

CITY COUNCIL ORDINANCE

ORDINANCE NO.: _____

INTRODUCED BY: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON AMENDING CHAPTER 17 OF THE BRIGHTON MUNICIPAL CODE, COMMONLY KNOWN AS *THE LAND USE AND DEVELOPMENT CODE*, PROVIDING FOR THE REPEAL OF SEC. 17-20-70, OIL AND GAS WELLS IN ITS ENTIRETY AND READOPTION AS SEC. 17-20-70, SET BACKS, OIL/GAS FACILITIES; THE ADOPTION OF A NEW ARTICLE 17-64, OIL AND GAS FACILITIES REQUIRING CONDITIONAL USE APPROVAL FOR OIL AND GAS WELLS AND OTHER RELATED FACILITIES OR ADMINISTRATIVE APPROVAL SET FORTH IN A MEMORANDUM OF UNDERSTANDING APPROVED BY THE CITY MANAGER; SETTING FORTH APPLICATION REQUIREMENTS, GENERAL STANDARDS, PLANS FOR SITE DEVELOPMENT, ENVIRONMENTAL PROTECTIONS, CONTROL OF NUISANCES, TRAFFIC PROTECTIONS, PROHIBITED FACILITIES, FEES, CITY INSPECTION, APPEALS, ENFORCEMENT; AMENDING SEC. 17-8-30. PROCEDURES REQUIRING A MAP OF OIL AND GAS FACILITIES AND NEIGHBORHOOD NOTICE; AMENDING SEC. 17-12-20. DEFINITIONS; AMENDING SEC. 17-8-60. CONDITIONAL USE RELATIVE TO ASSIGNABILITY OF A CONDITIONAL USE PERMIT; AMENDING SEC. 17-20-30 FENCE AND SIGHT TRIANGLES EXEMPTING TEMPORARY NOISE BARRIERS AT OIL AND GAS FACILITIES; AMENDING SEC. 17-32-15. TABLE OF USES; AND SETTING FORTH DETAILS RELATED TO THE FOREGOING.

WHEREAS, It is the City Council intent by enacting these regulations to facilitate the development of oil and gas resources within the City of Brighton while mitigating potential impacts to the City’s groundwater resources as well as potential land use conflicts between such development and existing, as well as planned, land uses; and

WHEREAS, the regulations herein adopted are intended to protect the health, safety, and general welfare of the residents of the City, and as such are an exercise of the City Council’s land use authority and police power; and

WHEREAS, It is the intent of the City Council that the exercise of its police and land use protection powers as expressed in this Ordinance be consistent with the intent and purposes of the State Oil and Gas Conservation Act (C.R.S. §34-60-101, *et. seq.*) and any rules or regulations of the Colorado Oil and Gas Conservation Commission and the Colorado Department of Public Health and the Environment and to complement the same; and

WHEREAS, the City Council finds that this Ordinance is necessary to safeguard the City’s groundwater resources and the zoning and land uses within the City by permitting oil and gas operations and facilities in a manner consistent with the aforementioned Act and rules and regulations of the COGCC.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

SECTION 1. Section 17-12-20. The definition of “Support and service facility, gas, oil and petroleum” in **Definitions** of Chapter 17-20. **Development Standards** of Chapter 17. **Land Use and Development Code** of the Brighton Municipal Code is hereby repealed.

SECTION 2. Section 17-20-70. **Oil and Gas Wells** of Chapter 17-20. **Development Standards** of Chapter 17. **Land Use and Development Code** of the Brighton Municipal Code is hereby repealed and reenacted in its entirety to read as follows:

Section 17-20-70. Set Backs, Oil and Gas Facilities

- (a) Buildings that require a certificate of occupancy shall not be constructed within a 500 foot radius of a tank battery or any oil and gas wellhead or within 25 feet of a well that has been plugged and abandoned.
- (b) Buildings that do not require a certificate of occupancy may not be built any closer than 150 feet from a tank battery or an oil and gas well unless that well has been plugged and abandoned.

SECTION 3.

Section 17-32-15. “Gas, Oil and Petroleum” Use Category in the **Table of Uses** of Chapter 17-32. **Development Standards** of Chapter 17. **Land Use and Development Code** of the Brighton Municipal Code is hereby repealed and reenacted in its entirety to read as follows:

Sec. 17-32-20. Legend.

Type of Use	Use by right	X
	Conditional use	C
	Special use	S
	Temporary use	T
	See approved Development Plan or C-3 for nonresidential uses and R-3 for residential uses	#
Zone Districts	Rural Estate	RE
	Single-Family Residential	R-1
	Single- and Two-Family Residential	R-1-A
	City Lot Residential	R-1-B
	Single- to Eight-Family Residential	R-2
	Multiple Family Residential	R-3
	Mobile Home	MH
	Downtown	DT
	Mixed Use Neighborhood Center	MU-NC
	Mixed Use Commercial Center	MU-CC
	Mixed Uses Regional/Employment Center	MU-R/EC
	Planned Unit Development Overlay	PUD
	Zone Districts (cont'd)	South 4th Avenue Corridor Overlay
South 4th Avenue Gateway Overlay		S4GW
Commercial Office		CO
Local Retail		C-1
Restricted Retail and Services		C-2

	General Retail and Services	C-3
	Business Park	BP
	Light Industrial	I-1
	Heavy Industrial	I-2
	Mineral Extraction	ME
	Flood Plain Control Overlay	FC
	Public Land	PL
	Open Space and Parks	OPEN
	Agricultural Residential	A/R
	Agricultural Estate	A/E
	<p>Notes:</p> <p>Specific land uses, for which the Zoning Official is unable to make a final determination, may be permitted upon a finding by the Director that the use is similar in character and impact to those specifically permitted within a zone district, when consideration is given to the goals and policies expressed in the Comprehensive Plan, or as may be amended; and to traffic and parking needs associated with the proposed use. If the Director and the applicant are unable to reach an agreement, the applicant may appeal the decision to the Board of Adjustment. If the applicant appeals to the Board of Adjustment, no fees will be assessed.</p> <p>For instances in which more than one land use is proposed for a specific property or building, the land use requiring the most stringent review process shall determine the type of review process required, or as may be determined by the Director.</p>	

(Ord. 1964, 2008; Ord. 2052 §4, 2010; Ord. 2061 §8, 2010)

SECTION 4. Chapter 17. **Land Use and Development Code** of the Brighton Municipal Code is hereby amended by the addition of a new Article 17-64. **Oil and Gas Facilities** to read as follows:

Article 17-64. Oil and Gas Facilities

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Division 1. General Provisions

Sec. 17-64-10. 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 Article 17-64 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 Article 17-64 and by mutual accommodation of the surface and mineral owners. Further, recognizing that the City’s primary source of water for its municipal and domestic use comes from numerous wells located throughout the City, and that the protection of those groundwater resources is essential to the health, safety and general welfare of its citizens, such development of the mineral estate must minimize and mitigate

any adverse impacts to the City's groundwater resources through compliance with this Section. Should it be established by competent evidence that a proposed use cannot be undertaken and completed in compliance with this Article 17-64, as the same may be amended from time to time, approval for such a use may be denied unless an appeal is obtained.

Sec. 17-64-20. Applicability.

1) The provisions in this Article 17-64, as amended from time to time shall apply to oil and gas exploration, drilling and production operations proposed or located in the City, including the permitting, construction, erection, and location of infrastructure to be used for the same, and accessory equipment or structures in the City, proposed or located on surface property within the City limits. Where provisions in this Article 17-64 are in conflict with other provisions of the Brighton Municipal Code or the Land Use and Development Code, the more restrictive, or that provision which results in the higher standard, shall apply.

2) All subsurface drilling operations, new oil and gas locations, oil and gas facility expansion that requires a new or modified permit from COGCC, and construction of pipelines, shall require review and approval of Conditional Use Permit by the City Council or a Memorandum of Understanding approved by the City Manager as provided in this Article 17-64 whether the same are permitted uses under the Land Use and Development Code or Conditional Uses for which a permit is required under Section 17-8-60, as the same may be amended from time to time.

3) Well and production sites that are in existence on the effective date of this Article 17-64 or that are located within territory which hereafter is annexed to the City may continue operating without the issuance of a Conditional Use Permit or a Memorandum of Understanding until the production site is expanded or new wells are drilled on the well site. Construction or reconstruction of access roads shall conform to the requirements of this Article 17-64 and shall require site plan review, pursuant to section 17-8-130, Site Improvement Permits, as the same may be amended from time to time.

