

## MINUTES

### CITY OF CARSON REGULAR MEETING OF THE PLANNING COMMISSION

*Helen Kawagoe City Council Chambers, 2<sup>ND</sup> Floor  
701 East Carson Street, Carson, CA 90745*

*April 14, 2015 – 6:30 P.M.*

1. **CALL TO ORDER** Chairman Faleto go called the meeting to order at 6:30 P.M.
2. **PLEDGE OF ALLEGIANCE** Vice-Chairman Piñon led the Salute to the Flag.
3. **ROLL CALL**  
Planning Commissioners Present: Brimmer, Faleto go, Gordon, Piñon, Schaefer, Saenz, Verrett  
  
Planning Commissioners Absent: Diaz (excused), Goolsby (excused)
4. **AGENDA POSTING CERTIFICATION** Recording Secretary Bothe indicated that all posting requirements had been met.
5. **AGENDA APPROVAL** Commissioner Saenz moved, seconded by Commissioner Schaefer, to approve the Agenda as submitted. Motion carried, 7-0 (absent Commissioners Diaz, Goolsby)
6. **INSTRUCTIONS TO WITNESSES** Chairman Faleto go requested that all persons wishing to provide testimony stand for the oath, complete the general information card at the podium, and submit it to the secretary for recordation.
7. **SWEARING OF WITNESSES** Assistant City Attorney Shannon Chaffin
8. **ORAL COMMUNICATIONS** For items **NOT** on the agenda. Speakers are limited to three minutes. None
9. **CONSENT CALENDAR**

**Minutes:** March 24, 2015

**Motion:** Commissioner Gordon moved, seconded by Commissioner Schaefer, to approve the March 24, 2015, Minutes as presented. Motion carried, 6-0 (Commissioner Verrett abstained; absent Diaz, Goolsby).

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**10. CLOSED SESSION**

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

1. Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) and (e) in one case.

The Closed Session was called at 6:35 P.M., and the regular meeting was resumed at 8:13 P.M.

Assistant City Attorney Chaffin provided the Closed Session report, noting there were no items to report on the Closed Session. All Planning Commission members present participated in the Closed Session.

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**11. CONTINUED PUBLIC HEARING**

**A) Zone Text Amendment No. 19-15**

Applicant's Request:

The applicant, city of Carson, is requesting the Planning Commission consider Text Amendment No. 19-15, to Adopt a Comprehensive Update of the City's Oil and Gas Ordinance Regulating Petroleum Operations and Facilities, and a finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308. The properties involved would be citywide.

Staff Recommendation:

Staff recommends the Planning Commission open public hearing, take testimony, close public testimony, discuss, provide additional refinements to the proposed Oil and Gas Code update, if any, and direct staff to prepare an updated resolution and ordinance consistent with the Planning Commission's direction and return for final action by the Planning Commission at the next meeting.

Chairman Faletogo opened the public hearing.

Mike Mitoma, resident, urged the Planning Commission to take into consideration the safety of the residents and address all health concerns when making its decision; and stated that all discussions should be held in open forums concerning this update. He noted that Hermosa Beach recently turned down oil drilling even being faced with a large lawsuit. He expressed his belief oil drilling operations put residents at risk of harm and stated that these operations should not be located in residential areas. He commented on the explosions at local refineries; and he noted his skepticism with the industry's assertion that they don't need to do any fracking to get the materials they are seeking.

Benjamin Hanelin, Latham & Watkins representing Californians for Energy Independence, noted that this evening, they have provided a letter, dated April 14, 2015, to the Planning Commission, urging the Commission to deny the proposed ban on hydraulic fracturing and to deny the proposed code update; stated that the letter highlights why the City should not get into the business of regulating the oil and gas industry as the ordinance proposes; noted that there are already state agencies in place that are equipped and allowed to regulate this industry; and stated that the City should not duplicate the important regulatory roles these state agencies play. He noted the

letter this evening includes a number of memorandums from other governmental officials/municipalities (City of Los Angeles, Compton, Monterey and Alameda Counties, Santa Barbara County, La Habra Heights) backing off from their attempts to regulate this industry due to legal advice that costly litigation is imminent and could bankrupt a municipality. He explained that the Baldwin Hills Community Services District ordinance was adopted to address specific issues arising out of the existing operations; that the ordinance was preceded by a lengthy EIR; that the regulations there were also shaped by litigation; that a settlement came out of that litigation; and he noted that Carson has none of those specific issues here. He stated there are existing operations in Carson; that these ordinances will put these existing operators out of business and cost Carson residents their jobs; that it is time for Carson to stop this process and to evaluate more fully what role the City can and should play as a land use regulator; and that it is time to draft an ordinance that will not destroy jobs and an ordinance that does not subject the City to substantial litigation risks.

