

---

**Sec. 21-5266. Subsurface Extraction**

- (1) **Purpose.** This Section is enacted pursuant to the land use authority and the police powers of the City and following the procedures described within, in order to protect and promote the health, safety, morals, convenience, order, prosperity and general welfare of the present and future residents of the City. It is recognized that under state law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners or lessees of subsurface mineral interests 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 this Section and any other applicable statutory and regulatory requirements. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a respectful manner and to have adverse land use impacts upon their property associated with the development of the mineral estate minimized and mitigated through compliance with this Section and by mutual accommodation of the surface and mineral owners. Should it be established by competent evidence that a proposed use cannot be undertaken and completed in compliance with this Section, approval for such a use may be denied unless an appeal is obtained.
  
- (2) **Applicability.**
  - (a) Subject to the provisions of the Section, no Operation shall be initiated in any manner within the city prior to issuance of an Oil and Gas Permit.
  - (b) All Oil and Gas Well Operations, as defined in this Code, are subject to the requirements of this Section. In the event that the provisions of this Section conflict with any other provisions of the Code, this Section shall supersede as applied to Operations.
  - (c) In instances of directional and horizontal drilling where surface Operations associated with a well occur outside City limits, but subsurface Operations occur within City limits, the operator shall comply with the provisions of this Section.
  
- (3) **Permit Required.**
  - (a) Permits issued pursuant to this Section shall encompass as part of its authorization, the right of the Operator, its agents, employees, subcontractors, independent contractors, or any other person to perform that work reasonably necessary to conduct the activities authorized by the Oil and Gas Permit, subject to all other applicable City permits, regulations requirements, and state and federal laws and regulations. Oil and Gas Permits may be issued for sites that are within the Agricultural and Industrial zone districts, and within PUD zone districts where Oil and Gas Wells are specifically listed as an allowed or permitted use. In all other

zone districts, Oil and Gas Permits may be issued only upon demonstration that no other reasonable alternative to access the oil and gas mineral interest exists.

(b) Exceptions.

- (i) Operations in existence on the effective date of this subsection, or that are in existence and are located within territory that is thereafter annexed to the City, may continue without the issuance of an Oil and Gas Permit until the Operation is expanded, new wells are drilled, or a permit is issued by the COGCC that allows further or additional Operations. The right to operate an Oil and Gas Facility terminates if the use thereof is discontinued for six (6) months or more.
- (ii) Any renovation, replacement or repair of nonconforming Oil and Gas Facilities shall be allowed without an Oil and Gas Permit, provided such work does not increase the degree of nonconformity. The replacement or addition of individual conforming tanks, treaters or separators shall not require the remaining equipment or systems at an Oil and Gas Facility to conform to the development standards in this Section.

(4) **Application Requirements.**

- (a) Application Requirements. An application for an Oil and Gas Permit shall include the following information:
  - (i) City application form and applicable, non-refundable fee;
  - (ii) An accurate legal description of the lease property to be used for the Operation;
  - (iii) Map showing proposed transportation routes and roads for equipment, chemicals or waste products used or produced by the Operation;
  - (iv) Proposed well name;
  - (v) Surface owner name(s), telephone number(s), address(es), and if possible, email address(es) of the leased property;
  - (vi) Mineral lessee name(s), telephone number(s), address(es), and if possible, email address(es);
  - (vii) Mineral owner name(s), telephone number(s), address(es), and if possible, email address(es);