4) Accessory equipment and pumping systems that are in existence on the effective date of this Section or are located within territory which hereafter is annexed to the City may continue operating without the issuance of a Conditional Use Permit or a Memorandum of Understanding. Any renovation or repair of nonconforming accessory equipment or pumping systems shall be permitted without a Conditional Use Permit, provided the work does not increase the degree of nonconformity. Any replacement of existing accessory equipment or any addition of accessory equipment shall conform to this Section and require a site plan review, pursuant to Section 17-8-130, Site Improvement Permits, as the same may be amended from time to time. The replacement or addition of individual tanks, treaters, or separators shall not require the remaining accessory equipment in a production site, an access road, or a well site, to conform to the standards and requirements of this Article 17-64.

5) Exceptions to the provisions of this Article 17-64 may be granted by the City Council as part of the approval of a Conditional Use Permit or by the City Manager in the approval of a Memorandum of Understanding but only if the owner or operator will employ equivalent mitigation measures for the standards waived.

Sec. 17-64-30. Definitions:

All terms used herein that are defined in the Act or in the regulations promulgated by the Colorado Oil and Gas Conservation Commission and/or the Colorado Department of Public Health and Environment and are not otherwise defined in Section 17-64-30 below shall be defined as provided in the Act or in such regulations. All other words used herein shall be given their usual customary and accepted meaning unless otherwise provided in this Article 17-64, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in the oil and gas industry. Any conflict between this section and any definition in any statute, rule or regulation of the State of Colorado or its regulatory agencies shall be resolved in favor of the state definition.

The words, terms and phrases listed below shall have the following meanings:

Act shall mean the Oil and Gas Conservation Act of the State of Colorado.

BMC shall mean “Brighton Municipal Code” of the City of Brighton, Colorado, as the same may be amended from time to time.

Building unit shall mean a Residential Building Unit, and every five thousand (5,000) square feet of building floor area in commercial facilities or fifteen thousand (15,000) square feet of building floor area in warehouses or other similar storage facilities that are operating and normally occupied during working hours.

COGCC rules shall mean the rules of the Oil and Gas Conservation Commission of the State of Colorado, as amended on the date that an application under this Article 17-64 is submitted to the City.

Commission or COGCC shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Conditional use permit shall mean the conditional use process as set forth in Section 17-8-30, BMC, and as provided in this Article 17-64, as the same may be amended from time to time.

Department or CDPHE shall mean the Department of Public Health and Environment of the State of Colorado.

Development Review Committee or DRC shall mean that Committee set forth in subsection 17-8-20(f) of the Land Use and Development Code found in Article 17 of the Brighton Municipal Code, as the same may be amended from time to time.

Director, for the sole purpose of this Article 17-64 shall mean Director of the Oil and Gas Conservation Commission of the State of Colorado.

High Occupancy Building Unit shall mean:

- 1) A Public School as defined in C.R.S. §22-7-703(4);
- 2) Nonpublic school as defined in C.R.S. §22-30.5-103.6(6.5);
- 3) Nursing facility as defined in C.R.S. §25.5-4-103(14);
- 4) Hospital;
- 5) Life care institution as defined in C.R.S. §12-13-101;
- 6) A Jail which includes those structures where the personal liberties of occupants are restrained, including but not limited to prisons, detention facilities, and reformatories; or
- 8) An operating Child Care Center as defined in C.R.S. §26-6-102(1.5).

Drilling Unit shall mean the area permitted for oil and gas development by the COGCC. A drilling unit can be no smaller than the maximum area that can be efficiently drained by a single well as defined in C.R.S. §34-60-116(2).

Inspector, City shall mean any person designated by the City Manager or by the Manager's designee, who shall have the authority to inspect a well site to determine compliance with this Article 17-64 and other applicable ordinances of the City.

Local government designee shall mean the office designated to receive, on behalf of the City, copies of all documents required to be filed with the local governmental designee pursuant to the rules of the COGCC.

MOU shall mean a “memorandum of understanding” or contractual agreement between the oil and gas operator and the City of Brighton for the purpose of facilitating and ensuring responsible oil and gas development within the City of Brighton.

Oil and gas facility shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas.

Oil and gas location shall mean a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

Operating plan shall mean a general plan which describes an oil and gas exploration and production facility identifying the purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operation, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

Operator shall mean any person or entity who exercise the right to control the conduct of oil and gas operations.

Person means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization or the manager, lessee, agent, servant, officer or employee of any of them.

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

Recompletion operation means any action taken after the initial completion of a well, including the action and techniques of reentering the well and redoing or repairing the original completed well to restore the well's productivity.

Residential building unit means a building or structure designed for use as a place of residency by a person, a family, or multiple families. The term includes manufactured, mobile and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.

Setback location: shall mean the minimum distances from Building Units, High Occupancy Building Units, or Designated Outside Activity Areas as established in COGCC Rules.

Surface owner shall mean any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

Surface use agreement shall mean any agreement in the nature of a contract or other form of document binding on the Operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the operator's activities on the surface in relation to locating a Well, Multi-Well Site, Production Facility, pipeline or any other Oil and Gas Facility that supports oil and gas development located on the Surface Owner's property.

Well shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, a stratigraphic well, or a well used for the purpose of monitoring or observing a reservoir.

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

Wellhead shall mean the mouth of the well at which oil or gas is produced.

Working day shall mean all days that the City of Brighton officers are open for conducting the public's business.

Section 17-64-40. Inspections:

In recognition of the potential impacts associated with oil and gas drilling and well

operation in an urban setting, all wells and accessory equipment and structures may be inspected by the inspectors of the City at reasonable times to determine compliance with applicable provisions of this Article 17-64, the International Fire Code, the International Building Code, and all other applicable standards adopted by the City of Brighton. For the purpose of implementing and enforcing the provisions of this Article 17-64, the personnel and/or agents of the City have the right to enter upon private property after reasonable notification to the operator, which provides the operator an opportunity to be present. The City may use the information collected by the inspections to enforce the requirements of this Section. These enforcement actions may be either through enforcement of City regulations or, in the case of state statutes or regulations, the City may report the inspection information to appropriate state officials for proper enforcement.

Section 17-64-50. Statutory References.

References to statutes or regulations include references to statutes and regulations as amended over time. Nothing in this document is intended to relieve the operator from compliance with then current applicable state or federal law.

Section 17-64-60. Review required.

Within all zoning districts, including a planned unit development district, when an applicant wishes to drill a well that has not previously been granted Conditional Use approval or which is subject to a Memorandum of Understanding under this Article 17-64, it is unlawful for any person to perform any such operation, unless a Conditional Use has been approved by the City Council pursuant to Section 17-8-60, and this Article 17-64, as the same may be amended from time to time; or administrative approval as set forth in a Memorandum of Understanding by the City Manager in accordance with this Article 17-64. When a use permitted by Conditional Use or an administrative Memorandum of Understanding has been executed for a well, the reentering of such well for the purposes of deepening, recompleting, or reworking shall not require a subsequent approval under this section unless such work requires a new or modified permit from COGCC. The approval of such Conditional Use or administrative approval of Memorandum of Understanding does not relieve the operator from otherwise complying with all applicable regulatory requirements of the City, state, and federal governments.

Section 17-64-70. Approval required

Development of an oil and gas facility shall not commence until and unless any required permits from COGCC, and a Conditional Use Permit or approval by Memorandum of Understanding from the City, have been approved.

Section 17-64-80. Transfer of Conditional Use Permit or MOU

Conditional Use Permits or Memorandums of Understanding may be assigned to another operator only with the prior written consent of the City Manager and upon a showing to the City that the new operator can and will comply with all conditions of the transferred Conditional Use Permit or Memorandum of Understanding and with all of the applicable provisions of this Article 17-64, as the same may be amended from time to time. The existing operator shall assign the Conditional Use Permit or Memorandum of Understanding to the new operator on a form provided by the City and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

Section 17-64-90. Abandonment and plugging of wells

The approval of a Conditional Use Permit or an administrative approval by Memorandum of Understanding shall not relieve the operator from complying with all Commission rules with respect to abandonment and plugging of wells. The operator shall provide the City with the COGCC Form 6, (well abandonment report) once it is approved by the Commission. The well abandonment report must be accurately and completely filled out and the location recorded with the Clerk and Recorder of the applicable county. Operators shall also comply with all applicable requirements set forth in the Subdivision Regulations of the City, as more specifically set forth in Article 17-40 of the BMC.

