



TOWN BOARD WORK SESSION

June 3, 2019 - 6:00 PM

1st Floor Conference Room, 301 Walnut Street, Windsor, CO 80550

GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.

Members of the Public in attendance are asked to be recognized by the Mayor before participating in any discussions of the Town Board

AGENDA

1. Meet The Board - New Hires
2. DUI Task Force
3. Senate Bill 181 Discussion
4. Future Meetings Agenda

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.



MEMORANDUM

Date: June 3, 2019
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Human Resources
Re: Meet The Board - New Hires
Item #: 1.

Background / Discussion:

Last Name	First Name	Title	DOH	Supervisor
Lynch	Helen	Guest Services Coordinator	4/29/2019	Eric Lucas
Eckles	Stephen	Parks Maintenance	4/29/2019	Eric Lucas
Ainsworth	Alexander	Utility Technician	4/15/2019	Terry Walker
Morales	Lynn	Horticulture Technician	5/13/2019	Eric Lucas



MEMORANDUM

Date: June 3, 2019
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Chief Klimek
Re: DUI Task Force
Item #: 2.

Background / Discussion:

The Colorado Department of Transportation (CDOT) is proposing the formation of a DUI Task Force. The Task Force will be focused in Larimer County as the first of its kind in the nation. There will be officers assigned to the Task Force from Loveland, Ft. Collins, Larimer County and Windsor. There will be a total of six officers assigned to the Task Force. CDOT will fund the Task Force for three years. The funding will pay for salaries, overtime, benefits, training and some equipment. Each agency will have a cap of \$100,000 available each year to cover those costs. Loveland PD will handle the paperwork for reimbursement for all agencies.

The Task Force will focus on impaired driving in Larimer County. There will be directed enforcement in problem areas, around special events and other areas as determined. Officers will at times work independently in their own jurisdictions. The efforts in Windsor will be focused in Larimer County.

The intention of the Task Force is to determine if there can be a positive impact on impaired driving by providing dedicated traffic enforcement. Windsor PD has been involved with state funded DUI enforcement efforts since the beginning, around 25 years. The Law Enforcement Agency Funding (LEAF) and High Visibility Enforcement (HVE) are monies generated by fines as part of convictions from impaired arrests. We will continue to apply for funding from these programs. Those funds will be applied towards impaired driving enforcement in the Weld County portion of Windsor.

CDOT is wanting to start the Task Force as soon as possible. The Task Force, after three years, may continue depending on the success. CDOT may expand the model to other counties

Financial Impact:

Agencies involved in the Task Force will provide a vehicle for the Officer assigned to the program. We would purchase and SUV. The cost of the vehicle would be around \$62,000. The purchase of the vehicle depends on availability of inventory and the purchase of the equipment. There is a possibility that the vehicle would not be available until late fall of 2019.

Relationship to Strategic Plan:

The Task Force will work to provide for the safety of citizens by removing impaired drivers from the roadways that endanger society. Safe streets are a priority for the citizens of Windsor. The mobility of vehicles often cover a large area and impact our community.

Recommendation:

I recommend that Windsor participate in this new program to impact impaired driving. We would hire an additional FET and purchase a patrol car. The assignment to the Task Force would come from within the current staff. The data generated by this program may allow us to apply resources with greater focus and efficacy.



MEMORANDUM

Date: June 3, 2019
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Shane Hale, Ian D. McCargar, Scott Ballstadt
Re:
Item #: 3.

ATTACHMENTS:

- ▢ Town Attorney's Memorandum re: SB 181
- ▢ Staff Presentation

MEMORANDUM

TO: Windsor Town Board
FROM: Ian D. McCargar, Town Attorney
DATE: June 3, 2019
SUBJECT: Senate Bill 181 (2019)

OVERVIEW

Senate Bill 2019-181 was signed into law by the Governor on April 16, 2019. The bill makes sweeping changes to the Colorado Revised Statutes with respect to the regulation of oil and gas activity on two basic levels:

- Requirement for extensive rule-making by the Colorado Oil and Gas Conservation Commission (“COGCC”) and the Colorado Department of Public Health & Environment Air Quality Control Commission (“AQC”); and
- Statutory amendments affecting oil and gas activity outside of the mandated rule-making process.

