. All leasehold roads shall be constructed and maintained to accommodate local emergency vehicle access.	4. International Fire Code
<b>Well Site Clean Up</b>	
18. Within 90 days after a well is plugged and abandon, the well site shall be cleared of all non-essential equipment, trash and debris.	None
<b>Identification of Plugged and Abandon Wells</b>	
19. Operator shall identify the location of the well bore with a permanent monument with the well number and date of plugging imbedded on the monument.	None
<b>Development of Existing Well Pads</b>	
20. Where possible, operators shall provide for the development of multi reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores.	None
<b>Visual</b>	
21. Production facilities, regardless of construction date, that can be seen from any public highway shall be painted a uniform, non-contrasting color tone that matches but is slightly darker than the surrounding landscape.	<p>5. Bufferyards – Type EX. Plant density and width unspecified, allowing City to require bufferyard in excess of Type E as necessary to buffer high intensity uses, such as an industrial batch plant or gravel mine from residential or commercial uses.</p> <p>6. Screening of unsightly areas – Such areas shall be screened from view from public sidewalks, streets, and other public areas. Whenever plants are used for screening, the plants should be coniferous and provide an opaque screen within three years.</p>
<b>Lighting</b>	
22. To the extent practicable, site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units within 1,000 feet.	<p>7. Elimination:</p> <ul style="list-style-type: none"> <li>(i) Minimum horizontal luminance – 0.2 foot candles</li> <li>(ii) Maximum uniform ratio – 10:1</li> <li>(iii) Maximum average luminance – 1 foot candle</li> <li>(iv) Minimum vertical luminance – 0.1 foot candle</li> <li>(v) Maximum on-site lighting levels: 10 foot candles – 20 foot candles for vehicle display lots</li> <li>(vi) Light shall be glare-shielded or directed away from residential zones</li> <li>(vii) Light spill-over levels shall not exceed 0.1 foot candles measure 20 feet from property line as a result of on-site lighting.</li> </ul>

(Continued)

Commission Rule	Current City Code Regulations
<b>Structure Height</b>	
None – drilling rigs are typically 150 feet in height, or less.	8. In the Industrial zone – East of County Road 9 – 50 feet. Other locations in the Industrial zone - 40 feet 9. It is unlawful to construct any tower or other structure which may constitute a hazard to the safe navigation of aircraft at the Fort Collins/Loveland Airport
<b>Vibration</b>	
None	10. Vibration at the level of human perception shall not be permitted beyond the lot lines.
<b>Floodplain</b>	
Best practices	11. Flood Fringe – Non-residential structures shall be placed on fill so that the lowest portion of the structure is at or above the regulatory flood protection elevation or comply with the floodproofing requirements set forth in the International Building Code. 12. Floodway – No use shall limit or restrict the floodway capacity, include fill or storage of material or equipment, increase flood heights during base flood, any well shall be protected from inundation from flood discharge and no new mobile home shall be permitted.
<b>Stormwater quality</b>	
	13. Compliance with City of Loveland Storm Criteria Manual
<b>Odors and Dust</b>	
23. Odor: (i) Compliance with Department of Public Health and Environment Air quality Control and odor Emissions regulations, plus specific regulations on crude oil, condensate, and produced water tanks, glycol dehydrators, pits, and pneumatic devices. (ii) Green completions practices required on wells that are likely to produce naturally flowing hydrocarbon gas in flammable concentrations. 24. Fugitive dust: Operator shall employ practices such as speed controls, regular road maintenance, restrictions on construction activity during high-wind conditions, silica dust controls when handling sand, road surfacing, wind breaks and automation of well site to reduce truck traffic.	14. Odor: Title 7: Nuisance Abatement
<b>Weed Control</b>	
25. All well and surface production facilities shall be kept free of weeds, rubbish, and other waste material.	15. Compliance with Title 7: Weed Control Ordinance