Section 17-64-100. Application review fees.

When an application is submitted to the City for a Conditional Use Permit or administrative approval by Memorandum of Understanding under this Article 17-64, the applicant shall pay to the City a preliminary site application review fee and an oil and gas application review fee or an MOU fee for each oil and gas facility shown on the site plan as established in the City's Annual Fee Resolution.

DIVISION II. CONDITIONAL USE REVIEW

Sec. 17-64-110. Preliminary Site Application

- 1) Prior to submitting a Conditional Use Application to the City of Brighton, and prior to applying for a Form 2A location permit through the COGCC for an oil and gas location within the City of Brighton, an operator must submit a Preliminary Site Application. The Preliminary Site Application must include the following:
 - a) The name and address of the operator
 - b) The number of wells and other equipment proposed to develop the drilling unit
 - c) A vicinity map or satellite photo at a scale of one (1) inch equals two hundred (400) feet, extending at least one-quarter (1/4) mile beyond the drilling unit. The map or satellite photo shall denote:
 - i) The outline of the drilling unit to be developed,

- ii) Streets and highways,
 - iii) All existing oil and gas wells, production facilities and pipelines,
 - iv) Natural drainage courses, water bodies, and similar major natural or man-made features of the area,
 - v) Existing uses for residential, commercial, industrial and public purposes
 - vi) All surface locations that would be practicable and economically feasible to access the drilling unit.
 - vii) Proposed access (ingress/egress) locations and haul routes
- d) Preliminary Site Application review fee payment
- 2) The Preliminary Site Application must be submitted at least thirty (30) days *prior* to submission of the conditional use permit application or COGCC Form 2A. (COGCC Rule 305.a.(1))
- 3) If the well or production facility is proposed less than 1,320 feet from a building unit, or public water supply wells, applicant must submit the following “alternative location analysis” as part of the Preliminary Site Application:
- a) A map that shows the drilling unit (or expected drilling unit) and all practicable and economically feasible surface locations that could be used to access the minerals within the contemplated drilling unit that are a greater distance from a building unit or municipal watershed protection area than the location proposed.
 - b) The operator must give a brief explanation of why each alternative location was not chosen.
- 4) After review of the Preliminary Site Application by all applicable City departments, the operator shall be furnished written comments concerning possible surface locations. City staff will review the potential locations identified by the applicant and make recommendations based on future land uses, public water supply areas and the COGCC requirement that multi-well locations are to be located “as far as possible from Building Units”. (COGCC Rule 604c(2)E.i.). Meeting City staff to review staff comments on the Preliminary Site Application will meet the Section 17-8-30 requirement for a pre-application conference.
- 5) Failure to submit the Preliminary Site Application prior to submitting the Form 2A location permit through the COGCC will deny the City the opportunity to be adequately prepared to engage in that process. Additional days for review will be requested of the COGCC and, depending on the location chosen, a hearing before the COGCC may also be requested pursuant to COGCC Rule 305.

Sec. 17-64-120. Conditional Use review, application requirements

All applications for Conditional Use review and approval by the City Council pursuant to Sections 17-8-30, 17-8-60 and this Article 17-64, Brighton Municipal Code, as the same may be amended from time to time, for an oil and gas facility shall include the following information:

- 1) The operator's and surface owner's names and addresses, and designation of agent, if applicable; and
- 2) A list of all permits or approvals obtained or to be obtained from local, state, or federal agencies other than COGCC; and
- 3) A list of COGCC permits that shall be submitted in conjunction with the COGCC Form 2A, Application for Permit to Drill (Form 2) and any exceptions proposed to be requested;
- 4) A detailed site plan for all well sites that includes submittal to the City of all documents required to be submitted with COGCC Form 2A, a depiction of all visible improvements within 1,320 feet of the proposed location, including buildings/residences, public roads and trails, major above-ground utilities, railroads, pipelines, mines, oil/gas/injection/water/plugged wells, etc., as required by COGCC Rule 303.d(3)C, and the site plan requirements of the Brighton Municipal Code, as amended, and
- 5) An operating plan including identified access points and operational timeline for posting to the City's community information web-page;
- 6) A site plan for site preparation, mobilization and demobilization;
- 7) A Stormwater Management Plan for construction as well as a Post-Construction Stormwater Management Plan;
- 8) A plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad;
- 9) A Utilities Report if applicable;
- 10) A plan for noise and light mitigation;
- 11) A traffic management plan (described in greater detail in Sec. 17-64-240. Transportation and access roads below);
- 12) Proposed form and issuer of a reasonable bond to cover any damage to public infrastructure during active drilling and completion;
- 13) A preliminary Visual Mitigation Plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening;
- 14) An air emissions mitigation plan (described in greater detail in Sec. 17-64-170. Air quality mitigation below);

15) An emergency response plan for each specific facility site, which is in compliance with the applicable fire code. The plan shall be filed with the City and the Greater Brighton Fire Protection District and updated on an annual basis in January of each year or as conditions change (responsible field personnel change, ownership changes, etc.). A “will-serve” letter must be obtained from the appropriate emergency provider(s). The emergency response will address all potential emergencies that may be associated with an oil and gas facility. The emergency response plan shall consist of at least the following information to be submitted to the City for review and approval:

- a) Name, address and phone number, including twenty-four (24) hour emergency numbers for at least two persons responsible for emergency field operations; and
- b) A diagram depicting the planned site design. Following construction of the facilities, the operator shall submit as-built drawings in AutoCAD format using the City’s current adopted coordinate system. The as-built drawings shall depict the locations and type of above and below ground facilities including sizes, and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites, and dry and wet utility infrastructure and/or surface water bodies, for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the City and shall only be disclosed in the event of an emergency or to emergency responders. The City shall deny the right of inspection of the as-built drawings to the public or for the training of emergency responders pursuant to C.R.S. § 24-72-204; and
- c) Detailed information addressing each reasonably potential emergency that may be associated with the operation. This may include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. A provision that any spill outside of the containment area, that has the potential to leave the facility or to threaten waters of the state, or city water supplies, or as required by the City-approved Emergency Response Plan shall be reported to the local emergency dispatch and the COGCC Director in accordance with COGCC regulations; and
- d) Detailed information identifying access or evacuation routes, and health care facilities anticipated to be used; and
- e) A project specific emergency response plan for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas; and
- f) A fire protection plan that is mutually acceptable to the operator and the

Greater Brighton Fire Protection District that includes planned actions for possible emergency events and other pertinent information; and

- g) Detailed information showing that the operator has adequate personnel, supplies, and training to implement the emergency response plan immediately at all times during construction and operations; and
- h) A program to ensure that the operator maintains onsite all current Material Safety Data Sheets (MSDS) for all chemicals used or stored on a site. The MSDS sheets shall be provided immediately upon request to City officials, employees or agents; a public safety officer; or a health professional as required by COGCC Rule 205; and
- i) A process by which the operator notifies the surrounding neighbors to inform them about the on-site operations and provide sufficient information for surrounding neighbors to communicate with the operator; and
- j) All training associated with the Emergency Response Plan shall be coordinated with the City and the Greater Brighton Fire Protection District; and
- k) A provision obligating the operator to reimburse the appropriate emergency agencies for expenses and damages resulting from the operator's operations, to the extent required by Colorado State Statutes; and

16) A weed control plan; and

17) The vicinity maps for a well site submitted with an application for a Conditional Use review and approval shall be submitted on one or more plats or maps showing the following information:

- a) Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a 500-foot radius of the proposed well or a one-half mile radius of the proposed well for application for administrative approval of a Memorandum of Understanding.
- b) Location of existing oil and gas wells or injection wells as reflected in COGCC records. This information shall be submitted on a map and shall include any and all wells within a 1,000-foot radius of the proposed location for the well.
- c) Location of drill site. The information to be submitted shall be on Commission Form 2 and shall include the parcel tax identification number.

18) Required fees including the oil and gas application review fee or the MOU fee together with such other impact fees or other fees that may be adopted by City Council. Such fees shall be as set forth in the City Council's Annual Fee Resolution in effect at the time of application.