Tom Muller, Manatt, Phelps, & Phillips, representing Carson Energy and the owners of the mineral rights underlying this land in Carson, noted that he provided a letter this evening for the Planning Commission, dated April 14, 2015; stated that if the City adopts an ordinance which denies his clients their right to millions of dollars of mineral rights, it stands to reason the people who own those mineral rights will sue to protect their constitutional rights, which will cost the City millions of dollars in legal fees trying to defend an ordinance that is unconstitutional and unnecessary. He stated that Carson should make sure it believes this ordinance is necessary.

Mr. Muller stated that nobody has fracked here and nobody is proposing to frack here because the underground structures are not suitable for fracking; and stated that his clients are concerned with the proposed impediments to any kind of oil production, oil exploration, and particularly acidization. He advised that acidization has been used in Carson and most other places where oil is produced since the 1930s without incident; he explained how far down the acid is pumped into the wells, thousands of feet below the ground surface; and stated that it does not get anywhere near people to do any harm, noting that the process of using the acids with a base dissolves the minerals and neutralizes the acid into salt and water. He stated that these acids here are not persistent like most of the other industrial chemicals used in this community. He noted his opposition to this draft piecemeal ordinance which has been created from various ordinances across the state; and he urged the Commission to instruct staff to remove any proposed ban on acidization and to come back with a balanced, fair, protective and reasonable ordinance.

Thomas Walker, representing some of the mineral rights owners, stated he is a registered professional petroleum engineer; and advised that he and his family live within two miles of two different oil drilling sites in Huntington Beach, noting he is very comfortable raising his family there. He advised that he has been hired to look at this ordinance and determine what, if any, impact on operations this ordinance will have. He expressed his belief this ordinance and its conditions will preclude an operator from developing their field; and stated that this ordinance gives the petroleum administrator (PA) the right to impose additional conditions upon an annual review and could cause operations to cease, noting there is too much uncertainty in this proposed ordinance. He noted that not all parties were given notice, stating that both the surface and mineral rights owners should receive notice of this process, addressing his concern with potential liability issues for all involved.

Mr. Walker explained that this technology is and has been used in Dominguez for many years; advised that the Dominguez field was discovered in 1923; that acidization was started worldwide in 1933; that water flooding began in 1944; that hydraulic fracturing was first commercially utilized in 1949; that massive hydraulic fracturing, which was not being used in this field, was started in 1968; that all those milestones occurred during the period this field was operated; and stated he is not aware of any major problems with operating the oil fields with those techniques.

Mr. Walker stated he is also concerned with the language in the ordinance regarding definitions; explained that when you drill a well, it is possible and common to have formation damage, noting this is cleaned up with small acid washes; and stated that the proposed language in this ordinance could prevent completion and production of wells. He added that state regulations are continually being generated in this industry.

Nicki Carlsen, Alston & Bird, representing E&B Natural Resources Management Corp. (E&B), stated that E&B has substantial oil and gas interests in Carson and that the company has recently decided to become more actively involved in this process; and advised that they have submitted a letter to the Planning Commission, dated April 13, 2015. She stated that the letter catalogs what they believe is the majority of their concerns with the proposed oil and gas code; advised that they are requesting to have further dialogue with the City; that the City should reach out to all the oil and gas interests for some input; and that they believe there needs to be more working sessions on specific sections and a better understanding on how the proposal impacts their client.

Eunice Langford, resident, urged the City to recognize that the state has in place adequate restrictions and regulations for this industry which have been designed to protect the health, environment and safety of the community; and expressed her belief what the City has drafted is unnecessary. She noted her concern with the loss of revenues for this community if this is to be adopted.

Nick Gomez, resident, member of Californians for Energy Independence, noted this group is opposed to the proposed oil and gas code update; and stated it will hurt this community's tax revenues, jobs, and services the residents receive.

Cruz Gonzalez, resident, stated it is important to protect California's right to energy independence; noted that energy production in California helps keep the cost affordable to all Californians; that it creates jobs across a wide range of sectors and generates significant revenues; and he urged the Commission to not approve this proposed ban, noting these are proven energy extraction techniques.

Steven Crump, resident, stated that tax revenues generated from oil production benefit this community in many important ways, such as funding schools, police, fire and many other community services Carson residents depend on and value; that banning proven oil extraction methods will result in economic inconveniences for Carson residents; and he urged the Commission to consider these issues.

Cliff Coatney, resident, stated that through the years, local energy operations in Carson have generated millions of dollars in local tax revenues each year funding vital services that are crucial for Carson's residents, such as police protection, fire, neighborhood maintenance, improvement of local schools, parks, libraries, and roads; and he urged the Commission to reject the proposed oil and gas code update, including the ban on oil production techniques.

