

PLANNING AND DEVELOPMENT MEMORANDUM
#11-01

January 13, 2011

TO: Honorable Mayor Joyce Downing and City Council members

FROM: William Simmons, City Manager *WAS*
James Hayes, Director of Planning and Development *JH*

SUBJECT: CB-1735 – Article 11-56, Oil and Gas Regulations

The Department of Planning and Development has prepared this memorandum as supplemental information for the discussion item on oil and gas regulations. Attached to this memorandum, is an ordinance, which if approved, will create a new Article 56 in Chapter 11 of the Municipal Code, and will regulate oil and gas operations within the City of Northglenn.

BACKGROUND:

In 2009, staff received an inquiry from Anadarko Petroleum about additional drilling sites in the Weld County portion of Northglenn (Section 36). The Company proposed to construct a drilling pad site in the northeast quarter section and directionally drill oil and gas wells. The current Municipal Code and the Zoning Ordinances do not address additional permitting requirements for oil and gas exploration within the City. The only method to address some of the impacts from the proposal was through a right-of-way (ROW) permit since the drilling trucks would access a public road. ROW permit #R10-000026 was issued to Kerr McGee Oil and Gas OnShore LP as a subsidiary of Anadarko for drilling in the NE ¼ of Section 36. The total permit fee was \$2,234.00 and did not include any details about the surface use agreement with the property owner (not the City) nor any requirements for private property land restoration. In addition, there were no requirements for fencing, hours of operation, or mitigating impacts from the operation.

After the initial ROW permit was issued, Anadarko stated their intentions to proceed with additional drilling on the south half of Section 36. In this case, the City is either the owner or has a controlling interest in the land, but the mineral rights have been severed. Although Anadarko will be required to negotiate a lease with the mineral interest owner and surface use agreement with the City, staff believes an additional level of regulation is required to mitigate the impacts from these operations.

The current proposal is for a centralized drilling location just northeast of the wastewater treatment plant building. The single pad site will be used for directional drilling of up to 13 additional well sites. Rather than simply negotiate a surface use agreement and issue another ROW permit, staff consulted with the City Attorney about creating a new section of the Zoning Ordinance to regulate oil and gas operations. The City Attorney agreed this regulation is best placed in the Zoning Ordinance since a Permitted Use Permit (PUP) process is proposed as the method for regulating the use of land. The Department of Planning and Development reviews and accepts PUP applications and schedules them for public hearing before the Planning Commission. In this case, the formal referral process will allow affected Departments and external agencies an opportunity to comment and recommend conditions for the PUP. In addition, the final PUP decision usually rests with the Planning Commission. In the draft ordinance, an additional step requiring City Council approval has been included to provide an additional level of oversight.

Another major reason to consider adopting this new ordinance is due to the increased activity of oil and gas exploration in Weld County. Specifically, increased resources in the Wattenberg field of natural gas and the Niobrara field of oil have been discovered in recent years. Most of the cities, towns, and unincorporated areas of Weld County and northern Adams County have seen increase in proposed exploration sites. The Town of Frederick recently adopted new oil and gas regulations and worked closely with the industry in developing the standards. The City Attorney has used these regulations as a model for our draft ordinance. The Colorado Municipal League (CML) is getting involved as well by hosting an educational session on August 25 about the impacts from drilling and limits on local land use control. Staff attended the session, which was presented by attorneys, engineers, and land use specialists affiliated with Anadarko.

On September 9, 2010, staff presented the new oil and gas regulations to the City Council in a study session. After some discussion, City Council directed staff to proceed with the new article of the municipal code, which included a review and recommendation by the Planning Commission.

On October 5, 2010, the Planning Commission reviewed the proposed ordinance and heard testimony from staff and representatives from Anadarko Petroleum. The item was continued to November 16, 2010 to provide time for the City Attorney and Anadarko to review and possibly amend the proposed language in the ordinance. On November 16, 2010, Anadarko had not yet provided their comments, and the matter was further continued to December 7, 2010.

On December 7, 2010, the Planning Commission reviewed the latest version of the ordinance and heard testimony from Anadarko, the City Attorney, and Department of Planning and Development staff. Minor revisions were recommended and agreed to by all of the various individuals. There may be some minor areas of disagreement, but the Planning Commission recommended approval of the revised document unanimously. A revised version of the ordinance was completed on December 8, 2010 by the City Attorney and was forwarded to Anadarko for final comment. As of December 27, 2010, no formal comments have been received, and the final version of the ordinance is attached for consideration by the City Council on January 13, 2011.

In conclusion, staff is requesting approval of the ordinance to add Article 56, Oil and Gas Regulations to the Zoning Ordinance.

