

## CITY COUNCIL ORDINANCE

ORDINANCE NO.: \_\_\_\_\_

INTRODUCED BY: Kreutzer

**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 BY 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 200 foot radius of an oil and gas facility 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.**

<b>Type of Use</b>	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	#
<b>Zone Districts</b>	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

<b>Zone Districts (cont'd)</b>	South 4th Avenue Corridor Overlay	S4CR
	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

Notes:  
 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.  
 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.

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

**Section 17-32-15 Table of Uses**

Use Categories	Specific Uses	Zone Districts																											
		R E	R I	R I A	R I B	R 2	R 3	M H	D T	M U C	M U C	M U R /	P U D	S 4 R	S 4 W	C O	C 1	C 2	C 3	B P	I 1	I 2	M C	F C	P L	O P E N	A /	A /	
<b>INDUSTRIAL USES</b>																													
Gas, Oil and Petroleum	Oil and gas facility (Conditional use in all zones unless there is an MOU)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
	Storage of gases or liquefied petroleum gases (in approved portable metal cylinder for storage or sale)	C									C	#						C	C	X	X	X	C	C			X	X	

**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**

**Division 1. General Provisions**

- Sec. 17-64-10. Purpose**
- Sec. 17-64-20. Applicability**
- Sec. 17-64-30. Definitions**
- Sec. 17-64-40. Inspections**
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- Sec. 17-64-60. Review required**
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- Sec. 17-64-80. Transfer of Conditional Use Permit or Memorandum of Understanding**
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- Sec. 17-64-110. Pre-Application Conference**
- Sec. 17-64-120. Conditional use review, application requirements**
- Sec. 17-64-130. Conditional use review and approval criteria**
- Sec. 17-64-140. Final Plans submitted prior to commence of drilling, conditional use**
- Sec. 17-64-150. Seismic operations**
- Sec. 17-64-160. Signs**
- Sec. 17-64-170. Recordation of pipelines**
- Sec. 17-64-180. Fencing**
- Sec. 17-64-190. Reclamation**
- Sec. 17-64-200. Geologic hazard, flood plain, floodway restrictions**
- Sec. 17-64-210. Transportation and access roads**
- Sec. 17-64-220. Well water protection**
- Sec. 17-64-230. Notice Requirements**

**Division III. Administrative Approval by Memorandum of Understanding**

- Sec. 17-64-310. Memorandum of Understanding**

**Division IV. Administrative Process**

- Sec. 17-64-410. Administrative Process–Conditional Use**
- Sec. 17-64-420. Administrative Process – Administrative Approval by Memorandum of Understanding**

**Division V. Variances**

- Sec. 17-64-510. Variance request**
- Sec. 17-64-520. Operational conflict variance for conditional use permit**
- Sec. 17-64-530. Other variances-ground for variance**

**Division VI. Miscellaneous**

- Sec. 17-64-610. Unlawful to construct or install unapproved oil and gas facilities**
- Sec. 17-64-620. Revocation of conditional use permit or memorandum of understanding**
- Sec. 17-64-630. Civil action; enforcement**
- Sec. 17-64-640. Prospective application**
- Sec. 17-64-650. Coordination with Air Quality Control Commission**
- Sec. 17-64-660. Coordination with the COGCC**

**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 after notice and hearing, 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 requiring a new COGCC permit. 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.

***Air Emissions Mitigation Plan*** means a description of the emission controls an Operator will utilize on an Oil and Gas Location to meet emission standards, as required by the Colorado Department of Public Health and Environment (CDPHE), Air Quality Control Commission (AQCC), COGCC, and United States Environmental Protection Agency (EPA).

***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.

***Code*** shall mean the Municipal Code of the City of Brighton, as the same may be amended from time to time.

***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).

**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, and shall consist of a Model MOU and Attachment A.

**Multi-well 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 two or more oil wells, gas wells, or injection wells.

**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 exercises 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 wells, gas wells, or injection 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.

**Utilities Report** shall mean utility line easements and rights-of-way within 150 feet of the proposed Oil and Gas Location and access road. For those facilities utilizing the power grid, it will also indicate any new power lines or other infrastructure necessary for the purpose of supplying electric power to oil and gas facilities.

**Well** shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

**Well site** shall mean the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection 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 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, and reasonable compliance with any safety requirements of the Operator. The Operator will be given an opportunity to be present at the inspection. 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 2A 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 Administrative 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 provided that the new Operator provides the City Manager written assurance that 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. These forms will be supplied to the City Manager within thirty (30) days of the assignment.

