

**FIRST & ONLY READING: May 15, 2012**

**ORDINANCE NO. 5685**

**AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF  
LOVELAND IMPOSING A NINE-MONTH MORATORIUM ON THE CITY'S  
ACCEPTANCE AND PROCESSING OF LAND USE APPLICATIONS, PERMITS  
AND OTHER APPROVALS CONCERNING THE CONDUCT OF OIL AND GAS  
EXTRACTION AND RELATED OPERATIONS WITHIN THE CITY**

**WHEREAS**, the Loveland City Council recognizes the importance of natural resources to the community, but believes it is important to minimize adverse impacts of any industry developing those resources on the City and the public's health, safety, and welfare through the exercise of the City's general police power and its zoning and land use regulations; and

**WHEREAS**, there has been considerable interest in oil and gas resources underlying portions of Loveland, including property owned by the City; and

**WHEREAS**, the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities present unique public health, safety, and welfare issues which may be inadequately addressed in the City's current zoning and land use regulations; and

**WHEREAS**, the present City regulations related to oil and gas exploration, extraction, production, transportation and related operations and activities, including, without limitation, all those oil and gas activities regulated by the Colorado Oil and Gas Conservation Commission (collectively "Oil and Gas Uses") in the City require updating with respect to current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission ("Commission") Rules and industry technologies in order to preserve and protect the health, safety, and welfare of Loveland's citizens and the resources of the City; and

**WHEREAS**, Oil and Gas Uses may negatively impact Loveland citizens and the use and integrity of local water supplies and water infrastructure, air quality, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife and aesthetic values; and

**WHEREAS**, Title 18 of the Loveland Municipal Code provides that the City's zoning and land use regulations are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent overcrowding of land; to avoid undue

concentration of population; and to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements; and

**WHEREAS**, a comprehensive study of the impacts of Oil and Gas Uses is needed to determine whether the City's existing zoning and land use regulations are sufficient to protect the public's health, safety, and welfare or whether additional regulations are necessary to address the impact of Oil and Gas Uses; and

**WHEREAS**, if land use applications, permit applications or any other applications are submitted to the City requesting approval of an Oil and Gas Use prior to the City's examination of the impact of any such Use and before a determination can be made by the Council as to whether any additional local regulations are necessary to protect the public's health, safety, and welfare, irreparable harm may be done to the public's health, safety and welfare and to the City's interests; and

**WHEREAS**, municipalities throughout Colorado are struggling to address the potential adverse impacts of proliferating Oil and Gas Uses in urban and suburban environments on their citizens' health, safety, and welfare and several municipalities have enacted moratoria permitting a period of time to evaluate those impacts of Oil and Gas Uses in order to assess and determine the appropriate local regulation of such; and

**WHEREAS**, it is Council's belief that Oil and Gas Uses are likely to commence on property in the City within the next nine (9) months; and

**WHEREAS**, a significant period of time will be required in order for the City Manager and City Attorney, and their respective staffs, to clarify the extent of the City's legal authority with regard to local regulation of such expected future Oil and Gas Uses and to formulate any recommended amendments to the City Code to deal specifically with those Uses in an adequate manner; and

**WHEREAS**, the imposition of a nine-month moratorium on the submission, acceptance, consideration, and approval of any and all applications for City licenses, permits and other approvals related in any way to Oil and Gas Uses within the City, will allow City staff and the Council the time needed to investigate the extent of City's authority to regulate such Uses and develop and implement appropriate regulations; and

**WHEREAS**, nine (9) months is a reasonable period of time and is no longer than necessary for the City to determine the extent to which Oil and Gas Uses may be locally regulated and to properly investigate, develop, and, if appropriate, adopt and implement any local regulations related to Oil and Gas Uses in Loveland in order to protect and preserve the public's health, safety and welfare; and

**WHEREAS**, existing Oil and Gas Uses in Loveland will not be unduly prejudiced by the imposition of such a moratorium, since such Uses currently permitted and existing in the City will not be prohibited or terminated by this moratorium; and