## **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.

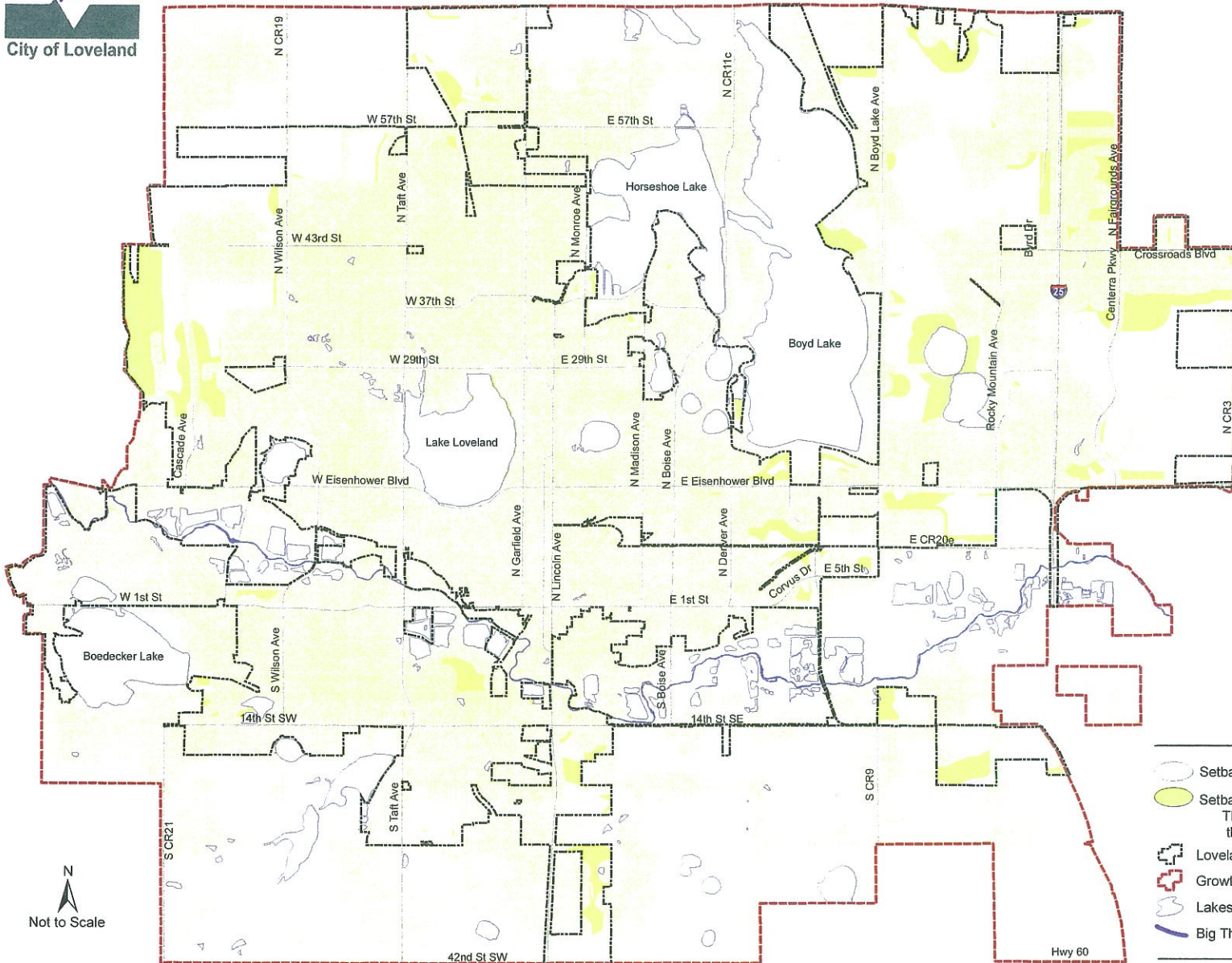


# Setback Areas as defined by New COGC Regulations and Proposed Loveland Enhanced Standards

This map represents general application of the Colorado Oil and Gas Conservation (COGC) newly adopted regulations under Section 603, effective August 1, 2013. In addition, this map shows general application of the proposed City of Loveland Enhanced Standards for setbacks. These setbacks apply to new wellheads or facilities.

This map is based on the best available information/GIS data and is considered a generalized analysis of both the COGC and City regulations and does not account for possible variation of how the setback rules are applied. Actual wellhead/facilities locations will be evaluated on a detailed site-specific analysis. This map is subject to change.

Please note: The new COGC regulations are applied to areas within the Loveland Growth Management Area (GMA). The proposed City Enhanced Standards are applied only within the city limits shown in the black dashed line.



## Legend

- Setback Areas as defined by New COGC Regulations
- Setback Areas as defined by Proposed City Enhanced Standards  
This map layer only shows where the standards are greater than the COG regulations within City Limits
- Loveland City Limits
- Growth Management Area
- Lakes and Ponds
- Big Thompson River





## Development Services Department

500 East Third Street, Suite 310 • Loveland, CO 80537  
(970) 962-2346 • Fax (970) 962-2945 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

**To:** City Council

**From:** Greg George, Development Services Director  
John Duval, City Attorney

**Date:** February 12, 2013

**Re:** Regulations for oil and gas development

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### I. ATTACHMENTS

- A. Oil and Gas Drilling Activities map
- B. Groundwater Baseline Sampling Analysis
- C. January 28, 2013 Planning Commission public hearing staff report
- D. January 28, 2013 Planning Commission minutes (draft)
- E. January 14, 2013 Planning Commission minutes (draft)

### II. EXECUTIVE SUMMARY

City staff has prepared draft regulations on oil and gas development to be consistent with the Statement of Direction adopted by City Council on August 21, 2012, address concerns raised by Loveland citizens concerning impacts on public health, safety and welfare and the environment, and the City's legal authority to regulate oil and gas development.

City staff proposes to create a new Chapter 18.77, which will contain all the review procedures, regulations, and standards applicable to oil and gas development. Oil and gas operators would be required to obtain a permit from the City for any oil and gas development within Loveland city limits. To avoid redundancy, please refer to Section I (page 1 of 12) in the attached January 28 Planning Commission staff report for a description of the two different procedures (Planning Commission Review and Administrative Review) for obtaining a permit from the City and the nature of the two sets of standards (Baseline Standards and Enhance Standards) that would apply to each process. Section V (page 3 of 12) of the Planning Commission staff report explains why it is necessary for the City to amend its zoning code. The key issues, and the remainder of this memorandum, have been updated from the Planning Commission report.

City staff is also proposing a new Chapter 18.78 to establish building setbacks for new development from existing and abandon oil and gas facilities.

