



LOVELAND PLANNING COMMISSION MEETING AGENDA

Monday, April 22, 2013
500 E. 3rd Street – Council Chambers
Loveland, CO 80537

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, GENDER, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMODATIONS TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2523 OR TDD 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. REPORTS:

a. Citizen Reports

This is time for citizens to address the Commission on matters not on the published agenda.

b. Staff Matters

c. Committee Reports

d. Commission Comments

IV. APPROVAL OF MINUTES

Review and approval of the April 8, 2013 meeting minutes

V. REGULAR AGENDA:

1. Amendment to Chapter 18.05 of the Municipal Code

This is a public hearing item to consider a proposed code amendment that would establish mailed notification distances for neighborhood meetings and public hearings associated with oil and gas permit applications. On March 19, 2013 the City Council adopted Ordinance # 5753 which established new chapters 18.77 and 18.78 of Title 18 of the Municipal Code regulating oil and gas operations. The ordinance, however, did not establish mailed notification distances for required neighborhood meetings and public hearings associated with oil and gas permits. The text amendment amends Chapter 18.05, Public Notice Requirements, to specify the required mailed notice distances. The amendment also specifies other minor clarifying adjustments to Chapter 18.05. This item is legislative in nature. The Planning Commission's responsibility is to forward a recommendation on this matter to the City Council for final action.

2. 2012 Accomplishments / 2013 Goals

Review of adjustments to the 2013 Goals resulting from the March 25th discussion. This is an administrative matter.

VI. ZONING BOARD OF ADJUSTMENT

1. ZBA Hearing Officer decision on Variance Application # 2013-1

As specified in Chapter 18.60 of the Municipal Code, decisions (Findings and Order) of the Zoning Board of Adjustment Hearing Officer are forwarded to the full Zoning Board of Adjustment (Planning Commission). The Hearing Officer made his Findings and Order regarding the referenced variance on April 16, 2013. As the Hearing Officer's decision is subject to appeal, Planning Commission members are advised to receive this information but not discuss or deliberate on the merits of this matter.

VII. ADJOURNMENT

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CITY OF LOVELAND PLANNING COMMISSION MINUTES April 8, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on April 8, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and Commissioners Massaro, Molloy, Dowding, Crescibene, and Prior. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

There were no staff matters to report.

COMMITTEE REPORTS

Chairman Meyers reported that there were no committee reports but there will be a Title 18 Committee meeting this Thursday, April 11th.

COMMISSIONER COMMENTS

There were no commissioner comments.

APPROVAL OF THE MINUTES

Chairman Meyers asked for a motion to approve the minutes from the March 25, 2013 meeting. Commissioner Dowding moved to approve the minutes. Commissioner Massaro requested that his name be placed on the list of attendees for the meeting. The motion to approve the minutes, with the addition of Massaro's name, was seconded by Commissioner Massaro and it was approved unanimously.

REGULAR AGENDA

1. 2012 Accomplishments / 2013 Goals.

Chairman Meyers announced that the purpose of this item was to review the adjustments to the 2013 Goals from the discussion at the March 25th meeting.

Bob Paulsen, Current Planning Manager, said he did not have time to make the adjustments and will bring them to the next Planning Commission meeting.

2. Development Permitting Process Report.

Chairman Meyers introduced the report concerning the improvement of the development review and building permitting process over the last few years. The report

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identifies progress in the implementation of the SMART Objectives that were initiated in January, 2010, he explained. This matter required no formal action by the Commission, he said.

Bob Paulsen, Current Planning Manager, provided an overview of the history and execution of the program that was developed. Bob Tipton, a consultant, was hired to assess and assist in the creation of the improvement process, he said. The new SMART Objectives program resulted in a more collaborative, efficient, expedited and cost effective review process, he reported. The process will be continually reevaluated and improved, he explained.

Commission discussion included the following:

Commissioner Crescibene indicated that his personal experience confirms a much improved process. He indicated that processing time has been cut by quite a bit.

Commissioner Massaro asked what cost savings have builders seen and are there internal savings?

Bob Paulsen responded, indicating that the department is working to collect data on average cost savings for both applicants and the city. He was unsure whether this would be possible but indicated that staff knows that there are savings related to plan printing, copying and delivery by both the City and developers.

Chairman Meyers asked whether application levels went up or down during the time the program has been implemented.

Bob Paulsen referred to the graphs in the report that illustrated the time the City takes to review building permits. That time has been reduced by 40%, he said. The planning review process has shown a modest increase in efficiency of approximately 10%, he stated, but the application submissions have increased during this period. He indicated that staff is very pleased with the overall results. Mr. Paulsen emphasized that staff has been working hard to keep the number of review rounds per project to two, and to keep the length of review rounds to two weeks. He stated that this effort is a continuing process.

Chairman Meyers inquired as to what the PC can do to help staff improve the processes.

Bob Paulsen responded, indicating that the PC can assist with the code amendments that allow for the approval of Minor Site Plan applications to be submitted directly to the Building Division. He elaborated that several code amendments will be brought to the Planning Commission over the next few months.

ADJOURNMENT

Commissioner Middleton made a motion to adjourn. Upon a second by Commissioner Massaro the motion was unanimously adopted.

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Buddy Meyers, Chair

Bob Paulsen, Acting Secretary



**Development Services
Current Planning**

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www.cityofloveland.org

ITEM NO:

1 - Regular Agenda

PLANNING COMMISSION MEETING:

April 22, 2013

TITLE:

Amendment to Chapter 18.05 of Title 18 regarding public notice requirements relating to oil and gas applications.

APPLICANT:

City of Loveland, Current Planning Division

STAFF CONTACTS:

Bob Paulsen, Current Planning Manager
Greg George, Development Services Director

APPLICATION TYPE:

Amendments to Title 18 of the Municipal Code

ACTION:

Legislative Action: Recommend Amendments to Title 18 for adoption by City Council

STAFF RECOMMENDATION:

Subject to additional evidence at the public hearing, City Staff recommends the following motion:

Move to recommend that City Council approve the amendments to Chapter 18.05 of Title 18 as specified in the April 22, 2013 Planning Commission staff report, as amended on the record.

I. ATTACHMENTS

1. Proposed Amendment to Chapter 18.05, Public Notice Requirements

This document includes the recently amended (adopted) version of Chapter 18.05 and indicates in a redline/strike-through format the proposed text amendments to the public notice requirements associated with oil and gas development. The primary text amendments are provided in Tables 18.05-1 and 18.05-2. These tables specify the distance requirements for mailed notices for required neighborhood meetings and for public

hearings associated with various zoning and development applications. The proposed amendments set forth distances applicable to notices for proposed oil and gas permits under Chapter 18.77.

2. Ordinance # 5753, adding Chapters 18.77 and 18.78 to the Municipal Code

This ordinance was adopted on March 19, 2013 and added two chapters to the Municipal Code which regulate oil and gas development. This ordinance is provided for reference; there are no proposed changes to this ordinance or to the chapters 18.77 and 18.78.

II. BACKGROUND

The City Council's March 19th adoption of Ordinance #5753, adding Chapters 18.77 and 18.78 to the Municipal Code, was the culmination of months of research and deliberations addressing the regulation of oil and gas development within Loveland. Now that the oil and gas regulations have been approved, the public notice provisions of the Municipal Code require amendment to set forth notice distances for oil and gas development.