BUDGET IMPLICATION:

Staff does not anticipate any major impacts to the City of Northglenn budget. Staff will be required to spend additional time reviewing Permitted Use Permit applications, but this will be offset by the collection of application and annual administrative fees.

STAFF REFERENCE:

If Council members have any questions they may contact James Hayes, Director of Planning and Development at 303-450-8937 or by e-mail at jhayes@northglenn.org.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1735
Series of 2011

Series of 2011

A BILL FOR AN ORDINANCE TO AMEND THE CITY OF NORTHGLENN ZONING ORDINANCE BY THE ADDITION OF A NEW ARTICLE 56, ENTITLED OIL AND GAS REGULATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City of Northglenn Zoning Ordinance is hereby amended by the addition of a new Article 56, entitled Oil and Gas Regulation, to read as follows:

ARTICLE 56. OIL AND GAS REGULATION

Section 11-56-1. Purpose.

(a) These regulations are enacted to provide for the safety, and preserve the health, safety and welfare of the present and future residents of the City. It is the City's intent by enacting these regulations to facilitate the development of oil and gas resources within the City while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that under Colorado law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners of subsurface mineral interests, including oil and gas, have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests subject to compliance with the provisions of these regulations and any applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources and in the prevention of waste and protection of the correlative rights of common owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with these regulations so long as these regulations do not create an operational conflict with the State's authority to regulate oil and gas development. Municipal governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction to the extent they do not create an operational conflict. These regulations are intended as an exercise of this land use authority.

(b) The City recognizes that this Article does not supersede or preempt the regulations of the Colorado Oil and Gas Conservation Commission ("COGCC") or any other state regulations, nor is this Article intended to conflict with them. The City acknowledges the authority of the COGCC and the application of its rules to oil and gas drilling and production

operations within the City's boundaries. The City further acknowledges that a Permit to Drill issued by the COGCC shall be binding with respect to any operationally conflicting requirement under this Article.

Section 11-56-2. General provisions.

(a) The provisions of this Article shall apply to all oil and gas exploration and production operations proposed or existing on or beneath property within the City limits.

(b) Legal nonconforming uses. Oil and gas facilities within City limits and operational prior to October 1, 2010, will be considered legal nonconforming uses.

(c) Where provisions in this Article are in conflict with other provisions of this Code or other applicable regulations, the more restrictive, or that provision which results in the higher standard, shall apply unless the application of the Code results in an operational conflict with the State regulation of oil and gas development.

(d) Exceptions to provisions of this Article which are of purely local concern may be granted by the City Council as part of the approval process of the permitted use permit only if the applicant demonstrates that the exception or waiver is necessary to prevent waste or protect correlative rights and can provide adequate mitigation measures for the standards waived.

(e) A permitted use permit for oil and gas facilities shall become null and void three (3) years after approval of the permitted use permit if oil and gas development at the site for which the permit was issued does not commence.

Section 11-56-3. Definitions.

(a) All terms used in this Article that are defined in the Oil and Gas Conservation Act of the State of Colorado ("Act"), or in Oil and Gas Conservation Commission ("COGCC") regulations and are not otherwise defined in this Section, are defined as provided in the Act or in such regulations as of the effective date of this Article. All other words used in this Article are given their usual, customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. When not clearly otherwise indicated by the context, the following words and phrases used in this Article have the following meanings:

Act means the Oil and Gas Conservation Act of the State of Colorado.

Applicant means the person making an application for a permitted use permit on behalf of the Operator or Owner of a well.

Approved plan means the totality of the material contained in the application for a permitted use permit approved by the City Council following a public hearing or, in the case of an existing use site plan order, the totality of the materials contained in the application for an existing use site plan order approved administratively by the City.

Building unit means a building or structure intended for human occupancy. A dwelling

unit is equal to one (1) building unit; every guest room in a hotel/motel is equal to one (1) building unit; and every five thousand (5,000) square feet of building floor area in commercial facilities, and every fifteen thousand (15,000) square feet of building floor area in warehouses, or other similar storage facilities, is equal to one (1) building unit.

Commission or *COGCC* means the Oil and Gas Conservation Commission of the State of Colorado.

Completion. An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease 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 rules of the COGCC. 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, a well that requires extensive testing shall be considered completed when the drilling rig is released or six (6) months after reaching total depth, whichever is later.

Day means a period of twenty-four (24) consecutive hours.

Director means the Director of the Oil and Gas Conservation Commission of the State of Colorado.

Drill Pad Site means the areas are directly disturbed during the drilling and subsequent operation of, or affected by, production facilities directly associated with one or more oil well, gas well or injection well(s).

Flow lines means those segments of pipe from the wellhead downstream through the production facilities ending at the gas metering equipment or the oil loading point.