Cesar Avalos, resident, stated that this industry provides good jobs and tax revenues; noted that this proposal will hurt the local economy; and he urged the Commission to reject this proposal.

Edwin Caballero, stated that he is currently training to be a diesel technician and expressed his belief this code, if adopted, would hurt the energy industry and the good jobs this industry creates; and he urged the Commission to not adopt the update.

Jeff Cooper, Cooper & Brain, 901 East Lomita Boulevard, stated that he only became aware of this proposal on Friday through an industry contractor, noting he did not receive any notice about this process. He stated that Cooper & Brain is a small business in Carson that produces oil; that they have five wells at their facility located on the southern end of Carson near Lomita Boulevard and Wilmington Avenue; and he noted they operate three wells inside the Tesoro Refinery tank farm. He stated that because he just became aware of this issue, he has not had adequate time to study what is being proposed and to provide input; he addressed his concern with not receiving notice of these hearings, stating that all impacted oil-related businesses in Carson should have been contacted; and he stated he would like to be involved in the dialogue with staff concerning this issue. He added that all these businesses want their operations to run safely. He noted that this business has been in operation since the 1960s.

Planning Manager Naaseh advised that notices were sent to all residents and businesses in Carson.

Rey Javier, V.P. Brea Canon Oil, noted that Brea Canon, a small family-owned company, currently owns and operates 22 existing wells; advised that out of those 22 wells, 11 are currently in pumping operation; and that they have 5 injectors (one idle), and one submersible. He stated that the City needs to consider the location of these wells, which are located inside the Los Angeles County Sanitation District property; that all other wells are west of Figueroa Street, south of Sepulveda Boulevard, with the exception of the one well in the parking lot of Target at the corner of Figueroa/Sepulveda; and he urged the Commission to continue this matter so the Commission can learn more about these technicalities.

Mr. Javier addressed his concern with converting the 11 existing pumps to submersible systems, stating this would put their company out of business; and stated that submersible pumps cost approximately \$100,000 each, which would cost them in total \$1.1 million. He advised that this company is only producing 82 barrels of oil per day in Carson at this time and that they would like to continue doing business in Carson; that they have 87 royalty owners who depend on those checks every month; stated that their annual Carson business license is \$20,000; and that their property taxes are \$420,000 annually. He asked to be involved in this process; and he urged a continuance of this matter.

Mike Kutchak, Director of Veterans Affairs with IBEW Local 11, stated that he served in the Marine Corps for 32 years and that he has dedicated his retirement life to serving veterans and helping returning combat veterans obtain decent jobs. He urged Carson to continue its dialogue with all interested parties and to not make rash decisions that could potentially close down and cease job opportunities for the returning veterans from active duty; and he pointed out that the military forces are being drastically and rapidly downsized. He stated that California is cutting back on its oil production; that the vast majority of California's oil comes from imports, which drive up the cost to California

consumers; and he noted his concern with outsourced jobs and lost revenues in this industry that can be maintained in California; and he urged the Commission to reject the updates, believing it is bad for California's economy and energy independence. He pointed out that Carson has openly and publically recognized its veterans; stated that the veterans deserve to be reintegrated into the workforce; and he highlighted the need to ensure they have the opportunities and options for good middle class jobs and incomes.

Tommy Faavae, representing IBEW Local 11, expressed his belief this process is moving backwards, referring to the moratorium from last April; stated that there are flaws in this oil and gas code; and noted his concern with the comments from a speaker this evening that his oil-related business had not received notice of this process, noting that all affected parties should be contacted. He stated that many jobs are going to be affected by the City's decision; and he urged the City to bring the affected parties to the table to develop a comprehensive oil and gas update that works for business, labor, and the community.

Joe Galliani, organizer of the South Bay Climate Action group, stated that he cares about the veterans and union workers, but noted he has higher aspirations for these people to obtain clean jobs that do not cause cancer and asthma. He stated there is 400 ppm of CO<sub>2</sub> in our atmosphere, noting we are pumping more carbon into the air than our atmosphere can handle. He explained that there is a carbon budget of about 535 million tons of more carbon that we can burn until we reach the danger zone of 2 degrees centigrade which scientists have warned us is the point where we don't want to go beyond; and pointed out that scientists from around the world agree with this 2-degree warning. He added that according to scientists, at our current burning rate of oil, coal and gas, we are 12 to 15 years away from reaching that 2-degree mark; and stated that 80 percent of our oil, coal and gas must be kept in the ground if we don't want to reach the danger zone and get past the point of no return.