Sec. 17-64-130. Conditional Use review and approval criteria.

- 1) In considering an application for a Conditional Use review and approval for an oil and gas facility pursuant to Section 17-8-60 and this Section 17-20-70, BMC, as the same may be amended from time to time, the City Council shall consider the following to determine if the application meets the criteria thereof:
 - a) The site plans for an oil and gas facility application to comply with the requirements of Section 17-64-120. Conditional use review, application requirements.
 - b) When applicable, compliance with the provisions for special mitigation of all applicable Sections of Article 17-64, as the same may be amended from time to time.
 - c) The application complies with all other site specific requirements as determined necessary by City Council that are not in operational conflict, and are otherwise consistent with applicable law.

Sec. 17-64-140. Documents submitted prior to drilling, Conditional Use.

All drilling and production activities permitted by Conditional Use permit approved by the City Council for an oil and gas facility shall require compliance with the final plans listed below. Such final plans must be approved by the City Manager prior to the commencement of drilling. The City Manager has the discretion to refer any revised plan to the City Council for its consideration and decision. If the City did not require modification or supplementation of a draft plan submitted with the application under Section 17-64-50, Review required and the operator has not otherwise updated the plan, the version of the plan submitted with the application under Section 17-64-50, Review required shall be deemed to be the final plan. In such a case, the plan need not be resubmitted to the City Manager for approval.

- 1) A response letter that outlines how the permit requirements have been met; and
- 2) A summary of planned operations, including identified access points and operational timeline for posting to the City's information web-page; and

- 3) A site plan for site preparation, mobilization and demobilization; and
- 4) A plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad; and
- 5) A Stormwater Management Plan for construction as well as a Post-Construction Stormwater Management Plan;
- 6) A Utilities Report if applicable;
- 7) Copies of all permits requested, including any exceptions; and
- 8) A final air emissions mitigation plan; and
- 9) A final emergency response plan; and
- 10) A final plan for noise, light and dust mitigation; and
- 11) A final traffic management plan and a reasonable bond to cover any damage to public infrastructure during active drilling and completion; and
- 12) A final visual mitigation plan; and
- 13) A final weed control plan; and
- 14) A water quality monitoring plan if required;
- 15) Evaluation of Nearby Wells pursuant to the COGCC DJ Basin Horizontal Offsite Policy, last revised December 17, 2013, as the same may be amended from time to time. The operator shall provide documentation submitted to the COGCC per that policy to the City, and permit the City an opportunity to comment to the COGCC.

Sec. 17-64-150. Noise mitigation measures.

An application for a Conditional Use permit pursuant to Section 17-8-60 and this Article 17-64 BMC, as the same may be amended from time to time, for an oil and gas facility shall require a Noise Mitigation Plan that will require that any equipment used in the drilling, completion, maintenance, stimulation or production of a well shall comply with section 25-12-103, C.R.S. (Maximum Permissible Noise Levels provided that the City may grant relief from these noise level requirements to the extent granted by the COGCC.)

- 1) Where the well and well site are in an area of particular noise sensitivity, additional noise mitigation may be required pursuant to Brighton's general police powers. (C.R.S. § 31-15-401(1)(e)). At these locations, an operator must make best efforts to reduce noise to residential limits as defined by the COGCC rules. An area of particular noise sensitivity includes but is not limited to the following: hospitals, dwelling units, nursing homes, hotels, churches, and designated wildlife preserves. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 - a) Nature and proximity of adjacent development, location and type;
 - b) Prevailing weather patterns, including wind directions;
 - c) Vegetative cover on or adjacent to the site; or
 - d) Topography.

- 2) Based upon the specific site characteristics set forth above, nature of the proposed activity, its proximity to surrounding development, and type and intensity of the noise emitted, additional noise abatement measures may be required. The level of required mitigation may increase with the proximity of the well and well site to areas of particular noise sensitivity or the level of noise emitted by the well and well site. One or more of the following additional noise abatement measures may be required:
 - a) Third-party noise mitigation study;
 - b) Noise management plan identifying hours of maximum noise emissions, type, frequency, and level of noise to be emitted, and proposed mitigation measures; or
 - c) Acoustically insulated housing or cover enclosing the motor or engine;
 - d) Any abatement measures required by the COGCC for high- density areas, if applicable.

Sec. 17-64-160. Visual impacts and aesthetics.

- 1) To the maximum extent practicable, oil and gas facilities shall be located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, ditch crossings, City-approved open space areas, and other approved landmarks.

- 2) To the maximum extent practicable, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.

- 3) To the maximum extent practicable, the applicant shall use structures of minimal size to satisfy present and future functional requirements.

- 4) To the maximum extent practicable, when clearing trees and vegetation for construction of

oil and gas facilities, the applicant shall consult with the City Director of Parks and Recreation and feather and thin edges of vegetation.

- 5) To the maximum extent practicable, the applicant shall locate facilities at the base of slopes to provide a background of topography or natural cover.
- 6) The applicant shall replace earth adjacent to water crossings at slopes less than the normal angle of repose with the soil type of the site.
- 7) To the maximum extent practicable, the applicant shall align access roads to follow existing grades and minimize cuts and fills.
- 8) Facilities shall be painted as follows:
 - a) Uniform, non-contrasting, non-reflective color tones.
 - b) Color matched to land, not sky, slightly darker than adjacent landscape.
 - c) Exposed concrete colored to match soil color.
- 9) In areas of increased visual sensitivity, such as a location near occupied buildings, the applicant shall submit a visual mitigation plan including one or more of the following standards, as appropriate:
 - a) To the maximum extent practicable, exterior lighting shall be directed away from residential areas and shielded from said areas to eliminate glare.
 - b) One or more of the following landscaping practices may be required by Brighton Planning Commission or City staff where practicable, on a site-specific basis:
 - i. Landscaping requirements found in Sec. 16-18-170;
 - ii. Establishment and proper maintenance of ground covers, shrubs, trees;
 - iii. Shaping cuts and fills to appear as natural forms;
 - iv. Cutting rock areas to create irregular forms;
 - v. Designing the facility to utilize natural screens; or
 - vi. Construction of fences for use with or instead of landscaping.

Sec. 17-64-170. Air Quality Mitigations

- 1) Operators must comply with the applicable emissions regulations promulgated by the Colorado Department of Public Health and Environment (CDPHE), Air Quality Control Commission (AQCC), COGCC, and United States Environmental Protection Agency (EPA). Specifically, air and odor emissions from wells and associated equipment shall be in compliance with the permit and control provisions of the Colorado Air Quality Control Program, Title 25, Section 7, C.R.S., COGCC Rule 805, and all applicable state, local and federal regulations; and

- 2) In addition to the requirements under Colorado Air Quality Control Program, Title 25, Section 7, C.R.S., oil and gas production facilities located within 1,320 feet of a building unit shall be:
 - a) Subjected to an instrument-based leak detection and repair (LDAR) inspection at least once a year unless the well is shut in or otherwise not in production;
 - b) VOCs destruction or control technologies with at least 95% efficiency must be employed on all tanks capable of emitting over 2 tons of VOCs annually; and
 - c) If a leak of over 10,000 ppm hydrocarbons is discovered the first attempt to repair the leak shall be made no later than 24 hours after discovery. If a repair is not possible within 24 hours, the well should be shut down until a repair can be made. If shutting down the well will not stop the leak, efforts should be made to minimize the leak within the first 24 hours and it shall be reported to the City Local Government Designee.
- 3) No flaring of gas during production operations except as permitted by applicable COGCC, EPA and AQCC regulations; and
- 4) *Fugitive Dust suppression.* Silica dust must be completely contained during the hydraulic fracturing process. Dust associated with on-site activities and traffic on access roads shall be minimized throughout construction, drilling and operational activities such that there are no visible dust emissions from access roads or the site to the extent practical given wind conditions. No untreated or unrecycled produced water or other process fluids shall be used for dust suppression. The operator will avoid dust suppression activities within three hundred (300) feet of the high water mark of any waterbody as defined in Section 17-12-20. Definitions, BMC, as the same may be amended from time to time, unless the dust suppressant is water. Safety Data Sheets (MSDS) for any chemical based dust suppressant shall be submitted to the City Manager for approval prior to use.
- 5) *Electric equipment.* The operators shall only use electric-powered engines for motors, compressors, and drilling and production equipment and for pumping systems in order to mitigate noise and to reduce emissions, unless the operator demonstrates to the City Manager that the use of such equipment in a particular situation is not economically feasible. If electricity from the grid is not available, the operator shall use propane or natural gas to power pumps and motors, if feasible.
- 6) To the extent practicable, exhaust from all engines, motors, coolers, and other mechanized equipment shall be vented in a direction away from occupied buildings.
- 7) The operator must maintain the following records on file for inspection by the City: (a) certification of compliance with these City and state air quality requirements and

documenting any periods of non-compliance, including the date and duration of each deviation and a compliance plan and schedule to achieve compliance; and (b) that the equipment at the well site continues to operate within its design parameters, and if not, what steps will be taken to modify the equipment to enable the equipment to operate within its design parameters. The operator may satisfy this obligation in whole or in part by making its AQCC Regulations No. 7 semi-annual reports and annual self-inspection reports available to the City for the prior calendar year.