**WHEREAS**, Loveland Charter Section 4-10 authorizes the City Council to adopt at one reading an emergency ordinance that goes into effect immediately upon an affirmative vote of at least six (6) members of the Council with a specific statement of the nature of the emergency set forth in the ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LOVELAND:**

**Section 1.** That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

**Section 2.** That it is necessary for the immediate preservation of the public's health, safety and welfare to delay the processing of applications for any and all City licenses, permits and any other approvals related to or in any way needed for any and all Oil and Gas Uses within the City until the City has had a reasonable opportunity to investigate the extent of the City's legal authority to regulate such Uses and, if appropriate, adopt and implement any local regulations related to Oil and Gas Uses in Loveland in order to protect and preserve the public's health, safety and welfare.

**Section 3.** That a nine-month moratorium is hereby imposed upon the acceptance, processing, and approval by the City of any and all applications for City licenses, permits and any other approvals related to or in any way needed for any and all Oil and Gas Uses in the City. No such applications requesting approval to use property within the City for Oil and Gas Uses shall be accepted, processed, or approved commencing May 16, 2012 and for the duration of the nine-month moratorium thereafter. Therefore, this moratorium shall begin on May 16, 2012, and end on February 16, 2013, or such earlier date as may be determined by the City Council by ordinance.

**Section 4.** That if any section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of and shall be severable from the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts may be declared unconstitutional or invalid.

**Section 5.** That all other ordinances or portions thereof, and all City Code provisions inconsistent or conflicting with this Ordinance or any portion hereof, are hereby superseded by this Ordinance and their legal effect held in abeyance but only to the extent of such inconsistency or conflict and only for the duration of the moratorium herein imposed.

**Section 6.** That because of the likely and imminent filing of applications for the approval of Oil and Gas Uses on property within the City prior to the City's examination of the impact of such Uses and, if appropriate, its adoption and implementation of specific or adequate zoning, land use and other police power

regulations to govern such Uses, an emergency for the adoption of this Ordinance exists in order to avoid the following adverse consequences:

- a. Adverse changes in the character of the City and its neighborhoods; and
- b. Adverse impacts to the health, safety and welfare of the City's residents as a result of unmitigated or inadequately regulated impacts on water quality, air quality, road and transportation impacts, noise and erosion and stormwater.

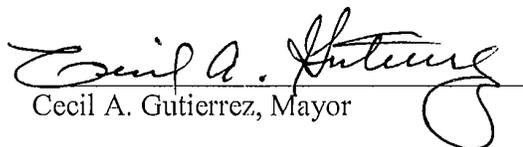
Accordingly, the City Council hereby finds and determines that an emergency exists requiring the immediate passage of this Ordinance for the preservation of the health, safety, morals and welfare of the citizens of the City of Loveland.

**Section 7.** That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council.

Signed this 15th day of May, 2012.

CITY OF LOVELAND, COLORADO

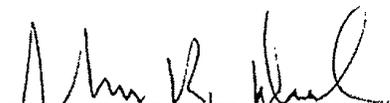


  
Cecil A. Gutierrez, Mayor

ATTEST:

  
Susan S. Andrews  
City Clerk

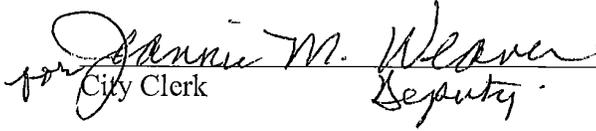
APPROVED AS TO FORM:

  
John R. Huel  
City Attorney

Ordinance # 5685

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on May 15, 2012 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits in full on May 19, 2012 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on (NA).