Gas well means a producing well with natural gas as the primary commercial product. Most gas wells frequently produce some condensate (natural gas liquids such as propane and butane) and occasionally produce some water.

Gathering line means a pipeline that transports gas from a current production facility to a transmission line or main.

High-density area rules for building units. A high-density area shall be determined at the time the well is permitted on a well-by-well basis by calculating the number of occupied building units within the seventy-two-acre area defined by a one-thousand-foot radius from the wellhead or production facility. If thirty-six (36) or more actual or platted building units (as defined in the COGCC 100 Series rules) are within the one-thousand-foot radius or eighteen (18) or more building units are within any semicircle of the one-thousand-foot radius (i.e., an average density of one [1] building unit per two [2] acres), it shall be deemed a high-density area. If platted building units are used to determine the density, then fifty percent (50%) of said platted units shall have building units under construction or constructed.

Injection Well means any hole drilled into the earth into which fluids are injected for the purposes of secondary recovery, storage or disposal pursuant to authorizations granted by the Commission.

Mineral Owner means any person having title or right of ownership in subsurface oil, gas, or other hydrocarbon and/or, where context dictates, any leasehold interest therein.

Multiple oil and gas operations permit means a permit issued by the City if more than one (1) well or production facility is being applied for and approved at the same time by the same applicant.

Multiwell Site means a common well pad from which multiple wells may be drilled to various bottomhole locations.

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

Oil well means a producing well with oil as its primary commercial product. Oil wells almost always produce some gas and frequently produce water. Most oil wells eventually produce mostly gas or water.

Operating Plan means a general description of a well site or a production site identifying the purpose, use, typical staffing, seasonal or periodic considerations, routine hours of operation, source of services/infrastructure and any other information related to the regular functioning of the facility.

Operator means the person designated by the owner or lessee of the mineral rights as the operator of oil and gas operations or a production facility and so identified in the Colorado Oil and Gas Conservation Commission applications.

Permitted use permit means a permit issued by the City in accordance with this Article. A *permitted use permit order* is the order issued by the City when the permitted use permit is approved.

Person means both the singular and plural and means a natural person, a corporation, association, guardian, partnership, receiver, trustee, administrator, executor and/or fiduciary, any other legal entity or representative of any kind.

Production facilities mean all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flow lines and other equipment directly associated with oil wells, gas wells or injection wells.

Production site means the area containing production facilities, exclusive of gathering

lines.

Reentering means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

Separator means a cylindrical or spherical vessel used to separate oil, gas and water from the total fluid stream produced by a well. Separators can be either horizontal or vertical.

Sidetracking means to drill a secondary well bore away from an original well bore. A sidetracking operation may be done intentionally or may occur accidentally. Intentional sidetracks might bypass an unusable section of the original well bore or explore a geologic feature nearby. In the bypass case, the secondary well bore is usually drilled substantially parallel to the original well, which may be inaccessible due to an irretrievable fish, junk in the hole or a collapsed well bore.

Surface owner means any person having the title or right of ownership in the surface estate of real property and/or, where context dictates, any leasehold interest therein.

Surface use agreement means any agreement entered into between a mineral owner and a surface owner in order to conduct oil and gas operations.

Twinning means the drilling of wells within fifty (50) feet of each other.

Well means an oil well, gas well or injection well.

Well site means the areas which are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well or injection well.

Wellhead means the mouth of the well at which oil and gas is produced, and any appurtenant above-ground facilities.

Wildlife and natural areas shall include, but not be limited to, floodplains and floodways; natural drainage and waterways; significant native trees and vegetation; wildlife travel corridors; special habitat features such as raptor nests, key nesting, breeding or feeding areas for birds; fox and coyote dens; prairie dog colonies more than twenty-five (25) acres in size; remnant native prairie habitat; plains cottonwood galleries; natural or man-made lakes and ponds and any wetland greater than one-quarter ($\frac{1}{4}$) acre in size.

(b) All terms used herein that are defined in the Act or in Commission rules and regulations and are not otherwise defined in Subsection (a) above shall be defined as provided in the Act or in such rules and regulations.

Section 11-56-4. Permitted use permit required.

(a) New oil and gas facilities.

(1) It shall be unlawful for any person to drill a new well, construct a new

facility or install new accessory equipment or structure within the corporate limits of the City unless a permitted use permit has been obtained pursuant to this Article. A separate permitted use permit shall be required for each well or production facility that has not been previously permitted under this Article except as outlined in Paragraph (a)(4) and Subsection (b) below.

(2) If more than one (1) well or production facility is proposed at the same time, the applicant may submit one (1) application for multiple wells and facilities; however, a separate fee shall be required for each drill pad site included in the application. The City will issue a multiple oil and gas operations permit that notes the name and location of each well or production facility.