**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 Approved Form 6, (well abandonment report). 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 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. Pre-Application Conference**

- 1) **Timing.** A pre-application conference as defined in Section 17-8-30 of the Code shall be held at least thirty (30) days prior to the applicant applying for a Conditional Use Application. Applicant will make best efforts to conduct a pre-application conference prior to submitting a COGCC Form 2A. At latest, the Operator shall contact the City on or before the day of the pre-application notice required by COGCC Rule 305.a.(1) and schedule the Pre-Application Conference to a date certain. The timing provision for the pre-application conference is intended to allow the City of Brighton to concurrently carry out its regulatory procedures in harmony with those of the COGCC.

The Operator shall use its best efforts to conduct the pre-application conference with the City prior to completing well siting decisions, to the extent reasonably feasible. Completion of the pre-application conference qualifies the applicant to submit an application for Conditional Use review or Administrative Approval by MOU, provided the application or request is filed within six (6) months after the pre-application conference.

- 2) **Conference.** The goal of the pre-application conference shall be for City staff and the Operator to review the proposed oil and gas operation to ensure it occurs in a manner that confirms compliance with applicable local, state and federal regulations. The pre-application conference shall also provide an opportunity for the Operator and City staff to:
  - a. Discuss the provisions set forth in Section 17-8-30 of the Code;
  - b. Review the City's Conditional Use review process so that the applicant can plan its proposed oil and gas operation in a manner that ensures compliance with the Code;
  - c. Review the applicant's objectives and land use proposal; ;
  - d. Review the preferred oil and gas location, site-specific matters, and, if necessary, possible alternatives;
  - e. Discuss project impacts (particularly as related to the City's domestic water supply) and possible mitigation methods, including field design and infrastructure construction, to minimize impacts;

- f. Discuss the submittal requirements for the Transportation Plan described in Sec. 17-64-210;
  - g. Discuss coordination of field design with other existing or potential development and oil and gas operations; and
  - h. Inform the applicant about the benefits of the expedited administrative approval by MOU process as more particularly set forth in Section 17-64-420.
- 3) **Site Visit.** At the discretion of the Community Development Director, after obtaining surface owner consent, the Community Development Director may require a site visit as part of the pre-application conference with the applicant to evaluate well locations, compliance with this Section, and/or mitigation measures and best management practices that may be required to adequately ensure compliance with this Section.
  - 4) Completion of the Pre-Application Conference is a condition precedent to the City's acceptance of an application for Conditional Use Review or Administrative Review by Memorandum of Understanding.
  - 5) Should the Applicant fail to participate in the Pre-Application Conference prior to submitting the form 2A Location Permit through the COGCC, the City shall request from the COGCC additional time for review and, depending on the selected location, may also request a hearing before the COGCC 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;
- 2) A list of all permits or approvals obtained or to be obtained from local, state, or federal agencies other than COGCC;
- 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 or variances proposed to be requested;
- 4) A vicinity map or satellite photo at a scale of one (1) inch equals two hundred-fifty (200) feet, extending at least one-quarter (1/4) mile beyond the Oil and Gas Location. The map or satellite photo shall denote:

- a. The outline of the Oil and Gas Location to be developed,
  - b. Streets and highways,
  - c. All existing oil and gas wells, injection wells, production facilities and pipelines,
  - d. Natural drainage courses, water bodies, and similar major natural or man-made features of the area,
  - e. Existing uses for residential, commercial, industrial and public purposes; and
  - f. Proposed access (ingress/egress) locations and haul routes.
- 5) 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;
  - 6) An operating plan including identified access points and estimated operational timeline for posting to the City's community information web-page;
  - 7) A site plan for site preparation, mobilization and demobilization;
  - 8) A Stormwater Management Plan;
  - 9) A plan for interim reclamation and re-vegetation of the well pad and final reclamation of the well pad;
  - 10) A Utilities Report if applicable;
  - 11) A plan for noise and light mitigation;
  - 12) A traffic management plan (described in greater detail in Sec. 17-64-210. Transportation and access roads below);
  - 13) Proposed form and issuer of a reasonable bond to cover any damage to public infrastructure during active drilling and completion;
  - 14) A preliminary Visual Mitigation Plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening;
  - 15) An Air Emissions Mitigation Plan;

- 16) 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.). The emergency response plan 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, or another format acceptable to the City, that is compatible with 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 as required by the COGCC; 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.
- 17) A weed control plan;
- 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.
- 19) If a well or production facility is proposed to be located less than 1,000 feet from a High Occupancy Building Unit, a Building Unit, or public water supply well(s), the Applicant shall submit the following "alternative location analysis" as part of the Application:
- a) On a map, denote all practicable and economically feasible surface locations that are a greater distance from Building Units and public water supply wells than the location proposed.
  - b) A brief explanation of why each alternative location was not chosen.
- 20) Any information or documentation agreed to be provided to the City by the Applicant at the Pre-Application Conference.