### III. SCHEDULE

Planning Commission: 1<sup>st</sup> public hearing - January 28, 2013  
City Council study session: February 12, 2013  
Planning Commission: 2<sup>nd</sup> public hearing - February 25, 2013

City Council: public hearing - Ordinance 1<sup>st</sup> reading - March 5, 2013  
City Council: Ordinance 2<sup>nd</sup> reading - March 19, 2013  
Legally effective: April 2, 2013

#### IV. KEY ISSUES

**A. Baseline Standards for Planning Commission Review:** The intent of the Baseline Standards in Section 18.77055 is to apply standards that mitigate adverse impacts to the extent possible, while not being preempted by State law. Baseline Standards include Colorado Oil and Gas Commission (the “Commission”) rules dealing with impacts typically addressed by current City standards on heavy industrial uses. Commission rules dealing with the technical aspect of oil and gas development are not included in these Baseline Standards.

**B. Baseline Standards for Planning Commission and Administrative Review:** The intent of the Baseline Standards in Section 18.77.060 is to apply standards to mitigate impacts that are either not addressed in Commission rules or to mitigate impacts to a higher standard. In either case, the intent is to not create an operational conflict and, therefore, avoid a standard being preempted by State law.

**C. Enhanced Standards for Administrative Review:** The standards in Section 18.77 065 are voluntary standards intended to mitigate impacts to a higher level than those of the Commission. These standards would likely be preempted by State law if they were not voluntary. Successful implementation of enhanced regulations will depend on the extent to which the standards are economically practicable and technically feasible for the applicant and the ability of the City to provide an incentive sufficient to achieve voluntary compliance. City staff has collaborated with representatives from Anadarko to create standards that are technically feasible and economically practicable. One possibility for increasing the incentive for compliance with these standards is to reduce or waive the filing fee or specific Capital Expansion Fees that might otherwise be applicable. Another possibility is that the surface owner may participate in the cost to implement the enhanced standards to reduce setbacks for new development in the future (see paragraph D, below concerning “no build” areas)

**D. Creation of “no-build” areas within city limits:** City Council has directed City staff to recommend zoning restrictions to establish setbacks for new development from existing or abandoned oil and gas facilities (see *Attachment A*). Any such setbacks could create significant “no-build” areas within the city and, in the future, within our Growth Management Area. A 500 foot setback would create an 18 acre “no-building” zone and a 1,000 foot setback a 72 acre “no-building” zone around an oil and gas facility. The Commission’s new rules on building setbacks require a significant number of new mitigation measures (i.e. closed loop drilling system, higher standards for containment berms, consolidation of well sites and blowout prevention equipment) if the oil and gas facility is within 500 from a Building Unit or 1,000 feet from a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. However, there are locations with the current city limits and, more so, within the Growth Management Area where Commission rules would not require these new mitigation measures.

**E. Setbacks for new development:** For those oil and gas facilities that are not required to adhere to the Commission’s new mitigation rules, City staff would recommend a 1,000 foot setback for new development and a 500 foot setback from those facilities that do include the new mitigation measures. To minimize the size of potential “no-build” areas within the city and better protect public health, safety and welfare and the environment, City staff is recommending, as an Enhanced Standard, that all oil and gas facilities within city limits adhere to the Commission’s new mitigation rules regardless of how close the

facility might be at time of permit issuance to an existing Building Unit or High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. This requirement would minimize obstacles for new development and provide more land area available for development in the future.

**F. Additional inspection services:** It may be necessary for the City to inspect oil and gas sites to ensure compliance with standards adopted by the City, particularly with respect to requirements that are not included in a Commission permit. Standards agreed to by an applicant and a local government may, at the discretion of the Commission, be placed as conditions on the Commission's permit. Since most of the Baseline Standards are regulations included in the Commission's rules, the City could decide to rely on inspections by Commission personnel to ensure compliance. However, to ensure compliance with the Enhanced Standards, the City may have to inspect oil and gas sites. One option would be to contract with a qualified inspector, on an as-needed basis, to perform the necessary inspections.

## **V. COMMISSION'S NEW RULES**

**A. Groundwater baseline sampling and monitoring:** The Commission adopted new rules for groundwater baseline sampling and monitoring on January 7, 2013. The new rules will become legally effective on May 1, 2013. The new rules that apply state-wide, except within the Greater Wattenberg Area (GWA), require operators to collect water samples from all available water sources, up to a maximum of four, within a one-half mile radius of a proposed oil and gas well. The first sample must be taken within twelve months prior to drilling and again between sixty and seventy-two months following completion of the well. The City of Loveland and surrounding area in Larimer County are located within the GWA. In this area, operators are required to sample one available water source within the quarter section in which the proposed well is to be located. The first samples must be taken within twelve months prior to drilling and the second between six and twelve months following completion of the well. The official press release from the Commission states that the rules in the GWA were adjusted due to the combination of energy development, agricultural and other industrial and residential uses unique to the area. The required analysis for all baseline sampling is described in *Attachment B*.

**B. Building setback rules:** The Commission's new rules for building setbacks were given only preliminary approval on January 9, 2013, with the Commission directing their staff to refine the regulations and bring them back for final adoption. On January 24, 2013, the Commission postponed any final decision until a hearing scheduled for February 11, 2013. No date has been established for the new rules to become legally effective. Section VII.B (page 5 of 12) of the Planning Commission report contains a description of the new rules for building setbacks based on the recommendations contained in the Commission's staff report dated January 7, 2013. If the rules change prior to the February 12, 2013, City staff will provide an update at the Council study session.