Each of these basic topics will be covered separately below.

I. Required Rule-making; AQC and COGCC.

A. Air Quality Control Commission Rule-making.

Under a new sub-section to CRS 25-7-109, the AQC is directed to:

Adopt new rules to minimize emissions of methane and other hydrocarbons, volatile organic compounds, and oxides of nitrogen from oil and natural gas facilities and facilities in the other segments (processing, gathering and boosting, storage, and transmission) of the natural gas supply chain.

Review existing rules for oil and natural gas well production facilities and compressor stations and specifically consider adopting more stringent provisions, including:

- Leak detection and repair inspections on a minimum a semiannual basis or alternative instrument monitoring methods;
- Regular inspection and maintenance of transmission pipelines and compressor stations;
- Installation and operation of continuous methane emissions monitors at facilities with large emissions potential, at multi-well facilities, and at facilities in close proximity to occupied dwellings; and

- Reduction of emissions from pneumatic devices, including, under appropriate circumstances, use of pneumatic devices that do not vent natural gas.

The new AQC rules may be phased in, but all facilities subject to phased-in regulations must be inspected more frequently during the phase-in.

B. COGCC Rule-making.

1. Fees. The former limits on COGCC fees for permits and hearings have been stricken, and the COGCC must by rule establish fees that reasonably cover direct and indirect costs of its regulatory activity.
2. Alternative location analysis. The Commission must establish rules for consideration of alternative site locations in the vicinity of populated areas.
3. Cumulative impacts. The Commission must work with CDPHE to evaluate the *cumulative impacts* of oil and gas development.
4. Financial accountability. The Commission must develop rules to assure adequate security for the industry's obligations under the statutes, including remediation, reclamation, plug/abandon, orphaned wells, etc. The rules must require review of security on an annual basis.
5. Wellbore integrity. The Commission must develop rules to assure wellbore integrity, including:
 - Permitting for construction, operation, and closure of production wells;
 - Current practices and standards that protect water zones and prevent blowouts;
 - Safety and environmental protections during drilling and hydraulic fracturing;
 - Integrity assessments for all oil and gas production wells; and
 - Nondestructive testing of weld joints.
6. Flowline safety. The Commission must shall review and amend its flowline rules, including inactive, temporarily abandoned, and shut-in wells to ensure protection and minimal adverse impacts to public health, safety, and welfare and the environment, including:
 - Allowing public disclosure of flowline information;
 - Evaluating and determining when a deactivated flowline must be inspected before being reactivated; and

- Evaluating and determining when inactive, temporarily abandoned, and shut-in wells must be inspected before being put into production or used for injection.
7. Worker training. The Commission must adopt rules to require certification for workers in the following fields:
- OSHA compliance officers, specifically including working in confined spaces;
 - Compliance officers with regard to codes published by the American Petroleum Institute and American Society of Mechanical Engineers, or their successor organizations;
 - The handling of hazmats;
 - Welders working on oil and gas process lines (addressing specific tasks not enumerated here)

II. Statutory Amendments (in addition to rule-making changes).

A. Local Land Use Authority.

1. The Bill makes specific modifications to the Local Land Use Enabling Act, CRS § 29-20-101, *et. seq.*, giving local governments the following powers:
 - a. Regulating the surface impacts of oil and gas operations in a reasonable manner to address:
 - The location and siting of oil and gas facilities and locations;
 - Impacts to public facilities and services;
 - Water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts;
 - Financial securities, indemnification, and insurance as appropriate to ensure compliance with the regulations of the local government; and
 - All other nuisance-type effects of oil and gas development.
 - b. Protecting and *minimizing adverse impacts* (under an expanded definition) to public health, safety, and welfare and the environment.
 - c. Reaffirming the authority of local governments to regulate air quality.