Effective Date: May 15, 2012

  
for City Clerk Deputy

**FIRST READING**      December 4, 2012

**SECOND READING**   December 18, 2012

**ORDINANCE #5735**

**AN ORDINANCE AMENDING ORDINANCE NO. 5685 TO EXTEND THE CITY'S MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF LAND USE APPLICATIONS, PERMITS AND OTHER APPROVALS CONCERNING THE CONDUCT OF OIL AND GAS OPERATIONS WITHIN THE CITY**

**WHEREAS**, on May 15, 2012, the City Council adopted as an emergency ordinance Ordinance No. 5685; and

**WHEREAS**, Ordinance No. 5685 imposed a nine-month moratorium on the City's acceptance, processing and approval of all applications for City licenses, permits and any other approvals needed for conducting within the City "Oil and Gas Uses," as such term is defined in Ordinance No. 5685; and

**WHEREAS**, this moratorium began on May 16, 2012, and is currently set to expire on February 16, 2013; and

**WHEREAS**, the primary purpose of this moratorium has been to give City staff and this Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate Oil and Gas Uses occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the public's health, safety and welfare; and

**WHEREAS**, during this process City staff has learned that the Colorado Oil and Gas Commission ("Commission") has begun its rulemaking process to adopt new oil and gas regulations related to air quality and setbacks; and

**WHEREAS**, the Commission is expected to complete its final adoption of these new regulations on or about January 8, 2013; and

**WHEREAS**, since under Colorado law the City is prohibited from adopting and enforcing local oil and gas regulations that are in "operational conflict" with the Commission's regulations, it has been suggested that the City's current schedule for City staff's preparation, the public's review and the Council's consideration of local oil and gas regulations be delayed approximately two months to take these expected new Commission regulations into account; and

**WHEREAS**, the only oil and gas company currently known to City staff planning in the near future to commence oil and gas operations within the City is Anadarko Petroleum Corporation ("Anadarko"); and

**WHEREAS**, Anadarko has indicated its support for the City rescheduling its process to consider local oil and gas regulations as well as the extension of the City's moratorium, in order

to allow the City in this process to take into consideration the Commission's new regulations expected to be adopted in early January; and

**WHEREAS**, the proposed new schedule is for the City's Planning Commission to review the City staff's proposed ordinance for the regulation of oil and gas operations at a public hearing on January 28, 2013, for Council to consider the ordinance at a study session on February 12, 2013, and for Council to consider the ordinance at a public hearing on first reading on March 5, 2013, with the second and final reading of the ordinance on March 19, 2013; and

**WHEREAS**, under this schedule the ordinance, if adopted, would become law on April 2, 2013; and

**WHEREAS**, the Council finds that this proposed rescheduling of the process to consider the adoption of local oil and gas regulations and the proposed extension of the moratorium are in the best interest of the City and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

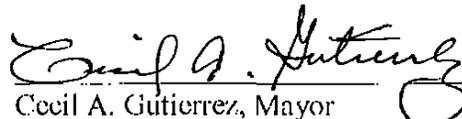
**Section 1.** That Section 3 of Ordinance No. 5685 is hereby amended to extend the moratorium imposed in Ordinance No. 5685 on any and all Oil and Gas Uses in the City from February 16, 2013, to the earlier of: (a) the date an ordinance is adopted by the City Council to enact local oil and gas regulations becomes law; or (b) April 15, 2013.

**Section 2.** That to the extent Ordinance No. 5685 prohibits seismic testing within the City using vibroseis trucks, also known as thumper trucks, to explore for oil and gas, such seismic testing shall not be prohibited in the City during the moratorium so long as the City's local government designee (currently the City's Development Services Director) is given the same prior written notice of such testing as is required to be given by an operator to the Commission by the Commission's regulations. Any other types of seismic testing within the City during the moratorium shall be prohibited.

**Section 3.** That except as amended in this Ordinance, Ordinance No. 5685 is hereby ratified and shall remain in full force and effect.

**Section 4.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 18<sup>th</sup> day of December, 2012.

  
Cecil A. Gutierrez, Mayor



ATTEST:

Teresa G. Andrews  
City Clerk

APPROVED AS TO FORM:

John R. Wood  
City Attorney

Ordinance # 5735

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on December 4, 2012 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits in full on December 8, 2012 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on December 22, 2012.

Teresa G. Andrews  
City Clerk

Effective Date: January 1, 2013