Sec. 17-64-180. Seismic operations.

The approval of a Conditional Use shall not relieve the operator from complying with all COGCC rules with respect to seismic operations and with all applicable requirements set forth in the Subdivision Regulations of the City, as more specifically set forth in Article 17-40 of the BMC. All notices which an operator is required to file with the Commission with respect to seismic operations shall be simultaneously filed with the City. The City shall comply with the same confidentiality requirements which bind the COGCC.

Sec. 17-64-190. Signs.

The approval of Conditional Use shall not relieve the operator from complying with all COGCC rules with respect to signs. In addition, the owner or operator shall maintain in good, readable condition all signs required by such COGCC regulations.

Sec. 17-64-200. Recordation of flow lines.

All new flow lines, including transmission and gathering systems, shall have the legal description of the location recorded with the Clerk and Recorder of the applicable county within thirty (30) days of completion of construction. Abandonment of any recorded flow lines shall be recorded with the Clerk and Recorder within thirty (30) days after abandonment.

Sec. 17-64-210. Fencing.

All pumps, pits, and producing facilities shall be adequately fenced to prevent access by unauthorized persons when the producing site or equipment is easily accessible to the public and poses a physical or health hazard. (COGCC Rule 605c.(3)). Fencing materials will be determined by City of Brighton, taking into consideration aesthetics, cost, and functionality.

Sec. 17-64-220. Reclamation.

The operator must comply with all COGCC rules with respect to site reclamation.

Sec. 17-64-230. Geologic hazard, flood plain, floodway restrictions.

All equipment at drilling and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement or subsidence and to the extent necessary to comply with the Federal Emergency Management Act and Section 17-16-200, *Flood Plain Control District*, BMC, as the same may be amended from time to time.

Sec. 17-64-240. Transportation and access roads.

- 1) *Transportation and circulation.* In each application for a Conditional Use Permit, the applicant shall include detailed descriptions of all proposed access and haul routes for equipment, water, sand, waste fluids, waste solids, mixed waste, and all other material to be hauled on the public streets and roads of the City. The disposal of water used on site shall also be documented in detail by the operator, including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water and the final destination for water used in operation.

The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, trips per day and any other information required by the City traffic engineer. The operator shall comply with all transportation and circulation requirements as contained in the Model Traffic Code as adopted by the City, Article 10-13, BMC, as amended Land Use Code as may be reasonably required by the Director of the Department of Streets and Fleets.

- 2) Access roads to oil and gas locations shall be subject to review by the Director of the Department of Streets and Fleet in accordance with the following minimum standards:
 - a) The Operator agrees to construct (unless already constructed) and maintain an access road designed to support an imposed load of 75,000 pounds that will accommodate emergency response vehicles such as, but not limited to, law enforcement, emergency command vehicles (cars/SUVs), ambulances, hazardous materials response vehicles, water tenders, and fire apparatus during construction and operation of new tank batteries, new drilling activity and reworks or recompletions of existing wells, unless a local fire department or fire district agrees to a different or lesser standard or waived by the City.
 - b) With respect to new roads to new tank batteries, the Operator agrees to construct access roads at least sixteen (16') feet wide with at least four (4") inch road base compacted to a minimum density of ninety-five percent of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six inches thick compacted to a minimum density of ninety-five percent of the maximum density determined in accordance with

generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course, as specified for aggregate base course materials in the Colorado Department of Transportation's "Standard Specifications for Road and Bridge Construction," latest edition. Best efforts will be made to improve inadequate access to existing tank battery sites identified by the fire district or County, based on service calls and demonstrated problems of accessing the site.

- c) Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (such as roadside swales, gulches, rivers, creeks, and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Director of the Department of Streets and Fleet.
- d) Maintained so as to provide a passable roadway reasonably free of ruts at all times.

3) All access roads will be protected through the following methods:

- a) *Water Management.* Water necessary for drilling and hydraulic fracturing shall be piped to the location if practicable. The availability and use of City water shall be at the sole discretion of the City.
- b) *Chains.* Traction chains from heavy equipment shall be removed before entering a City street or right-of-way.
- c) *Mud Tracking.* The operator shall take all practicable measures to ensure that vehicles do not track mud or debris onto City streets and rights-of-way. If mud or debris is nonetheless deposited on City streets, in excess of de minimus levels, the streets shall be cleaned immediately by the operator. If for some reason this cannot be done, or needs to be postponed, the City shall be notified of the operator's plan for mud removal.

4) Operators must obtain permits from the Department of Streets and Fleets for all vehicles that exceed legal vehicle dimensions or weights as specified in Section 10-13-60 of the Municipal Code.

Sec. 17-64-260. Well Water Protection

On July 28, 2014, the COGCC passed Order 1-XXX to give additional protections to the Brighton public water system (PWS) consisting of certain wells in Beebe Draw and on the South Platte River (collectively "wells"), Ken Mitchell Lakes and Barr Lake (collectively "lakes"), and specified segments of the South Platte River, including but not limited to Second Creek, Third Creek, Fulton Ditch and Lateral, Brighton Ditch and Lateral, and Brian Canal (collectively "ditch segments"). Exhibit A attached to and made a part of Order 1-XXX entitled "Brighton PWS Management Map, Commission Order No. 1-XXX" includes the relevant River, Stream, and Ditch

Segments which are integral to Brighton’s PWS and the exact boundaries of the Exception Zone, Groundwater Monitoring Zone and BMP Buffer zone. The COGCC Order 1-XXX, including all maps, exhibits and attachments are attached to this Ordinance as Exhibit 1.

The following requirements from the Order that pertain to Brighton are fully enforceable by the City under this ordinance.

1) Requirements for Drilling, Completion, Production and Storage (DCPS) Operations at New Oil and Gas Locations within ½ mile (2,640 feet) of the Brighton PWS. The following shall be required for all DCPS Operations at New Oil and Gas Locations within the ½ mile Buffer Zone:

- a) If a new Oil and Gas Location is proposed within ½ mile of the Brighton PWS, the Operator will consult with Brighton and the COGCC regarding site-specific BMPs and Operating practices in addition to those required for the BMP Buffer Zone that may be required to avoid potential significant adverse impacts to the ditches or South Platte River. Where a discrepancy between the Zones as described above and the attached Brighton PWS Management Map exists, the Operator shall request a consultation with Brighton and Staff to determine the applicability of this Order.
- b) Operator shall notify the Brighton Department of Utilities prior to commencement of new surface disturbing activities at the site; and
- c) An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for Brighton. The emergency response plan shall specify when notifications to Brighton shall be made and must be prepared in consultation with Brighton.
- d) In the event of a spill or release, the Operator shall immediately implement the emergency response procedures in the above-described emergency response program. If a spill or release results in significant adverse impacts or threatens such impacts to a portion of the Brighton PWS, the Operator shall notify Brighton immediately following discovery of the release in addition to reporting in accordance with Rule 906.b.

2) Groundwater Sampling

- a) Sampling and analysis shall be conducted as described in Commission Order No. 1-XXX and Rule 910.b.(2). Sampling and analysis conducted in conformance with the Commission Model Sampling and Analysis Plan, as posted on the Commission website, shall be deemed to satisfy the requirements of this subsection. Upon request, an Operator shall provide its sampling protocol to the Director and/or Brighton.
- b) The Operator shall notify the Director, Brighton, and the surface owner within twenty-four (24) hours if methane is detected at or above 10 mg/l; the test results indicate thermogenic or a mixture of thermogenic and biogenic gas; the methane

concentration increases by more than 5.0 mg/l between sampling periods; or BTEX compounds or TPH are detected in a water sample.