Mr. Galliani stated that there are new, clean energy jobs for everyone; and advised that there is a new solar jobs program in Los Angeles County, with UCLA indicating if solar is put on just 5 percent of the roofs and buildings in our county, that would create 29,000 new jobs that don't cause cancer and asthma. He noted that Hermosa Beach just recently rejected a proposal from the oil industry because they don't want the health risks and danger associated with this industry. He added that the state has called for a 50-percent reduction in the use of petroleum by the year 2030, noting that SB-350 has the support of the Governor, the Assembly, and the Senate. He stated that over the next 15 years, the market for coal, gas and oil in this state will be cut in half; and he urged the City to study these scientific and political facts and to continue working on regulating this field.

Mr. Galliani noted for Commissioner Schaefer that there is a program in the County of Los Angeles which allows a homeowner to borrow money on their property taxes to put solar on their home and pay it off over 20 years as part of its Los Angeles County Energy Program.

Alexandra Nagy, Southern California organizer with Food and Water Watch, noted she is fighting against the exploitation of the oil and gas industry in Carson; highlighted her disappointment with Oxy's EIR, believing it is one of the worst EIR's drafted; pointed out there is a small number of people employed in this industry compared to the rest of the population; and noted the need to protect the environment and health of those living in this community. She expressed her belief that this industry is a dying and

nonrenewable industry and that solar and other renewable energy is our future and is a growing industry. She stated that this update is beneficial for the City; that the City needs to address what it wants to see in its community, what makes this community healthy; and she urged the City to put in regulations that are necessary to protect the community from a dangerous and toxic industry. She stated that the oil and gas industry has the highest death rates than any other industry; and she urged the City not to back down from the legal threats.

Steve Carr, employee at E&B Natural Resources, noted he has worked for both Brea Canon Oil and Cooper & Brain; stated that he has worked in the oil industry for 20 years in Carson, and he has witnessed increased safety measures being implemented throughout the years in these oil-producing facilities; and he stated that these companies represented this evening have been paying attention to the neighbors and addressing their concerns and that they go beyond what is required of them. He advised that these properties are well maintained; and he urged the Commission to take more time and consider what the oil companies have said about wanting to have open dialogue.

Chairman Faletogo read into the record a statement from Carl Edwards: "This ordinance will eliminate all growth in the oil sector in Carson. Green Compass is a service firm that relies on work generated at E&B's Carson facility. We have serviced this field for many years. Please reconsider this idea. It is not in our best interest as a community."

Chairman Faletogo read into the record a statement from Lori Noffin, resident: "I feel the city of Carson should not approve this ordinance as written. Carson is a densely populated residential and commercial city. Carson is not an oil field. When we incorporated as a city, it was to stop the bad projects that cause contamination. I don't know where in Carson you could allow new drilling that would not impact the health and safety of our community. This ordinance should stop any new drilling and strongly regulate existing drilling in Carson. We have an opportunity to pass a meaningful ordinance that could stop this assault on our communities. That would stop our children and grandchildren from having to fight this battle again. Carson is not an oil field for investors and oil companies to be deciding where they are going to set up the next well."

Pilar Hoyos, representing Watson Land Company, asked: "Why is this ordinance necessary? What is the urgency to adopt the ordinance now that the CRC project has been withdrawn? Who is driving and pushing this ordinance and why?" She expressed her belief that outside forces came into this community and fed fear and created an environment of distrust; and she highlighted one example of that coming from a speaker present this evening who indicated that Oxy came in here with 200 fracking wells. She pointed out that is a factually incorrect statement; that Oxy never needed to frack; and that Oxy so stated and agreed they would enter into a development agreement that would not allow them to frack. She stated that was just one statement made to create a divide within the community by outside groups that have a different agenda.

Ms. Hoyos asked the following questions: "Does this ordinance go too far and effectively preclude all oil operations, including small business operators heard from this evening? What are the costs to the local economy, to jobs, families, and the community? If the intent of the ordinance is to ban drilling, then what are the risks to the City for the cost of litigation?" She highlighted the citing of various court cases posed by

the lawyers, asking, "If you own mineral rights, what do you do; do you have a right to those mineral rights and the value of that oil and gas?"

Ms. Hoyos pointed out that the state has the expertise needed to regulate and to protect all communities; and she urged the City to please consider the far-reaching impacts and the legal risks to the City and don't be fooled by outside groups that have a different agenda. Speaking to Tom Walker's reference this evening relating to the timing of the different types of drilling and how long they've been in operation, she pointed out that a lot of those oil fields were here before homes were built and they operated without all the negative impacts that have been thrown out in this evening's comments.

There being no further input from the audience, Chairman Faletogo closed the public hearing. He thanked the audience members for their participation this evening.

Chairman Faletogo noted that a memo was received from Robert Lesley, resident, noting his support of amending the ordinance.

Planning Manager Naaseh advised that following the February 24<sup>th</sup> hearing, staff met with the Planning Commissioners in three separate small groups to provide additional details on the proposed ordinance; and that staff and the consultants also met with industry representatives and community members who have shown interest in this process. He stated that four letters were received for this evening's meeting: two letters received from Manatt/Phelps/Phillips, dated April 13, 2015 and April 14, 2015; one received from Alston & Bird, dated April 13, 2015; and one received from Latham & Watkins, dated April 14, 2015 (of record).