It is also worth noting that Chapter 18.05 has recently been amended. On April 16, 2013, the City Council passed an ordinance (on 2nd reading), which will become effective on April 30, 2013, amending the public notice requirements contained both the zoning code and the subdivision code. This amendment was designed to clarify a number of longstanding issues with public notice procedures. Because the provisions of Chapter 18.05 have just been approved and are not yet effective, the Municipal Code as available on the City's web site does not reflect this change.

III. TITLE 18 COMMITTEE REVIEW & RECOMMENDATION

On Thursday, April 11, 2013, the City's *ad hoc* Title 18 Committee evaluated the proposed amendment to Chapter 18.05 to specify required mailed notification distances for neighborhood meetings and public hearings associated with oil and gas permit applications. After a lengthy discussion, the Committee arrived at a consensus recommendation to set the notification distance at 2,200 feet from the property boundaries on which the oil and gas permit is being requested. A summary of the Committee's rationale for this distance was as follows:

1. Other application types as specified in the zoning code require mailed notice distances of up to 1,200 feet
2. Oil and gas operations have the potential to impact other properties at a distance at least equivalent to those application types requiring a 1,200 foot distance
3. Due to the setback distances that oil and gas operations require from buildings and outdoor assemble areas (up to 1,000 feet as stipulated by the Municipal Code and state statute), the mailed notice distances for oil and gas operations should be expanded an additional 1,000 feet beyond the 1,200 foot baseline distance

IV. STAFF REVIEW AND ANALYSIS

Under the provisions of the Municipal Code, certain types of zoning, land use, and subdivision applications require neighborhood meetings and public hearings. When neighborhood meetings or public hearings are required, there is a corresponding requirement for public notice, providing those who may be affected by the application the opportunity to learn about the project and to provide input into the decision making process. Public notice includes published notice in the local newspaper, posted signs on the application site, and mailed notice (provided by the applicant) to property owners within a specified notice distance. The content requirements for mailed notice are specified in the Municipal Code.

When Ordinance # 5753 was approved by City Council (establishing the regulations for oil and gas operations) notice of neighborhood meetings and public hearings were required in accordance with Chapter 18.05. Consequently, this is a follow-up effort to specify mailed notice distance applicable to neighborhood meetings and public hearings in connection with an application for an oil and gas permit.

The Title 18 Committee determined that the existing maximum mailed notice distance of 1,200 feet as specified for other application types would be an appropriate starting point or baseline. Because oil and gas operations are anticipated to concentrate in more rural areas of the City, where parcels are larger and distances between development is greater, a wide notification area makes sense. Another factor adding rationale for a wide notice area identified by the Title 18 Committee is the established setback requirements from oil and gas facilities. Chapter 18.78 specifies that occupied buildings shall be setback 500 feet from an existing or abandoned oil and gas facility; buildings with an occupancy rating for 50 persons or more and “outdoor assembly areas” shall be setback a minimum of 1000 feet from an existing or abandoned “oil and gas well.” Given this latter provision, the Title 18 Committee recognized that an oil or gas well near the edge of a property would have the effect of precluding the development of certain uses within 1000 feet of the well site. Therefore, the Committee determined that the baseline maximum notification distance as specified in Chapter 18.05 of 1,200 feet should be expanded an additional 1000 feet and applied to oil and gas permit applications.

The Development Services Department has concluded that the Title 18 Committee’s analysis was sound and its recommendation is supportable; consequently, staff is recommending that the mailed notice distance for oil and gas permit applications is 2,200 feet from the boundary of the property on which the surface use will occur.

V. DESCRIPTION OF THE PROPOSED CHANGES TO CHAPTER 18.05

The following is a description of amendments to Chapter 18.05 of as proposed to the Planning Commission as identified in **Attachment 1**:

Table 18.05-1 Mailed Notice Distance Requirements for Neighborhood Meetings.

New text has been added to indicate that the mailed notification distance for required neighborhood meetings associated with oil and gas permits is 2,200 feet as measured from the

property boundaries on which the surface use will occur under the permit. The 2,200 foot distance is proposed for projects in all three identified categories relating to project size: under 5 acres; 5-50 acres; and, greater than 50 acres.

The effect of this additional text will require an applicant seeking an oil and gas permit to provide mailed notice at least 15 days in advance of any neighborhood meeting required by the Municipal Code to property owners within 2,200 feet of the boundaries of the property on which the oil and gas operations are proposed to be located on. The boundaries of the property would be based on the lot(s) or tract(s) of land on which the (oil and gas) surface use occurs. The City requires applicants to use the current records of the Larimer County Assessor in determining the ownership for the properties within the notification distance area.

Sub Section 18.05.030.C.5. Reduction in Notification Area.

The adjusted text would exempt oil and gas applications from qualifying for a reduction in mailed notification area for neighborhood meetings. The added text also excludes variance applications from the “infill” reduction. The infill reduction allows qualifying projects a 50% reduction in notice area.

Sub Section 18.05.030.C.6. Expansion of Notification Area.

The added text clarifies that when the Current Planning Manager decides to expand the neighborhood meeting notification area (as provided in this subsection), the area of notice can be expanded up to twice the distance indicated on Table 18.05-1.

Table 18.05-2 Mailed Notice Distance Requirements for Public Hearings.

The new text indicates that the mailed notice distance for required public hearings relating to oil and gas development is 2,200 feet as measured from the property boundaries on which the surface use will occur. This Table has been modified in the same manner as Table 18.05-1 and would have the impact on the mailed notice distance requirements for public hearings that the added text in Table 18.05-1 has on neighborhood meetings.

Sub Section 18.05.060.C.5. Reduction in Notification Area.

The adjusted text parallels the text adjustment provided in 18.05.030.C.5, and exempts oil and gas applications from qualifying for a reduction in mailed notification area from qualifying for the “infill” reduction. The adjustment also excludes variance applications from the “infill” reduction.

Sub Section 18.05.060.C.6. Expansion of Notification Area.

The added text to this sub section parallels the text addition to 18.05.030.C.6, clarifying that the mailed notification area as indicated in Table 18.05-2 can be expanded up to twice the distance for public hearings associated with oil and gas applications.

VI. CONCLUSION

Staff has reviewed the recommendation of the Title 18 Committee and supports their recommendation. Given the nature of oil and gas operations, and in consideration of the setbacks for buildings from oil and gas facilities established in the recently adopted Chapter 18.78, the establishment of the proposed 2,200 foot mailed notice distance is reasonable.

VII. ACTION TO BE TAKEN BY THE PLANNING COMMISSION

Conduct a public hearing on the proposed amendment to Chapter 18.05, taking comments from the public if requested. Following deliberation, the Commission shall vote to determine a recommendation to the City Council on the amendment. The Commission's recommendation may include modifications to the proposed amendment. If the Commission acts on this matter on April 22nd, it is anticipated that this matter will be scheduled for a public hearing by City Council on May 21st.

PROPOSED AMENDMENT TO CHAPTER 18.05,

PUBLIC NOTICE REQUIREMENTS:

Below is the entirety of Chapter 18.05 of Title 18 (the zoning code) of the Municipal Code, with the inclusion of proposed amendments relating to the public notice requirements for Oil and Gas Permits. Other minor, clarifying adjustments have also been provided. The amendments addressing notification for oil and gas permits respond to Ordinance #5753 that was adopted by the Loveland City Council on 2nd Reading on March 19, 2013. This ordinance (#5753) added chapters 18.77 and 18.78 to Title 18 of the Municipal Code for the purpose of regulating oil and gas development.

Please note that Chapter 18.05 was amended by the City Council on April 16, 2013 (2nd Reading). The amendment incorporated various clarifications and a restructuring of the chapter—but did not incorporate notification provisions for oil and gas development projects. Due to the recent adoption of the amendments to Chapter 18.05, the Municipal Code provisions assembled for access through the City's web site do not reflect the recent changes.

- Text proposed to be added is shown in underlined, red font
- Text proposed to be deleted is shown in ~~red font with strike-through~~

Chapter 18.05

PUBLIC NOTICE REQUIREMENTS

Sections:

18.05.010	Purpose.
18.05.020	Neighborhood Meetings.
18.05.030	Mailed Notice for Neighborhood Meetings.
18.05.040	Posted Notice for Neighborhood Meetings.
18.05.050	Public Hearings.
18.05.060	Mailed Notice for Public Hearings.
18.05.070	Posted Notice for Public Hearings.
18.05.080	Published Notice for Public Hearings.
18.05.090	Staff Decisions.
18.05.100	Computation of Time.
18.05.110	Notice Cost.
18.05.120	Applicant's Certification.
18.05.130	Failure to Provide Notice, Defective Notice.
18.05.140	Continuation of Hearings.
18.05.150	Notice for Appeals.

18.05.010 Purpose.

This Chapter provides standards for public notice for neighborhood meetings, public hearings, and staff decisions as specified within Title 18.

18.05.020 Neighborhood Meetings.

Mailed and posted public notice is required for neighborhood meetings. It is the applicant's responsibility to mail and post public notice for neighborhood meetings.

18.05.030 Mailed Notice for Neighborhood Meetings.

A. Deadline for Mailing. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.030.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120

B. Content. The written (mailed) notice for neighborhood meetings shall include the following:

1. Time, date, and location of the meeting.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property, including existing and proposed zoning, if applicable.
8. Primary contact (applicant or applicant's consultant) information, including name of individual, name of company, phone number and e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.

C. Requirements for Mailing.

1. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-1 and Sections 18.05.030.C (3) through (6), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.
2. Area of Notification. For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-1 Mailed Notice Distance Requirements, shall be

used to determine the area to which such notice shall be given, except as provided in Sections 18.05.030.C (3) through (6). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-1 MAILED NOTICE DISTANCE REQUIREMENTS FOR NEIGHBORHOOD MEETINGS

Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Oil & Gas Permit -per Chapter 18.77	<u>2,200 ft.</u> <u>(measured from boundary of property on which surface use will occur under permit)</u>	<u>2,200 ft.</u> <u>(measured from boundary of property on which surface use will occur under permit)</u>	<u>2,200 ft.</u> <u>(measured from boundary of property on which surface use will occur under permit)</u>
Annexation, Zoning	1,200 ft.	1,200 ft.	1,200 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Major Home Occupation	All members of the neighborhood <i>as defined in Section 18.48.020</i>		
PUD General Development Plan	1,200 ft.	1,200 ft.	1,200 ft.
PUD Preliminary Development Plan	600 ft.	900 ft.	1,200 ft.
Rezoning	600 ft.	900 ft.	1,200 ft.
Special Review	600 ft.	900 ft.	1,200 ft.
Variance	200 ft.	200 ft.	200 ft.

3. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-1. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the

reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

5. Reduction in Notification Area. All notification distances in Table 18.05-1 shall be reduced by fifty (50) percent, ~~but shall not be less than three hundred (300) feet, except for oil and gas permits and variances,~~ for infill projects that are ~~less than twenty (20)~~^{five (5)} acres ~~or less~~ in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-1 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. ~~The reduction in notification area as described in subsection 5. above shall not apply when there is an expansion of the notification area.~~ The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

18.05.040 Posted Notice for Neighborhood Meetings.

- A. Deadline for Posting. At least fifteen (15) days prior to a neighborhood meeting, the applicant shall post a notice on the subject property.
- B. Content. The posted notice for neighborhood meetings shall include the following:
 1. Time, date, and location of the meeting.
 2. The application(s) to be considered.
 3. Project name.
 4. City of Loveland Current Planning Division contact information, including the division phone number.
- C. Requirements for Posting.
 1. It shall be the applicant's responsibility to have the sign(s) created by a sign company.
 2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant's responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the neighborhood meeting. The Current Planning Division shall provide the applicant with specifications for the posting location of the required signs.
 3. An affidavit of the applicant's compliance with the posted notice requirements shall be provided to the City prior to the neighborhood meeting for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.050 Public Hearings.

Mailed, posted and published public notice is required for public hearings. It is the applicant's responsibility to mail and post public notice for public hearings; the City is responsible to publish notice for public hearings.

18.05.060 Mailed Notice for Public Hearings.

A. Deadline for Mailing. At least fifteen (15) days prior to a public hearing, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 18.05.060.C(1), at the address listed for each owner. An affidavit of the applicant's compliance with the mailed notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

B. Content. The mailed notice for public hearings shall include the following:

1. Time, date, and location of the hearing.
2. The application(s) to be considered.
3. Project name.
4. Applicant's name.
5. Vicinity map identifying the site within the neighborhood context.
6. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
7. Description of the proposal for the subject property.
8. Primary contact (applicant or applicant's consultant) information, including name of individual; name of company; phone number; e-mail address.
9. Secondary contact (City of Loveland Current Planning Division) information, including the name, phone number and email address of the reviewing planner.
10. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.

C. Requirements for Mailing.

1. Ownership List. A list, certified by the applicant, of the names and addresses of all surface owners of record of all properties that fall within the distances provided in Table 18.05-2 and Sections 18.05.060.C (3) through (7), shall be submitted to the City's Current Planning Division, using the names and addresses that appear on the latest records of the Larimer County Assessor. This list shall be current to within sixty (60) days prior to the mailing.
2. Area of Notification. For all applications requiring written (mailed) public notice, the distances specified in Table 18.05-2 Mailed Notice Distance Requirements, shall be used to determine the area to which such notice shall be given, except as provided in Sections 18.05.060.C (3) through (7). All properties that fall wholly or partially within the stated distance, as measured from the perimeter of the subject property, shall be included.

Table 18.05-2 MAILED NOTICE DISTANCE REQUIREMENTS FOR PUBLIC HEARINGS

Application Type	Application Size		
	Under 5 acres	5 – 50 acres	Greater than 50 acres
Oil & Gas Permit per Chapter 18.77	<u>2,200 ft.</u> <u>(measured from boundary of property on which surface use will occur under permit)</u>	<u>2,200 ft.</u> <u>(measured from boundary of property on which surface use will occur under permit)</u>	<u>2,200 ft.</u> <u>(measured from boundary of property on which surface use will occur under permit)</u>
Annexation, Zoning	1,200 ft.	1,200 ft.	1,200 ft.
Be District Developments*	300 ft.	300 ft.	300 ft.
Comprehensive Plan Amendment	See Section 6.0 of the Loveland Comprehensive Master Plan		
Height Exception	300 ft.	300 ft.	300 ft.
PUD General Development Plan	1,200 ft.	1,200 ft.	1,200 ft.
PUD Preliminary Development Plan	600 ft.	900 ft.	1,200 ft.
Rezoning	600 ft.	900 ft.	1,200 ft.

* For Be District developments requiring approval of Planning Commission as indicated in 18.24.050

3. Public rights-of-way and streets. Notification distance shall be calculated inclusive of public rights-of-way and public streets.
4. Lake, golf course and park front notification.
 - a. If the subject property fronts a lake, public or private golf course or public park, written notice shall also be mailed to owners of other properties that front the lake, public or private golf course or public park that are within two times the distances specified in Table 18.05-2. For the purposes of this provision, lake front properties include those that are separated from the lake up to 50 feet by undevelopable property such as open space tracts and outlots.
 - b. The area of required notification may be expanded to include up to all properties fronting the lake, public or private golf course or public park if the Current Planning Manager reasonably anticipates that the proposal may impact the use, enjoyment or viewshed of other fronting properties beyond the distance specified in (a) above. The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the neighborhood meeting.

5. Reduction in Notification Area. All notification distances in Table 18.05-2 shall be reduced by fifty (50) percent, ~~but shall not be less than three hundred (300) feet, except for oil and gas permits and variances,~~ for infill projects that are ~~twenty (20) less than five (5)~~ acres or less in size. For the purposes of this section, a project shall be considered an infill project if it is adjacent, on at least eighty (80) percent of its boundary, to properties within the existing city limits of the City of Loveland.
6. Expansion of Notification Area. The area of required notification may be expanded up to twice the distance specified in Table 18.05-2 if the Current Planning Manager reasonably anticipates interest or concern regarding the application from community members beyond the required distance. ~~The reduction in notification area as described in subsection 5. above shall not apply when there is an expansion of the notification area.~~ The applicant shall be notified in writing of any determination to expand the required notification area, including the reasons for the expansion, at least twenty one (21) days prior to the public hearing.
7. Mineral Estate Owners. The notification of mineral estate owners of the property which is the subject of a public hearing shall be given by the applicant at least thirty (30) days prior to the public hearing in accordance with the requirements of the Colorado Notification of Surface Development Act (C.R.S. § 24-65.5-101 et seq.)(the “act”). An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of the act.

18.05.070 Posted Notice for Public Hearings.

- A. Deadline for Posting. At least fifteen (15) days prior to a public hearing, the applicant shall post a notice on the subject property.
- B. Content. The posted notice for public hearings shall include the following:
 1. Time, date, and location of the hearing.
 2. The application(s) to be considered.
 3. Project name.
 4. City of Loveland Current Planning Division contact information, including the division phone number.
- C. Requirements for Posting.
 1. It shall be the applicant’s responsibility to have the sign(s) created by a sign company.
 2. The posted notice shall be readily visible from each public street or highway adjoining the property. It is the applicant’s responsibility to post the sign(s) on the site and ensure that the sign(s) remain in place during the full 15-day period leading up to the public hearing. The Current Planning Division shall provide the applicant specifications for the location of signs required for the site.
 3. An affidavit of the applicant’s compliance with the posted notice requirements shall be provided to the City prior to the public hearing for which the notice was given and shall satisfy the requirements of Section 18.05.120.

18.05.080 Published Notice for Public Hearings.

- A. Deadline for Publishing. Notice shall be published by the current planning division at least fifteen (15) days prior to a public hearing.
- B. Content. The published notice for public hearings shall include the following:
 - 1. Time, date, and location of the hearing.
 - 2. The application(s) to be considered.
 - 3. Project name.
 - 4. Applicant's name.
 - 5. General description of the size and location of the subject property using street address and nearest street intersection. For platted properties and for mineral estate notices, include the legal description of the subject property, referencing lots, blocks and tracts of identified subdivisions or additions. For metes and bounds properties, include a statement that the full legal description is available at the Current Planning Division office.
 - 6. Description of the proposal for the subject property.
 - 7. City of Loveland Current Planning Division contact information, including the division phone number.
 - 8. A statement that interested parties may appear and speak on the matter at the public hearing and/or file written comments with the City's Current Planning Division.
- C. Requirements for Publishing. Notice of the public hearing shall be published one (1) time in a newspaper of general circulation.

18.05.090 Staff Decisions.

- A. Required Notice. Mailed or posted public notice is required for certain staff decisions relating to special review and major home occupation applications. Refer to Code Section 18.40 for requirements applicable to special review application and Section 18.48.020 for requirements applicable to major home occupation application.
- B. Optional Notice. Notice of staff decisions authorized under this Title but not otherwise subject to specific notice requirements may be required by the Current Planning Manager when the following circumstances exist:
 - 1. A discretionary decision has been made by staff concerning the application of one or more regulations contained in this Title; and
 - 2. The decision may impact the use or enjoyment of property within the vicinity of the subject site; and
 - 3. There is reason to believe that there may be parties of interest residing or owning property within the vicinity of the affected property.
- C. Type and Distance of Optional Notice. Notice type(s) and distance for optional notice shall be at the discretion of the Current Planning Manager. In no instance shall mailed notice exceed 300 feet from the boundary of the subject property.

18.05.100 Computation of Time.

In computing any period of time prescribed for the purpose of giving notice under the provisions of this Chapter, the day of the publication, mailing, or posting shall be included. The day of the meeting or hearing shall not be counted. Saturdays, Sundays, and legal holidays shall be counted as any other day.

18.05.110 Notice Cost.

All costs for providing public notice as required by this Chapter shall be the responsibility of the applicant except for Published Notice.

18.05.120 Applicant's Certification.

Prior to the neighborhood meeting or public hearing, the applicant shall provide the Current Planning Division with an affidavit certifying that the requirements as to the applicant's responsibility for the applicable forms of notice under this Chapter have been met. The Current Planning Division shall provide a sample of the certification, which shall address all applicable forms of public notice required of the applicant in Sections 18.05.020 and 18.05.050.

18.05.130 Failure to Provide Notice, Defective Notice.

Failure to provide the required affidavit, or evidence of a defective mailing list prior to a neighborhood meeting or public hearing, shall result in termination of the review process until proper notice is provided, meeting all applicable provisions herein.

18.05.140 Continuation of Hearings and Neighborhood Meetings.

A hearing or neighborhood meeting for which proper notice was given may be continued to a later date without again complying with the public notice requirements of this Chapter, provided that the date, time, and location of the continued hearing or meeting is announced to the public at the time of continuance.

18.05.150 Notice for Appeals.

Any final decision that is appealed under this chapter is subject to the same notice standards as the original notice.

Section 2. That Chapter 16.18 of the Loveland Municipal Code is hereby amended and restated in its entirety to read as follows:

FIRST READING: March 5, 2013

SECOND READING: March 19, 2013

ORDINANCE # 5753

**AN ORDINANCE ADDING TO THE LOVELAND MUNICIPAL CODE
CHAPTER 18.77 FOR THE REGULATION OF OIL AND GAS
OPERATIONS AND CHAPTER 18.78 FOR SETBACKS FOR
DEVELOPMENT FROM OIL AND GAS OPERATIONS WITHIN THE
CITY OF LOVELAND**

WHEREAS, on May 15, 2012, the City Council adopted Ordinance No. 5685 as an emergency ordinance; and

WHEREAS, Ordinance No. 5685 imposed a nine (9) month moratorium on the City's acceptance, processing and approval of all applications for City licenses, permits and any other approvals needed to conduct oil and gas operations within the City; and

WHEREAS, this moratorium began on May 16, 2012, and was set to expire on February 16, 2013; and

WHEREAS, on December 18, 2012, the City Council adopted Ordinance No. 5735 to extend the moratorium from February 16, 2013, to the earlier of April 15, 2013, or on the date that an ordinance adopted by City Council to enact local oil and gas regulations becomes law; and

WHEREAS, the primary purpose of the moratorium has been to give City staff and this Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas operations 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 environment, wildlife resources and the public's health, safety and welfare; and

WHEREAS, in that process it was determined that under Colorado law the regulation of oil and gas operations by home rule municipalities, such as Loveland, is a matter of mixed statewide and local concern and, as such, the City has the legal authority to enact its own oil and gas regulations so long as those regulations are not in "operational conflict" with state law, including the oil and gas regulations which have been adopted by the Colorado Oil and Gas Conservation Commission ("Commission"); and

WHEREAS, in the exercise of that legal authority, the Council finds that it is important for the City to have a role in minimizing the adverse impacts that oil and gas development within the City will likely have on the City's environment and on its residents' health, safety and welfare; and

WHEREAS, the Council therefore finds that this Ordinance is a proper and necessary

exercise of the City's general police power and of its home rule authority to regulate zoning and land use, in order to regulate oil and gas operations and facilities within the City to the full extent permitted by law; and

WHEREAS, the development of oil and gas resources presents unique public health, safety and welfare issues that are inadequately addressed in the City's current zoning and land use regulations; and

WHEREAS, City staff has completed a review of applicable state law and of the Commission's regulations concerning oil and gas operations, a review of the oil and gas regulations adopted by other local governments throughout Colorado, and has received and considered input from the public, including from the Anadarko Petroleum Corporation, currently the only oil and gas operator known to have plans to begin new oil and gas operations within the City; and

WHEREAS, as a result of that process, the oil and gas regulations and the building setbacks from oil and gas activities as set out in this Ordinance are necessary to protect the City's environment and wildlife resources, and the public's health, safety and welfare.

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:

18.77.010	Authority.
18.77.015	Purpose.
18.77.020	Applicability.
18.77.025	Rules of Construction and Definitions.
18.77.030	Zoning.
18.77.035	Alternative Permit Processes.
18.77.040	Conceptual Review.
18.77.045	Planning Commission Review Process.
18.77.050	Administrative Review Process.
18.77.055	Baseline Standards for Planning Commission Review Process.
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	Variances.
18.77.080	Transfer of Permits.
18.77.085	Other Applicable Code Provisions.
18.77.090	Emergency Response Costs.

- 18.77.095 Application and Inspection Fees.**
- 18.77.100 Capital Expansion Fees.**
- 18.77.105 Reimbursement for Consultant Costs.**
- 18.77.110 Adequate Transportation Facilities**
- 18.77.115 Insurance and Performance Security.**
- 18.77.120 Inspections, Right to Enter and Enforcement.**
- 18.77.125 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.130 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. It is the intent of this chapter that these powers and authority be exercised in a manner that will not create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict could 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. The provisions of this chapter are therefore to 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 an 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 may 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 surface oil and gas operations occurring within the city's boundaries, which shall include, without limitation, any oil and gas operation requiring the commission's issuance or reissuance of a drilling permit or any other permit under the COG regulations. 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 surface oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 2, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 2, 2013. It shall also not apply to any surface oil and gas operations occurring on real property annexed into the city on or after April 2, 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 surface oil and gas operations occurring within the city's boundaries after April 2, 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 or in chapter 18.04 of this code, and where there is more than one definition, the controlling definition shall be the one that is most consistent with the city's authority described in Section 18.77.010 and with the city's purposes for enacting this chapter as described in Section 18.77.015. 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 plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

D. "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.

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

F. "Administrative review process" shall mean the expedited and enhanced review process set out in section 18.77.050.

G. "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.

H. "Application" shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

I. "Baseline standards" shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

J. "Best management practices" shall mean the best proven and commercially practicable techniques, technologies and practices that are designed to prevent or minimize adverse impacts caused by oil and gas operations to the public health, safety or welfare, including the environment and wildlife resources.

K. "Building" shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

L. "City manager" shall mean the city's duly appointed city manager or his or her designee.

M. "Code" shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

N. "COG permit" shall mean a permit issued by the commission to drill, deepen, re-enter or recomplete and conduct any other oil and gas operation as allowed under the COG regulations.

O. "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. 400; et seq.

P. "Commission" shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. "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 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.

R. "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.

S. "Current planning" shall mean the city's current planning division.

T. "Day" shall mean a calendar day.

U. "Designated agent" shall mean the designated representative of any operator.

V. "Development review team" or "DRT" shall mean the city's development review team.

W. "Director" shall mean the director of the city's development services department or his or her designee.

X. "Enhanced standards" shall mean those review standards and best management practices set out in section 18.77.065.

Y. "Gas" shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Z. "Hydraulic fracturing" shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.

AA. "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.

BB. "Minimize adverse impacts" shall mean, whenever reasonably practicable, to avoid significant adverse impacts to wildlife resources, the environment, or to the public's health, safety or welfare 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.

CC. "Natural area" shall mean those areas described or identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

DD. "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.

EE. "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.

FF. "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, re-entering, 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 flowlines and gathering lines; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

GG. "Operator" shall mean a person who has the legal right under a permit issued under this chapter 18.77 and under a COG permit issued by the commission to conduct oil and gas operations on the surface within the city's boundaries by drilling into and producing from a pool and to appropriate the oil or gas produced therefrom either for the operator or for the operator and an owner.

HH. "Outdoor assembly area" shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate, but shall not include the backyards of residential buildings.

II. "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.

JJ. "Permit" or "oil and gas permit" shall mean a permit issued by the city to an applicant under this chapter.

KK. "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.

LL. "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. This shall include, without limitation and as applicable, "production pits," "special purpose pits," "reserve pits," "multi-well pits" and "drilling pits," as these are defined in the COG regulations.

MM. "Planning commission" shall mean the city's planning commission as established in code section 2.60.210.

NN. "Planning commission review process" shall mean the review process set out in section 18.77.045.

OO. "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.

PP. "Setback" shall mean the distance on the surface estate between the following, as applicable: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.

QQ. "Significant degradation" shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

RR. "State" shall mean the State of Colorado.

SS. "Surface water body" shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

TT. "Surface owner" shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

UU. "VOCs" shall mean volatile organic compounds.

VV. "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, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WW. "Well blowdown" shall mean the maintenance activity designed to remove fluids from mature wells during which time gas is often vented to the atmosphere.

XX. "Well completion" shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and hydraulic fracturing, allows for the flowback of oil 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.

YY. "Wellhead" shall mean the equipment attached to the casinghead of an oil, gas or injection well above the surface of the ground.

ZZ. "Wetlands" shall have the same meaning as this word is 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, general development plans, 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 a COG permit 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 and enhanced 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 fifteen (15) days after a written request for the meeting has been received. At least fifteen (15) 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 set 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 a COG permit 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 and enhanced administrative review process rather than the planning commission review process. Within ten (10) 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. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within three (3) months thereafter.

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 fifteen (15) 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 fifteen (15) 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, 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 (45) 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 under the application and how the operations will be regulated under this chapter and the COG regulations. Notwithstanding the foregoing, the director may waive the provisions of this paragraph C. if the director determines that the City's required notices and neighborhood meeting under this paragraph will be duplicative of the notice and neighborhood meeting requirements under the COG regulations for the applicant's COG permit. To be considered duplicative, the commission's neighborhood meeting must be held within the city.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within forty-five (45) 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 chapter 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. Any such condition agreed to shall be submitted by the applicant to the commission to be included as an express condition on the applicant's COG permit. 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, unless the condition is expressly required by this chapter 18.77. 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. Any condition agreed to shall be added to the permit and the applicant shall submit the condition to the commission to be included as a condition on the applicant's COG permit. An applicant's refusal to agree to any such condition shall not be used by the city council to deny the permit unless the condition is expressly required by this chapter 18.77.

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 and enhanced 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 might be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that to the extent the enhanced or negotiated standards imposed through this administrative review process are not already included as conditions in the applicant's COG permit, the applicant will request the commission to add such enhanced standards as additional conditions to the applicant's COG permit; 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, 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 or waived in the same manner as under the planning commission review process set out in section 18.77.045.C., but with one addition. The notices mailed under section 18.77.045.C. 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 or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. 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 or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C., 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 shall 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. The condition shall also be submitted by the applicant to the commission to be added as an express condition on the applicant's COG permit. 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, unless the condition is expressly required by this chapter 18.77.

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, 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 Division of Parks and Wildlife 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 abandonment.*

1. All oil and gas facilities shall comply with the requirement for well abandonment set forth in COG rule 319, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment 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 Rescue Authority not less than two (2) hours prior to commencing plugging operations.

F. *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.

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

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

I. *COG regulations for hydraulic fracturing chemical disclosure.* All operators shall comply with COG rule 205.A, as amended. Each operator shall also provide to the Loveland Fire Rescue Authority in hard copy or electronic format the operator's chemical disclosure form that the operator has filed with the chemical disclosure registry under COG rule 205.A. Such form shall be filed with the director within five (5) days after the form is filed in the chemical disclosure registry.

J. *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.

K. *Cultural and historic resources standards.* The installation and operation of any oil and gas facility 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.

L. *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.

M. *Electric equipment.* The use of electric-powered equipment during production operations 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 cost to make the electrical connection is economically practicable. If available, electric service to the oil and gas facility shall be acquired by the operator within the shortest time period reasonably practicable. Temporary use of natural gas or diesel generators may be used until electric service is provided. Electric equipment shall not be required during drilling and well completion operations.

N. *Emergency response standards.*

1. In General. Operators agree to take all reasonable measures to assure that 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 provide to the City its emergency preparedness plan for operations within the City, 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. The emergency preparedness plan shall contain at least all of the following information:

- (a) The designation of the operator's office group or individual(s) responsible for emergency field operations. An office group or individual(s) designated to handle first response situations, emergency field operations or on-scene incident commands will meet this requirement. A phone number and address of such office group or individual(s) operation shall be required.
- (b) A map identifying the location of pipelines, isolation valves and/or a plot plan, sufficient in detail to enable the Loveland Fire Rescue Authority to respond to potential emergencies. The information concerning pipelines and isolation valves shall be kept confidential by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency or as otherwise required by law.
- (c) 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 and that is required to be reported to the commission or the commission's director shall be immediately reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and to the director promptly thereafter.
- (d) Access or evacuation routes and health care facilities anticipated to be used in the case of an emergency.
- (e) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.
- (f) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency caused by oil and gas operations and not promptly handled by the operator or its agents.
- (g) 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.

O. *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, 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. To the extent feasible and not inconsistent with its operations, operator may be required to use one (1) or more of the following additional noise mitigation measures to mitigate noise impacts:

- (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.

P. *Fencing.* After the drilling, well completion and interim reclamation operations are completed, the operator shall install permanent perimeter fencing six (6) feet in height around the entire perimeter of the production 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 or interferes with emergency or operations access to the production site.

Q. *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.

R. *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.

S. *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.

T. *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.

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

V. *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.

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

X. *Recordation of flowlines.* The legal description of all flowlines, 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 flowlines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Y. *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.

Z. *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.

AA. *Signs.* A sign permit shall be obtained for all signs at the oil and gas facility or otherwise associated with the oil and gas operations in accordance with code chapter 18.50 except such permit shall not be required for those signs required by the COG regulations or this chapter.

BB. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including, without limitation, the COG regulations, 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 comply with existing COG regulations concerning reporting and notification of spills, and the spill or release shall also be reported to the director within twenty-four (24) hours of the operator becoming aware of the spill or release.

CC. *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.

DD. *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.

EE. *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.

FF. *Water supply.* The operator shall identify on the site plan its primary source(s) for water used in both the drilling and well completion phases of operation. In addition, if requested by the city's Water and Power Department director, the applicant's source(s) and amounts of water used in the city shall be documented and a record of it shall be provided to the city. The disposal of water used on site shall also be reported to the Water and Power Department director if requested to include the operator's anticipated haul routes and the approximate number of vehicles needed to supply and dispose of the water. When operationally feasible, the operator shall minimize adverse impacts caused by the delivery of water to the operation site by truck. If available and commercially viable, the operator shall make a service line connection to a domestic water supplier who is willing to provide such water at the same rates, fees and charges and provided that the amount of the water that can be supplied by that provider can be done so without delay or negative impact to the operator's drilling and well completion operations. When operationally feasible, the operator may alternatively purchase non-potable water from any other sources and transfer that water through ditches or other waterways and/or through above or below ground lines.

GG. *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.

HH. *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.

II. *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.

JJ. *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.

KK. *Floodplains.* All surface oil and gas operations within the city's floodway and flood fringe districts, as these districts are defined and established in code chapter 18.45, shall be conducted, to the extent allowed under COG regulations, in accordance with all applicable COG regulations, including, without limitation, COG rules 603.k. and 1204. In addition, if the operator's oil and gas operations will involve any development or structures regulated under the city's Floodplain Building Code in code chapter 15.14, the operator shall also obtain a floodplain development permit before beginning such regulated operations.

LL. *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.

MM. *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.

NN. *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.

OO. *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.

PP. *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.

QQ. *COG regulations for odor.* All oil and gas operations shall comply with COG rule 805.

RR. *COG regulations for abandonment of pipelines.* Any pipelines abandoned in place shall comply with COG rule 1103 and the operator's notice to the commission of such abandonment shall be promptly filed thereafter by the applicant with the director.