- c) Copies of all final laboratory analytical results shall be provided to the Director, Brighton, and the water well owner or landowner within three (3) months of collecting the samples. The analytical results, the surveyed sample Water Source locations, and the field observations shall be submitted to the Director and Brighton in an electronic data deliverable format.

Sec. 17-64-270. Notice Requirements

Not less than thirty (30) days in advance of commencement of operations with heavy equipment for the drilling of a well (COGCC Rule 305f.), recompletion, or plugging and abandonment of a well, operators shall provide notice to the well site Surface Owner(s) and Brighton's Local Governmental Designee. Notice to the Surface Owner may be waived in writing by the Surface Owner. The notice must contain:

- 1) The operator's name and contact information for the operator or its agent;
- 2) A site diagram or plat of the proposed well location and any associated roads and production facilities; and
- 3) The date operations with heavy equipment are expected to commence and be completed.

DIVISION III. ADMINISTRATIVE APPROVAL BY MEMORANDUM OF UNDERSTANDING

Sec. 17-64-310. Enhanced Standards

All applications considered in the administrative review process resulting in a Memorandum of Understanding and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the requirements of Sections 17-64-110. Preliminary site application through and including 17-64-Well water protection, BMC, as the same may be amended, except that such administrative review shall not include compliance with the Conditional Use requirements of Section 17-8-60 BMC. The operator shall designate these standards and requirements, to the extent applicable, as agreed upon best management practices on any application the operator files with the Commission.

Sec. 17-64-320. Administrative review criteria.

- 1) In order to obtain an administrative approval by Memorandum of Understanding, an

applicant to operate an oil and gas facility shall first satisfy the following criteria, except to the extent waived by the City as provided herein.

- 2) A Memorandum of Understanding (MOU), in a form approved by the City shall be executed by the applicant and the City Manager and thereafter be in full force and effect, and the oil and gas facility as proposed shall be in compliance with the provisions of the MOU.
- 3) The application for administrative approval by Memorandum of Understanding and submittals to the City shall include the following:
 - a) Those submittal requirements set forth in Section 17-64-110. Preliminary site application through and including 17-64-140. Documents submitted prior to drilling, conditional use, BMC, as the same may be amended from time to time.
 - b) The following documents shall be submitted by the operator after well-completion:
 - i) Water quality data collected at 1, 3, and 6 year post- completion intervals, as described in subsection (g) of Section 17-64-330. Best management practices below; and
 - ii) A Comprehensive Gas Development Plan as described in Section 17-64-350. Comprehensive Development Plan (CDP) below.

Sec. 17-64-330. *Best Management Practices*

The MOU shall contain the following best management practices, at a minimum, and additional site specific requirements as determined by the City Manager.

- 1) The operator shall include as Conditions of Approval the best management practices requirements set forth in Section 17-64-330. Best management practices, BMC, as the same may be amended from time to time (and related submitted plans) on all Applications for Permit-to-Drill, Form 2, and Oil and Gas Location Assessments, Form 2A, submitted to the Commission for new wells after the effective date of this Article 17-64, except to the extent the City Manager in his/her sole discretion determines that such requirements do not need to be so included.
- 2) Operator agrees that the center of the wellhead for a new well shall not be located closer than 1,320 feet from an existing Building Unit (unless specifically permitted by the Building Unit landowner), an existing High Occupancy Building (as such terms are defined by the COGCC), and/or any of Brighton's public water supply wells, and that the associated pumping units, tanks, treaters and processing equipment shall not be located closer than 1,320 feet from an existing Building Unit and/or an existing High Occupancy Building and/or any of Brighton's public water supply wells. In the event that 1320-foot setback is infeasible, the operator shall maximize equipment and wellhead setbacks from occupied buildings and residences beyond the setbacks required by the COGCC to the greatest extent feasible.

- 3) *Containment berms.* The operator shall utilize steel-rim berms around tanks and separators at well sites with sufficient capacity to contain 1.5 times the volume of the largest tank enclosed by the berm plus sufficient freeboard to prevent overflow. All berms and containment devices shall be inspected by the operator at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a fired vessel. For purposes of this paragraph, "regular intervals" shall mean daily, unless remote sensing equipment approved by the City is utilized.
- 4) Secondary containment for tanks shall be constructed with a synthetic or engineered liner that contains all primary containment vessels and flowlines and is mechanically connected to the steel ring to prevent leakage.
- 5) For locations within five hundred (500) feet and upgradient of a surface water body, tertiary containment, such as an earthen berm, is required around production facilities. Such tertiary containment berm shall have a capacity of two (2) times the largest individual tank.
- 6) *Chemical disclosure and storage.* The operator shall remove hydraulic fracturing chemicals, flowback from hydraulic fracturing, and produced water from the Well Sites within 30 days of completion of fracturing operations.
- 7) *Water Quality Monitoring Plan.* The operator shall comply with COGCC Rule 609 and the steps identified in this subsection g) that go beyond that rule. In summary, this requires pre- and post-drilling testing. The rules require oil and gas operators to sample all "Available Water Sources" (if owner has given consent for sampling and testing and has consented to having the sample data obtained made available to the public), with a cap of four (4) water sources, within one-half (1/2) mile radius of a proposed well, multi- well site, or dedicated injection well. "Water Sources" includes registered water wells, permitted or adjudicated springs, and certain monitoring wells.

The operator shall also comply with the following requirements in addition to those required by the COGCC: following the sampling procedures and analysis as set forth in COGCC Rule 609, the operator shall test for dissolved metals, including arsenic, mercury, uranium, radium, and other dissolved metals as determined by the City; sampling intervals shall include baseline (before drilling), and post-drilling at one, three, and six years. Analytical results shall be shared with the COGCC, the City, and the landowner. All spills occurring in connection with new and existing wells shall be managed in accordance with COGCC regulations. Monitoring, sampling, and testing of well water required herein shall be at the sole expense of the operator.

- a) *Multiple identified aquifers available.* Where multiple defined aquifers are present, the sampling locations should attempt to sample from different aquifers when possible.
- b) Other considerations deemed necessary by the City Director of Utilities.

- c) Copies of all water test results shall be provided to the City and landowner within thirty (30) days of collecting the samples.
- d) If the methane concentration increases by more than 5.0 mg/l between sampling periods, or increases to more than 10 mg/l, the operator shall notify the City immediately.

Sec. 17-64-340. Insurance.

The operator shall, with respect to the initial drilling and completion of a new well, provide liability insurance that covers pollution, cleanup and general liability in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and in addition shall provide general liability umbrella coverage in the amount of \$5,000,000. Following completion, the operator shall provide ongoing pollution, cleanup and general liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and general liability umbrella coverage in the amount of \$5,000,000 per well pad. The operator shall identify the City as an additional insured under these policies. Upon request, operator shall provide certificates from the insurance company demonstrating its compliance with this paragraph.

Notwithstanding the above, the operator may elect to self-insure all or any part of its insurance requirements to the extent allowed by applicable law. Upon request, the operator shall provide the City Planning Division with a letter of self-insurance evidencing its compliance with this clause.

Sec. 17-64-350. Comprehensive Development Plan (CDP).

Within 90 days of its planned submittal of a permit to COGCC, the operator agrees to submit a Comprehensive Development Plan (CDP) to the City for the area affected by its planned operations for the next five to ten years, to maximize planning and minimize the impacts of the planned operations. The affected area includes the well sites and other locations within the City where the operator may conduct gas exploration or production activities and install supporting infrastructure (compressor stations, waste water treatment facilities, roads, pipelines, etc.) for a period of five to ten years. The operator is encouraged to coordinate with other operators whose geographic planning units overlap to develop integrated plans to improve use of existing and new infrastructure, to share or co-locate infrastructure, and to minimize cumulative impacts. The operator is not obligated to develop all the pads, wells or supporting infrastructure identified in the plan. Once approved, the CDP will remain in effect for ten years. The operator is encouraged to utilize COGCC Rules 216 and 513 as appropriate. The following planning principles shall be utilized in the plan:

- 1) Use multi-well, clustered drilling pads to minimize surface disturbance;
- 2) Comply with location restrictions, setbacks and other environmental requirements of State

- and local law and regulations and this Agreement;
- 3) Avoid, minimize and mitigate impact on sensitive resources;
 - 4) Preferentially locate operations on disturbed, open lands or lands zoned for industrial activity;
 - 5) Co-locate linear infrastructure with existing roads, pipelines and power lines;
 - 6) Consider impacts from other gas development projects and land use conversion activities and plan to minimize cumulative surface impacts; and
 - 7) Minimize fragmentation of intact open space.
 - 8) Additional planning elements include:
 - a. Identification of travel routes;
 - b. Sequence of well drilling over the lifetime of the plan that places priority on locating the first well pads in areas removed from sensitive natural resource values; and
 - c. Consistency with the City's Land Use and Development Code and comprehensive planning elements.

