

FIRST READING: December 3, 2013

SECOND READING: December 17, 2013

ORDINANCE NO. 5838

**AN ORDINANCE AMENDING CITY CODE CHAPTER 18.77
CONCERNING THE REGULATION OF OIL AND GAS OPERATIONS
AND CODE CHAPTER 18.78 CONCERNING OVERLAY ZONING
DISTRICTS FOR DEVELOPMENT SETBACKS FROM EXISTING OIL
AND GAS FACILITIES**

WHEREAS, on March 19, 2013, the City Council adopted Ordinance No. 5753 to add Chapters 18.77 and 18.78 to the City Code; and

WHEREAS, Chapter 18.77 establishes a comprehensive set of regulations for the permitting and operation of oil and gas facilities within Loveland; and

WHEREAS, Chapter 18.78 establishes within the City strict setbacks for future developments from existing oil and gas facilities; and

WHEREAS, the City has not yet received an application for an oil and gas permit under Chapter 18.77 or an application for development that would be affected by Chapter 18.78; and

WHEREAS, City staff has proposed that Chapter 18.77 be amended in several respects, to include: (1) clarifying existing and adding new definitions; (2) revising the notice requirements and clarifying appeal rights regarding the Director's decision on a permit issued under the administrative review process; (3) requiring that the Colorado Oil and Gas Conservation Commission be notified of the setbacks approved under the administrative review process; (4) establishing provisions for permit expiration; and (5) making the penalties for violations of the provisions in Chapter 18.77 consistent with the general penalty provisions in City Code Chapter 1.12; and

WHEREAS, City staff has also proposed that Chapter 18.78 be repealed in its entirety and reenacted to establish overlay zoning districts which would do the following: (1) create three overlay districts to allow certain land uses, generally of a heavy industrial nature and with certain limitations, within 1,000 feet of an existing oil and gas facility; (2) establish that such a use approved through the special review process would be allowed even if not permitted pursuant to the underlying zoning district; and (3) clarify that any request for a variance would be processed in accordance with the general procedures for a variance in City Code Chapter 18.60, but establish a separate process for variances requested based on a claim of a vested right or of a regulatory taking; and

WHEREAS, the Council 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 and adjacent development within the City to

the full extent permitted by law; and

WHEREAS, the oil and gas regulations and the overlay zoning districts from existing oil and gas facilities as set out in this Ordinance are necessary to protect the City's environment and wildlife resources, and to protect and promote 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 Code Section 18.77.010 is hereby amended to read in full as follows:

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.

Section 2. That Code Section 18.77.025 is hereby amended to read in full as follows:

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. "High occupancy building" shall mean any residential or non-residential structure designed to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more.

AA. "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.

BB. "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.

CC. "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.

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

EE. "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.

FF. "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, which shall include, without limitation, any and all storage, separation, treating, dehydration, artificial lift, compression, pumping, metering, monitoring, aboveground flowlines, and other equipment directly associated with oil wells, gas wells, or injection wells. However, "oil and gas facility" shall not include aboveground or underground power supply, underground flow lines, or underground water lines.

GG. "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.

HH. "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.

II. "Outdoor assembly area" shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate and is capable of being reasonably occupied by 50 or more natural persons at any one time, but the front, side and rear yards of residential lots shall not be considered an "outdoor assembly area."

JJ. "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.

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

LL. "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 county, home rule municipality, statutory municipality, authority or special district.

MM. "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.

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

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

PP. "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.

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 for the conveyance of water for irrigation or domestic water supply use, 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.

Section 3. That Code Section 18.77.040 is hereby amended to read in full as follows:

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 fifteen (15) 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 ninety (90) days 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 ninety (90) days thereafter.

Section 4. That paragraphs G. and H. of Section 18.77.050 are hereby amended to read in full as follows:

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 director's written decision shall be mailed to the applicant and to all persons required in paragraph D. of this section to be mailed written notice of the neighborhood meeting. 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 to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by anyone required in paragraph D. of this section to be mailed written notice of the neighborhood meeting, and by any other person or persons considered a "party in interest," under section 18.80.020. 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.

Section 5. That paragraphs A., C. and F. of Section 18.77.065 are hereby amended to read in full as follows:

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.* All oil and gas facilities shall comply with the setback distances set forth in Table A below or such greater distances as may be required by the commission. Setback distances shall be measured from the closest edge of any equipment included in the definition of oil and gas facility in section 18.77.025.FF to the nearest part of the nearest feature associated with the sensitive area as described in Column C in Table A. For the purpose of measuring the setback from any sensitive area that does not have a defined property or boundary line, the director shall establish the boundary line for measurement purposes.