**C. Commission's new mitigation rules:** Section VIII (page 9 of 12) of the Planning Commission report includes a table (*Table 2*) that identifies the new mitigation measures (those in the blue cells) that the Commission requires for oil and gas facilities that are within 500 feet of a Building Unit or within 1,000 feet of a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area.

## **VI. PLANNING COMMISSION RECOMMENDATION**

The minutes (draft) for the Planning Commission public hearing on January 28, 2013 are included as Attachment D. The only official recommendation made by the Commission was a motion made by Commissioner Dowding to recommend that City Council consider extending the schedule for completion of City oil and gas regulations and extend the moratorium by 2 months, to permit additional time for finalization of pending state rules and regulations. Upon a second by Vice Chair Middleton the motion was unanimously adopted.

## **VII. DRAFT REGULATIONS**

The regulations on oil and gas development proposed by City staff are in the accompanying ordinance.

## **Groundwater Baseline Sampling Analysis (source COGCC Rule 318A.E)**

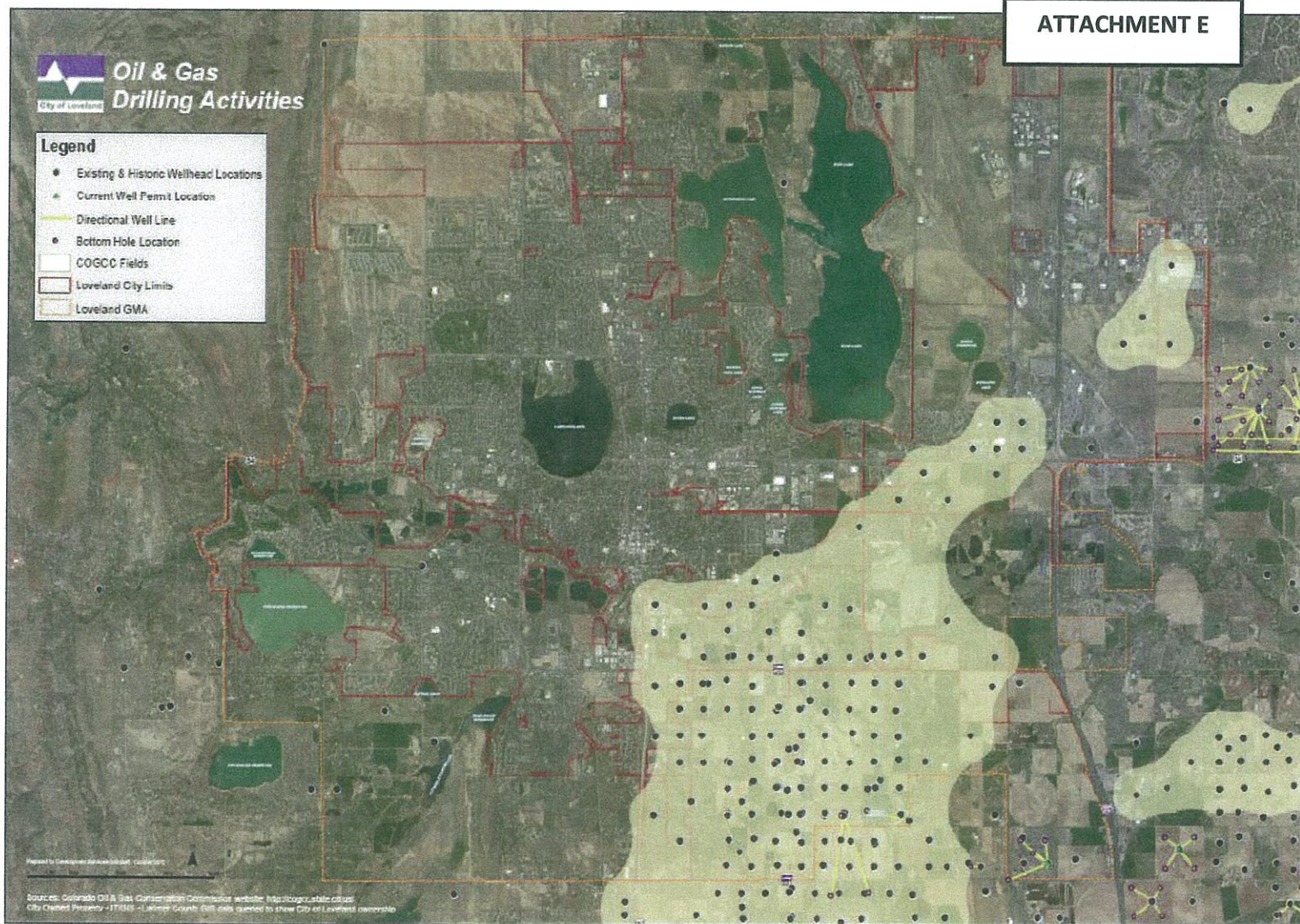
**E. Initial Baseline Sampling Analysis.** The initial baseline sampling required pursuant to subpart (4)D.i shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as  $\text{CaCO}_3$ ), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Source shall be surveyed in accordance with Rule 215.