(3) Any such permit issued pursuant to this Article shall encompass within its authorization the right for the operator, his or her agent, employee, subcontractor or independent contractor or any other persons to perform that work necessary in the drilling, completion or maintenance operations.

(4) For the purpose of this Article, the installation of tanks, heaters, separators and other accessory equipment shall be construed as extensions to oil and gas wells and shall accordingly be subject to the same applications, review, permit, regulations and standards. The application for these accessories when intended to be installed at the same time as the oil or gas well may be merged with an application for an oil or gas well permitted use permit and shall not require an additional permit fee.

(b) Modification to existing well sites.

(1) When a well or well site is existing with an approved permitted use permit use, any twinning, deepening or recompleting of a well and relocation of accessory equipment or gathering lines and transmission lines does not require a new permit so long as all applicable regulations of this jurisdiction and the State are met, and the operator shall submit a revised site and operating plans to the City depicting any changes from the approved permitted use permit. This is an administrative approval and does not require any additional public hearings. Upon receipt of the amended site plan and operating plan, the City shall issue an existing use site plan order as provided in Section 11-56-7 of this Article.

(2) If any changes are made to a legal nonconforming well or a well to which an existing use site plan order has been issued, i.e.: twinning, deepening or recompleting of a well, or relocation of accessory equipment or gathering lines and transmission lines occurs, the operator shall apply for a permitted use permit. By enactment of this Article, the City hereby approves any well, equipment or facility drilled or constructed prior to the enactment of this Article that occurred prior to annexation of additional acreage within the City.

(3) When a permitted use permit has been granted for a well, reentry of such well for purposes of sidetracking, deepening, recompleting, reworking, activating or converting the well shall not require a separate permitted use permit.

(4) The permitted use permit is limited to the facilities as shown in the approved plan. To the extent the applicant desires, after initial completion of a well, to place additional equipment on a tank battery or wellhead location which was not shown in the

approved plan, the applicant must, except in a situation where additional temporary equipment is necessary for a period of fourteen (14) days or less, notify the City of installation of such additional equipment by letter and include a site plan showing the location of the new equipment. No new permitted use permit is required.

(c) Terms and conditions of the permitted use permit.

(1) The term of the permitted use permit shall be coterminous with the state well permit issued by the COGCC. Any extension of the permit granted by the COGCC shall result in an automatic extension of the term of the City-issued permitted use permit equal to the extension granted by the COGCC. A permit shall not be required for seismic surveys, unless the drilling of a seismic (shot hole), core or other exploratory hole is involved.

(2) The permitted use permit shall automatically expire with the abandonment and reclamation of the associated well.

(3) The granting of a permitted use permit shall not relieve the operator or owner of a well, production facility, pipeline or gathering line from otherwise complying with all applicable regulatory requirements of the City, the State or the United States.

(4) Within thirty (30) days after the well is completed and equipped, the applicant shall provide to the City as-built drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit. These as-built drawings shall be the same as submitted to the COGCC.

(5) The permitted use permit and/or existing use site plan order required by this Article is in addition to any permit which may be required by any other provision of this Code or by any other governmental agency.

(6) By acceptance of any permitted use permit and/or an existing use site plan order issued pursuant to this Article, the operator or owner of any well, production facility, pipeline or gathering line expressly stipulates and agrees to be bound by and comply with the provisions of this Article, and any subsequent amendments shall be deemed to be incorporated. The terms of this Article shall be deemed to be incorporated in any permitted use permit or existing use site plan issued pursuant to this Article with the same force and effect as if this Article was set forth verbatim in such permitted use permit or existing use site plan.

Section 11-56-5. Permitted use permit for a new oil and gas operation – application submittal requirements and filing fees.

(a) Initial application form and authorization. Every application for a permitted use permit issued pursuant to this Article shall be in writing on a form supplied by the City, signed by the operator, or some person duly authorized to sign on his or her behalf, and filed with the Department of Planning and Development. If no form is available, Operator may file in its own format the information following that shall be submitted:

(1) The operator's name and address and, if the operator is a corporation, the state of incorporation and, if the operator is a partnership, the names and addresses of the general

partners.

(2) The name, address, telephone number, fax number and e-mail address of the individual designated by the operator to receive notices.

(3) The aliquot legal description of the property to be used for the oil/gas operation and the assessor's parcel number for the property. Property recorded by plat shall also be identified by subdivision name and block and lot numbers.

(4) The well name.

(5) The mineral lessee's name and address.

(6) The name and address of the representative with supervisory authority over the oil and gas operation site activities and a twenty-four-hour emergency phone number.

(7) The name and address of the surface owner or owners.

(8) The name, address and telephone number of the person or firm designated by the operator to file the permitted use permit application and prepare the site plan and related exhibits.