Table A – Setbacks for oil and gas facilities

| Column A | Column B | Column C |
|----------------|---------------------------|--|
| Sensitive Area | Setback Distance (ft.) | Setback to be measured to the following nearest feature of sensitive area |
| Building | 500 | Wall or corner of the building |

| Column A | Column B | Column C |
|--|----------|---|
| Public road, major above-ground utility facility, or railroad tracks | 200 | Right-of-way or easement property line |
| Property on which the oil and gas facility is located | 200 | Property line |
| Lease area on which the oil and gas facility is located | 200 | Property line |
| Natural area or wetland | 500 | Property line |
| Property managed by the City's Parks and Recreation Department, any City park, or property subject to a conservation easement managed by a public or non-profit entity | 500 | Property line of property or easement |
| Surface water body | 500 | Operating high-water line |
| FEMA floodway zoning district | 500 | Boundary line as shown by the Flood Insurance Rate Map (FIRM) revised to reflect a Letter of Map Revision effective May 24, 2010, published by the FEMA |
| Domestic or commercial water well | 500 | Center of wellhead |
| Outdoor assembly area | 1,000 | Property line |
| High occupancy building | 1,000 | Wall or corner of the building |

Once the setbacks for a well permitted under the administrative review process have been approved and established, the director shall submit to the commission a site plan showing the exact location of those setbacks for the permitted well.

C. *Bufferyards.* The bufferyards set forth in Table B 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 B - Bufferyards | | | |
|--|-----------------------|------------------|--|
| Base Standard (plants per 100 linear feet) | Optional Width (feet) | Plant Multiplier | Option: add 6 foot opaque masonry wall |

| | | | |
|-------------------|-----|------|-----|
| 5 canopy trees | 150 | 1.00 | .85 |
| 6 evergreen trees | 170 | 0.90 | |
| 4 large shrubs | 190 | 0.80 | |
| | 210 | 0.70 | |
| | 230 | 0.60 | |
| | 250 | 0.50 | |

F. *Sound Limitations.* 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.

Section 6. That a new Code Section 18.77.082 is hereby added to Code Chapter 18.77 to read in full as follows:

18.77.082 Expiration of Permits.

An oil and gas permit issued under this chapter shall expire and be null and void if drilling operations on the permitted well are not commenced within two (2) years after the date the permit is issued, unless before the expiration date the applicant requests in writing and the director approves an extension of such permit not to exceed one (1) year. To approve any such extension, the director must find that the applicant has an existing and valid permit from the commission for the subject oil and gas operations and that the proposed oil and gas operations approved under the city's permit continue to be in substantial compliance with the city's permit and the applicable provisions of this chapter.

Section 7. That paragraph D. of Code Section 18.77.125 is hereby amended to read in full as follows:

D. *Penalties.* A violation of any enforceable provision of this chapter shall constitute a misdemeanor offense punishable as provided in code section 1.12.010. 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.

Section 8. That Code Chapter 18.78 is hereby repealed in its entirety and reenacted to read in full as follows:

Chapter 18.78

Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities

Sections:

18.78.010 Purpose

| | |
|------------------|--|
| 18.78.020 | Definitions |
| 18.78.030 | Establishment of zoning overlay districts |
| 18.78.040 | Applicability |
| 18.78.050 | Zoning overlay district boundaries |
| 18.78.060 | Land use restrictions within zoning overlay districts |
| 18.78.080 | Variances |

18.78.010 Purpose.

The purpose of this chapter is to establish zoning overlay districts in the vicinity of existing oil and gas facilities in order to allow certain land uses within these zoning overlay districts that are compatible with the industrial nature of oil and gas facilities, but yet are protective of the public's health, safety and welfare. Nothing in this chapter is intended to regulate the location of an oil and gas facility, but only to regulate the use of land proposed to be developed for other uses and purposes.

18.78.020 Definitions.

The following words, terms and phases shall have the meanings set forth below, unless the context requires otherwise:

A. "Critical zone" shall mean all land and water surface area less than two hundred (200) feet from an oil and gas facility, as measured in accordance with section 18.78.050.

B. "High occupancy building zone" shall mean all land and water surface area five hundred (500) feet or greater but one thousand (1,000) feet or less from an oil and gas facility, as measured in accordance with Section 18.78.050.

C. "Oil and gas facility" shall have the meaning given to this term in section 18.77.025.FF and shall include, without limitation, operating, shut-in and abandoned wells. However, it shall not include an abandoned well that has been demonstrated, to the satisfaction of the Development Services Director, will not, as a matter of law, be reopened or reentered in the future for any type of oil and gas operation without the city's prior written consent.

