

MCGC Neighbors' Notes to Provide Context: *The email below was written by an engineer with 40+ years in the Oil and Gas Industry. He sent this email to 2 City Council members, Renie Peterson – Ward II and Molly Markert – Ward IV, after a City Council Study Session on August 25, 2014, where an update on Oil and Gas Development was given by the Planning Department. Council Member Peterson let the Planning Department know that they should not be granting waivers to the Oil and Gas industry without discussing them with City Council first, due to the provisions of Section 146-1207 Oil and Gas Facilities. This is the ordinance that City Council passed in 2012 to process Oil and Gas Development Applications. Council Member Markert agreed with Council Member Peterson. Council Member Pierce – At Large, disagreed with Council Members Peterson and Markert by saying that Section 146–1207 allowed for waivers. The public is not permitted to speak at Study Sessions, so Council Member Pierce’s statement could not be rebutted or clarified by members of the public who were in attendance. The email below was written to clarify the terms of Section 146-1207. MCGC Neighbors was given permission by the author to publish this email. We removed any personal information and made a few minor spelling changes for readability.*

While I have High respect for Member Pierce's views on most issues, he was factually incorrect in his rebuttal to your comments about waivers in yesterday's study session:

He observed that you can't squawk about Staff granting waivers when Council put in the waiver clause in the Oil and Gas law. BUT...the muni Oil & Gas 146-1207 reg that you passed **allows only 2 reasons for a waiver** (ref: 146-1207(H) Waivers):

1. A city requirement violates Colorado's Oil and Gas Commission rules, or
2. A city requirement violates the US or Colorado constitution as an "illegal taking".

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It does **not** allow waiver for:

- barbed wire fencing in lieu of the law's required slatted chain link fence for visual mitigation
- lack of planting because of no water at site, even though the **Operators haul in tens of thousands of gallons for fracking**, or that the State successfully plants thousands of trees for snow barriers along our highways, all without irrigation.
- equipment height in excess of 20 ft, even though the **Operators have produced no engineering to support why 31 ft is necessary**, or that two smaller towers, or even a horizontal vessel won't work, or that other technology like low differential pressure compression blowers won't work.
- Flaring instead of vapor recovery, even though there was a **flame in excess of 30 feet high** burning for Weeks at their Jewell wellsite.
- Operators exceeding even the 31-foot illegal waiver by **installing even higher flare towers in the last 2 weeks**.

The law also does not allow waiver by the Planning Director, but **only by the Planning and Zoning Commission and only after a Public Hearing**. It does not allow rampant waivers to be developed in secret and in the deep bowels of the 2nd floor of AMC!

I think it's past time for the **City Manager to reign in his troops**, and stop frustrating the clear will and intent of elected Council that was so painfully crafted in law after much deliberation and with every opportunity for the Industry and Staff to have input.

After my 40+ years in the Oil and Gas industry, I'm for development of this resource. But NOT when it is being done in such a shoddy fashion in our city. ConocoPhillips had every opportunity, and more than ample corporate resources, to **read the rules** before embarking on their plans in Aurora. For the life of me, I can't understand why they have **chosen to be such lousy neighbors**, and refuse to even put up a screening fence like our law requires to mitigate visual impacts.

Thanks for all you do on behalf of our citizenry. Full copy of the Waiver section of the law is below for ready reference.

Municode 146-1207(H) Waivers.

Generally. An applicant for an oil and gas permit under this section may apply for a waiver to a

development standard if the application of this section creates an operational conflict with OGCC regulations or constitutes a taking in violation of the United States or state constitutions.

Criteria. The planning and zoning commission shall grant a waiver to an applicant if the commission after considering the evidence presented at a public hearing finds either of the following:

- (1) The applicant establishes that the application of the development standard to the applicant or the applicant's property results in an operational conflict with the Oil and Gas Conservation Act of Colorado or OGCC regulations; or
- (2) The applicant proves that any development standard applicable to the applicant or the property constitutes a taking or damage by the city that violates the United States Constitution or article II, section 3 of the state constitution.

Approval. If a waiver is granted, the applicant shall meet the development standard to the maximum extent possible, and the approval shall be for the minimum waiver that will afford relief with the least modification possible to the development standard.

Appeals. An applicant may appeal the denial of a waiver to the city council, provided notice of appeal is filed with the city manager within 14 days of the planning and zoning commission's decision. The city council may overrule the planning and zoning commission by majority vote.