



Board Summary Report

File #: 21-723

Agenda Date: 10/26/2021

Agenda #:

To: Board of County Commissioners

Through: Bryan Weimer, Director, Public Works & Development

Prepared By:

Diane Kocis, Energy Specialist, Public Works & Development

Presenter: Diane Kocis, Energy Specialist, Public Works & Development

Subject:

Amendment of the Land Development Code to Include New Requirements for Oil & Gas Development, Case LDC19-004

Purpose and Request:

The purpose of this hearing is to seek BOCC approval of the draft Oil & Gas regulations, as an amendment to the existing Oil & Gas rules in the Land Development Code. .

Background and Discussion: With the enactment of SB19-181, State preemption over oil and gas development was removed. Local governments now have local land use authority to develop regulations to govern site approval for oil and gas wells, and more authority to control how they are operated, in order to mitigate off-site impacts. In recent years Arapahoe County has seen increases in the number of wells on pads. These larger facilities have created a more industrial operation with higher levels and longer intervals of noise, bright lights, odors and traffic, as well as greater visual impacts which are expected to last 20 or more years. Over the past two years, staff has presented options for new rules to the Board of County Commissioners (Board) and summarized other jurisdictions' rules. It is important to note that staff was directed by the Board to bring forward regulations developed with a balanced approach that would promote safety and provide rules to mitigate impacts to nearby residential properties, while allowing industry to develop mineral rights. Key draft Health & Safety regulations include: Site-specific Emergency Action Plans, FEMA National Incident Management System (NIMS) training for key personnel, lists of onsite chemicals, firefighting supplies, and setbacks from occupied structures, adjacent property lines, public right-of-ways, Designated Outside Activity Areas, operating or closed landfills, riparian areas, streams and perennial water bodies. Reverse setbacks (setbacks from existing oil and gas facilities to new homes) measured from existing wells to new construction

are also stipulated. Operations rules include secondary containment for storage tanks sufficient to hold 1.5 times the volume of the largest tank and specifying that no pits and no pads will be permitted in floodplains. Quality of Life rules include noise modelling plus Noise Mitigation Plans, visual mitigation, odor control and evaluation of truck access roads. Wildlife rules include no pads within 500 ft of wetlands or riparian areas, no fencing that bisects streams, boring under streams for installation of flowlines and pipeline connections, and installation of culverts for access road crossings in riparian corridors. Process Improvements rules include allowances for a waiver process and include rules for neighborhood meetings, notice of application to residents within one mile, sign posting at the time of application, and expiration of approvals after 3 years. Please refer to Table 1 for a summary of the draft Oil & Gas rules by category.

On October 5, 2021, Planning Commission held a public hearing on the proposed Oil & Gas regulations. Four people spoke at the hearing. Both API (American Petroleum Institute) and COGA (Colorado Oil and Gas Association) had concerns with our proposed 2,000' setbacks but they said they appreciated all the outreach and collaboration. One member of the public testified in support of the regulations, especially the 2,000' setback as it provides greater safety for residents. One member of the Planning Commission, who was unable to attend the meeting, called during the public comment and advocated for either a continuance to address the API/COGA concerns or a recommendation of denial. Planning Commission voted 6-0 to recommend approval of the regulations to the Board. The Planning Commission's approval recommendation recommended additional changes suggested by the Bennett-Watkins Fire Protection District for: (1). Section 5-3.6.F.3.f to apply to "reportable" chemicals; (2). Section 5-3.6.F.3.L.i to provide for District and Operator agreement whether additional firefighting capability may be required for a site; and (3). Section 5-3.6.F.8.a, to reduce the tank separation requirement to 3 feet. Additionally, the Planning Commission pointed out an ambiguity in Section 5-3.6.F.10.b and recommended removing the word "next" from the phrase "7 am to next 7 pm" to fix the ambiguity. In accordance with Planning Commission's recommendation, Planning staff is presenting to the BOCC for adoption the oil and gas regulations presented with this Report and including these four revisions. Staff also revised the definition of an Oil and Facility or Facilities to more clearly define a facility. The revised definition appears in the Resolution.

Fiscal Impact: Fiscal impact is expected to be minor and will entail increased staff time in Planning and the Office of Emergency Management for review of more application materials and waiver requests and additional recordkeeping.

Alternatives: Alternatives for the draft Oil & Gas rules are as follows: (a) Approve LDC19-004 as Recommended: Approve the amendment to the Land Development Code to include new Oil and Gas rules as recommended by staff and the Planning Commission; b) Approve LDC19-004 with Changes: Approve the amendment to the Land Development Code with changes to be included as part of the motion - the Board may specify the nature of the change and allow staff to finalize language or may direct staff to bring updated language back to the Board for further consideration; (c) Deny Application LDC19-004 to Amend the Oil and Gas Rules: This would leave the currently adopted rules in place in the Land Development Code; (d) Continue the hearing to a future date, or direct staff to notice a new public hearing date, and provide direction to staff for next steps.

Alignment with Strategic Plan:

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

Staff Recommendation: Staff recommends that all of the draft rules in their current form proceed to adoption, as recommended by the Planning Commission on October 5, 2021.

Concurrence: The Public Works & Development Department director and Planning Division managers concur with the Planning Commission's recommendation for approval of the draft Oil & Gas rules. On October 5, 2021, the Planning Commission voted 6-0 to recommend approval of the proposed rules to the Board.

Suggestion Motion(s): Attached.

Resolution: Attached.