

MINUTES

**CITY OF CARSON
REGULAR MEETING OF THE PLANNING COMMISSION
JUANITA MILLENDER-MCDONALD COMMUNITY CENTER
HALLS A, B, C
801 East Carson Street, Carson, CA 90745**

February 24, 2015 – 6:30 P.M.

1. **CALL TO ORDER** Chairman Faletogo called the meeting to order at 6:30 P.M.
2. **PLEDGE OF ALLEGIANCE** The Salute to the Flag was led by Commissioner Diaz.
3. **ROLL CALL**

Planning Commissioners Present:
Brimmer, Diaz, Faletogo, Goolsby,
Gordon, Piñon, Schaefer, Saenz,
Verrett

Planning Commissioners Absent:
None

Planning Staff Present: Planning
Manager Naaseh, City Attorney
Soltani, Assistant City Attorney Ward,
Associate Planner Gonzalez,
Associate Planner Rojas, Recording
Secretary Bothe
4. **AGENDA POSTING CERTIFICATION** Recording Secretary Bothe indicated that all posting requirements had been met.
5. **AGENDA APPROVAL** Commissioner Saenz moved, seconded by Commissioner Gordon, to approve the Agenda as submitted. Motion carried, 9-0.
6. **INSTRUCTIONS TO WITNESSES** Chairman Faletogo 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 Ward
8. **ORAL COMMUNICATIONS** For items **NOT** on the agenda. Speakers are limited to three minutes. None
9. **CONSENT CALENDAR**

Minutes: January 27, 2015

Motion: Commissioner Diaz moved, seconded by Commissioner Brimmer, to approve the January 27, 2015, Minutes as presented. Motion carried, 9-0.

10. NEW BUSINESS DISCUSSION

Presentation of the Utility User's Tax (UUT)

Acting City Manager Rhambo highlighted the following Measure A facts, Utility Users' Tax:

- UUT is approximately 12 percent of Carson's budget;
- Funds public safety services, seniors, youth, parks, street repair services;
- Second lowest UUT rate in California;
- 80 percent of UUT paid for by large Carson businesses;
- Exemptions for seniors and low income; and
- Average household cost is .34 per day.

Acting City Manager Rhambo fielded questions from the Commission, noting that a voter referendum would be needed to increase the 2-percent tax in the future.

Vera Robles-Dewitt, resident, pointed out the current UUT has until 2016 to collect funds; that there are approximately two to three more elections for this subject to be further analyzed; and noted her concern that CMC Section 61116 allows City Council to push forward a rate hike without voter approval.

Acting City Manager Rhambo advised that a future rate hike would need voter approval. He urged anyone with questions to call the UUT/Measure A hotline at 310.952.1707.

11. CONTINUED PUBLIC HEARING

A) Conditional Use Permit No. 962-14 and Variance No. 554-14

Applicant's Request:

The applicant, Car Pros Kia of Carson, is requesting to consider the relocation of an electronic message center pylon sign and allowing a second freestanding pylon sign for an automobile dealership located in the CA (Commercial, Automotive) zoning district. The subject property is located at 22020 Recreation Road.

Staff Report and Recommendation:

Associate Planner Gonzalez presented staff report and the recommendation to WAIVE further reading and ADOPT Resolution No. 15-2536, approving Conditional Use Permit No. 962-14 and Variance No. 554-14 for a second freeway-oriented electronic message center pylon sign for a Kia automobile dealership to be located at 22020 Recreation Road.

Chairman Faletogo opened the public hearing.

Rod Wilson, applicant's representative, noted his concurrence with staff recommendation.

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

Planning Commission Decision:

Commissioner Verrett moved, seconded by Commissioner Brimmer, to approve the applicant's request, thus adopting Resolution No. 15-2536. Motion carried, 9-0.

12. PUBLIC HEARING

**A) Conditional Use Permit No. 965-14 and
Relocation Review No. 3049-15**

Applicant's Request:

The applicant, Kevin Apel, is requesting to permit a temporary truck yard and a 320-square-foot modular office building for a five-year period in the MH-D (Manufacturing, Heavy – Design Overlay) zoning district. The subject property is located at 2100 E. 223rd Street.

Staff Report and Recommendation:

Associate Planner Rojas presented staff report and the recommendation to WAIVE further reading and ADOPT Resolution No. 15-2537, entitled, "A Resolution of the Planning Commission of the city of Carson approving Conditional Use Permit No. 965-14 and Relocation Review No. 3049-15 to permit a temporary truck yard and a modular office for a five-year period."

Commissioner Diaz asked if truck repair activities will be taking place on site.

Associate Planner Rojas explained that some minor repairs will be made on the larger 8-acre parcel not in view from the street and that the 2-acre parcel will be used for storage.

Commissioner Diaz questioned why a masonry wall or something more upscale is not being required for the perimeter fencing.

Associate Planner Rojas explained that the new tubular steel fence looks very nice, noting that it has the look of wrought iron from the public right-of-way; and stated that staff is recommending approval of this fence because this is a temporary use for this site. He noted that Condition No. 15 addresses the temporary nature of this approval.

Chairman Faletogo opened the public hearing.

Kevin Apel, applicant, stated that the applicant has multiple industrial properties in Carson and has recently purchased a leasehold interest of this site; noted his concurrence with the conditions of approval; and he explained that because of ongoing soil remediation onsite, Solutia is allowing only a minimum of soil disturbance. He added that this is a temporary use for this site; stated that the applicant does have interest in a future, permanent development after the completion of soil remediation; and noted for Commissioner Diaz that this site is fully fenced.

Commissioner Diaz expressed his belief that the fencing should be upgraded.

Commissioner Brimmer asked why landscaping plans were not submitted.

Associate Planner Rojas stated that the existing landscaping will be refreshed/cleaned and explained that because this is a temporary use, staff wrestled with balancing the need for upgrades at this site.

Planning Manager Naaseh explained that because no change is being proposed for the use of this site, staff determined after much consideration that refreshing the landscaping and cleaning it up for this temporary use is a good compromise.

Diane Thomas, resident, stated that there are too many trucks in this area.

Chairman Faleto go closed the public hearing.

Associate Planner Rojas noted that Traffic Engineer Garland pointed out that 223rd Street is a designated truck route; that this use is no different from what is currently approved for this site; and that the proposed use is not intensive enough to trigger a traffic analysis or EIR.

Planning Commission Decision:

Commissioner Goolsby moved, seconded by Commissioner Schaefer, to approve the applicant's request, thus adopting Resolution No. 15-2537. The motion carried, 7-2, as follows:

AYES: Faleto go, Goolsby, Gordon, Piñon, Saenz, Schaefer, Verrett
NOES: Brimmer, Diaz
ABSTAIN: None
ABSENT: None

12. PUBLIC HEARING

B) Zone Text Amendment No. 19-15

Applicant's Request:

The applicant, city of Carson, is requesting to 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 for properties citywide.

Staff Report and Recommendation:

Commissioner Verrett noted her concern with receiving a large volume of letters at this evening's meeting, noting there has not been enough time to review the paperwork.

City Attorney Soltani stated that staff has no control over what communications come in from the public, noting that it is staff's duty to forward the communications on to the Commissioners; stated she will attempt to address the concerns in the letters that were submitted; and noted that the Commission always has the option to continue its meetings to a future date. She clarified that Zone Text Amendment Nos. 19-15 and 20-15 will be included as part of the same discussion tonight.

Luis Perez, project manager with MRS, commented on the company's experience in providing environmental documents for oil and gas projects for over 30 years; stated that within the company, there are 150 years of combined oil and gas experience; and highlighted various projects they have done in multiple cities and counties. He advised that they created a Frequently Asked Questions flyer for this evening's meeting, noting it incorporates questions put forth at the community meetings. He noted that Carson's

current oil and gas code is antiquated and that it allows for permitting of oil and gas facilities by right; and he described the general approach taken to develop this update.

With the aid of a power point presentation, Mr. Perez addressed various components of the proposed oil and gas code update, providing brief input on the administrative procedures and development standards; advised that within the development standards, there's a separate code that would be adopted to ban fracking altogether; and noted that the development standards will address when facilities need to be decommissioned, abandoned, restored, and/or remediated. He highlighted the portion of the ordinance that bans fracking, acidizing and other well stimulation; noted that the administrative procedures essentially provide direction as to how one would permit a project if they were to come to the planning counter; stated it contains a robust/complete set of standards for an applicant; advised that the document addresses financial obligations, provides information on violations/fines for development of oil and gas facilities, requirements for conditional use permits for all drilling projects, development agreement requirements for multiple wells; and noted that in addition to the discretionary permits, there will also be a requirement for a drilling permit that allows a petroleum administrator who will oversee compliance.

Mr. Perez addressed some of the highlights for the administrative procedures; stated that a petroleum administrator will be designated by the City Manager to oversee all the drilling matters; and advised that the petroleum administrator will be funded by the oil company that happens to be applying for a permit, sharing the pro rata share of that cost.

Planning Commissioner Brimmer requested, and received, clarification on the moratorium and the various community meetings in 2014 regarding the oil and gas update.

City Attorney Soltani explained that the issues raised by the community at those meetings have all been analyzed in connection with updating the code; stated that the issues have not changed; that the community spoke at those meetings about the same environmental concerns; and that the code has been drafted to address those environmental issues.

Planning Commissioner Brimmer asked if the comments from the most recent community meeting on February 18, 2015, are included in the draft update.

Planning Manager Naaseh explained that staff report was written prior to and released on February 17th, so the comments are not incorporated into the draft that was released to the Planning Commission; however, he pointed out that the ordinance which is currently posted on the City's website has clarifications that were included from the last community meeting on February 18th.

Mr. Perez stated that while there were a lot of comments made at the February 18th community meeting, there were no comments from that meeting that required any changes to the code update; and advised that with the additional written materials distributed to the Commission this evening, they do include some comments in writing from members of the public that MRS is looking into and considering, but pointed out that some of them are grammatical and/or language clarifications and not substantial and that any change made/incorporated will not change the overall requirements proposed.

City Attorney Soltani pointed out that MRS will go over those changes this evening; and reminded the Commission they can continue this matter to a future meeting.

Mr. Perez continued addressing various restrictions and requirements within different zoned districts; advised that there will be no permits given for oil and gas facilities located within residentially zoned districts; commented on requirements for change of company ownership, high-risk operators, noticing requirements, requirement for monetary compensation for code violations, compliance monitoring component, provisions for periodic review, financial assurance and operator responsibility, securities and bonds for wells – highlighting the requirement of \$50,000 minimum per well, which can be adjusted; operator liability insurance, which includes injury and property damage for \$25 million and \$25 million for environmental impact; violations and fines, violations with fines starting at \$5,000 to \$10,000 per day, every day the violation occurs; and mitigation measures related to pipelines, wells, drilling facilities, storage facilities and setback requirements.

City Attorney Soltani clarified that this code will not allow any drilling in residentially zoned areas.

Mr. Perez addressed the 1,500-foot setback for no drilling to occur within that setback, noise impact restrictions, construction time limits, landscape and signage requirements, steaming, reclaimed versus potable water usage, environmental program for water quality control, ground water, greenhouse gas emissions, energy efficiency measures, emergency standards for blowout prevention and testing, operator responsibility for maintenance/restoration of public roads, transportation of chemicals, management prevention program, leak detection for pipelines and tanks, air quality monitoring testing, construction of pipeline/wells, well and site abandonment protocols/standards.

City Attorney Soltani summarized the arguments in the letters received this evening; stated that the letters received from Manatt, Phelps & Phillips are written on behalf of Carson Companies as one of the mineral rights owners; and she added that these same arguments were raised during the moratorium and that the City had responded in writing at that time to those same arguments. She noted that one of their arguments is that the ordinance constitutes a compensable taking of the mineral rights from operators, owners and holders of minerals rights and their royalty interest; they claim that the local regulations governing the petroleum operations will make it commercially impractical to extract oil and gas in Carson; she advised that the City does not agree that its regulations are going to make it impractical to extract oil and gas; and added that one of the letters submitted from Latham & Watkins at 5:00 p.m. today does not make that allegation, noting that Latham & Watkins represents Californians for Energy Independence, a statewide coalition of energy producers.

City Attorney Soltani added that in order to show there is a taking of a property right, you have to either show that a regulation deprived a private property of 100 percent of the total economic value of their property, stating this clearly does not; or you have to show that there's a significant diminution in value of property rights; advised that there are cases where a 95-percent loss in value has still not been found to be a regulatory taking of a property right; and she stated that here, you're not going to have 95-percent loss in the value of oil extraction by the regulations that you're putting in place. She asked those to keep in mind that when courts look at regulatory taking issues, they look at the rights of the entire parcel as a whole, not just look at mineral rights, to determine economic effects of economic taking; that 100 percent taking of mineral rights, even if you had a 100 percent taking of mineral rights, which you don't, is not 100 percent

taking of the whole parcel; and she noted her belief that the proposed ordinance is legally defensible, and there is no solid grounds for a taking challenge to this proposed ordinance.

City Attorney Soltani stated that the letters from Manatt, Phelps & Phillips also try to argue that the City is preempted by state law; noted that local governments routinely regulate and zone oil and gas uses; that the law has long sustained a City's right to regulate land use, including oil and gas operations; and that state laws may preempt regulations in certain instances, but the way this oil code is drafted, it's been carefully drafted to avoid those situations. She stated there is no evidence that the legislature has ever explicitly intended to preempt local control over oil and gas operations, and state oil and gas laws continue to express preemption clauses; and stated there's no implied preemption here. She noted that state oil and gas laws, including SB 4, actually fall short of "fully and completely"; explained that when stated regulations fully and completely cover a subject matter, then there could be an implied preemption; but added there are many zoning codes that deal with oil and gas uses, and the state has not intended to occupy the field. She advised that staff has put provisions in the ordinance to try to address potential preemption issues if a court were to find there are any preemption issues.

City Attorney Soltani explained that the ordinance basically has what they refer to as a savings clause; and that if there is a preemption issue on a particular issue, the ordinance recognizes that such state law regulation will prevail over any contradictory provision in the ordinance. She addressed the letter from Earth Justice wherein it alleges that the savings clause the City has should not be in there, and that Earth Justice is saying the exemption should only apply if the applicant has a vested right; and she advised that the City Attorney's Office disagrees with that statement because they are not going to worry about regulatory taking issues as the City would, as a regulatory body, so that group has different considerations than the City does. She stated they also argue that because the savings clause says that before an activity can move forward, the petroleum administrator must determine if the activity creates a nuisance or not; that they're encouraging the City that this gives too much discretion to the petroleum administrator; but advised that staff believes that given the uncertainty about what's going to happen in the future, that's a good thing; that the City is going to have a qualified person with an environmental background who is going to become the City's petroleum administrator; and she added there is nothing wrong with giving them that discretion so they can make a case-by-case analysis should these issues come up.

City Attorney Soltani added that they also argue the ordinance allows an exception to ban acid matrix stimulation and should phase out the use of this material; she stated it's important to note that as Mr. Perez presented, acid matrix stimulation is generally prohibited under this ordinance and before an exception to the prohibition can occur, the petroleum administrator must determine the activity does not create a nuisance or adversely impact persons or property within the City; and she stated that, again, the City needs to have these flexibilities in its code to make it a practical code that can work. She added that since the reasonable investment-backed expectations must be made before approval of an ordinance, it needs to effectively phase out the uses over time as property is sold or otherwise transferred, noting this is exactly what the ordinance does.

City Attorney Soltani stated that Earth Justice argues the update does not provide an adequate buffer necessary for protection of public health; noted they don't make a recommendation as to what is a recommended buffered distance; but stated they have

seen a buffer as large as 300 feet, noting this proposal sets the buffer at 1,500 feet, one of the most significant buffers in the state that she has seen; stated this is reasonable under the circumstances because this is an urban area; and that staff and the consultant believe it is a good, safe buffer zone.

City Attorney Soltani stated that in conjunction with the buffers, the ordinance also requires active monitoring of emissions and the petroleum operations; explained that if the monitors are triggered, it could require the operations to be shut down completely, noting there are other protections in place; and explained that if you had a buffer area and no other protections in place, you wouldn't be accomplishing anything if you're not monitoring the emissions. She stated that this code takes an approach from all different environmental aspects and tries to provide a meaningful way of monitoring oil and gas operations and addressing any environmental concerns out of the operations.

City Attorney Soltani stated that the Earth Justice letter also ignores the fact that the ordinance provides for air quality monitoring; stated that the petroleum administrator and other individuals are going to have active monitoring, which also helps to address any issues if they arise; she reiterated that if it's proven an oil operator is in violation of any provisions of the ordinance, there are heavy penalties, including from \$10,000 to \$100,000 per day depending on the violation; and there's also a penalty wherein their operations can be shut down for violating the code. She stated that their letter says there's not adequate enforcement in place, stating she does not know how one gets more adequate protections/enforcement in place when you can shut down their operation. She stated they also ask for the City to create a citizen prosecution process, noting her office would have to look into that because there may be potential due process or legal concerns.

City Attorney Soltani referred to the last letter from Latham & Watkins received today, written on behalf of Californians for Energy Independence, believing the main point they are raising is to urge the City not to advance the proposed ban on fracking; and that they argue it's not permitted under state law, noting she has already addressed those issues.

Vice-Chairman Piñon questioned if this ordinance proposal is going too fast through the process, pointing out the last community meeting was just last week; and stated that the Environmental Commission should also be involved in this process.

Planning Manager Naaseh stated that this item can be continued if this Commission believes more time is needed for document review, pointing out that staff has no control over the late submittals of public letters; and stated that staff will share these reports with the Environmental Commission at its March meeting. He suggested that this matter return to the Planning Commission on April 14th.

Mr. Perez noted for Vice-Chairman Piñon that in situ means in place/on site.

Vice-Chairman Piñon noted that the ordinance states the decisions of the petroleum administrator are final, questioning whether there is an appeal process.

Mr. Perez stated yes, that is the intent of the petroleum administrator; and that they will deal with the technical issues and they have the knowledge/leeway as to know when the applicants are in compliance.

Planning Manager Naaseh explained that this is only after the Planning Commission and City Council have approved a project; and that this is just implementing the project and is similar to any other development project the Commission and City Council approves.

Vice-Chairman Piñon asked what other cities have petroleum administrators.

Mr. Perez stated that Santa Barbara County, Signal Hill, and Long Beach all have petroleum administrators, with different levels of obligations; that with this code, it has been used as a person responsible for all aspects of the code; and explained that the code has delegated responsibility, which means as a petroleum administrator is making a decision, that person can also go back up the chain of command to determine if they are exercising the desires of the City.

Vice-Chairman Piñon asked how staff came up with the proposed distances/setbacks.

Mr. Perez explained that they have used a number of other setbacks; that the setbacks they had used for specific projects have shown them that once you get away from 300 to 400 feet, the air quality, odor, and safety impacts begin to diminish; that they believed 300 to 400 feet was a comfortable setback; however, he advised that the City wanted the more restrictive setbacks, so while the 1,500 feet presents an overabundance of caution by the City, it is responsive to the residents who expressed a desire to have a setback that was as stringent/protective as possible.

Vice-Chairman Piñon asked why the Commission had not been provided a copy of the setback boundary map.

Mr. Perez stated it was only produced today and stated that a copy will be provided to the Commission.

Commissioner Gordon noted that the Lathan & Watkins letter prohibits banning of fracking; stated that state law does not prohibit the regulation of oil and gas production; and he questioned whether fracking is considered an oil and gas regulation or a separate issue.

City Attorney Soltani explained that when looking at state law preemptive issues, there has to be either an expressed preemption, noting there's no evidence that the legislature here explicitly intended to preempt local control over any oil and gas operations; or that there needs to be an implied preemption. She stated that what the oil and gas industry will argue is that because there is a comprehensive regulation of actual oil operations under the subsurface, they will argue that that is the preemption argument, that local agencies are not then allowed to ban fracking and that the Department of Oil, Gas and Geothermal Resources (DOGGR) has the authority to regulate issues such as fracking. She stated she is not aware of any courts that have addressed this issue; and that she is not aware of any legal authority/decisions that are on point.

Commissioner Gordon asked for input on the assertion of depriving a person of their property rights even if they only own the mineral rights and not the property.

City Attorney Soltani stated it is her legal position the rights of the entire parcel as a whole must be evaluated when you look at property rights and not just mineral rights to determine the economic effects of economic taking; and that in her opinion, the fact that the mineral rights may be owned separately from the surface parcel does not affect this analysis. City Attorney Soltani stated that the courts would look at the entire parcel as a whole regardless of how the ownership is divided; stated that the code as drafted is not depriving anyone of their mineral rights; and that it allows for operations that will allow them to get a return on their investment rights.

Chairman Faletogo read into the record the following: “City of Carson Oil and Gas Code Update: FAQ Community Handout, 2) Can the City place an outright ban on all drilling? An outright ban on all operations cannot be approved as part of the current update process. The City Council directed staff to prepare an update of the oil and gas code, with a ban on hydraulic fracturing and other extraction processes. City staff have complied with the process, noticing and environmental analysis for the update of the oil and gas code. At a minimum, an outright ban on all petroleum operations would be required to go through a separate initiation process, environmental review, notice and other procedures before it could be considered by the Planning Commission and City Council. Adoption, or denial, of the oil and gas code will not have any impact on the City’s ability to explore other options in the future.”

Chairman Faletogo called a recess at 8:51 P.M. and reconvened the meeting at 8:56 P.M.

Vice-Chairman Piñon asked why fracking is banned absolutely, no appeal, but acidizing is banned unless the petroleum administrator deems it fit.

Mr. Perez explained that this is something added to allow some discretion of the petroleum administrator in the event there was a takings issue which was somehow convincing enough that the City would have the opportunity to have that out, to be able to provide that exception, noting there are limitations to it; and added that staff wanted to have that flexibility.

City Attorney Soltani stated there are currently some operators in the City that may have certain practices wherein they have vested rights, so the City needs to give that flexibility to the petroleum administrator to be able to assess all of that; and she stated that with respect to fracking, staff is not aware of any fracking taking place in Carson at this time.

Vice-Chairman Piñon asked if acidizing is a vested right but not fracking.

City Attorney Soltani noted her understanding that there is some maintenance that occurs with certain acidizing, and currently, those approaches are being used.

Mr. Perez explained that there is a use of acid which is a typical use down hole when they need to clean up some material, and that use of acid is not attempted to be banned; that what is attempted to be banned by the City at this point is the use of acid to help fracture a reservoir and allow it to become fluid through the use of that acid on the surface; that there are other areas within the code that relate to the use of acid and how that can be done without any issue; he stated that there is no issue, that the

quantities are very small and they're regularly used throughout versus the use of acid for the purposes of fracturing the reservoir, where there are much higher quantities of acid that remains there for a specific period of time, this being what they are attempting to ban. He stated that as they continue to look at this and take into consideration Vice-Chairman Piñon's comment, this is something that may need to be revisited.

Commissioner Diaz asked why an EIR is not being conducted for this oil and gas code update.

Mr. Perez explained that what typically happens when you start a project, such as this oil code project, you go through all different layers of what can be done with CEQA; in this particular case, they looked at the potential notice of exemption to see if the project could be exempt; that because the regulations proposed here are all intended to improve the environment, they're all intended to provide a series of standards within which any oil company can come in and apply for a project, but that it is actually strengthening the environmental standards versus creating an opportunity for things to be negatively impacted environmentally; and that they found it could apply within Categorical Exemption No. 15308, Actions by Regulatory Agencies for Protection of the Environment. He explained that this is a series of actions the City is intending to take for the protection of the environment; and that the code as proposed is replete where requirements and development standards exist that will protect the environment, and it applies to that for that exception. He stated that, therefore, they did not look beyond that to see if any other layers would be applicable to the code that the City was attempting to adopt, such as any other requirement; and stated this fits within the categorical exception, and there is no necessity to go beyond that.

Chairman Faletogo opened the public hearing.

Richard Vaughn, resident, stated that cities throughout Southern California are implementing total bans on oil drilling, such as Hermosa Beach and Whittier; noted his belief that Carson has received second class status; and noted his confusion with comments made tonight of whether the City can or cannot ban all future oil drilling. He addressed a comment by City Attorney Soltani that the City is currently left defenseless because of its weak ordinance in effect now; and he suggested putting in place a temporary freeze on new permits until a new ordinance can be adopted -- not to deny anyone their rights, but simply say that the safety of the community has to take precedence.

Mr. Vaughn stated that with regard to MRS, he asked why there isn't a second consultant firm onboard, noting there may be a conflict of interest with this one because their website indicates they do a lot of work for oil companies. He asked if there were other consultants brought into this mix; and mentioned that Whittier used more than one consultant for their endeavors. He noted that many states across the United States are overruling local authority regarding fracking bans; that the Supreme Courts are ruling that local, special bans on fracking are void; and advised that there are a great number of current cases in the nation where local municipalities are losing in the court system.

Benjamin Hanelin, Latham & Watkins representing Californians for Energy Independence, noted he did submit two letters to this Commission this afternoon, and he apologized for the late submittals and noted his hope additional time is given for the

Commissioners to read the important points made in these two letters. Mr. Hanelin stated that the first issue relates to the proposed ban on well stimulation; advised that the state has exclusive jurisdiction over all subsurface aspects of oil and gas regulation banning particular types of oil and gas production; that it is the state's exclusive regulatory territory; and that the state legislature made clear this was the case when it adopted SB 4, which allows well stimulation and directs DOGGR to closely regulate the practices. He stated that Carson's proposed ban would be preempted and it would be void; and that the City should not take on this risk, as there is no reason to do so.

Mr. Hanelin noted that the question was asked whether there is expressed preemption in the City's statute; stated he agrees with City Attorney Soltani's comment that the state's statute does not explicitly preempt activities by the City of regulation of down hole activities; he mentioned that in 1975, the Attorney General's opinion stated, "We observe that statutory administrative provisions appear to occupy fully the underground phases of oil and gas activity." He stated there are two questions when you are looking at preemption: is there an express preemption or is there an implied preemption; has there been an occupation of the field; he noted his belief there is no question that the state has occupied the field with respect to down hole regulation, which is what a ban on well stimulation attempts to do, that it attempts to regulate down hole activities; stated that they think the law is clear on this point, that the City cannot do that; and that if the City does, it is inviting litigation they will have to defend and stated the City will lose.

Mr. Hanelin stated that they believe the ordinance creates substantial taking liability against the City; advised that many of the oil rights here are held in split estates, meaning the mineral rights are held separately from the surface rights; stated that the scope of the oil and gas code is so extensive that they believe it makes it impractical to recover those resources; and that adopting the oil and gas code and banning well stimulation would open up the City to liability from mineral owners, from operators and from land owners within the City. He stated that specifically on the oil and gas code itself, it appears to be regulation for regulation's sake; and noted there are extensive regulations on the state level for oil and gas operators, and there is no reason for the City to step into this arena. He noted that the point has been made the oil and gas code has not been updated for 20 years; and advised that there have been no instances of upset in Carson in the last 20 years and there is no reason to undertake this effort now.

Alexandra Nagy, representing Food and Water Watch, urged the City to slow down on its adoption of this code update, encouraging the City to look at the Earth Justice recommendations listed in their letters. She stated they are concerned with the acidizing aspect and how that seems to be allowed by the petroleum engineer; and she quoted the following from the Earth Justice letter, "The exemption of well stimulation, other than hydraulic fracturing, is necessary to recover the owners'/operators' reasonable investment backed by expectation established through investment," noting that is where they are at issue. She stated that it needs to be connected to vested rights; and that if the petroleum administrator is the only one with the authority to say this company or this operator can use acidizing, if other vested rights claims are going before a judge, this should go before a judge as well and it should be connected to state law. She referred to Measure J, which was passed in San Benito, a recent fracking ban, noting it's a much narrower definition of what vested rights are and is connected to

property rights; and that they would have to prove they would need to use acidizing to continue to claim property rights and their constitutional rights.

Ms. Nagy referred to setback limits, asking to see a rendering of the map which includes the 500-foot setback limit to commercial property, noting she is unclear on what that means; when talking about 50-foot setbacks for public roadways, walkways, railways, she stated she is concerned about accidents, spills, blowouts if those areas are near public avenues, believing this setback to be insufficient; and stated that even though recommendations were not made, she suggested working together to figure that sum out as well. She referred to where the wells exist that are within the 1,500-foot setback range, asking when those wells will be phased out; stated she does not believe this proposed code addresses that; and she stated that the 1,500-foot setback should retroactively apply to all wells and phased out over time. She highlighted a report prepared by the California Office of Environmental Health Assessment, saying that Carson ranges in the top 15 percent of the most polluted communities in the state; and she urged the City to please take that into consideration when looking at increasing setbacks, stating that the environmental injustice in this community needs to be addressed.

Daryl Gale, Los Angeles, requested the City slow down and consider the health issues of this code update; stated that at least 80 percent of known fossil fuels must stay in the ground if there is any chance of averting catastrophic climate change; noted there is no rational justification for more oil exploration and more drilling; noted her concern with contaminating more homes and communities; pointed out that more clean energy jobs are needed; and that society must move away from its use/dependence of fossil fuels. She impressed upon the oil and gas company people in the audience that it is time to diversify their businesses; advised that the price of photovoltaics keeps declining and the technology is continuously improving; that the price of electric cars keeps decreasing; that battery storage technology is also becoming more sophisticated for heating and cooling our homes; that California is increasingly leading in clean energy jobs; and stated she looks forward to a more comprehensive amendment of this update in the future.

Robert Lesley, resident, stated that the Earth Justice letter references California drilling, fracturing, specifying reports of incidents; that the letter addresses the potential for down hole drilling blowouts; and commented on the recent Torrance refinery explosion that was felt miles away, noting that a 1,500-foot setback is not sufficient. He stated that a refinery representative told him that abandoned wells can explode and that many still contain an excessive amount of oil. He expressed his belief that the violation provisions in this ordinance do not address true violations; that it should carry a punishment of a misdemeanor at the least, not just a fine, nor does it specify enforcement or show who will be a litigant; and he stated that it should address what qualifications and job duties are required of the petroleum administrator.

Michael Bowles, resident and also on behalf of Californians for Energy Independence, asked the Commission not to adopt this ordinance, stating that energy production activities in this community would jeopardize thousands of jobs and local tax revenues that support essential services, such as police, fire and schools; pointed out that local energy operations in Carson have generated millions of dollars in local tax revenues each year funding vital services that are crucial to the Carson residents' way of life,

noting this includes maintaining neighborhoods, police and fire protection, money to improve local schools, parks, libraries, and roads; and stated that without this tax revenue from local energy operations, Carson would be forced to make devastating cuts to critical services. He stated that for decades, energy operations have directly and indirectly created and sustained hundreds of good paying jobs for Carson residents and have generated millions of dollars in economic activity; and highlighted a recent independent economic report which stated that a single proposed energy project in Carson would provide \$25 million in paychecks to local workers every year while creating more than \$1 billion in economic activity over the next 15 years. He urged this body to recognize that the state is moving forward with the strictest regulations in the nation for hydraulic fracturing and other well stimulation activities; and urged this body not to adopt this ordinance.

Frank Zavala, Building and Construction Trades Council, urged caution in adopting this ordinance and to allow some reworking of the proposed oil and gas code; and noted his confusion with all of the conflicting information and asked to have more time to read the letters and information that has been submitted late this week. He advised that the Trades Council is closely working with many refineries to improve the safety standards of the workforce, referring to the passing of SB 54; and he stated they seek safety for not only the workforce but also for those who live in and around the surrounding communities of refinery operations. He urged this City to take its time to fully understand what is being proposed.

Ed Rendon, Southern California Political Director for Teamsters Council Local 42, stated that because of Carson's proximity to the port, hundreds of teamsters and their families live here in Carson, noting that he is here representing those members; stated that oil policy is important to California, as thousands of jobs depend on this industry for their families' livelihood; and he stated it is important to carefully consider this update and not create a precedent that will negatively affect the industry's willingness and ability to continue to do business in California, noting the job loss alone would be devastating as will the loss of billions of dollars this industry contributes to important state and local services. He advised that Governor Brown has put together a task force to look at the oil extraction activities in California, urging this body to allow the governor to lead the way when it comes to policies affecting extraction; stated that they have the resources to properly and scientifically assess the risk of different types of extraction; and noted the high potential for local policy makers to bow to public pressure that might not always be based in accurate science. He urged this City to do what is best for the community at large.

Chris Hannon, Los Angeles/Orange County Construction Trades Council, stated that he represents 140,000 hardworking men and women working in Orange and Los Angeles Counties; stated that many of these members live in Carson, which has been a working class community for generations and earning a living working in the oil and construction industry; and he urged this Commission to delay action on this item and to do a thorough job in evaluating the entire proposal. He expressed his belief that SB 4, which regulates oil and gas stimulation, adequately regulates this industry; advised that SB 4 directed an independent study be done, noting it won't be completed until July 2015; and that he believes this update is being rushed. He pointed out that City documents from August 2014 regarding the selection process of the contractor to prepare this report indicate that one of the contractors was excluded because they couldn't keep up

with the accelerated schedule of this project; and he urged this City to allow time for this project to be done correctly. He added he is not saying any amendments are necessary, but if amendments are to be made, they should be thought out completely. He pointed out that this industry is already tightly regulated and it does not need more regulation that will harm workers and harm the recovery of working families in California.

Tommy Faava, resident and representing IBEW Local 11, urged this body not to make a decision this evening and to continue it, believing the proposed update is filled with flaws; and he stated that all interested parties should be involved in this entire process.

John Hawkinson, chief financial officer for the Carson Companies, advised that the Carson Companies and its shareholders have owned mineral rights in Carson and surrounding areas for hundreds of years; that this company and its affiliates have been involved in oil production since the 1920's; noted that despite the amount of production over that period of time, there are still significant amounts of recoverable oil and gas in the ground; expressed his belief that the proposed language in the ordinance would effectively make oil and gas production economically and physically impossible, thus cutting off their access to the minerals they own; and that passing this ordinance would constitute a taking of their property without just compensation. He stated that if this update happens, it will force them to seek restitution from Carson through the legal system, noting that the broad, over-reaching language of this ordinance would leave them no choice.

Tom Muller, Manatt, Phelps, & Phillips, representing the Carson Companies, noted that he submitted a letter today; and stated he respectfully disagrees with some of City Attorney Soltani's comments related to her understanding of the letters provided to this body. He explained that the mineral estate is different from the surface estate; he provided an example, stating that if the only thing he owns is the minerals and the City is attempting to ban time-honored, long-used production techniques, such as acidization, the City is preventing him from using those minerals, and therefore the City has taken his minerals. He advised that these minerals are worth hundreds of millions of dollars; that it is a huge value to the hundreds of mineral owners who own these materials; advised that the people who own these rights are going to have to vindicate these rights, thus exposing Carson to a lot of expensive litigation; and stated that Carson will not win that fight.

Mr. Muller stated that the second issue is the preemption issue; stated that acidizing has been used for 120 years in the oil business, a long-standing technique; and noted that tonight, he has not heard anything about what's wrong with that technique. He stated it is not harmful; and that it is less harmful than many of the industrial processes that are currently going on within a mile or two of this property. He stated it's very clear that while he agrees with the City that many cities do regulate the surface activities which surround oil production, he does think there is not much of a problem with what's proposed in that area; but pointed out that they do not regulate the down hole aspects of oil production itself. He added that this is not a localized Carson issue, that it is a nationwide issue; and pointed out that this nation needs to produce oil.

Harry Wilson, resident, asked why this ordinance does not address any emergency routes or monitoring system to warn the community of accidents or emergency situations; highlighted a recent incident in Carson, noting a number of residents were

concerned there were no sirens, horns relating to that incident; and stated that several residents' properties were affected by that incident. He urged the City to adopt the most restrictive ordinance as possible and take into consideration the health and welfare of the residents; and he stated that the ordinance should be so restrictive that it discourages all oil companies from seeking to drill for oil in Carson.

David Nofflin, resident, noted his concern the ordinance does not address slant drilling and the running of pipelines under homes and those safety aspects; asked how the slant drilling works and how it affects the safety of the residents; and questioned if the rights of the mineral owners exceed the rights of the residents.

Diane Thomas, resident, expressed her belief the oil companies only care about profits and not the health and welfare of the residents; and she stated that she likes the proposed ordinance, but noted there are some areas that need to be tightened. She cautioned the City not to work too slowly in adopting the update though, noting that there will be future interest when the price of oil increases; and she stated that Carson has a responsibility to keep its residents safe.

Alfred Sattler, congratulated Carson for this draft ordinance, noting it is one of the best in California thus far; and he asked that the City allow more time to review the late communications. He invited the construction trades to join in supporting construction of renewable energy and energy conservation facilities in Carson.

Pilar Hoyos, representing Watson Land Company, expressed concern with this proposed oil code; urged serious consideration in the deliberations; stated that outside forces with an anti-oil, anti-drilling agenda have been creating unwarranted fear with misleading information; and that those pushing for a ban on oil drilling have kept quiet the fact that the city of Compton recently rescinded its ordinance after facing a costly legal challenge. She stated that the proposed oil code is fueled by the fervor to stop the Oxy/CRC efforts to reopen the Dominguez Oil Field which had been operated for almost 70 years without incident; advised that some residents have been misled about the potential dangers from oil drilling in the center of Dominguez Technology Center, a 450-acre industrial park; and pointed out that no one would have more to lose from any purported dangers than Watson Land Company, which owns hundreds of millions of dollars in this master planned center. She pointed out that Watson Land Company does not own the oil and gas mineral rights; and that those are owned by the Dominguez Energy Company, made up of individuals and a number of charities serving the most needy.

Ms. Hoyos expressed her belief that the proposed oil code seems to be an exercise in punishing the industry that outside interests don't like rather than providing any necessary or well-reasoned protections. She noted that with the Oxy/CRC project EIR now moving forward, they question what urgency exists to hastily adopt an ordinance that will put the City in serious financial risk; pointed out that it stands to reason the mineral rights owners, as heard this evening, will not idly sit by and allow the taking of their oil and gas, as it represents significant value; and noted that the Constitution of the United States does not allow anyone's property rights to be taken by government action without just compensation. She added that the outside anti-oil forces have no real stake or interest in this community; that they want the Carson citizens to take on their national battle against the use of fossil fuels, yet they will not be the ones impacted by costly

litigation; and stated that the significant costs cannot be borne by Carson. She noted that Watson's holdings and investments in Carson are significant; and for this reason, they are very concerned about the potential negative impacts on the community and are urging the Commission to act with caution to protect the community and not rush to adopt this ill-advised and unnecessary ordinance and to reject the proposed oil code and direct staff to work with the industry, the community, and the mineral rights owners' representatives to develop reasonable regulations that do not put the City at risk and provide well-reasoned protections for the community.

Chairman Faletogo closed the public hearing.

Commissioner Verrett moved, seconded by Commissioner Brimmer, to continue this matter to the Planning Commission meeting on April 14th, directing staff to compartmentalize the proposals and to consider each item separately, at different meetings if necessary.

City Attorney Soltani clarified her understanding of the motion is to continue the public hearing to April 14th; for staff to break down the issues in the oil code into three categories to simplify the issues and put together responses to the issues raised this evening; and to provide the Commission packets earlier. City Attorney Soltani stated that all the issues should be taken up at one time when it comes back to the Commission, that it should be looked at comprehensively; and stated she does not recommend separating the health and environmental issues at different hearings. She stated that staff will try to further simplify the three components and work with the consultants to put together handouts that keep the three issues separate.

By way of a friendly amendment, Vice-Chairman Piñon asked that this item be the only issue on the April 14th agenda.

The makers of the motion accepted the friendly amendment.

City Attorney Soltani also requested this hearing be held in the Council Chambers at City Hall.

Commissioner Brimmer asked that the comments be clearly responded to and incorporated into the documents.

City Attorney Soltani invited the Commissioners to contact her office or City staff for clarifications.

Commissioner Brimmer asked whether an analysis of local city ordinances was performed.

Planning Manager Naaseh urged the Commissioners to contact staff with specific questions or clarifications on any matter, reiterating that this offer applies to all the Planning Commission agenda items.

Chairman Faletogo asked that slant drilling be addressed and for staff to work with the community and industry to develop other regulations for consideration.

Commissioner Gordon stated that the document should point out why this City is proposing to ban fracking, providing accurate/comprehensive information on what impacts this ban will create.

Planning Manager Naaseh stated that if the Commission is willing, staff and the consultant can conduct small group meetings with the Commissioners, conduct workshops, or meet one-on-one with the Commissioners to provide clarifications, agreeing that the issues are very complex/detailed.

The motion to continue this matter to April 14th carried, 9-0.

12. PUBLIC HEARING

C) Zone Text Amendment No. 20-15

Applicant's Request:

The applicant, city of Carson, is requesting the Planning Commission consider adoption of an Ordinance prohibiting hydraulic fracturing ("fracking"), acidizing and any other form of well stimulation and the associated CEQA finding for properties citywide.

13. WRITTEN COMMUNICATIONS None

14. MANAGER'S REPORT None

15. COMMISSIONERS' REPORTS

Vice-Chairman Piñon stated that on February 10th, there was an open tryout for a women's football league at Carriage Crest Park; and that he met with the league president and discussed the possibility of having the Los Angeles team play at the StubHub Center. He added that on February 20th, he attended the press conference announcement at the Community Center for the NFL stadium proposal; and that on February 21st, he moderated an election debate at Colony Cove Mobile Home Park.

16. ADJOURNMENT

At 10:15 P.M., the meeting was formally adjourned to Tuesday, March 10, 2015, 6:30 P.M., Helen Kawagoe City Council Chambers.

Chairman

Attest By:

Secretary