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

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:

- 1) 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.
- 2) 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.
- 3) 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. Final Plans submitted prior to commencement of drilling, Conditional Use.**

- 1) 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 that substantially deviates from the plan approved in the Conditional Use approval to the City Council for its consideration and decision.
- 2) If the City did not require modification or supplementation of a draft plan submitted with the application under Section 17-64-120 Conditional Use review, application requirements and the Operator has not otherwise updated the plan, the version of the plan submitted with the application under Section 17-64-120 Conditional Use review, application requirements shall be deemed to be the final plan. In such a case, the plan need not be resubmitted to the City Manager for approval.
- 3) The requirements under this section may be modified by an MOU.
  - a. A response letter that outlines how the permit requirements have been met; and
  - b. A summary of planned operations, including identified access points and operational timeline for posting to the City's information web-page; and
  - c. A site plan for site preparation, mobilization and demobilization; and
  - d. A plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad; and
  - e. A Stormwater Management Plan;
  - f. A Utilities Report if applicable;

- g. Copies of all permits requested, including any exceptions; and
- h. A final Air Emissions Mitigation Plan; and
- i. A final emergency response plan; and
- j. A final plan for noise, light and dust mitigation; and
- k. A final traffic management plan and a reasonable bond to cover any damage to public infrastructure during active drilling and completion; and
- l. A final visual mitigation plan; and
- m. A final weed control plan; and
- n. A water quality monitoring plan if required by an MOU.

**Sec. 17-64-150. 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. 17-64-160. 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. 17-64-170. Recordation of pipelines.**

All new pipelines that leave the well pad, 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 pipelines, including transmission and gathering systems, shall be recorded with the Clerk and Recorder within

thirty (30) days after abandonment. The owner of the pipeline, transmission line, or gathering system shall be responsible for the recording requirements under this Section.

**Sec. 17-64-180. 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. 17-64-190. Reclamation.**

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

**Sec. 17-64-200. Geologic hazard, flood plain, floodway restrictions.**

All equipment at drilling and production sites in geological hazard and floodplain areas shall comply with all COGCC rules and, to the maximum extent practicable, all such equipment should 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. 17-64-210. Transportation and access roads.**

- 1) *Transportation Management Plan.* 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.

In order for the Director of the Department of Streets and Fleet to assess the impact of the oil and gas operation on the City's roadways, the submittal may 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 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 Fleet.

- 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 (or the load of the heaviest truck anticipated, whichever is greater), 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 that require a new Form 2 or 2A permit, 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 graded gravel roadway with 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.
  - 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 reasonably and commercially 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 as soon as practicable 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, or Operators' contractors, as applicable, 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. 17-64-220. Well Water Protection**

On July 28, 2014, the COGCC passed Order 1-189 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 1-189 entitled “Brighton PWS Management Map, Commission Order No. 1-189” 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 1-189, including all maps, exhibits and attachments are attached to this Ordinance as **Exhibit 1**.

The following shall be required for all Drilling, Completion, Production and Storage (DCPS) Operations at New Oil and Gas Locations within the ½ mile Buffer Zone.

- 1) 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.
- 2) Operator shall notify the Brighton Department of Utilities prior to commencement of new surface disturbing activities at the site; and
- 3) 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.
- 4) 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.

