



## CITY COUNCIL AGENDA MEMO

**MEETING DATE:** October 19, 2021

**AGENDA TITLE:** Ordinance No. 21, Series 2021 / Amending Chapter 26 of the Lafayette Code Regarding Land Use Regulations Pertaining to Oil and Gas Development, Facilities, and Operations

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### **Executive Summary**

Ordinance No. 21, Series 2021, repeals and replaces the City's existing oil and gas land use regulations in Section 26-22.1 of the Code with updated land use regulations based upon enabling legislation (SB 19-181) and rulemaking at the state level that provides local jurisdictions with greater authority to regulate the location, surface impacts, and external effects of new and existing oil and gas facilities.

This memo provides an overview of the new regulations. These regulations are presented to City Council prior to the expiration of the City's moratorium on the acceptance and processing of land use applications related to oil and gas activities in November.

Staff is requesting a City Council action in accordance with Section 26-30-2 of the Code, which establishes the procedure for amendments to the Development and Zoning Code (Chapter 26). Both the Planning Commission and staff recommend approval.

**City Council Strategic Priority (most applicable): Environmental Leadership**

### **Background Information**

#### Enabling Legislation

In 2019, the Colorado General Assembly passed, and the Governor signed into law, SB 19-181 effecting a mission change for the Colorado Oil and Gas Conservation Commission (COGCC) and redefining the relationship between state and local government regulation of oil and gas activities. In November 2020, the COGCC completed its rulemaking proceedings addressing the mission change, as well as flowlines, cumulative impacts, alternative location analysis, and compensatory mitigation for wildlife rules, as required by SB 19-181.

The COGCC's rulemakings implement the change to the COGCC's mission from "fostering" oil and gas development to "regulating" oil and gas development in a manner that protects public health, safety, welfare, the environment, and wildlife resources. Moreover, the

rulemakings addressed the new dual regulatory framework established by SB 19-181, which gives authority to local governments and the COGCC to regulate oil and gas development. These substantial regulatory changes at the state level, along with the enhanced authority given to local governments under SB 19-181, require the City to comprehensively update City's oil and gas regulations in Section 26-22.1 of the Development and Zoning Code (DZC).

### Basis of Draft Regulations

The regulations are provided in Attachment A and B and generally follow Boulder County's regulations with adjustments to integrate the regulations into Lafayette's DZC, but also consolidate portions of the regulations for usability and to avoid unnecessary repetition of requirements and include strengthening provisions such as designating zone districts where oil and gas facilities are prohibited, and requiring alternative site analysis at the pre-application stage, for example.

### Applicability of Regulations

The rules will apply to operators seeking to construct a new oil and gas facility or conduct a new oil and gas operation in the City. Certain rules will apply to all operators—new and existing—such as operator registration, monthly and annual inspections for emissions, liquid leaks, soil contamination, emergency response planning, and nuisance provisions.

### Summary of Regulations

The new regulations would replace the City's existing regulations in Section 26-22.1 DZC in their entirety. There are also minor technical modifications to other sections of the DZC to incorporate the proposed regulations into existing code provisions, including amendments to Table 26-A (Permitted Uses); Section 26-15 (Special Use Application Requirements and Procedures), and Section 26-16 (Review Procedures).

The draft regulations fulfill the goal and purpose of SB 19-181 in that they:

- Promote the public health, safety, and welfare, and the protection of the environment and wildlife resources by requiring state-of-the-art controls and practices to avoid or minimize and mitigate adverse impacts of oil and gas operations on public health, welfare, safety, and the environment.
- Include provisions, where necessary, that are more stringent than those required by COGCC or the Air Quality Control Commission (AQCC), including additional emission controls to reduce leaks, venting, and flaring, and more frequent groundwater monitoring requirements to swiftly identify contamination to groundwater. The regulations also include higher insurance limits, require environmental pollution insurance, and control-of-well insurance.
- Prohibit oil and gas development in zoned districts that allow for residential uses. This includes the RE1, RE2, R0, R1, OTR, R3, R4, RSR, T1, B1, and P zone districts. The only zone districts that could potentially allow new Oil and Gas facilities include C1 (Regional Business District), M1 (Industrial), DR (Developing Resource), and AG (Agricultural) zone districts under a special review process.

- Include a 2,000-foot setback for single well sites and a 2,500-foot setback from multiple well pad sites from homes, workplaces, trailheads, trails, childcare centers, jails, athletic fields, auditoriums, amphitheaters, hospitals, undeveloped residential lots, event centers, recreational facilities, nursing homes and life care institutions, and schools in those districts that allow for oil and gas development.
- Establish a special review process for the establishment of new oil and gas facilities within the City, and for the substantial modification of existing oil and gas facilities.
- Under the special review process, provide for a variance process in which City Council can reduce setbacks if the applicant can demonstrate that the proposed location and conditions of approval will provide substantially equivalent protections for public health, safety, welfare, the environment, and wildlife resources as the 2,000-foot setback would otherwise provide.

### Scope of Regulations

The draft Oil and Gas regulations represent a significant expansion and modernization over the City's existing regulations. The following is not meant to be an exhaustive description of the regulations but provides a high-level summary of the major sections and provisions within the proposed regulations.

1. **Registration.** Requires registration and annual renewal for existing and new operators. Registration includes submission of the following:
  - Contact information.
  - Map of mineral rights, including lease rights, within the City or within 2,000' of the City's boundaries.
  - 10 years of Colorado Oil and Gas Conversation Commission (COGCC) notices of alleged violations.
  - 10 years of any incident reports, including but not limited to accidents, spills, releases, and injuries.
  - Information related to the Operator's financial fitness to operate.
  - Emergency Response Plan.
  - Complaint resolution protocol.
  - Other information that may be necessary to identify the operator's oil and gas operations and facilities.
2. **Inspections.** Requires the following inspections for pre-existing facilities, new facilities, and ongoing operations within the City:
  - Annual soil sampling for contamination.
  - Monthly inspections for emissions or releases.
  - Monthly inspections for liquid leads within the boundaries of oil and gas facilities pads and along pipeline routes.
3. **Required reporting and cleanup of spills, leaks, and releases.** Requires reporting spills, leaks, and releases to the City's designated contact person immediately upon discovery and no later than 6 hours thereafter.

4. **Facility and pipeline abandonment, decommissioning, and reclamation requirements.** The regulations include strict compliance with all COGCC rules, authority for the City to impose conditions on approval of abandonment and decommissioning operations, and revegetation and reclamation requirements.
5. **Permitting for geophysical exploration and seismic testing.** The regulations include requirements for vibration monitoring and mapping, travel routes, traffic control plans, insurance, property owner permission, vibration monitoring, and seismic testing. The regulations also contain noticing requirements to nearby property owners and pre-exploration inspections of property at a nearby property owners' request.
6. **Special Use Review Procedures.** The regulations outline all submittal, noticing, community meeting, and referral requirements for new oil and gas development.
7. **Special Use Application Requirements.** The regulations specify the submittal requirements for a special review application. Highlighted submittal requirements include:
  - Verification of Legal Rights.
  - Site Plan and supporting information.
  - Reclamation Plan.
  - Air Quality Modeling.
  - Traffic and Road Use Plan.
  - Agricultural Impact Plan.
  - Natural Resources Impact Report.
  - Water Usage Study.
  - Water Quality Plan.
  - Emergency Preparedness Plan.
  - Noise Monitoring Plan.
  - Odor Plan.
  - Cultural and Historical Resources Survey.
  - Waste Management Plan.
  - Existing Mines Study.
8. **Special Use Review Standards.** The regulations specify the review and approval criteria for new facilities and operations, including required setbacks from defined uses and features.
9. **Standard Operating Requirements.** The regulations include supplemental rules, requirements, and conditions for oil and gas facilities approved under the special review process. The requirements address air quality, operations, water supply, water and stormwater quality, waste, site management, weed control, landscaping, seismic monitoring, noise, odor, lighting, dust, traffic, etc.
10. **Procedures following approval of Special Use Review.** The regulations include miscellaneous provisions regarding right of entry for inspections, amendments and modifications to facilities, and for maintenance and repair activities.

**11. City Inspections and Enforcements.** The regulations enable enforcement of the new rules and inspections to ensure compliance.

**12. Fines and Penalties.** There is a process for identification and assessment of fines for violation of the regulations, including a process for appeals to City Council.

**13. General Provisions** address operator requests to maintain the confidentiality of documents submitted to the City, such as financial reports. The regulations also allow the City to retain consultants for technical or other assistance, as well as variance provisions and requirements to notify the City if an operator's legal or financial status changes.

**14. Insurance Requirements.** The regulations include requirements for general commercial, automobile, workers compensation, umbrella, professional, pollution liability, and control-of-well insurance. Operators are responsible for ensuring their contractors and subcontractors have adequate insurance. In addition, insurance policies must name the City as an additional insured, and operators will be held responsible for any damage or loss caused by operators or their contractors or subcontractors.

**15. Definitions.** The definitions define key terms used within the regulations.

#### Changes to the Proposed Regulations

The following changes were made to the initial proposed version of the regulations based upon input received from Planning Commission and City Council at the August 11, 2021, joint work session:

- Prohibition of seismic testing activities in areas previously or currently used for mining activities.
- Public noticing requirement extended to 30 days prior to any seismic testing to ensure that property owners have adequate notice and opportunity to arrange for inspections with the applicant.
- Requirement of onsite storage of aqueous film forming foam (that does not contain PFAS), absorption boom, and granulated materials for ready deployment in case of leaks or other emergencies with a requirement to notify first responders the location of these materials on site.
- Prohibition of the use of City water for well construction and stimulation.
- An increased setback of 2,500 feet for multi-well facilities.
- Allowance for self-insurance to fulfill insurance requirements.

In addition, the City Attorney has added standards for review and addressed procedural matters for appeals of decisions by the Planning Director to City Council within the regulations.

#### **Next Steps**

City Council will review the Ordinance on second reading, at its meeting on November 1, 2021.

**Recommendation**

Per Sections 26-30-2 and 26-30-3, City Council may approve, approve with amendments, or reject the Ordinance. The Planning Commission reviewed the proposed Ordinance at its September 22, 2021 meeting and recommended approval by a vote of 6-0. Staff also recommends approval.

**Proposed Motion Language**

Council motion to approve Ordinance No. 21, Series 2021, an ordinance amending Chapter 26 of the Lafayette Code regarding Land Use Regulations Pertaining to Oil and Gas Development, Facilities, and Operations on first reading.

**Attachment(s)**

A: Ordinance No. 21, Series 2021

B: Exhibit A – Section 26-22.1 (Regulation of Oil and Gas Development, Facilities and Operations)