(b) Fee and signed reimbursement agreement. Every application shall include a required fee in the amount of one thousand dollars (\$1,000.00). In addition, the applicant shall submit a signed cost reimbursement agreement provided by the City, but such reimbursement agreement shall only apply to the use by the City of outside consultants to review the application, if necessary. The fee and required cost reimbursement agreement must be received by the Department of Planning and Development in order to process the application.

(c) Substantive application. Upon having submitted the materials and fee required in Subsections (a) and (b) above, an application for a permitted use permit pursuant to this Article shall be filed with the Department of Planning and Development and shall include the following information:

(1) Site plan. The site plan shall be submitted on one (1) or more plats or maps, at a scale not less than one (1) inch to fifty (50) feet, showing the following information:

a. A site plan of the proposed operation showing the location of all improvements and equipment, including the location of the proposed wells and other facilities, and including but not limited to pumps, motors, electrical power lines, tanks, flowlines, gathering lines, compressors, separators and storage sheds. All existing tank batteries and transmission and gathering lines within six hundred sixty (660) feet of the well site shall also be shown.

b. The location of layout, including, without limitation, the position of the drilling equipment and related facilities and structures, if applicable.

c. The location and description of all existing improvements and structures within one thousand (1,000) feet of the well, as well as proof that the new well or

production facility meets all applicable setback requirements from any building unit as defined by the COGCC.

d. Existing utility easements and other rights-of-way of record, if any, within a radius of six hundred sixty (660) feet of the proposed well.

e. The location of existing irrigation or drainage ditches within one thousand (1,000) feet of the well site or production site, if any.

f. The applicant's drainage and erosion control plans for the well site or production site, if applicable. The applicant may submit the best management plan required by COGCC to meet this requirement.

g. Location of access roads in accordance with the provisions of Section 11-56-13 of this Article.

h. The location of existing oil and gas wells as reflected in COGCC records within a one-thousand-foot radius of the proposed location for the well and existing lease boundaries.

i. The names of abutting subdivisions or the names of owners of abutting, unplatted property within three hundred (300) feet of the proposed of the well site or production site.

j. The date the site plan was prepared and any revision numbers to the site plan, when applicable.

k. The location of existing wildlife and nature areas within one thousand (1,000) feet of the well site or production site, if any.

l. The location of the well site or production site in relation to existing lease boundaries.

m. A true north arrow.

(2) Transportation routes.

a. A map showing all proposed transportation routes for access to and from the well site for construction equipment and well drilling, completion and reworking equipment from the well/production site to the to the corporate limits of the City.

b. All transportation routes which access the state highway system shall be required to obtain necessary CDOT access permits.

(3) Written narrative.

a. A title block or heading containing the operator's and surface owner's names and addresses, the well name and the legal description of the well/production site

location.

b. Copies of the approved or submitted COGCC forms 1A, and 2 or 2A or 10, as applicable. If the applicant has not received approval from COGCC, the City shall process the application conditioned on proof of an approved COGCC permit.

c. An operating plan.

d. A copy of the surface use agreement or acknowledgement, including reception number, that a surface use agreement has been recorded with the applicable County Clerk and Recorder's Office. If no surface use has been executed, applicant shall provide verification that efforts to enter into such an agreement have occurred, and/or provide the City evidence (which may include evidence of lease or posting of bond) of its rights to proceed with oil and gas operations absent an executed surface use agreement.

e. A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than the COGCC.

f. An emergency response plan that is mutually acceptable to the operator and the appropriate fire protection district and the Police Department that includes a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency, the location of the well and provisions for access by emergency response entities.

g. A fire protection plan that is mutually acceptable to the operator and the appropriate fire protection district that includes planned actions for possible emergency events and any other pertinent information.

h. A plan for weed control at the well site.

i. A sanitary facilities plan that complies with COGCC regulations.

j. Verification of ownership of the mineral interest.

Section 11-56-6. Permitted use permit process for new oil and gas operations.

(a) The process for issuing a permitted use permit shall be the same as for a permitted use permit for any land use within the City pursuant to Article 30 of this Chapter 11 and shall include the following steps. Where terms of this Section conflict with those of Article 30 of this Chapter 11, the provisions of this Section shall apply.

(1) Step 1: Preapplication conference. The applicant shall attend a preapplication conference with a representative from the City. The purpose of the meeting is to discuss the permitted use permit submittal requirements and review process.

(2) Step 2: Application submittal. The applicant shall comply with the submittal requirements of Section 11-56-5 of this Article.

(3) Step 3: Staff review for completeness. Within a reasonable period of time, not to exceed ten (10) business days, City staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and resubmit the required number of copies of the amended application to the City. This is not a substantive review of the application submitted.

