



Mayor Jeni Arndt
Council member Tricia Canonico
Council member Emily Francis
Council member Susan Gutowsky
Council member Kelly Ohlson
Council member Shirley Peel
Council member Julie Pignataro

February 23, 2023

Re: Fort Collins Draft Oil and Gas Regulations

Dear Mayor Arndt and City Council members,

The Larimer Alliance for Health, Safety, and the Environment; Sierra Club Poudre Canyon Group; 350 Colorado; Fort Collins Sustainability Group; and Colorado Rising respectfully offer the following additional comments regarding the City of Fort Collins draft Oil and Gas (O&G) regulations.¹ These groups collectively represent thousands of Fort Collins and Larimer County residents committed to protecting our community's public health, environment, natural resources, and wildlife resources from significant threats posed by inadequately regulated O&G development.

We urge the City to prepare a substantially revised and enhanced regulatory package consistent with our recommendations; with meaningful opportunities for public input before proposed regulations are brought forward for Council action.

This letter incorporates and expands upon the comments and recommendations made in our letter to you dated Dec. 17, 2022. Its primary purpose is to identify specific regulatory approaches that would significantly strengthen the City's draft O&G regs. There is nothing new or unproven here: Every one of the approaches we recommend has been adopted by at least one local government in the Front Range. Moreover, none of the regulatory approaches we recommend have been successfully challenged in Colorado by O&G industry advocates.

Fort Collins residents and voters have expressed their desire for effective protection from the threats, dangers, and harms associated with O&G development; and the need to upgrade the current under-protective draft O&G regs cannot be overstated. However, based upon our communications with City

¹ These comments are based on the most recent public version of the draft regs (ver. 2 dated Dec. 12, 2022). We note that ver. 2 did not address most of the concerns pertaining to ver. 1 identified in the Air Quality Advisory Board's Dec. 15, 2022 memo to City Council and the Dec. 17, 2022 Joint Environmental Organization letter to City Council.

staff, strengthening the draft regs will not occur unless City Council expressly directs staff to broaden the regulatory approach and adopt protective standards.²

To help ensure that future O&G development within Fort Collins, or in areas over which the City may exert regulatory jurisdiction, proceeds in a manner that sufficiently protects the public interests set forth in SB 19-181, we recommend modifying the draft O&G regulations by including the following provisions:³

- **Financial Assurance:** Establish operator financial assurance requirements, including insurance and indemnification requirements, sufficient to ensure adequate resources are available to provide for proper maintenance, decommissioning, removal, response, and remediation of O&G operations and facilities; and be adequate to guarantee operator performance of all conditions of approval. Insurance should include pollution liability and control of well coverage.
- **Cumulative Impacts:** Require the operator to provide a cumulative impacts analysis and a natural habitat / natural feature review in the O&G development application for all O&G facilities and operations (including pipelines).
- **Setbacks:** The setback should be a non-waivable minimum of 2500' with a discretionary option to expand the setback to 3200' (as required in California) where necessary to protect public health, public welfare, or the environment.⁴
- **Water Use, Source Documentation, and Recycling:** Require the operator to provide an up-front Water Use, Source Documentation, and Recycling Plan as part of the O&G development application showing that water supply for the proposed O&G operation will be adequate for the project's needs; to disclose the amounts and sources of the water utilized; and to maximize use of produced water recycling to the maximum extent possible.
- **Air Quality and Emissions Modeling and Monitoring:** Require an independent air quality modeling study that assesses existing air quality at the proposed site, predicts the anticipated

² At the Dec. 20, 2022, City Council meeting, City staff publicly recommended adoption of the current draft regulations without significant changes. In recent discussions, staff verbally reaffirmed the intent to recommend that City Council adopt the current draft as is.