D. "Restricted zone" shall mean all land and water surface area two hundred (200) feet or greater but less than five hundred (500) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

18.78.030 Establishment of zoning overlay districts.

There are hereby created and established in the city as zoning overlay districts the critical zone, the restricted zone, and the high occupancy building zone.

18.78.040 Applicability.

Notwithstanding the land uses allowed by the underlying zoning districts established in this title for any land located in the critical zone, restricted zone, or high occupancy building zone, development of such land shall be subject to and shall comply with the applicable zoning restrictions set forth in this chapter.

18.78.050 Zoning overlay district boundaries.

The boundaries of the zoning overlay districts established in section 18.78.030 shall be measured from the closest edge of any oil and gas facility.

18.78.060 Land use restrictions within zoning overlay districts.

A. In the critical zone land uses shall be limited to any of the following:

1. Essential underground public utility facilities; and
2. Undeveloped and restricted open space designed and operated to discourage access and use by natural persons, but this shall not include "recreational open space" as defined in chapter 18.04 and any of the uses allowed in the public park zoning district under chapter 18.32, unless it is an open lands/natural area that is undeveloped and designed and operated to discourage access and use by natural persons.

B. In the restricted zone land uses shall be limited to any of the following, provided no outdoor assembly area (as defined in section 18.77.025.1I), building, or parking lot is located within the restricted zone and the use is approved in accordance with the provisions in chapter 18.40 for uses permitted by special review.

1. Airports and heliports;
2. Attended recycling collection facility;
3. Commercial mineral deposit;
4. Composting facility;
5. Contractor's storage yard;

6. Essential public utility uses, facilities, services and structures;
7. Heavy industrial uses;
8. Landfill area;
9. Landscaping;
10. Personal wireless service facilities;
11. Plant nursery;
12. Public service facility;
13. Recyclable materials processing;
14. Resource extraction, process and sales;
15. Self-service storage facility;
16. Street;
17. Truck terminal;
18. Unattended recycling collection facility;
19. Vehicle rentals of heavy equipment, large trucks and trailers;
20. Vehicle rentals of cars, light trucks and light equipment;
21. Vehicle sales and leasing of cars and light trucks; and
22. Vehicle sales and leasing of farm equipment, mobile homes, recreational vehicles, large trucks and boats with outdoor storage;

These land uses shall be permitted if approved as a special review under this paragraph B. notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.

C. In the high occupancy building zone all land uses authorized for the affected land by the land's underlying zoning district as provided in this title shall be allowed subject to the

requirements of that zoning district, except that high occupancy buildings and outdoor assembly areas shall not be allowed within this zoning overlay district.

18.78.070 Variances.

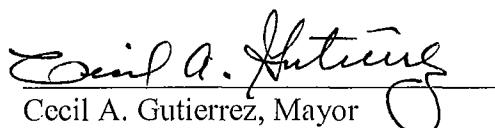
A. An owner of any real property subject to the requirements and limitations of this chapter may request a variance from those requirements and limitations using the variance procedures set out in chapter 18.60. The grounds for such variance shall be those set out in chapter 18.60 to the extent applicable. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property.

B. An owner may also request a variance from any of the requirements of this chapter on the basis of the existence of a vested right under chapter 18.72 or Colorado law or on the grounds that application of chapter 18.78 would constitute a regulatory taking under Article II, Section 3 of the Colorado Constitution. A variance request under this paragraph shall be made to the city council by filing with the city's current planning division a written variance request stating all the facts and law the owner is relying on for the variance. A quasi-judicial hearing before the city council to consider the variance request shall be scheduled and held not less than thirty (30) days but not more than sixty (60) days after filing of the owner's written variance request. Notice of the hearing shall be provided in accordance with all applicable requirements of chapter 18.05. At the conclusion of the hearing, the city council may grant, grant with conditions, or deny the variance request. In so doing, the city council shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing. However, any variance approved under this paragraph must be in compliance with the underlying zoning or approved development plan governing the subject property. The city council's decision may be appealed to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by any person receiving mailed notice of the hearing, or by any other person considered a "party in interest" under section 18.80.020.

Section 9. 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 7th day of December, 2013.




Cecil A. Gutierrez, Mayor

ATTEST:

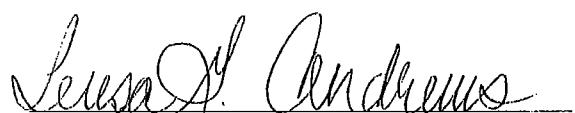

Leesa D. Andrews
City Clerk

APPROVED AS TO FORM:


City Attorney

Ordinance # 5838

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 December 3, 2013 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on December 7, 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 December 21, 2013.


City Clerk

Effective Date: January 7, 2014

December 31, 2013