(4) Step 4: Referral agencies notified. Upon receipt of a completed application, the City shall forward the application to the appropriate referral agencies. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name. At minimum, the application shall be referred to the Police Department and the Fire District. Referral agencies shall be provided thirty (30) days to respond with any comments. After such thirty (30) day period, the City may proceed on the Application whether or not the City has received comments from the notified referral agencies.

(5) Step 5: Staff review and comments. City staff shall review the Application for compliance with this Article and all other applicable federal, state and City regulations and standards. A summary of this review, including referral comments, shall be sent to the Applicant.

(6) Step 6: Applicant response. The applicant shall address all of the City staff comments and any referral agency comments, then submit the following to the City:

- a. Written correspondence explaining how all of the comments have been addressed; and
- b. Revised maps and other documents, as necessary.

(7) Step 7: Public hearing scheduled and notification process. The City shall:

a. Publish notice of the public hearing for the special use permit in a newspaper of general circulation in the City at least fifteen (15) days before the scheduled hearing date.

b. Posting of notice. Notice of the hearing shall be posted by the City on each street adjoining the property involved for a period of at least fifteen (15) continuous days prior to the date of the hearing. An affidavit of posting signed by a representative of the City shall constitute prima facie evidence of fulfillment of the required posting. The expense of such posting and affidavit shall be paid by the applicant. The sign shall be professionally made or hand-stenciled with dimensions as shown; enamel or weatherproofed painted letters; white background on sturdy backing; minimum size as shown below; on two (2) posts as shown below; and six (6) feet from the edge of the street pavement.

(8) Step 8: Final staff review and report to Planning Commission. City staff will complete a final review of the resubmitted materials and then prepare a report to the Planning Commission explaining how the application is or is not consistent with the review criteria and applicable City ordinances, regulations and standards.

(9) Step 9: Review by Planning Commission.

a. Criteria for review. At a public hearing, the Planning Commission shall review the application for special use permit for compliance with the following criteria:

1. The requirements of Subsections 11-56-5(a) and (b) above are met.

2. The site plan for the well site complies with the requirements of Section 11-56-5(c)(1) of this Article.

3. The requirements of Paragraph 11-56-5(c)(2) of this Article are met.

4. The written narrative complies with the requirements of Paragraph 11-56-5(c)(3) of this Article.

5. When applicable, the application complies with the provisions for geologic hazards, floodplains or floodways provided in Section 11-56-17 of this Article.

6. When applicable, the application complies with the provisions for wildlife mitigation procedures provided in Section 11-56-18 of this Article.

b. Conditions of approval. The Planning Commission may recommend as a condition of approval of a permitted use permit, any conditions necessary to improve or modify the site plan; any conditions necessary to ensure that any negative impacts of the proposed oil and gas operation are eliminated or mitigated; or may impose conditions related to the surface use so long as said conditions do not create an operational conflict with the State's authority to regulate oil and gas development. The Planning Commission shall cause its recommendations to be forwarded to the City Council.

(10) Step 10: Review by the City Council.

a. A public hearing on the requested permitted use permit shall be held by the City Council at a regular or special meeting of the Council. Notice of the public hearing shall be published by posting and by publication one (1) time in a newspaper of general circulation in the City not less than fifteen (15) days before the date of the hearing. Notice shall be given to the property owners abutting the property or within three hundred (300) feet of the property, and to the City's service providers, the County, special districts and referral agencies as deemed appropriate by the City. Said notice shall be given by first-class mail not less than fifteen (15) days before the date of the hearing.

b. The City Council shall consider evidence presented in the application and at the public hearing which establishes compliance consistent with Subparagraph (a)(9)a. above and any recommendations of the Planning Commission, if applicable. Following the conclusion of the public hearing, the City Council shall by written resolution render its

decision to approve, deny or conditionally approve the application, or it may take the matter under advisement until an announced date certain, not to exceed fifteen (15) days from the date of the hearing, at which time it shall render its decision by written resolution. The written resolution shall be prepared by the City Attorney and shall set forth the findings of the City Council.

c. In the event that an application is granted with conditions, the applicant may, within fifteen (15) days of the City Council's decision, request a rehearing by petitioning for the same to the City Clerk. The purpose of the rehearing is to afford the applicant the opportunity to demonstrate that removal or modification of one (1) or more of the conditions is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits or that the decision is otherwise inconsistent with state laws and regulations. Following the conclusion of the rehearing, the City Council may by written resolution render its decision on the application, or it may take the matter under advisement until an announced date certain, not to exceed fifteen (15) days from the date of the rehearing, at which time it shall render its decision by written resolution. The written resolution shall be prepared by the City Attorney, shall set forth the findings of the City Council and shall confirm, modify or repeal the conditions contested by the applicant.

d. For the purposes of judicial review, the City Council's final action or decision on an application shall be deemed to have been made as of the date upon which the City Council executes the written resolution, which shall constitute the final decision of the City Council.