**Sec. 17-64-230. 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**

#### **17-64-310 Memorandum of Understanding**

- 1) The administrative review and approval by Memorandum of Understanding is an alternative to the Conditional Use Review process set forth in Division II hereof.
- 2) **Model MOU**. The City Manager is authorized and shall prepare a Model MOU (the "Model MOU") which shall contain best management practices to address issues including, but not limited to, surface owner involvement, setbacks for new Oil and Gas Locations, pits, water quality monitoring, noise mitigation measures, floodplain, and visual impacts and aesthetics. The Model MOU is intended to be used by all Operators who submit an application for a new Oil and Gas Location within the City for administrative review of a Memorandum of Understanding.
  - a) Operators interested in pursuing an Administrative Approval by MOU should contact the City to obtain a copy of the Model MOU and schedule a meeting with the City to discuss the MOU. This meeting should be held well in advance of the Operator submitting any application to the City.
  - b) Operators are encouraged to discuss their immediate and longer range plans for operations within the City. Such information will be held in confidence.
- 3) **Attachment "A"**. Attachment "A" to the Memorandum of Understanding shall set forth the site-specific conditions to be placed on applications that are administratively approved by MOU.
  - a) The City Manager is authorized to work in good faith with the Operator to finalize and execute Attachment "A".
  - b) Attachment "A" may address, by means of illustration only, such best management practices as pits, containment berms, water supply and quality, setbacks for new Oil and Gas Locations, discharge valves, burning, chemical storage, water quality and monitoring, floodplain, visual impacts and aesthetics, electric equipment, air quality

mitigation, fugitive dust suppression, flammable material, flow lines, and removal of debris and equipment.

- c) The Operator shall include as Conditions of Approval the best management practices requirements set forth in Attachment “A” 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.
- 4) 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.
- 5) Applications for Administrative Review by MOU will be governed by the Code and the terms of the negotiated MOU and Attachment “A”. For each application for Administrative Review by MOU, the Attachment “A” (which lists the conditions that will be attached to the COGCC permit) will be modified by agreement of the parties to reflect the location chosen and the specific mitigations and best management practices required by that application.

#### **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 by Memorandum of Understanding**

- 1) **Pre-Application Conference.**
  - a) **Timing.** A pre-application conference as defined in Section 17-8-30 of the Code shall be held at least thirty (30) days prior to the applicant applying for an Administrative Approval by Memorandum of Understanding. Applicant will use best efforts to conduct a pre-application conference prior to submitting a COGCC Form 2A. At latest, the Operator shall contact the City on or before the day of the pre-application notice required by COGCC Rule 305.a.(1) and schedule the Pre-Application Conference to a date certain. The timing provision for the pre-application conference is intended to allow the City of Brighton to concurrently carry out its regulatory procedures in harmony with those of the COGCC.

The Operator shall use best efforts to conduct the pre-application conference with the City prior to completing well siting decisions, to the extent reasonably feasible. Completion of the pre-application conference qualifies the applicant to submit an application for Administrative Approval by MOU, provided the application or request is filed within six (6) months after the pre-application conference.

- a) Conference. The goal of the pre-application conference shall be for City staff and the Operator to review the proposed oil and gas operation to ensure it occurs in a manner that confirms compliance with applicable local, state and federal regulations. This pre-application conference shall also allow the Operator and City staff to:
  - i. Discuss the provisions set forth in Section 17-8-30 of the Code;
  - ii. Review the City's Conditional Use review process so that the applicant can plan its proposed oil and gas operation in a manner that ensures compliance with the Code;
  - iii. Review applicant's objectives and land use proposal;
  - iv. Review preferred Oil and Gas Location, site-specific matters, and, if necessary, possible alternatives;
  - v. Discuss project impacts (particularly as related to the City's domestic water supply) and possible mitigation methods, including field design and infrastructure construction, to minimize impacts;
  - vi. Discuss the submittal requirements for the Transportation Plan described in Sec. 17-64-210;
  - vii. Discuss coordination of field design with other existing or potential development and oil and gas operations; and
  - viii. Discuss other matters that may be appropriately incorporated within an MOU
- b) Site Visit. At the discretion of the Community Development Director after consultation with the surface owner, the Community Development Director may require a site visit as part of the pre-application conference with the applicant to evaluate well locations, compliance with this Section, and/or mitigation measures and best management practices that may be required to adequately ensure compliance with this Section.
- c) Completion of the Pre-Application Conference is a condition precedent to the City's acceptance of an application for Administrative Review by Memorandum of Understanding.
- d) Should the Applicant fail to participate in the Pre-Application Conference prior to submitting the form 2A Location Permit through the COGCC, the City shall request from the COGCC additional time for review and, depending on the selected location,

may also request a hearing before the COGCC pursuant to COGCC Rule 305.