- d. The following powers are specifically authorized:
 - Facility inspections;
 - Fines for leaks, spills, and emissions; and
 - Fees on operators or owners to cover the reasonably foreseeable direct and indirect regulatory costs.
2. Distinct grants of regulatory authority (distinct from Land Use Enabling Act). The Bill adds a new Section 34-60-131, *No land use preemption*:

Local governments and state agencies, including the commission and agencies listed in Section 34-60-105 (1)(b), have regulatory authority over oil and gas development, including as specified in Section 34-60-105 (1)(b). A local government's regulations may be more protective or stricter than state requirements.

B. Modifications to COGCC Powers.

1. Legislative declaration changed to include *regulating* oil and gas development (formerly *fostering*), *subject to* the protection of public health, safety, welfare, the environment and wildlife (formerly “consistent with” these objectives). This is essentially an incorporation of the legislative intent rejected by SCOC in the *Martinez* case (2019).
2. Modifies definition of *minimize adverse impacts* in the COGCC context to align with the local government context definition. The new definition removes cost factors and technical feasibility from the former definition; these factors are no longer a consideration.
3. Redefines *waste* in the context of both oil and gas. The concept of waste elimination remains, but leaving resources in the ground to protect public health/safety/welfare/wildlife/environment is no longer considered *waste*.
4. Re-emphasizes that the COGCC’s powers over oil and gas activity is coincident with the AQC’s regulatory authority in the field.

C. Modifications to COGCC structure. Generally speaking, the industry loses significant representation on the Commission as presently composed. Before the Bill, the industry had three representatives, plus whatever influence it had through some of the other members. Going forward, the industry is comparatively under-represented.

1. Specific compositional changes. The former 9-member commission is reduced to 7. The two *ex officio* members (Director of Department Natural Resources and Director of CDPHE) remain. The Commission will be composed one way before required

COGCC rule-making is complete, and a different way after the rule-making is complete:

Before COGCC rule-making:

- 2 Western Slope members
- Political party limitations

- 1 industry member (formerly 3);
- 1 local governmental official;
- 1 with environmental experience (formerly subsumed in wildlife member);
- 1 with wildlife protection experience (retained);
- 1 with soil reclamation experience (retained);
- 1 with royalty or agricultural interests (retained);
- 1 with public health experience (new).

After COGCC rule-making:

- 2 Western Slope members
- Political party limitations

- 1 industry member;
- 1 with land use planning experience;
- 1 with environmental or wildlife or soils reclamation experience;
- 1 with experience of assistance to balanced decisions by Commission;
- 1 with public health experience.

- 2. Member compensation. The Commission goes from being an unpaid body with member *per diems* to being composed of full-time compensated members.

- 3. Conflicts of interest. The Bill adds a restriction on members with current or prior experience that impairs Commission’s ability to make “balanced decisions”. However, mere experience in the industry does not automatically disqualify a person from Commission membership.

D. Changes to COGCC administrative procedures. The Bill adds specific administrative procedures, deadlines and review protocols with respect to any Commission action requiring hearings conducted in a quasi-judicial atmosphere.

E. Additional COGCC Director powers; technical review boards. The Bill adds a new function for the COGCC Director: the power to convene a *technical review board* to assist in resolving disputes between the industry and local governments. The technical review board is advisory only, and is discretionary for the Director only if the parties to the dispute request it. This process kicks in when a local government makes an initial determination on the location of an O&G site. *See* sub-section F below.

F. Changes to Permit to Drill applications. In a significant departure from past practice, the Bill requires operators at the application stage to include the affected local government’s determination of a site location request, either by showing the local government is not regulating site locations or, if regulated, by showing the local government’s determination. If the local government’s determination is in dispute, the technical review

board option described above is available. Otherwise, the operator may seek judicial review of the local government's determination. The COGCC is not, however, an appeal avenue.

G. Force-pooling/statutory pooling. The procedure for pooling non-consenting mineral rights holders has been modified as follows:

1. Force-pooling applications must be initiated by 45% of the affected minerals; any less than that percentage renders the unit ineligible. Formerly "any interested person" could initiate force-pooling.
2. The royalty percentages available to non-consenting gas rights holders have been increased from 12.5% to 13%, and for oil rights holders the percentage is fixed at 13%. The remainder of the non-royalty revenue is applied to operational costs until the costs are fully recovered.
3. Pooling orders have a new requirement: the surface owned by non-consenting mineral rights holders cannot be used to access the minerals without specific permission.