Luis Perez, MRS, with the aid of a power point presentation, provided an update on the progress since the last meeting; and stated that this evening's presentation is part of the direction given to MRS by the Commission from that last meeting. He added that staff and he met in small groups with members of the Planning Commission since the last meeting; and that they also met with industry representatives and community stakeholders on Wednesday, April 8<sup>th</sup>, noting that a number of revisions have been made to the code arising from those meetings, which will be addressed this evening.

Mr. Perez commented on the following community/industry issues of concern:

- With regard to slant drilling allowed, he explained that slant drilling is predicated by property rights; in order for a company to drill, they have to obtain easements, mineral rights, and property rights for access to those wells and that slant drilling is not something the City is able to regulate;
- With regard to potential exceptions to a fracking ban, he stated that the fracking ban language has been put in place to protect the City from potential litigation;
- With regard to a requirement for ambient air monitors, he explained that the requirement is only for air monitors that cover hydrogen sulfide monitoring; that it is very expensive and not viable to monitor all the different components/types of toxic materials the public addressed, and therefore, no change is proposed;
- With regard to the appeal process, he explained that the appeal process would range from the PA, Planning Commission, and then on to the City Council;
- With regard to abandoned wells within the City, he stated there is a map which shows where all the abandoned wells are located; and added there is a requirement within the code that if somebody is doing drilling within an area that

has existing abandoned wells, they would have to ensure those previously abandoned wells have been abandoned/plugged properly; and

- With regard to existing wells and how those will continue to operate without new regulation, he explained that the proposal does not cover existing wells; and that the new regulations would only cover existing wells if an operator were to obtain a permit for new development within that area which requires them to obtain a conditional use permit (CUP) and a development agreement (DA).

Chairman Faletogo asked if a PA is necessary; and is there anything wrong with the current situation of using staff and the City Council.

Mr. Perez stated that the code would require the City administrator to appoint someone as the PA; he stated if there were no proposed projects, there probably would not be any need for a PA; but if there was a wave of new development/proposals for oil and gas projects, the City manager would appoint a PA to handle the issues of the code. He added that the intent of the PA would be to have a specific clearing house, a go-to person that is in charge of all the petroleum activities within a jurisdiction. He stated this is done in other jurisdictions.

Commissioner Brimmer asked for clarification on the appeal process.

Assistant City Attorney Chaffin stated that an appeal process depends on the type of activity involved; that the way the code is proposed, some matters will be decided directly by the PA; that some may be appealed to the Planning Commission and City Council; and that there are other legal remedies available to them if the City's appeal process is not in their favor, noting a court would have to determine if the City acted reasonably, that it would involve a lawsuit to challenge the City's decision.

Commissioner Brimmer asked if any written handouts were distributed to those present at the April 8<sup>th</sup> meeting, noting the technical information needs to be uncomplicated as possible. She stated the City needs to make sure all interested parties are informed of this process and these meetings.

Assistant City Attorney Chaffin noted for the record that legal notices were given in compliance with the Brown Act and City requirements.

Commissioner Gordon noted his concern with the PA and their authority under the proposed ordinance, Page 108 of staff report, first paragraph, "The decisions of the PA in enforcing, interpreting, or in exercising the authority delegated by the provisions of this ordinance and of the codes adopted hereby shall be deemed final," stating this means to him there is no chance of appeal following the PA's decision; he noted his concern with interpreting this code; and stated there is no criteria for the qualifications of the PA.

Assistant City Attorney Chaffin explained that Section 9505A, Page 108 of staff report, is intended to provide finality for the applicant by saying the decision is final and they don't need to go to another body for relief; and explained that this Commission has the discretion to deny or support this proposed language.

Commissioner Gordon asked what other jurisdictions have PA's and has the power and authority this is proposing.

Assistant City Attorney Chaffin explained that there are other jurisdictions which have PA's, but added those authority rights vary from each jurisdiction; and that the City has

the authority to designate and determine how it interprets its own ordinances as long as that interpretation is reasonable.

Commissioner Gordon expressed his belief that not everything needs to be solved in a court of law, that the City should be able to develop an appeal process that avoids lawsuits. He highlighted staff report Page 112, "Findings, The project shall not be detrimental to the comfort, convenience, health, safety, and general welfare of the community, and will be compatible with the uses in the surrounding area," asking if that determination is left to the interpretation of the PA, what would be considered "comfort, convenience" of the community.

Planning Manager Naaseh explained that this is a finding for the CUP and is under the purview of the Planning Commission.

Assistant City Attorney Chaffin stated that Section 9507.3 says the Planning Commission is the deciding body to approve/deny a CUP, not the PA.

Mr. Perez referred to industry issues that were discussed at their meeting:

- With regard to the timing of the code/impetus, he explained that this was initiated by City Council in May of last year; that City Council provided direction to return to them with an oil code that is as protective as possible to the health, safety, and environment; and in addition to that, City Council also was in favor of a ban on fracking as part of that oil code update;
- With regard to legal, non-conforming uses, he stated that any concerns with regard to legal, non-conforming uses relate to those existing facilities, noting that they could potentially be subject to amortization at some point and required to cease operations;
- With regard to acidizing definitions/acid volume thresholds, he explained that the two definitions used in the letter for acidizing and acid volume thresholds say to flush minerals from the well and its associated equipment, to help dissolve minerals at the bottom of the well that are plugging the well and impeding the flow of oil into the well, noting these are not contemplated within the ban on well stimulation techniques, and they would not be affected; that those two things can continue to be done as a matter of course as far as their operation is concerned; and he stated the language is very clear with regard to that particular issue, noting this process has been used for many years;
- With regard to a requirement of submersible pumps in industrial zones, he noted they are in agreement that there should not be a requirement for submersible pumps in industrial zones, noting they are sufficiently far away enough from any potential sensitivity receptors and there is no necessity for them; and noted the code has been amended to include an exclusion for submersible pumps within industrial zones;
- With regard to requirements for pipelines inside oil fields, he stated the intent of the code was not to have requirements for leak detection systems inside the oil fields, that it's only for the pipelines that leave the oil fields; and advised that they have made that clarification as part of the revised code; and
- With regard to the overlap with AQMD (fugitive dust), he stated they are in agreement with the concern of overlapping with AQMD on fugitive dust issues;

and that they would suggest removing that language from the code because that is already contemplated within AQMD's regulations.

Mr. Perez commented on how the oil and gas code update will affect existing operations; stated that if an operator wants to add wells or do something that would trigger the requirements of the oil code by way of needing to obtain a CUP or DA, those actions would then require the existing facilities to be brought up to the requirements of the updated oil code; but if an existing operator continues to operate/produce without making any substantial changes and not require a permit, they can continue to do so. He stated that by virtue of the code, that property would become a legal, nonconforming use, and they could continue to operate for a period of years before Carson's 20-year amortization process kicks in; and that if an operator was to consider continuing their operations after that amortization period, they could request to obtain an exemption from the requirements of the code as an existing operator.

Greg Chittick, engineer with MRS, commented on EIRs from other jurisdictions and the impact distances, with mitigations, highlighting issues of aesthetics, air quality, odors, noise, and safety; and noted these were studied in order to understand what impacts oil and gas operations might produce:

- With regard to issues concerning aesthetics, he stated that aesthetics can be very subjective and dependent on the location of a project;
- With regard to air quality, he addressed the issues related to AQMD's localized thresholds as well as cancer and chronic/acute health impacts, noting that all the numbers reflected on the power point chart have mitigation measures in place; and
- With regard to odor, he noted that Carson's proposed 1,500 setback addresses all of the impacts, with the exception of completely mitigating odors; noted there are advantages/disadvantages to this proposed setback; and advised that the disadvantages are it is very restrictive on current operators and is less legally defensible, noting there are very few codes that are as restrictive, none they are aware of in California. He explained that if this setback were reduced to 500 feet, it would be less restrictive for current operators; would address most of the public health issues, including noise, air quality; and most of the odors and safety issues would likely require added mitigation. He explained that if this setback is further reduced to 300 feet, it would be minimally restrictive for current operators and mitigation measures would be put in place, but leaves open the potential for odors, accidents, or unmitigated noise and air quality issues. He stated that the current code sets residential at 300 feet, which is the least restrictive of the proposed.

Commissioner Piñon referred to staff report Page 107, Subsection A, asking what are the legal parameters of the PA, "the PA shall have the powers of a law enforcement officer."

Assistant City Attorney Chaffin explained that various public safety officials have some of the powers of law enforcement officers; that this would allow certain rights of inspection and enforcement; that it would allow monitoring of a facility and the ability to shut down the operations; and he stated that he is not familiar with the exact enforcement parameters at this time. He stated he does not believe they will have the authority to arrest anyone.

Mr. Perez noted the intent was not to provide arresting powers, but in cases where there may be an incident, to allow the PA right of entry into a facility where there needs to be monitoring and assurance of compliance; in addition to that, if there's a need because of public health and safety, it would authorize the PA to require a shutdown of facilities.

Commissioner Piñon asked why submersibles would be required, questioning if it has to do with safety or aesthetics.

Assistant City Attorney Chaffin stated that is a current requirement in the City's code, and noted his belief it is largely for aesthetics.