³ SB 19-181, §4(1)(h) provides local governments with broad authority to regulate “the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment.” In addition to the section’s broad “protect and minimize adverse impacts” authorization, the numerous “matters specified” that SB 19-181, §4 expressly authorizes local governments to regulate include: impacts to public facilities and services (§4(1)(h)(III)); water quality and sources ((§4(1)(h)(IV)); air emissions and air quality (§4(1)(h)(IV)); noise and vibration (§4(1)(h)(IV)); financial securities, indemnification, and insurance (§4(1)(h)(V)); and imposition of fines for leaks, spills, and emissions (§4(2)(b)). We note that the City’s current draft regulations make virtually no use of these important local government authorities expressly granted under SB 19-181. We also note that the draft regs fail to utilize the full range of inherent regulatory authority available under the City’s Home Rule status.

⁴ There is no scientific and/or medical evidence that a 2000' setback provides a high level of health protection and safety, and a substantial body of scientific and medical evidence indicates that more than 2000' is needed to protect health and safety. The 2000' setback in the COGCC and Larimer County regulations was a political compromise, and without scientific and/or medical basis.

emissions from the proposed facilities/operations, and models the air quality impacts over the project's projected lifetime.

- Require compliance with the National Ambient Air Quality Standards (NAAQS); avoidance or minimization and mitigation of methane emissions; and the most protective health-based guidelines for Hazardous Air Pollutants (HAPs) established by EPA and CDPHE.
- Require continuous emission and ambient air quality monitoring for key air pollutants during all phases of the facility's/operation's pre-production, production, shutdown (including any temporary shutdown), and P&A. Monitoring must be conducted by an independent expert and data generated should meet EPA and CDPHE-APCD standards.
- **Best Management Practices:** Require development plans for all O&G operations and facilities (including all pipelines) to incorporate industry-leading Best Management Practices regarding facility inspection, maintenance, and operation; and require the operator to implement and fully comply with these BMPs.
- **Inspection, Enforcement, and Penalties:** Establish effective inspection, enforcement, and penalty provisions for violations of operational requirements.
 - Enforcement options should include the authority to promptly issue facility shut-down and corrective action orders in response to non-compliance events; to seek judicial injunctive relief in response to an operator's failure to comply with such orders and/or for continuing violations; and to impose meaningful penalties for an operator's repeated, willful, or negligent non-compliance.
 - In addition to civil fines, enforcement authority should include the discretion to mandate, in response to non-compliance events, increased inspection frequencies; facility equipment upgrades; and system audits.
- **Infrastructure and Services Fees:** Establish a schedule of impact fees sufficient to cover all costs for infrastructure and services necessary to serve oil and gas development, including roads, water supply, waste disposal, emergency services, and City planning, inspection, and enforcement costs.
- **Pipeline Leak Detection and Integrity Inspection:** Require the operator to implement state-of-the-art pipeline leak detection technologies/practices and periodic pipeline integrity inspection protocols.

The currently proposed regulations are not consistent with the full intent of SB 19-181 and as such would neglect the City's opportunity and duty to reduce unnecessary public health, safety, welfare, and environmental risks for Fort Collins' current and future residents.

We urge the City Council to instruct staff to take a more comprehensive vision of what protections are available and needed, and to prepare a substantially revised and enhanced regulatory package consistent with our above recommendations.

We also encourage the City Council to provide timely and meaningful opportunities for public input before final proposed regulations are brought forward for Council action.

As always, we stand ready to assist and work with the City Council and staff toward these very worthwhile and achievable goals.

Thank you for the opportunity to provide these recommendations and for your commitment, time and efforts to the Fort Collins community.

Sincerely,

Tim Gosar, Convener

Larimer Alliance for Health, Safety, and the Environment

Megan Thorburn, Chair

Sierra Club Poudre Canyon Group

Kevin Cross, Convener

Fort Collins Sustainability Group

Micah Parkin, Executive Director, and Riley Ruff, Northern Colorado Coordinator

350 Colorado

Lauren Petrie, Executive Director

Colorado Rising