H. Habitat protection, reasonable accommodation. The statute retains the requirement that surface owners must *reasonably accommodate* mineral operators' use those portions of the surface needed to access the resources. However, new language clarifies:

1. The Commission must consult with and have the surface owner's consent to permit-based wildlife protection measures that *directly impact* the owner's use of the property.
2. The Commission need not have the owner's consent to permit-based wildlife protection requirements that *do not directly impact* the owner's use of the property (such as off-site wildlife mitigation measures).

I. Fiscal considerations. The Bill changes some fiscal formulas for disposition of State revenue generated by the mill levy on wellhead production and the Environmental Response Fund.

Shane Hale, Town Manager
Scott Ballstadt, Director of Planning
Ian D. McCargar, Town Attorney



SB19-181 OVERVIEW

June 3, 2019

OVERVIEW

INTRODUCTION. Shane Hale

CURRENT TOWN PRACTICES (CUG's). Scott Ballstadt

SB181 COMPONENTS. Ian McCargar

POLICY OPTIONS. Group discussion



SB19-181 Overview

June 3, 2019

Introduction (Shane Hale)

SB181 signed into law April 16, 2019.

Calls for extensive **rule-making** by COGCC, CDPHE (Air Quality Control Commission). See Town Attorney Outline for details.

Significant statutory changes of concern to us: **expanded powers of local control**



SB19-181

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Windsor Current Process (Scott Ballstadt)

Brief History:

- First wells in Windsor area drilled in early 1970's
- Town first adopted oil and gas regulations in 1992
- Sharp increase in oil and gas activity in 2000's prompted Town staff to meet with local operators to discuss conditions
- Ord. No. 2006-1232 required Conditional Use Grant process



Current CUG Process

June 3, 2019

Updated mitigation measures and outreach in 2000's:

- Neighborhood meeting requirements
- Notification requirements (500 feet)
- Development of a Town oil and gas webpage
- Participation in Local Government Designee (LGD) program
- Adopted road impact fees for new wells in 2015
- Regular meetings with local operators
- Development of conditions of CUG approval to better mitigate oil and gas issues within the Town's purview



Current CUG Process

June 3, 2019

CUG Conditions of Approval - Drilling and Site Improvement Plans:

- Site access plan detailing access points and haul routes
- Public street clean-up and tracking prevention
- Site grading
- Site lighting (full cut-off lighting required)
- Temporary screening
- Permanent Screening
- Fencing
- Oil and gas equipment (electric motors to minimize sound, low profile tanks, etc.)
- Air quality (in conformance with all State and Federal requirements)
- Water Quality (in conformance with all State and Federal requirements)
- Emergency containment (equal to or greater than State requirements)
- Waste Disposal (in conformance with State requirements)



Current CUG Process

June 3, 2019

SB 181 Components (Ian D. McCargar)

Express powers of local control.

Land use powers under CRS 29-20-101, *et. seq.*

Regulating the **surface impacts** of oil and gas operations in a reasonable manner



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Surface impacts include:

- Location and siting;
- Impacts to public facilities and services;
- Water quality and source,
- Noise, vibration, odor, light, dust, air emissions and air quality;
- Land disturbance, reclamation procedures;
- Cultural resources;
- Emergency preparedness and coordination with first responders, security, and traffic and transportation impacts;



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Surface impacts, *cont'd*

Financial **security, indemnification, and insurance** as appropriate to ensure compliance with the regulations of the local government; and

All other **nuisance-type effects** of oil and gas development.



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SB 181 Components, Land Use Powers, cont'd

Protecting and *minimizing adverse impacts* (under an expanded definition) to public health, safety, and welfare and the environment.

Reaffirming the authority of local governments to regulate *air quality*.

Specific Powers: Facility *inspections*; *Fines* for leaks, spills, and emissions; *Fees* on operators or owners to cover the reasonably foreseeable direct and indirect regulatory costs.



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New CRS Section 34-60-131:

Local governments ... have **regulatory authority** over oil and gas development.... A local government's regulations **may be more protective or stricter than state requirements**.