- (viii) Operator/applicant name(s), telephone number(s), address(es), and if possible, email address(es); 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;
- (ix) Name, telephone number, address, and if possible, email address of the individual designated to receive notice;
- (x) Name of representative with supervisory authority over the proposed Operation and a twenty-four-hour phone number;
- (xi) Location and description of all improvements, including water wells, and habitable structures within one thousand five hundred feet (1500') of the proposed Operation;
- (xii) Owner and address of each parcel of property within one thousand five hundred feet (1500') of the proposed Operation;
- (xiii) The location of existing wildlife, nature areas, or open space within one thousand five hundred feet (1500') of the well site or production site, if any;
- (xiv) A site plan for the proposed Operation showing the location of all improvements and drilling equipment, including the location of the proposed well(s) and other facilities, including, but not limited to, tanks, pipelines, compressors, separators, and storage tanks, including the number of the potential maximum number of wells to be drilled and associated drilling equipment;
- (xv) For private access roads connecting Operations with a public street or state highway, the Operator shall provide written documentation as part of the permit application demonstrating that it has the legal right to use such road(s) for the purpose of accessing the Oil and Gas Facilities.
- (xvi) A description of public utilities required during drilling and operation;
- (xvii) A description of the water source(s) to be used during drilling;
- (xviii) A description of how waste products will be managed for the Operation;
- (xix) A description of storm water pollution prevention plan and erosion control plan pursuant to the city's standards;
- (xx) A copy of the hazardous materials management plan. In addition to the hazardous materials management plan, all material safety data sheets (MSDSs) for all hazardous materials that will be located,

stored, transported, and/or temporarily used in conjunction to the Operation shall be provided to the city and fire district;

- (xxi) A copy of the emergency response plan as required by the city;
- (xxii) A copy of an emergency evacuation plan shall be provided, detailing all persons to be notified in the event of an evacuation, including without limitation, all persons residing within one-half (1/2) mile of the edge of construction or surface disturbance;
- (xxiii) Evidence of insurance and security requirements under this section;
- (xxiv) A copy of the noise management plan, for any equipment used in the drilling, completion, or production of an Oil and Gas Well;
- (xxv) A notarized statement, under oath, signed by the Operator, or designated representative, that the information submitted with the application is, to the best knowledge and belief of the Operator or designated representative, true and correct;
- (xxvi) Copies of all information submitted to the COGCC to include but not limited to:
  - a. The proposed location of Production and Oil and Gas Facilities in the event production is established.
  - b. The layout of the Oil and Gas Facilities, including, without limitation, the position of the drilling equipment and related facilities and structures, if applicable.
  - c. The following information within a radius of 1500 feet of the proposed well:
    - 1) *Existing surface improvements;*
    - 2) *Existing utility easements and other rights-of-way of record; and*
    - 3) *Existing irrigation or drainage ditches.*
- (xxvii) A plan for weed control at the Oil and Gas Facilities;
- (xxviii) A sanitary facilities plan that complies with city and COGCC regulations;
- (xxix) A lighting plan;
- (xxx) A revegetation plan;

- (xxxi) A list of all permits or approvals obtained or yet to be obtained from local, state, or federal agencies, other than the COGCC;
  - (xxxii) A public improvement agreement (if applicable); and
  - (xxxiii) Any other information that the city deems necessary for consideration of an Oil and Gas Permit application.
- (b) **General Business License Requirement.** Operators shall obtain and maintain a general business license prior to commencing operations. Operators must conform to applicable provisions of the Commerce City Municipal Code related to licensing.
  - (c) **Building Permit Requirement.** The Operator shall obtain building permits prior to the construction of any above-ground structures to the extent required by the City building and fire codes then in effect.
  - (d) **Public Notification Process.** The City shall follow the public notification procedures outlined in Article III with the following addition:
    - (i) **Adjacent Property Notification.** All costs of property owner notification shall be borne by the Operator.
  - (e) **Public Comment Procedures.**

During the Public Notification process, members of the public will have the opportunity to file written comments with the City. The nature of these comments can be in favor of the proposed Oil and Gas Permit, against the proposed Permit, provide additional information regarding the Oil and Gas Permit, or ask further questions regarding the Oil and Gas Permit. The deadline for providing these comments shall be contained in the public notification of the process as outlined in the public notification section. The comments received can be used by the Director to inform the decision based on the relevance and accuracy of the comments. Any written objection request must be directly related to the proposed Oil and Gas Permit.
  - (f) **Third Party Technical Review.** Upon determination that the application is complete, the City may require that the application materials, including requests for exceptions based on operational conflicts be submitted to a technical consultant deemed by the City to be appropriate and necessary to complete the review. Reasonable costs associated with such review shall be paid by the Operator.
  - (g) **Extraction Agreement Required.** Every Operator shall enter into an Extraction Agreement (“EA”) with the City prior to the issuance of an Oil and Gas Permit.

- (5) **General Standards.** All Operators and their agents, employees, licensees, and contractors shall:
- (a) Comply with all local, state, and federal laws and regulations;
  - (b) Comply with FAA Regulations relative to building height and locations; and
  - (c) Enter into and comply with an Extraction Agreement that is acceptable to the City.
- (6) **Site Development.**
- (a) **Visual Mitigation Plan Required.** Applications for Oil and Gas Permits may be required to include a visual impact analysis when the Operation will be located adjacent to or in the vicinity of current or future residential and/or commercial land uses, as determined by the Director. When required, the Visual Mitigation Plan shall include photographic simulations of the Oil and Gas Well Site that include proposed impact mitigation measures as indicated below. The Director will determine if the proposed Oil and Gas Well Site requires a photographic simulation based upon topography, existing vegetative and/or structural screening and the linear distance from the proposed Operations to residential and/or commercial land use(s).
  - (b) **Visual Mitigation Methods.** One or more of the following visual mitigation methods may be required on a site-specific basis: Use of low-profile tanks, facility painting, vegetative or structural screening, land berming and landscaping.
    - (i) Where the painting of an Oil and Gas Facility or any structural screening (i.e., fence or wall) is required as a method of visual impact mitigation, such Oil and Gas Facility and screening shall be painted a uniform, non-contrasting, non-reflective color. The Oil and Gas Facility or structural screening paint color shall be matched to the land, not the sky, and shall be slightly darker than the adjacent landscape.
    - (ii) Any exposed concrete shall be colored to match the soil color.
    - (iii) To the maximum extent feasible, the Operator shall use structures of minimal size to satisfy present and future functional requirements.
    - (iv) At all times, the Operator shall minimize the removal of existing vegetation.
  - (c) **Fencing.** Above-ground Operations shall be fenced and gated with eight-foot (8') high, wrought iron fencing, Ameristar Impasse, Stronghold

fencing, or approved equivalent. The fencing color shall be black unless the Director approves an alternative fencing color.

- (d) Landscaping.
  - (i) All plant materials shall be maintained in a healthy growing condition at all times. The Operator is responsible for the regular weeding, mowing, fertilizing, pruning and other maintenance of all plant materials as needed. Proper irrigation of plant materials shall be provided, except that automatic irrigation systems are not required if no direct water connection is available within 500 feet.
  - (ii) The City may require landscaping to mitigate visual concerns, and one or more of the following landscape criteria may be required. The specific requirements for landscape screening and buffering shall be determined by the Director and may include, but not be limited to:
    - a. Earthen berm located around the perimeter of the fence and planted with turf grass or ground cover generally recognized by landscape architects and horticulturalists for local area use for the purpose of general screening;
    - b. Installation of ground cover, trees and shrubs for screening and aesthetic purposes; and
    - c. Designing the Oil and Gas Facility to utilize natural screens where possible.
- (e) Lighting. To the maximum extent practical, exterior lighting shall be directed away from residential and other sensitive areas or shielded from said areas to eliminate glare. All permanent lighting fixtures installed at the Operations shall comply with the lighting standards of this Code.
- (f) Signs and Markers. The Operator shall mark each and every Oil and Gas Well in a conspicuous place, from the time of initial drilling until final abandonment, as follows:
  - (i) General Sign Requirements. No sign required under this Section shall be installed at a height exceeding six (6) feet. Operators shall maintain signs in a legible condition and shall replace damaged or vandalized signs within sixth (60) days. New or successor Operators shall update signs within sixty (60) days after change of Operator approval is received from the COGCC.
  - (ii) Drilling and Recompletion Operations. The Operator shall provide directional signs, no less than three (3) and no more than six (6) square feet in size, during all drilling and recompletion Operations.

Such signs shall be at locations sufficient to advise emergency crews where drilling or recompletion is taking place. At a minimum, such sign locations shall include the first point of intersection of a public road and the rig access road and thereafter at each intersection of the rig access route, except where the route to the well is clearly obvious to uninformed third parties. Signs not necessary to meet other obligations under these rules shall be removed as soon as practical after the Operation is complete.

- (iii) Permanent Designations.
  - a. Oil and Gas Wells. Within sixty (60) days after the completion of an Oil and Gas Well, a permanent sign shall be located at both the wellhead and surface equipment (if not at the wellhead), which shall identify the Oil and Gas Well, the name and contact information of the Operator and the legal location, including the quarter section.
  - b. Tank Batteries and Other Surface Equipment. Within sixty (60) days after the installation of a tank battery, a permanent sign shall be located at the tank battery. At the option of the Operator, or at the request of the City, the sign may be placed at the intersection of the lease access road with a public road nearest the tank battery, if the tank battery is readily apparent from such location. Such sign, which shall be no less than three (3) square feet and no more than six (6) square feet, shall provide: the name of the Operator; a phone number at which the Operator may be reached at all times; a phone number for local emergency services; the lease name or Oil and Gas Well name(s) associated with the tank battery; the public road used to access the site; and the legal location, including the quarter section. In lieu of providing the legal location on the permanent sign, it may be stenciled on a tank in characters visible from one-hundred (100) feet away.
  - c. Tanks and Containers.
    - 1) *All tanks with a capacity of ten (10) barrels or greater shall be labeled or posted with the following information:*
      - a) Name of Operator;
      - b) Operator's emergency contact telephone number;



- c) Tank capacity;
  - d) Tank contents; and
  - e) National Fire Protection Association (NFPA) Label.
- 2) *Containers that are used to store, treat or otherwise handle a hazardous material and required to be marked, placarded or labeled in accordance with the U.S. Department of Transportation’s Hazardous Materials Regulations, shall retain the markings, placards and labels on the container until the container is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.*
- (g) Environmental.
- (i) Floodplain Prohibition. Operations in hazard areas, including floodplains and man-made (e.g., airport and landfill) conditions that constitute a hazard to public health and safety or to property shall be prohibited. Land shall not be developed for Oil and Gas Facilities and Operations until hazards have been identified and avoided or removed, or until the Operator can show that the impact of the hazard(s) can be mitigated to the satisfaction of the City.
  - (ii) Vegetation.
    - a. Existing Vegetation Analysis. Applications for an Oil and Gas Permit shall include an analysis of the existing vegetation at the Oil and Gas Well Site to establish a baseline for re-vegetation upon abandonment of the Oil and Gas Facility or upon final reclamation of the Oil and Gas Site. The analysis shall include a written description of the species, character and density of existing vegetation at the Oil and Gas Site and a summary of the potential impacts to vegetation as a result of the proposed Operation.
    - b. Re-Vegetation. Applications for an Oil and Gas Permit shall include a copy of any COGCC accepted interim and final reclamation procedures and there shall be consultation with City staff regarding site specific re-vegetation plan recommendations.
    - c. Weed Control Plan. Applications for Oil and Gas Permits shall include a copy of a weed control plan that complies with all City requirements for weeds and vegetation under the City’s Municipal Code. Oil and Gas Well Sites shall be

considered developed property for the purposes of this Section.

- (iii) Wildlife Mitigation Plan.
  - a. General. When Operations will be located within or adjacent to a wildlife or natural area, the Operator shall consult with the Colorado Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. 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 that, in the opinion of the Colorado Division of Wildlife, threaten endangered species.
- (iv) General Waste Management.
  - a. The Operator shall at all times keep all aspects of an Operation, including roads and rights-of-way, safe and in good order, free and clear of noxious weeds, litter and debris.
  - b. Disposal of any water, except as provided herein, or any equipment, litter, sewage, waste, trash, chemicals or debris shall be at an approved disposal site.
- (v) Sanitary Regulations. The Operator shall provide proper health and sanitation facilities for its employees and subcontractors.
  - a. The Operator shall fully comply with all applicable rules and regulations of the county and state health departments or other similar body.
  - b. The Operator shall at all times provide at the Oil and Gas Well Site a sufficient supply of safe drinking water for its employees and shall give orders against the use of water known or believed to be unsafe.
  - c. During extended construction and maintenance operations, the Operator shall, at convenient places within the Oil and Gas Well Site, provide fly-proof outside toilets, which shall be maintained in a sanitary condition. Toilets shall not be permitted in any water reservoir area and shall not be permitted where they may pollute a water supply.

- (vi) Drainage and Stormwater Management.
  - a. Drainage. Operations shall comply with all applicable City drainage requirements and standards.
  - b. Stormwater Management. Any application for an Oil and Gas Permit shall include a description of the manner in which stormwater will be managed in accordance with City regulations. Operations, including the construction and use of access roads, well sites, pipelines and storage areas for equipment and materials, shall meet all stormwater management, erosion control and pollution prevention requirements of the Colorado Department of Public Health and Environment and the City.

**(7) Nuisances.**

- (a) Odor/Dust Containment. Operations shall be conducted in such a manner that odors and dust do not constitute a nuisance or hazard to public health, safety, welfare and the environment. All Operations shall use the best available technologies to control odor and dust. If deemed necessary and reasonable, the City may require additional mitigation standards at any point during Operations.
- (b) Noise Impacts.
  - (i) At a minimum, sound emission levels shall not exceed COGCC standards.
  - (ii) Operators may be required to provide for additional noise mitigation based on the following site specific characteristics:
    - a. Nature and proximity of adjacent development (design, location, use);
    - b. Prevailing weather patterns, including wind directions;
    - c. Type and intensity of the noise emitted; and
    - d. Vegetative cover on or adjacent to the site or topography.
  - (iii) Based on the foregoing, one or more of the following additional noise abatement measures may be required:
    - a. Acoustically insulated housing or covers enclosing any motor or engine;

- b. Screening of the Oil and Gas Well Site or specific noise-emitting equipment by a wall or landscaping;
- c. Solid wall of acoustically insulating material surrounding all or part of the Operation, such as hay bales;
- d. A noise management plan specifying the hours of maximum noise and the type, frequency and level of noise emitted;
- e. Use of electric-powered motors and pumping systems; and
- f. Construction of buildings or other enclosures where Operations create noise and visual impacts that cannot otherwise be mitigated due to proximity, density or intensity of adjacent land use.

**(8) Traffic.**

- (a) Traffic Impact Study. The City may require applications for an Oil and Gas Permit to include a traffic impact study, which shall clearly identify and distinguish impacts to City roads and bridges related to Oil and Gas Facility construction, Operations and ongoing new traffic generation. Traffic impact studies shall be prepared in accordance with City standards and requirements or other guidelines as identified by the City Engineer. The process for mitigation of transportation impacts will typically include a plan for traffic control, the receipt of all necessary permits, ongoing roadway maintenance and improving or reconstructing City roads, including providing financial assurance.
  - (i) The Operator shall prepare a traffic control plan for each phase of Operations where City roads will be used for transportation of materials in support of facility construction or Operations.
  - (ii) In the event public road improvements are necessary to accommodate an Operation, and before work will be permitted within any City right-of-way, the Operator shall draft engineered drawings to be prepared by a Colorado licensed civil engineer, in conformance with City standards, for review and approval by the City. Financial assurances shall be required when any Operation requires the construction or reconstruction of public or private roads.
- (b) Maintenance. In the event Operations or other activities cause any City roadway to become substandard, the City may require the Operator to provide ongoing repair and maintenance of the roadway at the Operator's cost. Such maintenance may include dust control measures and roadway improvements such as graveling, shouldering, and/or paving as determined in the Traffic Impact Study.

- (c) Oil and Gas Well Site Access. Access to any property from a City street requires a City-issued access permit. Access Permits are revocable upon issuance of a stop work order or if other Oil and Gas Permit violations occur. The permitting and construction of accesses shall comply with the City's Engineering Construction Standards and Specifications and design standards.
- (d) Private Access Roads. All private roads used to access or conduct Operations shall be graded for appropriate drainage and surfaced and maintained to provide adequate access for the Operator's vehicles and emergency vehicles. The Operator shall comply with City standards regarding vehicle tracking and dust mitigation
- (e) State Highway Access. Where a Site's access is directly to a state highway, the Operator must procure and maintain an approved State Highway Access Permit.
- (f) Access Roads.
  - (i) Tank Battery Access Roads. Access roads to tank batteries shall be, at a minimum, a graded gravel roadway at least twenty feet (20') wide with a minimum unobstructed overhead clearance of thirteen feet six inches (13' 6") and a minimum thickness to be approved by the City Engineer.
  - (ii) Wellhead Access Roads. Access roads to wellheads shall be, at a minimum, a graded gravel roadway at least twenty feet (20') wide with a minimum unobstructed overhead clearance of thirteen feet six inches (13' 6"), and a minimum thickness to be approved by the City Engineer.
  - (iii) Pavement Standards. To protect public streets, sidewalks, and curbs and gutters, all tank battery and wellhead access roads that intersect a paved City street or alley shall be paved to standards determined by the City Engineer. The access location shall comply with all City requirements.
  - (iv) Indemnification. No public improvements, such as curbs, gutters, pavement or sewer lines, etc., shall be damaged by vehicles entering or leaving the location. In the event of damage, the Operator shall indemnify the City for any repair costs.
- (g) Haul Routes. Operators shall only use roadways for haul routes that are identified on a City-approved traffic control plan.
- (h) Oversize/Overweight Vehicles. Any oversize or overweight vehicle making use of any City street shall obtain an Oversized, Overweight and

Longer Vehicle Combination Permit from the City's Department of Public Works prior to any such use.

- (9) **Prohibition. The following facilities are prohibited within the City:**
- (a) Injection wells for disposal of oil and gas exploration and production wastes;
  - (b) Disposal pits;
  - (c) Commercial disposal facilities;
  - (d) Centralized Exploration and Production waste management facility;
  - (e) Subsurface disposal facility; and
  - (f) Temporary housing at an Oil and Gas Facility, including trailers, recreational vehicles, etc.
- (10) **Abandonment and Plugging.**
- (a) The Operator shall comply with all COGCC rules in relation to abandonment and plugging.
  - (b) Operators of Wells that are to be abandoned shall notify the applicable Fire District (the "Fire District") not less than two (2) hours prior to commencing plugging operations.
  - (c) Operators shall notify the City if the flow and gathering lines have been or will be abandoned.
  - (d) Operators shall provide copies of all COGCC plugging and abandonment reports to the City at the same time such are filed with the COGCC.
- It shall be unlawful for any Operator or other person to reactivate a plugged or abandoned Oil and Gas Well unless a new Oil and Gas Permit has first been issued by the City. The initial Oil and Gas Permit may allow any twinning, sidetracking, deepening, recompleting or reworking of an Oil and Gas Well and relocation of accessory equipment or gathering and transmission lines so long as all applicable City and State regulations are met.
- (11) **Impact Fees.** The Operator shall pay a fee sufficient to pay for all impacts of the proposed Operation to improvements and property owned or operated by the City or used by the general public including, but not limited to: repair and maintenance of roads, bridges and other transportation infrastructure; improvements made or to be made by the City to accommodate the Operations and to protect public health, safety and welfare; costs incurred to process and

analyze the Oil and Gas Permit application, including the reasonable expenses paid or to be paid by the City to independent experts or consultants; and impact fees comparable to those charged to other businesses or industries that operate within the City and that are not specifically mentioned herein. The City shall establish a mechanism to assess and obtain payment of such fees, subject to the right of the City to request additional funds if the fees prove to be insufficient or to refund surplus funds to the Operator if the fees paid exceed the true cost of the impacts.

**(12) Financial Assurances.**

**(a) Insurance.**

- (i) **Commercial General Liability Insurance.** The Operator shall procure and maintain throughout the lifetime of the Operation a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the Operator, and naming the City as an additional insured, against any liability for personal injury, bodily injury or death arising out of the Operations with coverage of at least one million dollars (\$1,000,000) per occurrence.
- (ii) **Comprehensive Automobile Liability Insurance.** The Operator shall procure and keep in force during throughout the lifetime of the Operation a policy of comprehensive automobile liability insurance insuring the Operator, and naming the City as an additional insured, against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the Site of all motor vehicles controlled by the Operator or its subcontractors that are used in connection with the Operations, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least one million dollars (\$1,000,000).
- (iii) Unless the Operator is self-insured, insurance required by this Section shall be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as the Operator deems reasonable, but in no event greater than Ten Thousand dollars (\$10,000.00). The Operator is responsible for payment of any deductible. No such policies shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. The Operator shall identify whether the type of coverage is “occurrence” or “claims made.” If the type of coverage is “claims made,” which at renewal the Operator changes to “occurrence,” the Operator shall carry a twelve (12) month tail. The Operator shall not do or permit to be done anything that shall invalidate the policies.

- (iv) No “Pollution Exclusion.”
    - a. The insurance required by this Section shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise.
    - b. In the event the Operator is unable to procure a policy of comprehensive general liability insurance in compliance with the provisions of this subsection, the Operator shall secure and maintain either a rider or a separate policy insuring against liability for pollution related damages, claims or suits, as described in this subsection, with at least One Million dollars (\$1,000,000) each occurrence, subject to approval by the City, which approval shall not be unreasonably withheld.
  - (v) Mutual Benefit. The insurance policies described in herein shall be for the mutual and joint benefit and protection of the Operator and the City. All insurance policies required herein shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of negligence of the Operator or its officers, employees, agents, subcontractors or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.
  - (vi) Evidence of Coverage. Prior to issuance of an Oil and Gas Permit, the Operator shall furnish to the City certificates of insurance policies evidencing insurance coverage required herein. The Operator shall, upon request by the City and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the City with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this Section.
- (b) Performance Security. To ensure compliance with mitigation and other requirements set forth in this Section and specific conditions of approval for the Operations, the Operator may be required to provide reasonable performance security to the City through a minor improvement security agreement as outlined in this Code in an amount to be determined by the City and in a form acceptable to the City. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and any damage to public infrastructure.



- (c) Cost Reimbursement Agreement. The Operator shall reimburse the City and/or the Fire District for any emergency response costs incurred by the City and/or the Fire District in connection with the Operations.

**(13) Inspection by the City.**

- (a) Right to Enter. In addition to the rights identified in the City's Municipal Code, the City shall have the authority to discontinue the application process, revoke approved permits or to obtain an order from a court of competent jurisdiction to obtain entry, in the event entry is denied.
- (b) Operator Contact. The Operator shall provide the telephone number of a contact person who may be reached 24 hours a day for purposes of being notified of any proposed City inspection under this Section or in case of emergency. All Operations may be inspected by the City at any time to ensure compliance with the requirements of the Oil and Gas Permit, provided that at least one hour prior notice is given to the contact person at the telephone number supplied by the Operator. Calling the number (or leaving a message on an available answering machine or voice mail service at the number) at least one hour in advance of the proposed inspection shall constitute sufficient prior notice if the contact person does not answer. By accepting an Oil and Gas Permit, the Operator grants consent to such inspections. The cost of any such inspection shall be borne by the Operator, provided such inspections and fees are not in conflict with COGCC inspections and rules.