Mr. Chittick added that if an above-ground pump is not working well, it could become a noise issue.

Commissioner Schaefer referred to staff report Page 151, asking what a meteorological station is, whether it is manned and is the requirement standard industry practice.

Mr. Chittick explained that the meteorological station records wind speed and direction, temperature, a whole range of things; but this site-specific requirement is for the recording of wind speed and direction, believing that having this information is advantageous in understanding where an odor might come from or if there are other issues related primarily to odors. He mentioned that this requirement was taken from the Baldwin Hills Community Standards District, and noted it is not a state requirement.

Commissioner Schaefer expressed her belief this ordinance needs a lot more work; pointed out that there are state agencies already in place to regulate this industry; and noted her concern with Carson attempting to set its own rules/regulations from the rest of the state's regulations. She requested that the code be revised to a smaller version that is parallel with what the state requires, noting the state is continually updating these regulations to keep up with the industry; and to include a few regulations that specifically relate to Carson's uniqueness. She stated that it is not necessary to completely revise the rules/regulations; and stated it needs to be reworked and made more simplistic.

Commissioner Gordon noted his concurrence with Commissioner Schaefer's comments. He stated he would like to see a couple options concerning the PA: 1) the complete elimination of a PA; and 2) a reduction in the scope of authority for a PA and provide some comparatives to the authority they have in other municipalities and how they operate. He expressed his belief this is going forward too quickly with such drastic changes being proposed; and he asked what is the problem the City is trying to solve that requires such a drastic change in this ordinance and what is the urgency in moving this along so quickly.

Assistant City Attorney Chaffin explained that Carson's City Council is the body that initiated this process/task and gave direction to staff with regard to the scope of the ordinance; that staff is merely acting consistent with the direction they've been given by City Council; and that it would be the City Council's determination as to why this matter is moving forward. He added that as far as the comment about this ordinance item going too quickly, ordinances are typically passed much more quickly than what is happening here, though acknowledging this is a complicated issue. He noted this update has been available to the public since February; stated that as the process goes forward, there are further requested refinements being made; and highlighted staff's

recommendation this evening for the item to be continued for additional review and additional recommendations.

Commissioner Gordon stated that more time is necessary to understand the ramifications of the update's implementation. He asked, "Who really has authority on regulating fracking? Is it local or state?" He stated that somewhere the line seems to be crossed, and that this question has not been satisfactorily answered in this report. He added that the answer should be put in relation to SB-4.

Assistant City Attorney Chaffin stated that SB-4 does not specifically ban fracking nor does it expressly preclude the City from banning fracking; and that currently, there is no law which expressly prohibits Carson from banning fracking.

Commissioner Gordon asked if SB-4 gives this authority to the Division of Oil, Gas, and Geothermal Resources (DOGGR).

Assistant City Attorney Chaffin explained that DOGGR has certain regulatory authority, part of that regulatory authority being granted under the direction of SB-4; and that under SB-4 direction, DOGGR was to address certain well stimulation technique impact studies to develop regulations.

Chairman Faletogo agreed that legal ramifications need to be considered.

Commissioner Gordon asked with regard to the takings issue, is this proposed regulation so onerous and so restrictive that it deprives a person of their rights.

Assistant City Attorney Chaffin explained that the way the ordinances are currently structured, they do not ban oil and gas operations, they regulate oil and gas operations; and that this is within the purview of the City. He noted that to the extent the ordinances may come to the point where they inadvertently and could potentially result in a taking, both the ordinances include a savings clause, which is a provision wherein the oil industry or applicant can come in and say under my unique circumstances associated with my case, if you apply this ordinance, it will result in a taking unless you grant me an exception; and as proposed, the PA has the authority to grant that exception which would mean there would not be a compensable taking.

Commissioner Gordon stated he is concerned with the burdensomeness of this regulation; and asked how long it will take for a business to get through this process.

Assistant City Attorney Chaffin stated there are too many variables to accurately answer that question, but if he had to estimate, it could take a year to a year and a half to complete the environmental process.

Commissioner Gordon asked the following questions: "What will it cost a business to go through this process from start to drilling a hole in the ground? What is the maximum setback in place in any jurisdiction in California for this industry?"

Assistant City Attorney Chaffin stated that throughout most jurisdictions, it can range from 100 to 500 feet and noted that a maximum range of 500 to 600 feet would not be uncommon. He added there are a range of options and to know for sure, it would require an extensive overview of each jurisdiction. He highlighted the power point sample given this evening of various jurisdictions ranging from 100 to 500 feet.

Commissioner Gordon highlighted the proposed 1,500-foot setback, questioning what is the risk to the City of having a setback which far exceeds any other jurisdiction.