Expressly reverses former State pre-emption



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Other statutory changes:

- Revised COGCC composition; reduces the number of required industry-oriented members
- New “Technical Review Board” process; COGCC Director can bring third parties in to sort out technical disagreements between the industry and local governments
- Force-pooling requirements



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Other statutory changes, cont'd.

- Legislative declaration changed to include *regulating* oil and gas development (formerly *fostering*), *subject to* the protection of public health, safety, welfare, the environment and wildlife (formerly *consistent with* these objectives). Incorporates the legislative intent rejected by SCOC in the *Martinez* case (2019).
- Modifies definition of *minimize adverse impacts* in the COGCC context to align with the local government context definition. The new definition removes cost factors and technical feasibility from the former definition.



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Other statutory changes, cont'd

- Redefines **waste** in the context of both oil and gas. The concept of waste elimination remains, but leaving resources in the ground to protect public health/safety/welfare/wildlife/environment is no longer considered waste.
- Re-emphasizes that the COGCC's powers over oil and gas activity is coincident with the CDPHE Air Quality Commission's regulatory authority in the field.



SB19-181

June 3, 2019



MEMORANDUM

Date: June 3, 2019
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Shane Hale, Town Manager
Re: Future Meetings Agenda
Item #: 4.

ATTACHMENTS:

- ▢ Future Meetings Agenda



FUTURE TOWN BOARD MEETINGS

June 10, 2019 5:30 p.m.	Board/Manager/Attorney Monthly Meeting Broadband Discussion
June 10, 2019 7:00 p.m.	Town Board Regular Meeting
June 17, 2019 6:00 p.m.	Town Board Work Session New Employee Introductions
June 24, 2019 6:00 p.m.	Town Board Work Session Bright Futures Presentation Trails and Open Space Update
June 24, 2019 7:00 p.m.	Town Board Regular Meeting
July 1, 2019 6:00 p.m.	Town Board Work Session Proposed Employee Benefit Update
July 8, 2019 5:30	Board/Manager/Attorney Monthly Meeting
July 8, 2019 7:00 p.m.	Town Board Regular Meeting Kern Board
July 15, 2019 6:00 p.m.	Town Board Work Session
July 22, 2019 6:00 p.m.	Town Board Work Session Preliminary Transportation Master Plan Information – Fehr & Peers Presentation for CIP Budget Discussion
July 22, 2019 7:00 p.m.	Town Board Regular Meeting
July 29, 2019	Fifth Monday – No Meeting
August 5, 2019 6:00 p.m.	Town Board Work Session Parks, Recreation and Culture Strategic Plan Update
August 12, 2019 5:30 p.m.	Board/Manager/Attorney Monthly Meeting
August 12, 2019 7:00 p.m.	Town Board Regular Meeting

Additional Events

June 6, 2019	Transportation Master Plan Public Outreach Event, Boardwalk Park, Windsor, CO beginning at 6:00 p.m. – attending: Baker, Rennemeyer, Jones, Wilson, Sislowski, Bennett
June 11, 2019	Town of Windsor Transportation Master Plan Open House, WSFR Station #1, Windsor, CO from 4:00-7:00 p.m. – attending: Baker, Rennemeyer, Wilson, Jones, Bennett, Sislowski, Melendez
June 15, 2019	Coffee with the Mayor, Raff’s Tavern, Windsor, CO 7:30-9:00 a.m. – attending: Melendez, Rennemeyer, Wilson, Baker, Sislowski, Bennett
June 18-21, 2019	Colorado Municipal League Annual Conference, Breckenridge, CO – attending: Melendez, Bennett, Baker, Rennemeyer, Jones, Sislowski, Wilson
July 20, 2019	Coffee with the Mayor, Colorado Cherry Company, Windsor, CO 7:30-9:00 a.m. – attending: Melendez, Rennemeyer, Wilson, Baker, Sislowski, Bennett

Future Work Session Topics

- Investment Strategy Discussion
- Land Use Code Update meeting with Planning Commission (next code section in series) – Planning
- Economic development/retail needs at 60,000 population