DIVISION IV ADMINISTRATIVE PROCESS

Sec. 17-64-410. Administrative Process – Conditional Use

The administrative process for an application for approval of a Conditional Use shall be as set forth in Section 17-8-30, BMC, as the same may be amended from time to time.

Sec. 17-64-420. Administrative Process – Administrative Approval of Memorandum of Understanding

- 1) *Pre-submittal meeting.* Prior to the submission of an application for Administrative Approval by Memorandum of Understanding, the operator is encouraged to schedule a meeting with the City to review the proposed new well or drilling activity. The goal of this meeting shall be for City staff and the operator to review the proposed oil and gas operation in a manner that ensures compliance with the operator agreement and applicable state and federal regulations. This pre-submittal meeting shall also allow the operator and staff to explore, to the extent commercially reasonable, site-specific concerns, discuss project impacts particularly on the City's water supply and potential mitigation methods including field design and infrastructure construction to minimize impacts, to discuss coordination of field design with other existing or potential development and operators, to identify sampling and monitoring plans for air and water quality, and other elements of an MOU as required by subsections 17-64-310. Enhanced standards through and including 17-64-350. Comprehensive development plan (CDP), BMC, as the same may be amended from time to time. Based upon the foregoing, the operator is encouraged to conduct the pre-submittal meeting with the City prior to completing well siting decisions, to the extent reasonably feasible.

2) *Notification Regarding Application and Neighborhood Meeting.*

- a) The City shall mail notice of the Application for an Administrative Approval by Memorandum of Understanding, no more than ten (10) working days after an application has been submitted to the City. Owners of record shall be ascertained by the City according to the records of the applicable Assessor's office in the county in which the well is located or within the area around the well for which notice is required. Notice of the application shall include reference to the neighborhood meeting, if applicable, and be made as follows:
 - i) To the surface owners of the parcels of land on which the oil and gas operation is proposed to be located;
 - ii) To the surface owners of the parcels of land in the City or adjacent unincorporated Weld or Adams County within one thousand (1,000) feet of the parcel on which the oil and gas operation is proposed to be located.
- b) *Posted Notice.* The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. Such signs shall be provided by the City and shall be posted on the subject property by the applicant in a manner and at a location or locations reasonably calculated by the City to afford the best notice to the public, which posting shall occur a minimum of ten (10) calendar days prior to the neighborhood meeting.
- c) *Neighborhood Meetings.* Before submitting an application to the COGCC, but after submitting application to the City, a neighborhood meeting shall be required on any Oil and Gas Facilities, even for existing well pads, that require an application for Administrative Approval by Memorandum of Understanding. The operator shall schedule, notice, attend, and conduct the neighborhood meeting. The City shall attend to facilitate the discussion. A written summary of the neighborhood meeting shall be prepared by the operator and provided to the City. There will be a 21-day public comment period after the neighborhood meeting.
- d) *Notification to the City and the public regarding commencement of operations.* At least two weeks prior to the commencement of any new drilling operations, the operator shall provide a notice to the City for posting on the website setting forth the information required by the City, including the operator and surface owner's names and addresses, designation of the operator's agent, identification of the City's designee and the commencement of operations, which the operator may revise from time-to-time during operations, with prior approval from the City.

- 3) *Review for Completeness.* Upon receipt of an application for Administrative Approval by Memorandum of Understanding and all applicable fees, the Director of Community Development Department of the City or her/his designee shall review the application for completeness within three working days of the application submittal. The application, when determined to be complete, shall be referred to the Development Review Committee for a twenty (20) working day review. An application may require review by outside agencies such as the U.S. Army Corps of Engineers, if the project impacts a floodplain, and may also be referred to any life-safety providers, adjacent jurisdictions, local public health department, and others as may be deemed appropriate by the City Manager, and any comments therefrom shall be returned to the City within a reasonable time.
- 4) *Review Process for Application for Administrative Approval by Memorandum of Understanding.* The applicant will be notified of any outstanding issues in connection with application materials upon completion of this review and will be required to address any issues or deficiencies in connection with the application materials. If necessary, a meeting will be held to discuss any issues that need to be resolved. The applicant may then submit an amended application, plan or other submittals, as appropriate, to the City for verification that deficiencies have been addressed by the applicant. If the outstanding issues cannot be resolved, the City Manager may refer the application for consideration as an application for Conditional Use by the City Council.
- 5) *Revision of Application for Administrative Approval by Memorandum of Understanding.* If revisions are submitted, the City shall be provided ten (10) working days to review the revised application. Upon determination by the City that all issues have been resolved, the plans shall be considered the final copy of the application and exhibits. The Director of the Community Development Department shall forward the final copy of the application materials for final review by the City Manager.
- 6) *Action to Approve, Conditionally Approve, or Deny.* Unless there are any issues that have not been resolved by agreement with the applicant, the City will exercise its best efforts to process the Administrative Approval by Memorandum of Understanding for an oil and gas facility within thirty (30) working days from the date of the neighborhood meeting. The Administrative Approval by Memorandum of Understanding can be administratively approved, approved with conditions, or denied by the City Manager. Written notice of the decision shall promptly be provided to the applicant, and, if denied, the notice shall include a statement of the reason(s) for denial. The thirty (30) working day timeframe applies only to the City's processing time and does not include the applicant's response time.
- 7) *Referral.* In lieu of the City Manager making a decision on an application, the City Manager may refer any application for Administrative Approval by Memorandum of Understanding or amendment thereto to the City Council for its consideration and decision

at a public hearing. In such event, the City Council shall make its determination based upon the requirements of the provisions of this section applicable to Approval of a Memorandum of Understanding. At such public hearing, the City Council may approve, approve with conditions, or deny the application.

- 8) *Term.* An approval of the application for Administrative Approval by Memorandum of Understanding shall be valid for five (5) years from the date of the MOU unless the MOU states otherwise, or unless the oil and gas facility is substantially commenced prior to the expiration of such timeframe.
- 9) *Appeal.* An applicant may appeal the City Manager's denial of an application for an Administrative Approval by Memorandum of Understanding, or any conditions of approval, to the City Council for a de novo hearing. The applicant must file the appeal within fourteen (14) calendar days of the date of the City Manager's decision by submitting a letter of appeal to the City Manager. Thereafter, the matter will be scheduled on the next available agenda of the City Council. At such hearing, the City Council may affirm, reverse or modify the decision of the City Manager, based upon the provisions of Article 17-64, BMC applicable for an MOU, as the same may be amended from time to time.
- 10) *Approval conditions.* The approval of an application for Administrative Approval by Memorandum of Understanding shall automatically include as conditions of approval all provisions of the MOU executed by the applicant and the City.
- 11) *Amendment.* If the applicant or operator proposes changes to the plans approved and agreed to by the Memorandum of Understanding, the applicant or operator shall submit a proposed amendment to the MOU showing the changes together with payment of the applicable fee. The proposed amendment will be reviewed by the City and, if applicable, the City may require additional information. The amended application will need to meet all requirements of subsections 17-64-310. Enhanced standards through and including 17-64-350. Comprehensive development plan (CDP), BMC, as the same may be amended from time to time and be approved in writing by the City Manager, prior to implementation.

DIVISION V. VARIANCES.

Sec. 17-64-510 Variance Request.

For either a Conditional Use permit or Administrative Approval of Memorandum of Understanding process, an applicant may request a variance from any provision of this Article 17-64, BMC as the same may be amended from time to time. A request for a variance may be

included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the Conditional Use permit review or Administrative Approval by Memorandum of Understanding processes, as applicable. The variance provisions of Section 17-8-40, BMC, shall not be applicable to a variance request under subsections 17-64-510. Variance request through and including 17-64-530. Other variances-ground for variance, BMC, as the same may be amended from time to time.

Sec. 17-64-520. Operational Conflicts Variance for Conditional Use permit.

In the case of an application for a Conditional Use permit, a variance from the application of any provision of Article 17-64 shall be granted if the provision is in operational conflict with the Act or the COGCC regulations, meaning the application of the provision would have the effect of materially impeding or destroying the state interest as expressed in the Act. The applicant will have the burden to show there is an operational conflict and the local and state rules cannot be implemented harmoniously. This subparagraph does not apply in the case of an application for Administrative Approval by Memorandum of Understanding.

Sec. 17-64-530. Other Variances - Grounds for Variance.

A variance from the application of any provision of Article 17-64, BMC, as the same may be amended from time to time, shall be granted on the basis of one or more of the following grounds. A variance may be in the form of a waiver or modification, as applicable:

- 1) There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety, or welfare or on the environment.
- 2) An alternative approach not contemplated by the provision is demonstrated to provide a level of protection of the public health, safety, and welfare and of the environment that would be at least equivalent to the applicable provision.
- 3) Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas facility, which may include, without limitation, topographical conditions, shape or dimension of the operation site, or inadequate public infrastructure to the site.

DIVISION VI. MISCELLANEOUS

Sec. 17-64-610. Unlawful to construct or install unapproved oil and gas facilities.

Except as otherwise provided in this Article 17-64, it is unlawful to construct, install, or cause to be constructed or installed, any oil and gas facility within the City unless approval has been granted by the City either by a Conditional Use Permit or Administrative Approval of a Memorandum of Understanding. The unlawful drilling or redrilling of any well or the production therefrom is a violation of this chapter.

Sec. 17-64-620. Revocation of Conditional Use Permit or Memorandum of Understanding.

If the City believes the operator has failed to conduct its operations in accordance with the terms and conditions of the Conditional Use Permit or Memorandum of Understanding, then as a condition precedent to terminating the Conditional Use Permit or Memorandum of Understanding, the City must provide written notice to operator specifying, in reasonable detail, the failure and the remedy required. Operator shall then have a period of 45 days in which to remedy the failure, or if the failure is of a nature that cannot be remedied within that 45-day period, operator shall have commenced to remedy the failure and will diligently complete the remedy. If operator fails to remedy a material default in the manner set forth above, upon written notice, the City may terminate the Conditional Use Permit or Memorandum of Understanding and revoke any or all approvals for operations of the subject oil and gas facilities. Upon such revocation, operator shall cease operating such oil and gas facilities until it obtains approval for such wells under the then-applicable City code.

Sec. 17-64-630. Civil action; enforcement.

In case of any violation of this Article 17-64, BMC, as the same may be amended from time to time including but not limited to

- 1) Non-conformance with a Memorandum of Understanding or Conditional Use Permits,
- 2) Non-conformance with plans submitted and approved by the City pursuant to this Article 17-64, or
- 3) A building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is or is proposed to be used, in violation of any provision of this Article 17-64 or the conditions and requirements of the oil and gas Conditional Use Permit or Memorandum of Understanding,

the City Attorney, in addition to the other remedies provided by law, ordinance, or resolution, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, or Use. The enforcement provisions of this Article 17-64 shall apply to all Conditional Use Permits or

Memorandums of Understanding adopted pursuant to this Article 17-64 and all operator agreements adopted on or after the effective date of this ordinance.

Sec. 17-63-640. Prospective application.

Unless specifically provided otherwise, this Article 17-64 shall apply only to wells which are drilled in the City on and after the date this Article is adopted. The reentering of a well in existence prior to the date of adoption of this Section, for purposes of deepening, recompleting or reworking, shall not require approval of a Conditional Use Permit as required by this Article 17-64, unless such work requires a new or modified permit from COGCC.

Sec. 17-64-650. Coordination with Air Quality Control Commission.

Pursuant to C.R.S. § 25-7-128(4), upon the issuance of any enforcement order or granting of any permit, the City shall transmit to the AQCC a copy of the order or permit. Pursuant to C.R.S. §25-7-128(6), the City shall confer and coordinate its activities regarding efforts to control or abate air pollution consistent with that provision.

Sec. 17-64-660. Coordination with the COGCC

The City’s designated Local Government Designee is only given a very short window to review COGCC permits. In recognition of this, the Local Government Designee, in coordination with the City Manager, is hereby authorized to:

- 1) Comment on COGCC applications on behalf of the City,
- 2) Request an additional time to review applications,
- 3) Request onsite inspections,
- 4) Request review from CDPHE, and
- 5) Recommend actions to the City Council regarding COGCC applications or other COGCC processes.

SECTION 5. Subsection (c)(6) of Section 17-8-30. **Procedures** of Chapter 17, the Land Use and Development Code of the Brighton Municipal Code is amended by the addition of a new subsection (g) to read as follows:

(6) **Site development plan.** A site development plan shall include, at a minimum, such information as may be required by the application or the Director, which may include the following:

(g) A map of all oil and gas wells or production facilities located on the property or within 200 feet of the property. Wells shown should include all wells, regardless of whether they are still in production. This information may be found on the COGCC website. If a plugged and abandoned well is located on the property, the results of a soil methane test shall be included as well. Sampling protocol for methane testing can be obtained from the Brighton Planning Division.

SECTION 6. Subsection (7) of Section 17-8-30. **Procedures** of Chapter 17, the Land Use and Development Code of the Brighton Municipal Code is repealed and reenacted to read as follows:

(7) Neighborhood notice. A list of the names and addresses of all property owners within a minimum of three hundred (300) feet as shown by the records of the county assessor no more than seven (7) calendar days prior to the date of the application. The Director may limit or increase the distance for determining the number of names and address for notification. THE NOTIFICATION DISTANCE IS INCREASED TO 1,000 FEET IN THE CASE OF OIL AND GAS APPLICATIONS UNDER SECTION 7-20-70.

SECTION 7. Section 17-8-60. **Conditional use** of Chapter 17, the Land Use and Development Code of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 17-8-60. Conditional use.

A conditional use is an additional use of land, structures or both that may be allowed with restrictions deemed necessary upon the review and approval of City Council. The conditional use is created in order to recognize that a use may be allowed within a zone district on a specific parcel of ground in an area if restrictions and/or conditions are placed upon such use in order to ensure that such use is compatible with the area in which it is intended to be located. The resolution approving the conditional use shall set forth whether the conditional use approval shall run with the land, IS ASSIGNABLE, or is limited to the continued conditional use of the property by the applicant. If the resolution fails to so provide, the approval shall be limited to the continued use of the property by the applicant. Notices for conditional uses shall be as provided for in Paragraphs 17-8-30(f)(2), (f)(3) and (f)(4) above.

SECTION 8. Subsection (b)(1) of Section 17-20-30. **Fence and sight triangles** of Chapter 17, the Land Use and Development Code of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 17-20-30. Fence and sight triangles.

(b) Permit and Fee Required.

(1) No person, firm or corporation shall construct, establish or build or cause to be constructed, established or built, a fence, wall or other similar structure unless a separate permit for each such fence, wall or similar structure has first been obtained from the Chief Building Official. The fee for this permit shall be established annually by resolution of the City Council. TEMPORARY NOISE BARRIERS, ERECTED FOR THE PURPOSE OF MITIGATING NOISE FROM OIL AND GAS DRILLING AND COMPLETION OPERATIONS, ARE REGULATED IN ARTICLE 17-64 AND EXEMPTED FROM THIS SECTION.

SECTION 9. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

SECTION 10. Findings. The recitals of this Ordinance are hereby adopted by Council as additional findings. The City Council hereby finds, determines, and declares that this Ordinance is enacted under the City's Charter, its general police powers, and as specifically authorized by State law; that it is enacted for the public's health, safety and welfare; and that it is necessary for the preservation of the public's health, safety and welfare.

SECTION 11. Validity. If any part or parts of this Ordinance are for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS _____ DAY OF _____, 2014.

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Brighton Banner*
First Publication: _____

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE

ONLY THIS _____ DAY OF _____, 2014.

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Brighton Banner*
Final Publication: _____