Assistant City Attorney Chaffin pointed out that the Planning Commission has the discretion to make a recommendation for a shorter setback and explained that lessening that distance would likely require added mitigation measures; and stated that the Planning Commission could direct staff to return with language that reduces that setback.

Commissioner Brimmer requested a copy of this evening's power point presentation. She urged staff to meet with all interested parties before the next meeting. She requested that the PA's scope of work be broken down and clarified; and noted her belief that in order to save money, a qualified planner could be assigned the duties of a PA.

Commissioner Schaefer asked if there have been any violations recorded on the current operators in Carson and if so, what has been done about those violations.

Commissioner Verrett asked if the draft ordinance will be sent to DOGGR and other regulatory agencies for input.

Chairman Faleto go asked what would happen if no PA is required.

Planning Commission Motion:

Commissioner Gordon moved to continue this matter to May 26<sup>th</sup>; to direct staff to answer the questions posed this evening; to return with two options for the PA, to eliminate or reduce the power/authority. (This motion was ultimately rescinded.)

Commissioner Verrett seconded the motion.

Commissioner Brimmer expressed her belief the motion needs to have clarity and asked if she is able to submit further written questions for staff's consideration.

Assistant City Attorney Chaffin noted the consultant will not be available on May 26<sup>th</sup>.

By way of a substitute motion, Commissioner Verrett moved to continue the matter; and that the discussion and motions be broken into segments until the Commissioners are satisfied with each section. This motion died due to the lack of a second.

By way of an amended motion, Commissioner Gordon moved to continue this matter to May 12<sup>th</sup>; that this evening's questions/concerns be addressed; that the ordinance be tailored to Carson and not a consolidation from other jurisdictions; and to return with two options for the PA -- to eliminate or to reduce the power/authority.

Commissioner Verrett reiterated her desire to see each section taken in an organized fashion.

Chairman Faleto go seconded Commissioner Gordon's amended motion.

Assistant City Attorney Chaffin asked if the motion includes setback issues.

Commissioner Gordon stated it should, yes, that it is to direct staff to address reducing that setback from 1,500 down to 500 feet, or scaling it downward. He added that there should be communication with all affected businesses in Carson; and that the Planning Commissioners submit any further questions in writing to staff.

Chairman Faleto go noted his support of reducing the setback to 500 feet.

Mr. Perez asked that any written questions be submitted no later than next week so they can include the answers at the May 12<sup>th</sup> meeting.

Commissioner Verrett asked for further clarification on the pipeline, transportation and storage issues.

Assistant City Attorney Chaffin noted his understanding of the motion as follows: to continue this hearing to May 12<sup>th</sup>; staff is directed to return with alternative language to either eliminate the position of the PA or significantly reduce the authority of the PA; staff is directed to return with language setting up a 500-foot setback for residential uses instead of the 1,500-foot setback; that there can be a scaling down involved, up to 1,500 feet, the closer one is to residences, the more requirements necessary; and that the Planning Commission is to submit within the next week any questions they have.

The amended motion passes, 7-0 (absent Commissioners Diaz, Goolsby).

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(Commissioner Brimmer departed the meeting after the motion.)

Assistant City Attorney Chaffin suggested incorporating all the public testimony and Commission comments that were offered this evening for Zone Text Amendment No. 19-15 as if it were stated for this item; advised that staff does not have any additional publications or report to offer on this matter; and he suggested the hearing be opened/closed for public testimony. He added that all items posted on the City's website related to this matter have been printed out and are available at this evening's meeting.

## 11. CONTINUED PUBLIC HEARING

### B) Zone Text Amendment No. 20-15

#### Applicant's Request:

The applicant, city of Carson, is requesting the Planning Commission to consider adoption of an Ordinance prohibiting hydraulic fracturing ("fracking"), acidizing and any other form of well stimulation, and the associated CEQA finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308 for properties. The properties involved would be citywide.

#### Staff Recommendation:

Continue.

Chairman Faletogo opened the public hearing. There being no further input, Chairman Faletogo closed the public hearing.

#### Planning Commission Motion:

Commissioner Verrett moved, seconded by Commissioner Schaefer, to concur with the attorney's direction, continuing this item to May 12, 2015. Motion carried, 6-0 (absent Commissioners Brimmer, Diaz, Goolsby).

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## 12. WRITTEN COMMUNICATIONS None

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**13. MANAGER'S REPORT**

Planning Manager Naaseh noted that staff is preparing an RFP for preparation of a new zoning code that will be presented to the Planning Commission within the next few weeks.

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**14. COMMISSIONERS' REPORTS**                      None

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**15. ADJOURNMENT**

At 10:51 p.m., the meeting was formally adjourned to Tuesday, April 28, 2015, 6:30 P.M., Helen Kawagoe City Council Chambers.

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Chairman

Attest By:

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Secretary