**(14) Appeals/Noncompliance.**

- (a) The Operator may submit a separate written request and application to the City for a waiver of certain requirements of this Section, which may be granted where the implementation of such requirements is impossible or unnecessary, where it would materially impede or destroy the state's interest, or where it would cause the Operator to violate other applicable laws (i.e., "Operational Conflict"). All applications for a waiver of appeal shall be heard in a noticed public hearing by the City in a quasi-judicial capacity, through the Planning Commission and the City Council. The Operator shall have the burden of pleading and proving a lack of necessity, or an actual, material, irreconcilable impossibility or Operational Conflict. If the City finds in favor of the Operator by a preponderance of evidence in the record, then a waiver may be granted in whole or in part, but only to the extent necessary to provide the relief sought.
- (b) For this Section, no variances of minor modifications are permitted concerning Oil and Gas Permits. All requests for non-compliance shall be addressed via the process identified above.

**(15) Enforcement and Penalties.**

- (a) Failure to Obtain Permits. Any Operator that fails to obtain an Oil and Gas Permit, or that fails to comply with requirements of this Section, the Oil and Gas Permit, or the EA, may be enjoined by the City from engaging in Operations and may be subject to such other criminal or civil liability as may be prescribed by law.
- (b) Suspension of Oil and Gas Permit. In the event the City determines that the Operator has violated any term or condition of this Code, the Oil and Gas Permit or the EA, or that one or more material changes to the Operations or Oil and Gas Facilities have been made without the express, written consent of the City, the Director may temporarily suspend the Oil and Gas Permit and order all Operations thereunder to cease. In such event, the Operator shall immediately cease all Operations upon written notification by the Director of the violation or identification of the material change(s).
- (c) Revocation of Oil and Gas Permit. Following notice and hearing, the Planning Commission or City Council may revoke an Oil and Gas Permit if the Operator has violated any term or condition of this Code, the Oil and Gas Permit or the EA, or if one or more material changes to the Operations or Oil and Gas Facilities have been made without the consent of the City.
  - (i) Not less than thirty (30) days prior to the revocation hearing, the City shall provide written notice to the Operator identifying the violation and/or the material changes and the time and date of the hearing.
  - (ii) Public notice of the revocation hearings shall follow the standard notice procedures of the Planning Commission and City Council.
  - (iii) If, following the hearings, the Planning Commission or City Council determines by a preponderance of evidence that one or more violations exist, the City may:
    - a. Revoke the Oil and Gas Permit;
    - b. Suspend the Oil and Gas Permit pending correction of the violation(s) by a date certain; or
    - c. Defer action on the Oil and Gas Permit pending correction of the violation(s) by a date certain.
- (d) Assignment of Permits. An Oil and Gas Permit may be assigned to another Operator only with the written consent of the City and upon a showing that the new Operator can and will comply with all requirements,

terms and conditions of this Code, the Oil and Gas Permit and the EA and all applicable state, local and federal laws, rules and regulations. Such new Operator shall execute a written consent to assignment of the EA on a form approved by the City.

- (e) **Judicial Review.** Any action seeking judicial review of a final decision of the City shall be initiated in the District Court for Adams County, Colorado, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.
  - (f) **Governing Law and Venue, and Recovery of Costs.** This Code, the Oil and Gas Permit and the EA shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in Adams County, Colorado, and for federal actions shall be in United States District Court for the District of Colorado. In the event the City brings any action against the Operator to enforce any provision of this Code, the Oil and Gas Permit or the EA, the Operator shall pay all reasonable court costs and attorney fees incurred by the City.
- (16) **No Permit Approval Pending Enforcement Action.** No Oil and Gas Permit or application therefore shall be processed or approved on behalf of an Operator or property owner for a Site that is subject to an ongoing enforcement action.
- (17) **Other Oil and Gas Operations – Seismic Operations.** An Oil and Gas Permit shall not be required for seismic surveys unless the drilling of a seismic (shot hole), core or other exploratory hole is involved or unless the seismic survey is located on City property.

*Section amended by Ord. 1891, August 2012*