SS. *Temporary Housing.* Temporary housing shall be prohibited on any oil and gas operations site, including, without limitation, trailers, modular homes and recreational vehicles, except for the temporary housing customarily provided and required during twenty-four hour drilling, well completion and flowback operations.

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. The operator shall designate these standards and requirements, to the extent applicable, as agreed upon best management practices on any application the operator files with the commission.

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, all oil and gas facilities shall be located at least five hundred (500) feet from any building, or such greater distance as may be required by the commission.
2. All oil and gas facilities 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 facilities shall be located at least five hundred (500) feet from: (i) the boundary of any natural area or wetland; (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; (iv) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity, or such greater distance as required by the commission.
4. All oil and gas facilities 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 facilities shall be located at least one thousand (1,000) from any 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, or such greater distance as required by the commission.

B. *Commission mitigation regulations.* All oil and gas operations shall comply with the mitigation measures required under commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table 1 below, shall be established once the well is in production around the entire perimeter of the oil and gas production site, 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. Bufferyards shall not be required during drilling and well completion operations. 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, maintained and operated for xeriscape plant types for a period of two years from planting.

Table 1 - Bufferyards

Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
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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 manner 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, during production operations, 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.

9. *Monitoring compliance and reporting.* Operators shall submit to the director an annual report providing the following information concerning the operator's oil and gas operations as related to air emissions:

- (a) Dates when the operator or its agent inspected its oil and gas facilities under its leak detection and repair plan;
- (b) A record of the expected and actual air emissions measured at the facilities;
- (c) The operator's emissions data collected during well completion activities;

- (d) Dates and duration when operator conducted well maintenance activities to minimize air emissions;
- (e) If venting occurred at any time during the reporting period, an explanation as to why best management practices could not have been used to prevent such venting; and
- (f) Dates when reciprocating compressor rod-packing is replaced.

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

1. Flowlines, 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 building 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, 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, meaning while the well is in production. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chapter. If necessary to comply with said chapter, 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 a COG permit and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 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 may 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.

18.77.080 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 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.

18.77.085 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.

18.77.090 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.

18.77.095 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. Fees established for inspections shall be nondiscriminatory to only cover the city's reasonable costs to inspect and monitor for road damage and for compliance with the city's fire code, building codes and the conditions of any permit issued under this chapter. However, such inspection fees shall not be based on any costs the city might incur to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order or permit condition administered by the commission.

18.77.100 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. Any such fees adopted, shall be paid by the operator to the city at the time of issuance of an oil and gas permit under this chapter.

18.77.105 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.

18.77.110 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.

18.77.115 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, dispersal, 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 for Road Damage.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a twenty-five thousand dollar (\$25,000) 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 to cover the city's costs to repair any damages to the city's public rights-of-way caused by the operator's use of said rights-of-way. In the event this security is insufficient to cover the city's costs to repair any such damages, the operator shall be liable to the city for those additional costs and the city may pursue a civil action against the operator to recover those costs as provided in section 18.77.125.C. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.120 Inspections, Right to Enter and Enforcement.

A. *Inspections.* 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. However, the city's inspections shall be limited to the inspection of those matters directly enforceable by the city under this chapter 18.77 as provided in paragraph C. of this section. In the event an inspection is desired by the city relating to a matter not directly enforceable by the city under this chapter, the city shall contact the commission to request that it conduct the inspection and take appropriate enforcement action.

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. *Enforcement.* The city's enforcement of the provisions of this chapter 18.77 and of the conditions included in permits issued under this chapter shall be limited to those provisions and conditions that are not in operational conflict with state law or COG regulations. Notwithstanding the foregoing, the city may also enforce any provision or condition that is an enhanced standard imposed and agreed to by the applicant through the administrative review process or agreed to by the applicant in the planning commission review process, unless such provision or condition is made an express condition of the applicant's COG permit.

D. *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 (24) hours a day, seven (7) days a week for the purpose of being notified of any proposed city inspection under this section or in case of an emergency. The applicant shall notify the city in writing of any change in the primary or back-up designated agent or their contact information.

18.77.125 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 enforceable condition of a permit; or

3. Violate any applicable and enforceable 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 enforceable 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 five (25) 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 enforceable 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.

18.77.130 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 18.78

Building Setbacks from Oil and Gas Facilities

Sections:

- 18.78.010 Purpose**
- 18.78.020 Building Setbacks from Oil and Gas Facilities**
- 18.78.030 Variances.**

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 "buildings," as defined in code section 18.77.025, except such buildings with an occupancy rating for fifty (50) persons or more, shall be setback a minimum distance of five hundred (500) feet from an existing or abandoned oil and gas facility. All such buildings with an occupancy rating for fifty (50) persons or more and "outdoor assembly areas," as this term is defined in code section 18.77.025, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas well," as this term is defined in code section 18.77.025. Land included in such setback areas shall be restricted to use only as open space and recreational uses within that open space, such as play fields, parks and playgrounds, shall not be permitted.

18.78.030 Variances.

The owner of any real property subject to the setback requirements of section 18.78.020 may request a variance from those setbacks in accordance with the provisions of section 18.77.075 using the planning review process set out in Chapter 18.77.

Section 3. That Ordinance No. 5685 and Ordinance No. 5735 are hereby repealed.

Section 4. 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 _____, 2013.



Cecil A. Gutierrez
Cecil A. Gutierrez, Mayor

ATTEST:

Teresa G. Andrews
City Clerk

APPROVED AS TO FORM:

John R. Neal
City Attorney

Ordinance # 5753

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on March 5, 2013 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits in full on March 9, 2013, and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on March 23, 2013.

Teresa G. Andrews
City Clerk

Effective Date: April 2, 2013



City of Loveland

Current Planning Division

500 East Third Street • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

April 17, 2013

Gary & Rita Clark
6945 Clearwater Drive
Loveland, CO 80538

Re: Zoning Board of Adjustment Findings and Order of the Hearing Officer

Dear Mr. and Mrs. Clark,

On Tuesday, April 16, 2013 the Zoning Board of Adjustment Hearing Officer issued their findings and order. It is attached to this cover letter. In summary, a decision to deny your variance requests was made. As specified in Chapter 18.60 Section 18.60.060 of the Loveland Municipal Code, this decision may be appealed to the full board of adjustment by any party-in-interest. This would require filing of a written appeal with the Current Planning Division within ten (10) days of the Hearing Officer's decision. Appeal of a final decision shall be limited to allegations that the Hearing Officer committed one (1) or more of the following errors:

1. Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or
2. Failure to conduct a fair hearing in that:
 - a. The Hearing Officer exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;
 - b. The Hearing Officer considered evidence relevant to its findings which was substantially false or grossly misleading; or
 - c. The Hearing Officer improperly failed to receive all relevant evidence offered by the appellant.