2) **Submittal Requirements.**

All applications for Administrative Approval by 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 set forth in this Division IV; and shall also comply with the following, as applicable, as the same may be amended:

- a) Section 17-64-120 Application Requirements;
- b) Section 17-64-140 Documents Submitted;
- c) Section 17-64-150 Seismic Operations;
- d) Section 17-64-160 Signs;
- e) Section 17-64-170 Recordation of Pipelines;
- f) Section 17-64-180 Fencing;
- g) Section 17-64-190 Reclamation;
- h) Section 17-64-200 Geologic Hazard, flood plain, floodway restrictions;
- i) Section 17-64-210 Transportation and access roads; and
- j) Section 17-64-220 Well Water Protection.

3) **Review for Completeness.**

Upon receipt of an application for Administrative Approval by Memorandum of Understanding and all applicable fees, (see Section 17-64-120 Application Requirements and Section 17-64-140 Documents Submitted) the Director of Community Development Department of the City or her/his designee shall review the application for completeness within three (3) working days of the submittal of a complete application.

4) **Neighborhood Meeting.**

A neighborhood meeting shall be required for any Oil and Gas Facilities that require an application for Administrative Approval by Memorandum of Understanding. The Operator shall schedule, 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.

The meeting shall have the following notice requirements:

- a) *Mailed Notice.* The City shall mail notice of the Application for an Administrative Approval by Memorandum of Understanding, no more than ten (10) working days after a complete 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.
  - iii) Mailing notice shall be provided at least fourteen (14) calendar days prior to the neighborhood meeting
- b) *Posted Notice.* A sign shall also be posted on the real property on which the oil and gas operation is proposed to be located, providing notice to the general public of the proposed operation. 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 fourteen (14) calendar days prior to the neighborhood meeting.

5) **Review Process for Application for Administrative Approval by MOU.**

The application, when determined to be complete, shall be referred to the Development Review Committee for review. Such review will be completed in no more than fourteen (14) calendar days. 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. 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.

6) **Revision of Application for Administrative Approval by MOU.**

If substantive revisions are submitted, the City shall be provided no more than fourteen (14) calendar days to review the revised application. Upon determination by the City that all issues have been resolved, the revised application 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.

7) **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 in twenty-one (21) calendar days or less 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 twenty-one (21) calendar day timeframe applies only to the City's processing time and does not include the applicant's response time. Approval with conditions or Denial of the Administrative Approval by Memorandum of Understanding shall in no way prevent, delay or restrict the ability of the applicant to resubmit the application through the standard Conditional Use Review, described in Division II of this Section 17-64.

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. If the MOU is terminated for any reason, the conditions of the MOU that were applied to an administrative approval of an Oil and Gas Location shall continue to be enforced through Sections 17-64-620, 17-64-630 and other applicable provisions in this Chapter.

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.

**12) 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 approximate commencement of operations, which the Operator may revise from time-to-time during operations.

**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 re-drilling 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 Manager 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, the City Manager may request a hearing with the City Council. Upon thirty days written notice sent by certified mail to the Operator and otherwise made in accordance with the City's requirements for notification of a City

Council meeting, the City Council may hold a public hearing on the alleged violations. At such hearing, the City Council may determine that no such failure occurred, that such failure occurred but was remedied in the manner set forth above, or that such failure occurred and has not been remedied. If the City Council finds that such failure occurred and has not been remedied, the City Council, upon allowing forty-five (45) days' notice to Operator prior to such action, may act in its discretion to terminate, suspend, or restrict the Conditional Use Permit or Memorandum of Understanding and revoke any or all approvals for operations of the subject oil and gas facilities, or alternatively, may require such other actions of the Operator as it deems appropriate. 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 administrative approval by 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 COGCC Form 2 or Form 2A.

**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 one thousand (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.**

(h) Fencing Requirements by Type of Use.

(3) Industrial fencing.

b. The maximum height of any fence within an industrial zone district is ten (10) feet, which may include not more than four (4) strands of barbed wire, provided that the barbed wire is located not less than six (6) feet above the ground and may be placed at not to exceed a forty-five-degree angle from vertical. Fencing consisting only of barbed wire is prohibited. Temporary noise barriers, erected for the purpose of mitigating noise from oil and gas drilling and completion operations, are exempted from any height restrictions.

**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 \_\_\_\_\_, 2015.

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 *Standard Blade*  
First Publication: \_\_\_\_\_

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

CITY OF BRIGHTON, COLORADO

By: \_\_\_\_\_

Richard N. McLean, Mayor

ATTEST:

\_\_\_\_\_

Natalie Hoel, City Clerk

Published in the *Standard Blade*

Final Publication: \_\_\_\_\_