Section 11-56-7. Existing use site plan order for pre-existing wells. Within twenty-one (21) days following enactment of this Article, an existing use site plan order shall be issued administratively by the City.

Section 11-56-8. Permitted use permit order. Prior to commencement of operations for which a permitted use permit has been approved, a permitted use permit order shall be obtained from the City. The City shall issue the permitted use permit order within a reasonable time upon receipt of the following:

- (1) A copy of the resolution of the City Council approving a permitted use permit;
- (2) Proof of compliance with any conditions placed in the resolution of the City Council approving a permitted use permit;
- (3) A copy of the approved site plan;
- (4) A copy of an approved oversize or overweight vehicle or load permit issued by the City pursuant to Section 11-56-14 of this Article, if applicable;
- (5) Copies of any necessary state or federal permits issued for the operation if not previously submitted; and
- (6) Copies of all COGCC permits.

Section 11-56-9. Contact information. The intent of this Section is to ensure that the City has the correct contact information in case of an emergency, code violation or security concern.

(1) Service of notice. As required by the COGCC, every operator shall designate an agent who is a resident of the State upon whom all orders and notices provided in this Article may be served and shall specify in writing a mailing address for such agent. Every operator so designating such agent shall, within ten (10) calendar days, notify the City in writing, of any change in such agent or such mailing address unless operations in the City are discontinued. The City may serve any notice provided in this Article upon the operator by mailing the same, postage prepaid, to the operator's designated agent at his or her designated address. Service shall be complete upon such mailing. The operator shall give the City written notice of any change in the designated agent or their contact information.

(2) Transfer of operator or new operator. As required by COGCC, the operator shall notify the City, in writing, of any sale, assignment, transfer, conveyance or exchange by said operator of a well's property and equipment within ten (10) calendar days after such sale, assignment, transfer, conveyance or exchange. The notice shall provide a map indicating the location of the properties and equipment involved in the transaction.

Section 11-56-10. Emergency inspections and emergency response. The applicant for a permitted use permit or existing use site plan order shall provide the telephone number of a contact person who may be reached twenty-four (24) hours a day for purposes of being notified of any proposed City emergency inspection under this Section. Any site for which a special use permit or existing use site plan order has been granted may be inspected by the City at any time, to ensure compliance with the requirements of the approved permitted use permit or existing use site plan order or to address any emergencies that may arise. By accepting an approved permitted use permit or existing use site plan order, the applicant grants its consent to such emergency inspections. The operator shall reimburse the City or the applicable fire district for any emergency response costs incurred by the City or the fire district in connection with activity at the well site or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by the mistake of the City.

Section 11-56-11. Building permits. In addition to any other requirements of this Article, building permits must be obtained for all aboveground structures to which the applicable City Building Codes apply.

Section 11-56-12. Use tax. All operators must conform to applicable provisions of this Code relating to taxation, if any.

Section 11-56-13. Access roads. All private roads used to provide access to the tank batteries or the well site shall be improved and maintained according to the following standards so long as such standards are consistent with the surface owner's requests or the terms of a private Surface Use Agreement with the surface owner, and does not damage adjacent properties:

(1) Oil and Gas Facility access roads. Access roads to facilities shall conform to the following minimum standards:

a. A graded gravel roadway 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 as determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, aggregate base course as specified for aggregate base course materials in the Colorado Department of Transportation's Standard Specifications for Road and Bridge Construction, latest edition.

b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the City Engineer.

c. Maintained so as to provide a passable roadway free of ruts and dust at all times.

d. The access roadway intersecting a municipal street or roadway shall be hard-surfaced at least from the municipal street to the right-of-way line. Vehicles using the access roadway shall not track mud or other debris onto municipal streets from the access road.

(2) Wellhead access roads. Access roads to wellheads shall conform to the following minimum standards:

a. A graded dirt roadway compacted to a minimum density of ninety-five percent (95%) of the maximum density as determined in accordance with generally accepted engineering sampling and testing procedures and approved by the City.

b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval by the City.

c. Maintained so as to provide a passable roadway free of ruts and dust at all times.

d. An access roadway intersecting a municipal street or roadway shall be hard-surfaced at least from the municipal street to the right-of-way line. Vehicles using the access roadway shall not track mud or other debris onto municipal streets from the access road.

Section 11-56-14. Oversize or overweight vehicle or load permit. An oversize or overweight vehicle or load permit shall be required for all oversize or overweight vehicles or loads as defined in Sections 42-4-501 through 42-4-511, C.R.S., which use City streets. Said permit, if required, shall be obtained from the City prior to such use. The applicant shall comply with all City and state regulations regarding weight limitations on streets within the City, and the applicant shall minimize oversize or overweight vehicle traffic on streets within the City.