Should there be any questions regarding this letter or the information contained in it, please contact me at (970) 962-2579 or send email to Troy.Bliss@cityofloveland.org

Sincerely,

Troy Bliss
City Planner II
Current Planning Division

Cc: **Zoning Board of Adjustment**

James Martell, 300 South Howes Street, Fort Collins, CO 80521
Bernard and Linda Rollin, 2101 East County Road 30, Fort Collins, CO 80525
Ginny Deitchler, 2715 Anchorage Court, Loveland, CO 80538
Russ Opal, 2735 Anchorage Court, Loveland, CO 80538



**Development Services
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
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**ZONING BOARD OF ADJUSTMENT
IN AND FOR THE CITY OF LOVELAND, COLORADO**

Variance Application # 2013-01

FINDINGS AND ORDER OF THE HEARING OFFICER

Regarding: Variance for setback and accessory structure square footage for Gary Clark, 6945 Clearwater Drive, Loveland, Colorado.

Property: Lot 3, Block 11, Waterfront North Subdivision, P-61 Waterfront Addition Planned United Development (PUD) – approximately 4.6 acre rural estate lot.

Request: The Applicant requested a variance to accommodate placement of a barn and riding arena to accommodate horses. The PUD permits 2 accessory structures on this lot, subject to the following standards:

- A 100 foot setback along the west property line; and
- A maximum of 1,500 square feet for each accessory structure (3,000 square feet total).

Applicant requests:

- A setback variance - to permit construction of a proposed barn and riding arena in a location that encroaches into the 100 foot setback (resulting in a minimum of 50 foot setback at the closest point); and
- A size variance - to permit construction of a 1,728 square foot barn, in excess of the 1,500 square foot limit. The proposed barn would be the second accessory structure on the lot, in addition to an existing detached garage of 816 square feet, bringing the total of 2 accessory structures to 2,544 square feet.

Hearing: This matter was heard on March 27, 2013 and continued to April 8, 2013 by John Crescibene, Hearing Officer designated by the Zoning Board of Adjustments pursuant to Section 18.60.060 of the Loveland Municipal Code.

Appearances:

Appearing as representative of Mr. Clark: James Martell, Esq., Liley, Rogers and Martell, LLC, 300 S. Howes, Fort Collins, Colorado 80521, 970/449-8718.

Appearing as the consultant for Mr. Clark: None.

Appearing for the City of Loveland: Troy Bliss, Planner.

Exhibits and Evidence: The following exhibits and documentary evidence were received: Application, including the following attachments: See the list set forth on **Exhibit A** attached hereto and incorporated herein.

Findings: The Hearing Officer considers and finds that due notice of this hearing was given. Thereupon, a hearing was held and the Hearing Officer, having heard the evidence and arguments of all persons in interest, makes the following **FINDINGS:**

Request for Setback Variance

Finding 1. *There are unique circumstances or conditions that are particular to, or related to, the land or structure for which the variance is requested, in that:*

Request for setback variance: The property is bisected by a driveway and has one accessory structure (detached garage) on the south side of the residence. The proposed location of the barn to the north of the residence and near the west property line makes efficient use of the existing space to permit maximum grazing area.

Request for size variance: While the allowance for horses in the PUD is a special or unique circumstance in an urban neighborhood, the PUD permits accessory structures of a specified size (1,500 square feet per structure, not to exceed 3,000 square feet for two structures) for the uses permitted – which include keeping two horses. No evidence was received indicating there are special circumstances that make 1,500 square foot limitation is inadequate for the permitted purpose.

Finding 2. *That the special circumstances are not the result of actions or inactions by the Applicant or the current Owner, in that:*

Request for setback variance: These conditions existed at the time the Applicant purchased the property.

Request for size variance: The special circumstances are not the result of the Applicant, but as stated above, these circumstances are not related to the need for a larger size barn.

Finding 3. *That the strict interpretation and enforcement of the provisions of the code would not cause an unnecessary or undue hardship, in that:*

Request for setback variance: From the statements provided by Mrs. Clark, it was inferred that the main intent for placement of the proposed barn is to block the view of objectionable items on the adjacent property to the west. Further, the lot includes 4.6 acres and no evidence was presented that alternative locations were investigated, with the exception of indicating that placement of the barn on the south-east side of the residence would adversely impact the northerly views of neighbors adjacent to that area. The 100 foot setback is clearly stated in the plat and show in the PUD documents and I can see no evidence of an undue hardship imposed by compliance with this setback.

Request for size variance: The limitation on the size of the barn to 1,500 square feet does not appear to cause undue hardship in the keeping of horses as permitted by the PUD.

Finding 4. That granting the variance is not the minimum action needed to accommodate or alleviate the difficulty or hardship involved, in that:

Request for setback variance: Alternative placement of the proposed barn appears to be possible while maintaining sufficient grazing area for horses to the extent permitted by the PUD documents and still avoiding adverse impact on neighbors to the southeast of the lot. Alternatives should be evaluated before a variance can be identified as the minimum action necessary.

Request for size variance: Since no undue hardship is apparent, a variance is not necessary to alleviate or accommodate it.

Finding 5. That the variance would substantially impact the use and enjoyment or development of other property in the vicinity of the land or structure, in that:

Request for setback variance: The 100 foot setback along the west property boundary was intended as a buffer for the property adjacent to the west that is rural in character, and included required landscaping in the 100 foot buffer area. Construction of a significant permanent structure within this setback reduces the effectiveness of the buffer and results further encroachment of development into the rural area to the west. The property owners to the west bargained for and have relied upon this 100 foot setback as a buffer and the loss of that buffer would have an adverse impact on that property. Property owners to the north, east, and southeast of the Clarks lot are a part of the same semi-urban and/or rural estate development and have not reasonably anticipated a significant buffer, although thoughtful alternatives for placement should be considered in order to minimize impact to these owners as well.

Request for size variance: A variance of 228 square feet is not large in the context of this property – however, the size cannot be adequately evaluated separately from location in terms of the impact on other property.

Finding 6. That the variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district, in that:

Request for setback and size variance: The requested variances as to setback and size do not propose a use that is not already permitted in the PUD zoning district.

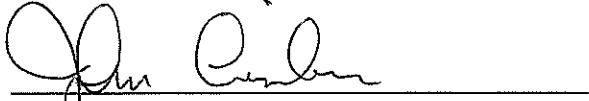
Finding 7. The variance would not waive or modify the requirements of any use by special review, in that:

Request for setback and size variance: The property is not subject to a special review.

NOW, THEREFORE, IT IS ORDERED BY THE HEARING OFFICER DESIGNATED BY THE BOARD that the application from Gary Clark for a lot-specific variance applicable to the identified lot from standards specified in development plans and the subdivision plat for P-61

Waterfront Addition Planned United Development (PUD), which PUD was created and exists pursuant to Chapter 18.41 of the Loveland Municipal Code, to allow a construction of an accessory structure within the 100 foot setback along the west property line and in excess of the 1,500 square foot limit be, and hereby is, DENIED.

BY:



John Crescibene, Hearing Officer

Dated this 16th day of April, 2013.

EXHIBIT A
LIST OF EXHIBIT AND DOCUMENTARY EVIDENCE RECEIVED

1. Application, including the following exhibits:
 - a. April 8, 2013 Liley, Rogers & Martell, LLC Exhibits
 - b. April 8, 2013 Zoning Board of Adjustment Memorandum
 - c. April 5, 2013 email from neighbor
 - d. March 27, 2013 Zoning Board of Adjustment Staff Report