**F. Subsequent Sampling Analysis.** Subsequent sampling to meet the requirements of subpart (4)D.ii shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as  $\text{CaCO}_3$ ), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

**G. Methane Detections.** If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen –  $^{12}\text{C}$ ,  $^{13}\text{C}$ ,  $^1\text{H}$  and  $^2\text{H}$ ) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

- i. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;
- ii. the methane concentration increases by more than 5.0 mg/l between sampling periods; or
- iii. the methane concentration is detected at or above 10 mg/l.

# ATTACHMENT E



FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

**ORDINANCE #**

**AN ORDINANCE ADDING A NEW CHAPTER 18.77 TO THE  
LOVELAND MUNICIPAL CODE FOR THE REGULATION OF OIL AND  
GAS OPERATIONS WITHIN THE CITY OF LOVELAND**

**WHEREAS, ; and**

**WHEREAS, ; and**

**WHEREAS, ; and**

**WHEREAS, ; and**

**WHEREAS, ; and**

**WHEREAS, .**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF LOVELAND, COLORADO:**

**Section 1.** That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to  
read in full as follows:

**Chapter 18.77**

**Oil and Gas Regulations**

**Sections:**

- |                  |   |
|------------------|---|
| <b>18.77.010</b> | <b>Authority.</b>   |
| <b>18.77.015</b> | <b>Purpose.</b>   |
| <b>18.77.020</b> | <b>Applicability.</b>   |
| <b>18.77.025</b> | <b>Rules of Construction and Definitions.</b>                     |
| <b>18.77.030</b> | <b>Zoning.</b>  |
| <b>18.77.035</b> | <b>Alternative Permit Processes.</b>                              |
| <b>18.77.040</b> | <b>Conceptual Review.</b>   |
| <b>18.77.045</b> | <b>Planning Commission Review Process.</b>                        |
| <b>18.77.050</b> | <b>Administrative Review Process.</b>                             |
| <b>18.77.055</b> | <b>Baseline Standards for Planning Commission Review Process.</b> |

- 18.77.060**      **Baseline Standards for Planning Commission and Administrative Review Processes.**
- 18.77.065**      **Enhanced Standards for Administrative Review Process.**
- 18.77.070**      **Application Requirements.**
- 18.77.075**      **Prohibited Oil and Gas Facilities.**
- 18.77.080**      **Variances.**
- 18.77.085**      **Transfer of Permits.**
- 18.77.090**      **Other Applicable Code Provisions.**
- 18.77.095**      **Emergency Response Costs.**
- 18.77.100**      **Application and Inspection Fees.**
- 18.77.105**      **Capital Expansion Fees.**
- 18.77.110**      **Reimbursement for Consultant Costs.**
- 18.77.115**      **Adequate Transportation Facilities**
- 18.77.120**      **Insurance and Performance Security.**
- 18.77.125**      **Inspections and Right to Enter.**
- 18.77.130**      **Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.135**      **Conflicting Provisions.**

**18.77.010      Authority.**

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. However, it is not the intent of this chapter that these powers and authority be exercised in a manner that would create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict would arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. It is therefore the intent of this chapter that its provisions be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid any operational conflict.

**18.77.015      Purpose.**

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that will negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and

enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

#### **18.77.020      Applicability.**

Except as otherwise provided in this section, the provisions of this chapter shall apply to all oil and gas operations occurring within the city's boundaries. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 15, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 15, 2013. It shall also not apply to any oil and gas operations occurring on real property annexed into the city on or after April 15, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other oil and gas operations occurring within the city's boundaries after April 15, 2013.

#### **18.77.025      Rules of Construction and Definitions.**

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations and in chapter 18.04 of this code. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the concreting of a well, the removal of its associated production facilities, the removal or abandonment in-place of its flow line, and the remediation and reclamation of the wellsite. ~~process of plugging: (i) a dry well or a well at which the operator no longer plans to conduct oil and gas operations; and (ii) a seismic core or other exploratory hole.~~

CD. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

DE. "Adverse effect" or "adverse impact" shall mean the impact of an action, after mitigation, that is considerable or substantial and unfavorable or harmful. The term includes

Page 3 of 32

ATTACHMENT F

social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

~~EF~~. “Administrative review process” shall mean the expedited review process set out in section 18.77.050.

~~FG~~. “APD” shall mean an application for a permit to drill, deepen, re-enter or recomplete and operate under the COG regulations.

~~GH~~. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

~~HI~~. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

~~IJ~~. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

~~JK~~. “Best management practices” shall mean practices that are designed to prevent or reduce adverse impacts caused by oil and gas operations to air, water, soil or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

~~KL~~. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

~~LM~~. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

~~MN~~. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. T. 400.

~~NO~~. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

~~OP~~. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging and abandonment are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive

testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

~~PQ.~~ “Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

~~QR.~~ “Current planning” shall mean the city’s current planning division.

~~S.~~ “Day” shall mean a calendar day ~~period of twenty four (24) consecutive hours.~~

~~RT.~~ “Designated agent” shall mean the designated representative of any operator.

~~SU.~~ “Development review team” or “DRT” shall mean the city’s development review team.

~~TV.~~ “Director” shall mean the director of the city’s development services department or his or her designee.

~~UW.~~ “Enhanced standards” shall mean those review standards and operation requirements set out in section 18.77.065.

~~VX.~~ “Flow line” shall mean a pipeline connecting individual well sites to gathering lines.

~~WY.~~ “Fracking” shall mean the technique of using explosive charges and water, sand and certain chemicals injected under pressure into an oil and gas well to create fractures that extend from the well bore into rock, shale or coal formations thereby allowing oil and gas to travel more easily from those formations, where the oil or gas is trapped, to the production well.

~~XZ.~~ “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

~~YAA.~~ “Gathering line” shall mean a pipeline transporting produced gas, oil or water from multiple well sites to a centralized facility.

~~ZBB.~~ “Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

~~AACC.~~ “Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

~~BBDD.~~ BBDD. –“Most effective performance technologies and practices” shall mean the application of proven emerging techniques and technologies or other best management practices used in conducting oil and gas operations which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on- and off-site impacts to the public health, the environment, landowners, and natural resources, and which may reduce conflicts between operators and potentially affected landowners.

~~EE.~~ EE. “Natural area” shall mean those areas described or as-identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

~~CCFF.~~ CCFF. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

~~DDGG.~~ DDGG. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas.

~~EEHH.~~ EEHH. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

~~FFII.~~ FFII. “Operator” shall mean a person who has the legal right to drill into and produce from a pool and to appropriate the oil or gas produced either for the operator or for the operator and an owner.

~~JJ.~~ JJ. “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for persons to congregate.

~~GGKK.~~ GGKK. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

~~HHLL.~~ HHLL. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

~~HMM.~~ HMM. “Person” shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

~~JNN~~. “Pit” shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils.

~~KKOO~~. “Planning commission” shall mean the city’s planning commission as established in code section 2.60.210.

~~LLPP~~. “Planning commission review process” shall mean the review process set out in section 18.77.045.

~~QQ~~. “Residential or non-residential building” shall mean any structure designed and permitted to be occupied by persons.

~~MMRR~~. “Seismic operations” shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

~~NNSS~~. “Setback” shall mean the distance between the following: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a residential or non-residential building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.

~~OOTT~~. “Significant degradation” shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

~~PPUU~~. “State” shall mean the State of Colorado.

~~VV~~. “Surface water body” shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

~~QQWW~~. “Surface owner” shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

~~RRXX~~. “VOC” shall mean volatile organic compounds.

~~SSYY~~. “Well” shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

~~TTZZ~~. “Well blowdown” shall mean the maintenance activity designed to remove unwanted fluids from mature wells during which time gas is often vented to the atmosphere.

~~UUAAA~~. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and fracking, allows for the flowback of petroleum or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

~~VVB~~BBB. "Wellhead" shall mean the equipment attached to the casing of an oil, gas or injection well above the surface of the ground.

CCC. "Wetlands" shall mean as defined in code section 18.41.110.

#### **18.77.030      Zoning.**

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city's zoning districts, planned unit developments, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and an APD has been issued by the commission for those oil and gas operations.

#### **18.77.035      Alternative Permit Processes.**

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

#### **18.77.040      Conceptual Review.**

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city's development review team. Current planning shall schedule such meeting within fourteen (14) days after a written request for the meeting has been received. At least fourteen (14) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy sets of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain an APD for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited administrative review process rather than the planning commission review process. Within five (5) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have

three (3) months thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations.

#### **18.77.045 Planning Commission Review Process.**

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fourteen (14) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fourteen (14) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application ~~has been determined by the director to be a complete application, is filed with current planning,~~ the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within ~~forty-five~~<sup>fifteen</sup> (15) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning

the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations and how the operations will be regulated under this chapter and the COG regulations.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within ~~forty-fivethirty~~ (4530) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. *Appeal of Planning Commission Decision.* The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and any "party in interest" as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission's final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council's decision in the appeal hearing to grant, grant with conditions or deny the applicant's request for an oil and gas permit shall, like the planning commission's decision, be based on the

applicable provisions of this chapter and any other applicable provisions of this code. The council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council's appeal hearing.

#### **18.77.050 Administrative Review Process.**

A. *Applicant's Election to Use Administrative Review Process.* As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant's application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards could reasonably be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that the applicant is waiving any such operational conflicts for the purpose of pursuing this expedited approval of its application under this administrative review process; and (3) that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. *Application Completeness Review.* An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application ~~has been determined by the director to be a complete application, is filed with current planning,~~ the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted in the same manner as under the planning commission review process as set out in section 18.77.045.E., but with one addition. The notices mailed under section 18.77.045 shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until ~~fifteen~~ (15) days after the neighborhood meeting is held in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within ~~fifteen~~ (15) days after the neighborhood meeting is held, any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within ~~fifteen~~ (15) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director may, in his or her discretion, negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit.

G. *Director's Decision.* Within ~~fifteen~~ (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed by the applicant or a "party in interest," as defined in section

18.80.020, to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

**18.77.055 Baseline Standards for Planning Commission Review Process.**

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with the setback and mitigation requirements set forth in COG rule 604, as amended, ~~for setbacks and mitigation measures~~, in addition to the standards and requirements in code section 18.77.060.

**18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.**

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado ~~Parks and~~ Division of Wild-~~L~~ife is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for* ~~well soil protection and plugging and abandonment.~~

1. All ~~oil and gas facilities permits for oil and gas operations~~ shall comply with the requirement for ~~well abandonment soil protection and plugging and abandonment~~ set forth in COG rule ~~7063~~19, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment plugging method to the director within thirty (30) days from receiving such approval.

2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.

3. The operator shall notify the Loveland Fire and Rescue Authority not less than two (2) hours prior to commencing plugging operations.

F. *Anchoring.* All mechanized equipment associated with oil and gas operations shall be anchored so as to minimize transmission of vibrations through the ground.

G. *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.

H. *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.

I. *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.

J. *COG regulations for hydraulic fracturing chemical disclosure.* All permits for oil and gas operations shall comply with COG rule 205.A, as amended. The operator shall provide copies of the commission's chemical disclosure registry form to the Loveland Fire and Rescue Authority at the same time as it is provided to the commission.

K. *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.

L. *Cultural and historic resources standards.* The installation and operation of any oil and gas operation shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.

M. *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.

N. *Electric equipment.* The use of electric-powered motors for pumping or drilling systems shall be required if a provider of electric power agrees at the provider's customary rates, fees and charges to provide electric service to an oil and gas facility and the oil and gas facility is located in reasonably close proximity to available electric distribution lines. Electric service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of generators may be used until electric service is provided.

O. *Emergency response standards.*

1. In General. Oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to develop an emergency preparedness plan for each specific facility site, which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency preparedness plan shall contain at least all of the following information:

(a) Name, address and phone number, including 24-hour emergency numbers, for at least two persons responsible for emergency field operations.

(b) An as-built facilities map in a format suitable for input into the city's geographical information system depicting the locations and type of above and below ground facilities, including sizes and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency. The city shall deny the right of inspection of the as-built facilities maps to the public pursuant to C.R.S. § 24-72-204.

(c) Detailed information addressing each potential emergency that may be associated with the operation, which shall include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. For each potential emergency, threshold/trigger levels shall be pre-identified to determine when a state of emergency should be declared.

(d) A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state shall be reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and the director immediately.

(e) Detailed information identifying access or evacuation routes and health care facilities anticipated to be used.

(f) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

(g) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency.

(h) Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

(i) A provision obligating the applicant to have immediately available on each oil and gas operation site a current Material Safety Data Sheets (MSDS) for all chemicals used or stored on the site. The MSDS sheets shall be provided immediately upon request to the director, a public safety officer or a health professional.

(j) The plan shall include a provision establishing a process by which the operator engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with the operator.

P. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.

2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:

(a) Nature and proximity of adjacent development;

(b) Prevailing weather patterns, including wind direction;

(c) Vegetative cover on or adjacent to the site; and

(d) Topography.

3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. One (1) or more of the following additional noise mitigation measures may be required:

(a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;

- (b) Vegetative screens consisting of trees and shrubs;
- (c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;
- (d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and
- (e) Lowering the level of pumps or tank batteries.

Q. *Fencing.* Permanent perimeter fencing six (6) feet in height shall be installed around the entire perimeter of the oil and gas operations site, including gates at all access points. Such gates shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety.

R. *Flammable material.* All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

S. *Land disturbance standards.* The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.
4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator

shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.

6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operations. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.

T. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

U. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and

2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

V. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

W. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

X. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

Y. *Recordation of flow lines.* The legal description of all flow lines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow lines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Z. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

AA. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

BB. *Signs.* A sign permit shall be obtained for all signs at the oil and gas operations site or otherwise associated with the oil and gas operations in accordance with code chapter 18.50, except as otherwise required by the COG regulations.

CC. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall notify the affected or potentially affected water well owner immediately following discovery of the release, and the spill or release shall be reported to the director within twenty-four (24) hours of becoming aware of the spill or release.

DD. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

EE. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

FF. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

GG. *Water supply.* The operator shall identify on the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the city shall be documented and ~~this~~ record shall be provided to the city annually or sooner, upon request of the city's Water and Power Department director, or his or her designee. The

disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water, and the final destination for water used in operation.

HH. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

II. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

JJ. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

KK. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

LL. *Floodplains.* All oil and gas operations shall comply with code chapter 18.45.

~~MM. *Temporary housing.* Temporary housing at any oil and gas operations, including without limitation, trailers, modular homes, and recreational vehicles shall be prohibited.~~

~~MMNN.~~ *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

~~NNOO.~~ *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

~~OOPP.~~ *Domestic water supply.* Oil and gas operation sites shall be connected to a domestic water supply if a domestic water supplier agrees to make such a connection and the site is located in reasonably close proximity to such connection at the supplier's customary rates, fees and charges. Domestic water service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of imported water may be allowed until such water service is provided.

~~PPQQ.~~ *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

~~QQRR.~~ *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

**RRSS.**     *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:

- (a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;
- (b) Located to avoid crossing hills or ridges;
- (c) Located to avoid the removal of trees; and
- (d) Located at the base of slopes to provide a background of topography and/or natural cover.

2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.

3. One (1) or more of the landscaping practices may be required on a site specific bases:

- (a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;
- (b) Shaping cuts and fills to appear as natural forms;
- (c) Cutting rock areas to create irregular forms; and
- (d) Designing the facility to utilize natural screens.

~~STT.~~ *COG regulations for odor.* All oil and gas operations facilities permits shall comply with COG rule 805.

TT. COG regulations for abandonment of pipelines. Any pipelines abandoned in place shall comply with COG rule 1103 and the notice to the commission~~COG~~ of such abandonment shall be promptly filed with the director~~local governmental designee.~~

#### **18.77.065 Enhanced Standards for Administrative Review Process.**

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060:

A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building.

1. Except as required under subparagraph 5. below, a All oil and gas operations shall be located at least five hundred (500) feet from any residential or non-residential occupied~~occupied~~ building, or such greater distance as may be required by the commission.
2. All oil and gas operations shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.
3. All oil and gas operations shall be located at least five hundred (500) feet from: (i) the boundary property line~~boundary property line~~ of any natural area or wetlands; (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body including, but not limited to, rivers, streams, ditches, wetlands, reservoirs and lakes; (iii) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and ~~(iv) any "Designated Outdoor Activity Area (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity," as defined in COG regulations;~~ or such greater distance as required by the commission.
4. All oil and gas operations shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.
5. All oil and gas operations shall be located at least one thousand (1,000) from any residential or non-residential building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or

more. "High Occupancy Building" as defined in the COG regulations, or such greater distance as required by the commission.

B. *Commission mitigation regulations.* ~~All Permits for~~ oil and gas operations ~~to be located within city limits, whether within or outside any "Designated Setback Location" as defined in the COG regulations,~~ shall comply with the mitigation measures required under ~~C~~commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table 1 below, shall be established around the entire perimeter of the oil and gas operation sites, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided for xeriscape plant types.

Table 1 - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer's data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer's recommendations, instruction and operating manuals.

2. *Combustion devices.* All flares shall be designed and operated as follows:

- (a) The combustion devices shall be designed and operated in a matter that will ensure it complies with 40 Code of Federal Regulations (“CFR”) §60.18 (General control device and work practice requirements);
  - (b) The combustion device shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and
  - (c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.
3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.
4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.
5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:
- (a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;
  - (b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;
  - (c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and
  - (d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency’s Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.
6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.

7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.

8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.

E. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

1. Flow lines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential ~~or~~ non-residential buildings or the high water mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;

2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;

3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and

4. Operators shall use boring technology when crossing streams, rivers, ~~or~~ irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

F. All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chaptersection. If necessary to comply with said chaptersection, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

#### **18.77.070 Application Requirements.**

All applications submitted to current planning shall contain the information required for an APD and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

#### **18.77.075 Prohibited Oil and Gas Facilities.**

Notwithstanding any provision in this chapter or code to the contrary, the following oil and gas operations and oil and gas facilities shall be prohibited within the city:

- A. Pits;
- B. Commercial disposal facilities regulated by the Colorado Department of Public Health and Environment;
- C. Centralized exploration and production waste management facilities; and
- D. Temporary housing at any oil and gas operations, including without limitation trailers, modular homes and recreational vehicles, except for such housing customarily required during twenty-four hour drilling and fracking operations.

#### **18.77.080 Variances.**

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section shall be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.
2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.
3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.
4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.

5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

#### **18.77.085      Transfer of Permits.**

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter, the ADP and the COG regulations. The existing operator shall assign the permit to the new operator on a form provided by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

#### **18.77.090      Other Applicable Code Provisions.**

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code; 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

#### **18.77.095      Emergency Response Costs.**

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

#### **18.77.100      Application and Inspection Fees.**

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter.

#### **18.77.105      Capital Expansion Fees.**

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution.

**18.77.110 Reimbursement for Consultant Costs.**

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

**18.77.115 Adequate Transportation Facilities.**

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

**18.77.120 Insurance and Performance Security.**

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars (\$1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars (\$10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursement, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the operator and the city and shall provide that although the city is named as additional insured, the city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of

insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a \_\_\_\_\_ (\$\_\_\_\_\_) performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and any damage to the public right-of-way. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

#### **18.77.125 Inspections and Right to Enter.**

A. *Inspections.* In recognition of the potential adverse impacts associated with oil and gas operations in an urban setting, all oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code.

B. *Right to Enter.* Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Designated Agent.* The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four hours a day for the purpose of being notified of any proposed city inspection under this section or in case of an emergency.

#### **18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**

A. *Violations.* It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any condition of a permit; or

3. Violate any applicable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe than an operator is in violation of any provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty one (21) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any provision of this chapter shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

**18.77.135 Conflicting Provisions.**

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

**Section 2.** That a new Chapter 18.78 is hereby added to the Loveland Municipal Code to read in full as follows:

**Chapter 18.77**

**Building Setbacks from Oil and Gas Facilities**

**Sections:**

**18.78.010 Purpose**

**18.78.020 Building Setbacks from Oil and Gas Facilities**

**18.78.010 Purpose.**

The purpose of this chapter is to generally protect the public's health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.

**18.78.020 Building Setbacks from Oil and Gas Facilities.**

All ~~"residential and non-residential buildings," as defined in code section 18.77.025, except such buildings with an occupancy rating for fifty (50) persons or more, buildings intended to be occupied shall be setback a minimum distance of five hundred (500) feet from an existing or abandon oil and gas facility. and a~~ All such buildings with an occupancy rating for fifty (50) persons or more and outdoor assembly areas "High Occupancy Building Units," as defined in the rules and regulations of the Colorado Oil and Gas Conservation Commission, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas facility," as defined in code section 18.77.025. Land included in such setback areas shall be designated as open space and uses such as open space play fields and parks shall not be permitted within such areas.

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

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City Attorney