Section 11-56-15. Fencing requirements. At the time of initial installation, or upon the

issuance of an existing use site plan order, fencing is required for all pumps, wellheads and production facilities that are within an approved subdivision or within one thousand (1,000) feet of an existing public road or existing structure or if a well site falls within a high-density area as defined by the COGCC. All pumps, pits, wellheads and production facilities shall be adequately fenced to restrict access by unauthorized persons. For security purposes, all such facilities and equipment used in the operation of a completed well shall be surrounded by a fence six (6) feet in height, and so long as the material is noncombustible and allows for adequate ventilation, the gates shall be locked. The following specific standards shall apply to all oil and gas wells and production facilities. Fence enclosures shall be constructed of materials suited for the given location and operations that are fiscally, technologically, and operationally feasible, and compatible with the surrounding land uses, but which shall not include solid masonry walls. All fences walls shall be equipped with at least one (1) gate. The gate shall meet the following specifications:

a. The gates shall be of chain-link construction that meets the applicable specifications or of other approved material that, for safety reasons, shall be at least as secure as a chain-link fence;

b. The gates shall be provided with a combination catch and locking attachment device for a padlock and shall be kept locked except when being used for access to the site; and

c. The operator must provide the fire protection district with a "Knox Padlock" or "Knox Box with a key" to access the well site, to be used only in case of an emergency.

Section 11-56-16. Compliance with state environmental and noise requirements. The approval of a permitted use permit shall not relieve the operator from complying with all current applicable state and federal regulations and standards concerning air quality, water quality and waste disposal. State law and regulations concerning noise abatement (Title 25, Article 12, C.R.S. and COGCC, Series 800 Rules, as the same may be amended from time to time) shall apply to all operations, together with applicable local government ordinance, rules and regulations.

Section 11-56-17. Geologic hazard, floodplain, floodway location restrictions.

(a) Violation of any federal, state or local laws or regulations shall be a violation of this Article.

(b) The well and tank battery shall comply with all applicable federal, state and local laws and regulations when located in a floodway or a one-hundred-year floodplain area.

(c) All equipment at production sites located within a one-hundred-year floodplain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by a berm with a top elevation at least one (1) foot above the level of a one-hundred-year flood.

(d) Any activity or equipment at any well site within a one-hundred-year floodplain

shall comply with applicable City Floodplain Regulations and the Federal Emergency Management Act and shall not endanger the eligibility of residents of the City to obtain federal flood insurance.

Section 11-56-18. Wildlife impact mitigation.

(a) Wildlife. When a well site or production site is located within or adjacent to a wildlife or natural area, the applicant shall consult with the Colorado Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures as required by the COGCC. The operator shall implement such mitigation procedures as are recommended by the Colorado Division of Wildlife after consultation with the City. The operator shall file a mitigation plan with the City.

(b) Endangered species. The operator shall not engage in activities which, in the opinion of the Colorado Division of Wildlife, threaten endangered species.

Section 11-56-19. Violation and enforcement.

(a) Unlawful to construct or install unapproved oil and gas facilities. Except as otherwise provided in this Article, it is unlawful to construct, install or cause to be constructed or installed any oil and gas well or production facility within the City unless approval of a permitted use permit has been granted by the City Council. The unlawful drilling or re-drilling of any well or the production therefrom is a violation of this Article.

(b) It is unlawful to fail to obtain a permitted use permit or existing use site plan order where one is required pursuant to this Article.

(c) Unlawful to provide false, misleading, deceptive or inaccurate information and/or documentation in an application for a special use permit or existing use site plan order. Except as otherwise provided in this Article, it is unlawful for the applicant to provide information and/or documentation upon which the approval of a special use permit was based, which the applicant, its agents, servants or employees knew or reasonably should have known was materially false, misleading, deceptive or inaccurate.

(d) Penalty. Any person convicted of a violation of any of the acts enumerated in Subsections (a), (b) and (c) above, or who commits any act or omission in violation of any provision of this Article, or of the conditions and requirements of the special use permit, may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Each day of such unlawful operation constitutes a separate violation.

(e) Civil action. In case any well, production facility, building or structure is or is proposed to be erected, constructed, reconstructed, maintained, altered or used, or any land is, or is proposed to be, used in violation of any provision of this Article or the conditions and requirements of the special use permit or any existing use site plan order, the City Attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, maintenance, alteration or

use.

(f) Recovery of fees. Should the City prevail in any action for legal or equitable relief for a violation of the provisions of this Article, in addition to any other penalties or remedies which may be available, the City shall be entitled to recover any damages, costs of action, expert witness fees, and reasonable attorneys' fees incurred.

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____,
2011.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2011.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney