

1. Agenda

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Documents:

[2022.02.01 PACKET.PDF](#)



WORK SESSION OF THE TOWN BOARD

**Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, February 1, 2022 6:30 p.m.**

This is an IN-PERSON meeting at the location and time noted above.

You may also join virtually using Zoom:

Phone: 1-346-248-7799 or 301-715-8592

Web: www.zoom.us/join

Use this Meeting ID: 875 4635 9034

- I. WORK SESSION CALLED TO ORDER – Mayor William Karspeck**
- II. REVIEW OF RESPONSE TO 2020 POLITICAL RALLIES**
- III. OIL AND GAS REGULATIONS DISCUSSION**
- IV. ADJOURN**

February 1, 2022 Work Session Agenda

The order of agenda items listed above are approximate and intended as a guideline for the Town Board. Individuals needing special accommodation may request assistance by contacting the Town Clerk, 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-2643 at least 24 hours in advance.



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EDWARDS & AMATO P.C. CONSULTATION REVIEW FOR THE TOWN OF BERTHOUD, CO

BACKGROUND: The Town of Berthoud contracts with the Larimer County Sherriff's Office (LCSO) for law enforcement services. On both July 26, 2020, and July 30, 2020, within the Town of Berthoud, protests occurred. As a result of the protests and the LCSO response to the protests, Berthoud desired a review of the IGA and other factors that could provide additional resources and/or support for LCSO's enforcement in Berthoud.

The Town contracted with Edwards & Amato (the "Firm") to provide law enforcement consultation to review all current and future options for the Town of Berthoud. This review will be of all factors to include the IGA between Berthoud and LCSO, current or future statutes and ordinances that may benefit enforcement, and other relevant law enforcement analysis of protests and standard operating procedures for public demonstrations/rallies/protests and counter protests.

SCOPE: The Firm shall provide an analysis of the law enforcement function provided by the Larimer County Sherriff's Office pursuant to the contract between the Town of Berthoud and Larimer County. The analysis shall be of contemporary law enforcement principles and standards for purposes of:

1. Assisting the Town with terms and conditions for inclusion into said contract; and
2. Assisting the Town with development of Town policies and standard operating procedures and/or joint Town and Larimer County Sheriff Office policies and standard operating procedures for public demonstrations/rallies/protests and counter protests.

DOCUMENTS PROVIDED: On June 2, 2021, the Town of Berthoud provided the following documents to the Firm:

Municipal Code Chapters 17 and 20
2021 LCSO Contract
2020 LCSO Contract
August 2020 After Action Report
December 2020 After Action Report
Complaints or Concerns

DOCUMENTS REVIEWED:

Municipal Code Chapters 17 and 20
2021 LCSO Contract

2020 LCSO Contract
August 2020 After Action Report
December 2020 After Action Report
Complaints or Concerns
Meeting with and review of Board of Trustees meeting
Memo from LCSO to Town of Berthoud Mayor & Trustees
Colorado Attorney General's Investigation and Findings (City of Aurora matter)
Colorado State Statutes
Colorado Senate Bill 20-217
Colorado House Bill 21-1250
Maldonado v. City & County of Denver
Miscellaneous articles, papers and reviews concerning Law Enforcement in Colorado

ADDITIONAL RESOURCES (Interviews):

Cpt. Shellhammer, Larimer County Sheriff's Office
Lt. Troy Badberg, Larimer County Sheriff's Office
Greg Biggers, Larimer County Sheriff's Office
Gordon McLaughlin, District Attorney
Chris Kirk, Town of Berthoud Manager
Erin Smith, Town Attorney

DISCLAIMER: The Firm, although a Professional Legal Corporation, has reviewed and analyzed the material described in this report. The material as well as the analysis and conclusions are a law enforcement consultation provided to the client, not legal advice. This consultation is provided as a non-legal service to provide information and analysis consistent with constitutional policing and contemporary law enforcement standards. All analysis, conclusions and recommendations are predicated on a consistent best practices analysis. This analysis considers both the First Amendment precepts as well as subsequent case law interpreting the First Amendment as applied to protest situations. As such a brief analysis of the First Amendment law as it applies to protests, counter protests and other First Amendment protected activity is necessary. All analysis is provided as a tool to assess and review the current agreement between Berthoud and the LCSO for law enforcement services.

Although this review is being performed as a result of two incidents that occurred in 2020, consultants will not be evaluating the specific conduct of LCSO during those incidents. However, the incidents do provide a backdrop for analysis and lessons learned at these events. The review and analysis will refer to the incidents in that manner but will not address the questions originally raised from those previous incidents as to whether or not there was responsibility to act by LCSO, a failure to act but by LCSO, or different means and mechanisms for LCSO to perform the required duties. This review will look at best practices for First Amendment protected activities in light of the prior incidents.

ADDITIONAL BACKGROUND:

2020 Event: In reviewing all material concerning the 2020 events, including videos created at the event, post-incident de-briefs, complaints and correspondence regarding the incidents, interviews with individuals at or responsible for the event, the following information was confirmed.

- LCSO was on scene and provided law enforcement duties during the events.
- LCSO used Deputies to engage with individuals as well as a means to separate parties.
- LCSO Deputies attempted to keep opposing parties separate to avoid physical confrontations.
- LCSO did not have or use physical barriers between the opposing sides.
- Individuals from opposing groups did engage with each other.
- LCSO engaged with members of both sides of the event.
- LCSO allowed both sides to express their opinions without infringing on 1st Amendment protections.
- LCSO did not use force in the performance of their duties at the event.
- LCSO did not take any immediate enforcement action at the event (arrests, detentions etc.)

CONSTITUTIONAL/STATUTORY CONSTRAINTS:

1st Amendment

The First Amendment to the United States' Constitution declares that "Congress shall make no law respecting an establishment of or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

As stated in the amendment, protesting is considered to be a form of expressing one's beliefs and therefore allows an individual to legally assemble with fellow citizens to voice their grievances. Some examples of expressing one's rights include marches, sit-ins, sleep-ins, silent protests, and burning flags. These activities are protected by the First Amendment unless the actions cross the established line of criminal conduct.

While the government cannot deny its citizens the right to protest, the ways in which they can regulate them include lawful time, place, and manner restrictions. Time, place and manner restrictions must be content-neutral, narrowly tailored to serve significant government interests, and leave open ample alternative channels of communication. Gatherings that evolve into violence, theft, or destruction of property are forms of protesting that are not permitted and can be legally restricted by the government.

Case Law interpreting 1st Amendment rights specific to protests & events

The 1st Amendment provides Constitutional protections for individuals and groups to express their opinions, including opinions that may offend others, even when the person expressing their opinion has the intent to offend others. These protections exist not only in private, but also in the public forum, which clearly includes public streets, sidewalks, and parks. As a group, citizens can express themselves in protests, counter-protests and other 1st Amendment protected activities on government property with varying degrees of protection depending on the type or nature of the government property.

In *Verlo v. Martinez*, 820 F.3d 1113 (10th Cir. 2016), the Court gives a good overview of the three 1st Amendment areas for speech on government property: the traditional public forum, the designated public forum, and the nonpublic forum.

“Turning now to the constitutional restrictions on speech, our analysis is guided by Plaintiffs’ wish to engage in First Amendment-protected activity on government property. ‘Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.’ *Cornelius*, 473 U.S. at 799–800, 105 S.Ct. 3439. But in some instances, the public may have acquired by tradition or prior permission the right to use government property for expressive purposes. See *id.* at 802, 105 S.Ct. 3439. To determine when and to what extent the Government may properly limit expressive activity on its property, the Supreme Court has adopted a range of constitutional protections that varies depending on the nature of the government property, or forum. *Id.* at 800, 105 S.Ct. 3439.

The Court has identified three types of speech fora: the traditional public forum, the designated public forum, and the nonpublic forum. *Id.* at 802, 105 S.Ct. 3439. Traditional public fora are places that by long tradition have been open to public assembly and debate. See *id.*; *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) (‘At one end of the spectrum are streets and parks which ‘have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.’ (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515, 59 S.Ct. 954, 83 L.Ed. 1423 (1939))). In these traditional public fora, the government’s right to ‘limit expressive activity [is] sharply circumscribed.’ *Id.* A designated public forum is public property, not constituting a traditional public forum, which the government has intentionally opened to the public for expressive activity. *Id.* The government is not required to retain the open character of the property indefinitely, but ‘as long as it does so, it is bound by the same standards as apply in a traditional public forum.’ *Id.* at 46, 103 S.Ct. 948. If the property is not a traditional public forum and it has not been designated as a public forum, it is a nonpublic forum. ‘Access to a nonpublic forum ... can be restricted as long as the restrictions are ‘reasonable and are not an effort to suppress expression merely because public officials oppose the speaker’s view.’ 6 *Cornelius*, 473 U.S. at 800, 105 S.Ct. 3439 (brackets omitted) (quoting *Perry Educ.*, 460 U.S. at 46, 103 S.Ct. 948).

Because the nature of the forum dictates the standard of scrutiny with which restrictions on speech are reviewed, courts typically begin the analysis of a challenge to restrictions on speech involving government property by identifying the nature of the forum involved. See, e.g., *Doe v. City of Albuquerque*, 667 F.3d 1111, 1128 (10th Cir.2012)."

Finally, in a local case, *Maldonado v. City & County of Denver*, Civil Action No. 1:20-cv-03098-RBJ (October 5, 2021), a federal judge ruling on a Motion for Preliminary Injunction, provided analysis specific to the location of First Amendment activities. Dealing with Red Rock State Park, the court stated that "The relevant historical inquiry is whether the type of place at issue has historically been used as a place of public assembly and debate, not whether there is in-fact a long history of a particular place being used for such gatherings. A newly created lawn/park in front of a state capitol building would not avoid being designated a traditional public forum because it has no history of actual assembly.

Continuing its analysis, the court held that the government may close a public forum by, for example, changing its physical characteristics or principal use. In some sense the government always retains authority to close a public forum, by selling the property, changing its physical character, or changing its principal use. Otherwise, the State would be prohibited from closing a park, or eliminating a street or sidewalk.

Although this case is not an appellate case nor one addressing the merits of the action, the court's analysis provides some insight into a very recent, local case dealing with the government's attempted restriction of First Amendment activities.

Current State Statutes & Town Ordinances

The Firm reviewed both State statutes and Town Ordinances that apply or may apply to enforcement at 1st Amendment events. Both Colorado and Berthoud have conduct specific laws to address criminal conduct at these events. Given the current environment, the Firm analyzed both Berthoud and Colorado laws for not only constitutional compliance, but also for their ability to provide law enforcement with the tools necessary to maintain order and protect individual's rights.

Qualified Immunity (Federal and State)

Qualified immunity is a type of legal immunity. "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably."

Specifically, qualified immunity protects a government official from lawsuits alleging that the official violated a plaintiff's rights, only allowing suits where officials violated a "clearly established" statutory or constitutional right. When determining whether or not a right was

“clearly established,” courts consider whether a hypothetical reasonable official would have known that the defendant’s conduct violated the plaintiff’s rights. Courts conducting this analysis apply the law that was in force at the time of the alleged violation, not the law in effect when the court considers the case.

Qualified immunity is designed to protect all but the plainly incompetent or those who knowingly violate the law. Law enforcement officers are entitled to qualified immunity when their actions do not violate a clearly established statutory or constitutional right.

The Enhance Law Enforcement Integrity Act (SB20-217) allows plaintiffs to bypass “qualified immunity” which proponents claim is a barrier to holding government agents accountable in court.

The Colorado law creates a new “civil action for deprivation of rights,” which will allow Coloradans to sue officers for damages in *state* court, if those officers violate the Colorado Constitution Bill of Rights or “fail to intervene” when those rights are violated.

Critically, the Act explicitly states that “qualified immunity is not a defense to liability” and also exempts this new cause of action from the Colorado Governmental Immunity Act. SB20-217 applies to all local law enforcement officers, sheriff’s deputies, and as a result of HB 21-1250 Colorado State Patrol officers.

The new Colorado law doesn’t end the doctrine of qualified immunity; Section 1983 claims filed by Coloradans in federal court would still be subject to qualified immunity. Only the U.S. Supreme Court or Congress has the power to alter or abolish qualified immunity, though prospects are questionable at this time.

Current IGA Analysis

The current Municipal Law Enforcement Services Agreement between Berthoud and LCSO, effective date January 1, 2021, provides in Section 1.1 that the “County agrees, through the Sheriff, to provide general law enforcement services within the corporate limits of the Town to the extent and in the manner hereinafter set forth in this Agreement. Annually, the Sheriff and Town will negotiate the budget, which sets forth the level of services provided and the associated costs”. General law enforcement services, as provided in the agreement includes the basic level of services which are provided for unincorporated areas of Larimer County.

The agreement also states that, “The Sheriff will provide equipment, training, uniforms, vehicles, and supplies for deputies provided hereunder, on the same basis as the Sheriff provides to deputies assigned outside of the Town, adequate to provide the services agreed to hereunder.

For Special Events, the agreement, in Section 2.9 provides “When the Town requires additional staffing for special events, beyond what the contract deputies can supply, the Sheriff will work

with the Town to provide extra staffing. Volunteers, such as Reserve Deputies, Posse, and Explorers may be used, when available and appropriate, to supplement staffing. If extra-duty deputies are requested, the Town will be financially responsible for compensating the County for the hours worked by these deputies at the contractual extra-duty rate charged by the Sheriff's Office."

Resources provided by the Town...The Statement of Work and Budget Agreement provides that "The County, through the Sheriff's Office, will provide the services of one (1) full- time sworn sergeant, one (1) full- time sworn corporal, at the discretion of the city manager, six (6) full-time sworn deputies, one (i) half-time sworn investigator, and two (2) half time sworn School Resource Officers to assist the Town with law enforcement activities.

Practice/Procedure Analysis

After interviewing staff members of the Town as well as members of LCSO concerning the previous events in Berthoud, there appeared to be limited thoughts or conversations about a practical approach to handling 1st Amendment protected activities prior to the events of 2020. As with any law enforcement activity, planning before the event as opposed to reacting during the event allows for a more thoughtful and measured response.

ANALYSIS & RCCOMENDATIONS:

A necessary part of the analysis must begin with the understanding that law enforcement is in a unique position when dealing with First Amendment activity. Whether to take enforcement action or not is often a question for law enforcement at the scene. Under certain circumstances, it is better for law enforcement to make these decisions after careful consideration and review. This can occur at a later time with a debriefing, which provides an opportunity for less emotion and the benefit of additional parties to assist in the analysis. In situations where there are two or more divergent positions expressing their First Amendment rights at a single location law enforcement's primary function is to keep the peace and protect all individuals who are expressing their First Amendment rights. This often puts law enforcement in a position of having to make decisions on scene as to how to enforce current statutes or ordinances or to maintain the peace for the activity to continue.

Many law enforcement agencies around the country have taken the approach of identifying and documenting conduct and individuals at these events without taking enforcement action so as not to interfere with the First Amendment rights of the individuals or be put in a position where resources are being used for enforcement to the detriment of the resources being used to support the activities. With social media, body worn cameras and other mechanisms law enforcement has come to realize that after action reviews can often identify not only individuals but criminal conduct and allow law enforcement to make an informed decision after the fact as to potential charges. This also has the added benefit of taking emotion out of the analysis at the scene and allowing a cool disinterested assessment of all the activities and

conduct that occur. This approach is very beneficial for minor infractions or conduct that does not require immediate law enforcement intervention. Obviously, any conduct that presents a danger to the public or is so egregious as to require immediate law enforcement attention must be addressed at the scene. This tactic also provides to the public the perception that law enforcement is not out to stop the activity nor infringe upon individuals First Amendment rights but to keep the peace and only take enforcement action when necessary to protect citizens at the scene.

Statutory Options

When looking at potential prospective actions to be taken by the Town, prior to such action, the Firm recommends a review of all the relevant factors. Given the recent legislative changes within Colorado specifically Senate Bill 20-217 and House Bill 21-1250 which attempt to take away qualified immunity for law enforcement officers acting in color of law pursuant to state law claims, it becomes very important to understand the nature of the current legislative agenda. Creating ordinances or lobbying for state law change that would increase law enforcement authority as it relates to 1st amendment protected activities would likely not only be unsuccessful but counterproductive given the current state of the law and public perception in Berthoud and Colorado.

It is important to understand that any recommendations made as to the enforcement of criminal laws, either state or local, in relation to First Amendment protected activity must be looked at not only in terms of the First Amendment constitutional analysis and statutory analysis but also using the current societal expectations and norms. As this Firm has been hired to provide information, analysis and recommendations to assist the Town of Berthoud in future circumstances, it is incumbent to not only identify but address the political and social spectrum in which this analysis is being provided. To that end this Firm has not only reviewed the documentation specific to Berthoud and the Larimer County Sheriff's Office, interviewed members of all affected parties, but also reviewed recent Colorado State statutes, proposed federal and state legislation and Colorado Attorney General investigations to put in context the enforcement of criminal law when applied to 1st amendment protected activities. Evaluation of options cannot be conducted in a vacuum. Berthoud must consider the legal aspects as well as the political ramifications. Given the current view of law enforcement as well as potential federal and state intervention in local LE (consent decree or CO AG stepping in to investigate), decisions that do not consider all relevant aspects or decisions that do not contemplate consequences (intended or unintended) may damage Berthoud rather than assist Berthoud.

Intergovernmental Agreement

The language in the IGA provides for the services provided by LCSO to Berthoud for the general law enforcement function. The IGA does not specifically articulate the services or agreements in place to deal with special events or incidents.

In the next executed agreement, the Town should seek to add language to address situational needs. Although no agreement can adequately anticipate or prepare for the unexpected, the IGA should have language in it that provides for situational needs analysis and response by LCSO. In addition to the general law enforcement service/Special event staffing (currently addressed in IGA) and currently being provided pursuant to the IGA, language should be added to this agreement to allow/require for the LCSO to provide additional resources for unexpected and or pre planned events that occur within Berthoud.

IGA section 4.0, resources to be provided by the Town, should include not only contact individuals within the Town but specific information as to parking barriers or other hard facilities and hard resources that the Town can provide to LCSO to assist them in protests, counter protests, special events and other law enforcement challenges.

Within the IGA, Berthoud and LCSO should have the ability to provide for resources and or services specific to First Amendment events. This section should include pre planned events as well as unexpected events and should allow for appropriate resources available for law enforcement support regardless of the situation. This can include language concerning pre-approval for additional officers as well as the recognition of incidents in which additional officers may be necessary but cannot be planned for.

The IGA should provide for a process to work through the issues and expectations of both parties seeking a mutual agreement. Also formalized within the agreement, the Town of Berthoud's Board expectations of the Sheriff's Office and the assigned employees. Create a system for formal communication to occur on a regular basis as well as informal communication to occur on a regular basis or as needed. Formalize a quarterly report from LCSO to the Town Council to be provided by either the Sheriff or the designee, to address all issues of relevance and concern from the previous quarter as well as articulate anticipated plans events changes for the upcoming quarter. Communication should also include debriefs after major incidents in person when practical, by LC SO to the Board.

On multiple occasions, the Firm requested, from both the Town and LCSO, the LCSO policies related to First Amendment activities, enforcement actions related to First Amendment activities and policies related to special events and enforcement. The Firm also requested LCSO policies on accepting, investigating, and resolving of citizen complaints as they apply to complaints arising from law enforcement activities within Berthoud. **NOTE:** At the time this document was completed, the Firm had not received any policies to review. After completion of this document, LCSO provided contact information for a public records request to obtain the policies. However, based on the timeline for completion of the request, there was no option for obtaining the policies to include in the analysis. As such, this recommendation put forth by the Firm is for the Town to engage with LCSO to ensure that the policies and procedures for these critical activities are consistent with the Town's expectations, both legally, politically, and socially. These core policies should be reviewed by the Town prior to each renewal of the IGA.

It is recommended that the Town of Berthoud request and review policies from LCSO specific to accepting complaints, evaluating complaints, and resolving complaints as it pertains to law enforcement services provided to the Town. LCSO policy should provide that all complaints will be accepted whether anonymous, third party, or otherwise. The IGA should also require that LCSO provide the specific policy on how those complaints will be investigated as well as how LCSO will respond to the complaints. Agreement should also require LCSO advising Berthoud of the complaint and the resolution. LCSO shall be responsible for handling of all complaints, investigations and the resolution of situations involving LCSO personnel in the provision of the service provided to Berthoud.

Without the ability to review the policies currently used by LCSO, the Firm can provide an example of a constitutionally sound policy for the Investigation of Complaints for the Town to use an example:

INVESTIGATION OF COMPLAINTS OF EMPLOYEE MISCONDUCT

A. The Department is committed to maintaining a positive relationship with the community and to correcting any actions, practices, or behavior on the part of Department employees that are not professionally acceptable. To ensure that such investigations (“administrative investigations”) are conducted in a fair manner, and conducive to good order and discipline, the following procedures are established.

B. Critical to this effort is the Professional Standards function. The sensitivity and impact of these investigations requires that the commander of this function *[insert the position responsible]* have the authority to report directly to the Sheriff.

C. When receiving or investigating a complaint, whether against a sworn employee or professional staff, the agency shall follow all statutory requirements, personnel rules and regulations, and employee agreements.

D. Note that critical incidents, including any officer involved shooting, in-custody death, or other incident where the actions of a department employee result in death or serious injury, are not to be handled under this General Order, but rather under the procedure set forth in the Critical Incident Policy.

Receipt and Assignment of Complaints

A. The Department will accept all written and/or verbal complaints of employee misconduct, whether from an internal or external source, including anonymous and third-party complaints.

B. An employee who initiates, receives, or is notified of a complaint or allegation of employee misconduct shall immediately refer the matter to a supervisor. An employee who receives or refers a complaint shall not discuss the complaint or allegations with anyone other than

the supervisor to whom the complaint is referred, an internal investigator, or with the employee's chain of command.

C. The supervisor who receives the complaint must evaluate the complaint or allegation of misconduct and determine whether the complaint involves serious misconduct or misconduct. Regardless of who investigates the complaint, the supervisor shall contact Professional Standards, who shall document receipt of the complaint.

Administrative Investigations

A. The person assigned to complete the investigation will conduct a thorough investigation, when possible, making contact with the reporting party first to gather all pertinent information. All witnesses and any other parties will be contacted and interviewed, if available. Investigators shall comply with the requirements of Arizona law (see below) when contacting and interviewing Department employees.

B. Upon completion of the investigation, the investigator shall make findings of fact and appropriate violations. *[insert rank]* shall recommend discipline, based on the findings and seriousness of the incident and the employee's disciplinary history, and in accordance with **County** and Department disciplinary policy. The investigator shall complete the Department Investigation Form on all complaints. The completed investigation will be sent to the *[insert rank]* through the chain of command for review and final determination of discipline.

Without the ability to review the policies currently used by LCSO, the Firm can provide an example of a constitutionally sound policy for the First Amendment activities for the Town to use as an example:

CIVIL DISTURBANCES AND PUBLIC DEMONSTRATIONS

- A. Civil disturbances, labor-management conflicts and public demonstrations, and other events involving large or disorderly crowds require an appropriate response.
 - B. If possible, Law Enforcement presence and activities should be recorded by the agency (this section may expand law enforcement recording beyond the current statutory requirements).
 - C. If available, a supervisor shall be dispatched to the scene of any such event.
 - D. The role of police officers will vary depending on the nature of the event and the size and conduct of the crowd.
1. As in all other situations, it is the responsibility of officers to preserve the peace, prevent crime, arrest offenders, and protect the rights of persons and property.

2. At the same time, it is the responsibility of officers to remain neutral in their enforcement of the law, protecting the rights of all members of the public to assemble and to exercise their freedom of speech.

E. Officers must be mindful of both the safety of officers and members of the public when determining tactics to be used to control large disorderly groups.

RECORDING POLICE ACTIVITY

Members of the public, including media representatives, have a First Amendment right to record officers in public places, as long as their actions do not interfere with the officer's duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty in a public space.

RECORDING RIGHTS AND LIMITATIONS

- A. Persons who are lawfully in public spaces or locations where they have a legal right to be present—such as their home, place of business, or the common areas of public and private facilities and buildings—have a First Amendment right to record things in plain sight or hearing, to include police activity. Police may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. However, the right to record is not absolute and is subject to legitimate and reasonable legal restrictions, as follows:
 1. A reasonable distance must be maintained from the officer(s) engaged in enforcement or related police duties.
 2. Persons engaged in recording activities may not obstruct police actions. For example, individuals may not interfere through direct physical intervention, tampering with a witness, or by persistently engaging an officer with questions or interruptions. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not of itself justify an officer taking corrective or enforcement action or ordering that recording be stopped, as this is an infringement on an individual's constitutional right to protected speech.
 3. Recording must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic.
- B. Before taking enforcement action:
 1. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, where appropriate, prior to making an arrest.

2. Arrest of a person who is recording officers in public shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not, in itself, provide grounds for detention or arrest.
3. Arrest of an individual does not provide an exception to the warrant requirement justifying search of the individual's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant. Files and media shall not be altered or erased under any circumstances.
4. Officers may not order an individual to show recordings regardless of the value or reason the recording was made including those that have been made of enforcement actions or other police operations, unless an exigency threatening human life exists.

Inherent in First Amendment enforcement is the need for the policy to be broad enough for law enforcement to understand the fluidity of the situation. As such, this area of enforcement requires training on how to implement the policy. Some jurisdictions seek to have a lengthy First Amendment Activity policy that attempts to address every situation. This approach is unrealistic and not only creates confusion in the enforcement of the policy but also creates additional liability for the jurisdiction and law enforcement. The preferred approach provides a general First Amendment policy that is clear and concise and supported by continued training.

Berthoud should have the ability to review and provide input on the policy and procedures for both citizen complaints arising out of the law enforcement services provided to the Town and on First Amendment enforcement activities that occur within the Town.

Berthoud should also add to LCSO requirements/request LCSO to address/agree to, complete and confirm with Berthoud:

- Community policing within Berthoud
- Intelligence gathering
- Proactive interactions with protestors/counter protestors to obtain information prior to events
- Training (general for Law Enforcement issues and also specific to Berthoud).
 - 1A training on aspects of Law Enforcement authority pursuant to 1st Amendment
 - 4th Amendment training on lawful seizures

Practice/Procedure

In reviewing the statutes, ordinances and IGA, it became apparent to the consultants that although there is limited ability to make changes to those areas of concern, there is the opportunity to improve law enforcement response to protests and other similar 1st Amendment

protected activities. The consultants found several opportunities for improvement in the handling of public demonstrations/rallies/protests and counter protests.

During the research portion of this analysis the Firm had the opportunity to discuss with the current District Attorney that prosecutes cases arising within Berthoud the review and filing standards for charges and or law enforcement decisions as seen by the District Attorney. The District Attorney indicated that when reviewing potential criminal charges associated with First Amendment protected activity, the ability to do so after the fact without the pressure of having someone in custody was beneficial not only to the law enforcement agency but to the District Attorney as well. Based upon that conversation, consultants identified numerous advantages to the utilization of District Attorney:

- Independent from Berthoud or LCSO
- Prefers arrests at scene occur only when necessary
 - Can review recordings after the event for any non-necessary charging decisions
- Takes out the emotion, decisions made in a vacuum, potential to reduce unknown information
- Available for post-incident review
 - To determine if and what charges
 - To review entire situations in light of all facts & circumstances
 - Provide guidance on interests of justice (file or not)
 - Third party non-interested, independent from Berthoud & LCSO
- We should note, the District Attorney stated based upon his review of the 2020 protests, he approved of how LCSO handled the protests.

Another recommendation is for Town staff to be trained on 1st Amendment and 4th Amendment law and enforcement issues to provide them with a working knowledge of the authority and responsibility that LCSO has in dealing with these situations so as to not have false or misleading expectations from those who are engaging LCSO for law enforcement services.

Berthoud should also provide to LCSO a contact person within the Town on a 24/7 basis to assist with access to city facilities and city resources. Having a Town employee with knowledge and physical access to buildings, parks, barricades, signs, waste facilities/resources and other Town resources can assist LCSO in the performance of their duties. Parks representative, Traffic representative, Town Management should all be available to assist. Town Management can also assist LCSO in creating an OPS plan for pre-approved activities (specific to Berthoud dynamics, not LE activity).

The Town of Berthoud should coordinate with LCSO and the Town traffic department to allow LCSO access to barricades and other traffic containment devices to assist in larger events. These tools can be used for traffic control as well for use during an event as a resource for deputies to control unruly groups. Barricades, cones, horses and other control devices can provide a

valuable resource to deputies in the lawful control of group dynamics. These tools can be used to separate and protect individuals, and if used correctly, to do so without any infringement upon the persons exercising their 1st Amendment rights.

Berthoud should also provide to LCSO maps of the Town with clearly delineated lines as to public property, private property and locations that are traditional First Amendment forums. This will allow LCSO to enforce the laws consistent with property rights as well as the First Amendment.

Berthoud can also assist LCSO in anticipating and planning for First Amendment protected activities by taking a role through Town staff in contacting organizers of the First Amendment protected activities regardless of the groups position on any issue, to identify and support all members of the group or groups that wish to engage in First Amendment protected activities. Many agencies have found it to be not only beneficial to the jurisdiction but to the individuals involved to engage in these conversations prior to the event in order to have information sufficient to provide protection to all who attend. By talking to the leadership of the groups, Berthoud can identify those that are participants and distinguish those that may be present to cause a disruption (ensure to distinguish First Amendment protected disruption from non- First Amendment protected conduct-based disruption).

It is also recommended that the Town of Berthoud update its website/social media presence to include support for First Amendment rights as well as education and the responsibilities of those engaged in protests, counterprotests or other First Amendment protected conduct within the Town of Berthoud. Create reasonable expectations on the part of all involved whether involved in the First Amendment activity or involved with the Town itself so that individuals have an informed understanding of the rights and responsibilities of protesters as well as the responsibilities and authority of LCSO in performing its law enforcement function during these events.

Through proactive social media, Berthoud can indicate their support for 1st Amendment activities and provide guidance to those interested in expressing their 1st Amendment opinions. Many jurisdictions provide “guidelines” on their sites so that all who attend (regardless of their position/affiliation) are aware of the ground rules concerning activities on public property. This messaging can allow the Town to put forth the rules in a content neutral way that will provide notice to all as to the allowable conduct as well as the prohibited conduct. Prohibited conduct areas can include blocking public thoroughfares, trespassing on private property, alcohol consumption, alcohol possession, disorderly conduct, assault, threatening or other conduct related prohibitions.

Berthoud can assist by engaging with those individuals responsible for organizing events. By identifying responsible parties, it provides an open line of communication between the Town and the organizers to provide resources as well as the ability for the organizer to immediately contact those assigned to protect them and their rights. Berthoud can also identify the LCSO individual responsible on sight and provide the contact information to each party to facilitate a

safe and constitutionally secure event. Given that many arrests that occur at 1st Amendment events are of individuals from different jurisdictions and not invited or part of the original group, communicating with event organizers can be beneficial to the organizers as well as the Town and LCSO. Those attending to cause trouble can be distinguished from those attending to express their opinions and thereby protect the individuals as well as their rights.

Berthoud can provide additional resources to LCSO to assist LCSO's enforcement of the law within Berthoud in a constitutionally sound and defensible manner. These resources can include Berthoud providing to LCSO access to Berthoud's website, Meta (Facebook), and other social media accounts so as to allow LCSO to keep track of events and activities within Berthoud. This will also allow LCSO to keep track of the conversations and communications of those who are planning events or counterprotests as well as those that may plan to disrupt those activities. Berthoud can also use their social media presence to be proactive in communicating with those that have a message that will be presented in an event. This form of intelligence will be very beneficial for purposes of planning as well as contacting the parties to provide resource support and protection of First Amendment rights.

Another option for Berthoud to assist LCSO in the performance of their duties as it relates to 1st Amendment protected conduct as well as to attempt proactively to mitigate confrontations between parties would be to create a permit process for Town parks, including Fickel Park. Although Berthoud currently has a Permit Application available to those seeking to host an event, there is no authorizing legislation for the application. To provide a constitutionally sound process for special event permits, the Town should have supported authority for the application. (See *McDonnell v. City & Cnty. of Denver*, 878 F.3d 1247 ((10th Cir. 2018)) for a discussion of permit issues on public property). The permit process would allow for individuals and groups to obtain a permit for a portion of the park that would allow them to have exclusive dominion and control over that portion and thereby allow the parties to create a barrier with those that might be confrontational as well as provide LCSO with the authority to enforce the permit process consistent with the First Amendment. This option would not prohibit counter protestors or hecklers from attending and conducting their business, however, it would limit their access to certain areas and allow for a physical boundary to be created and enforced by the Sheriff's Office. This process may provide a constitutional sound method for limiting contact between countervailing parties and minimizing the potential for physical confrontations.

Generally, government is allowed to require permits for certain types of events, including:

- A march or parade that does not stay on the sidewalk, and other events that require blocking traffic or street closure,
- A large rally requiring the use of sound amplifying devices; or
- A rally at certain designated parks or plazas

Often permit procedures require that the application be filed several weeks in advance of the event. However, the First Amendment prohibits such an advance notice requirement from being used to prevent rallies or demonstrations that are rapid responses to unforeseeable and

recent events in public forums. Also, many permit ordinances give a lot of discretion to law enforcement or Town officials to impose conditions on the event, such as the route of a march or the sound levels of amplification equipment. Such restrictions may violate the First Amendment if they are unnecessary for traffic control or legitimate public safety needs, or if they interfere significantly with effective communication with the intended audience. A permit cannot be denied because the event is controversial or will express unpopular views.

Benefits of a permit process include the ability for the Town and Sheriff's Office to have notice of upcoming events. This allows the ability to plan for the event and have resources allocated to properly handle the event. It also provides the Town with the contact information of the planner/s and opens a line of communication with the event planner/s. The permit process can be drafted to address the specific areas/facilities of Berthoud in a content neutral manner. Specifically, if an event were to occur at Fickel Park, the Town could have already determined boundaries and rules specific to the geography of the park (see Attachment #1). By creating the process for these events, if followed, provides the Town with a content neutral process that can be defended. Finally, if this process is created and used by event organizers, it would allow the Town to identify a specific portion of the property that would be for the exclusive use of the permitted event, thereby providing the Town with the ability to enforce a physical boundary between divergent parties.

Detriments of a permit process are that it will create the need for the Town to pass an ordinance, staff the process and provide resources to support the process. It also is limited in its enforceability. The Town can mandate the process for special events; however, this process cannot limit an individual's 1st Amendment rights. If an individual, or group, decide to hold a 1st Amendment event on public property without a permit, the Town is limited on its ability to enforce any restrictions or penalties for such activity. Finally, another concern that has arisen in jurisdictions that currently have a permit process is the complaint from those who obtain the permit seeing others without a permit having the same 1st Amendment protections without the need for a permit. Having responded to this complaint, the permit does provide the permitted event the exclusive use of a specific area, whereas unpermitted events do not have that ability.

If a permit process is sought it is imperative that The Board of Trustees as well as Town staff be educated as to the authority as well as limitations of the permit process. Specifically, the permit process must be content neutral, and the process must be accessible to all who have an interest in obtaining a permit. To that point Town personnel must be aware that they are as obligated to fulfill a permit for a KKK meeting or a Boy Scout meeting if both apply for a permit and meet the requirements. If interested in implementing a permit process the process can be specific to Berthoud and the public property within the Town so as to take into account, the park and the roads around the park in an effort to maximize public safety and minimize the impact to 1st Amendment protected activities. Attached is a map of Berthoud with an emphasis on Fickel park so that if a permit process is contemplated, the process is created with a practical knowledge of how it will be implemented in Berthoud. The permit process can also provide Berthoud with a limited ability to separate divergent parties, thereby protecting all participant's

1st Amendment rights as well as their physical safety. It may allow a separation that can provide the Town with the ability to limit or even avoid physical confrontations.

On pages 18 through 22 of this document is an example of a reasonable, content neutral permit process (adapted from the City of Mesa, Arizona).

PURPOSE AND ADMINISTRATION

- (A) The Town Council acknowledges that special events enhance the lifestyle of the citizens of Berthoud and create unique venues for expression, entertainment, and business that may not otherwise be available to the public. The purpose of this Chapter is to protect the public health, safety, and welfare by establishing a process for Permitting and regulating certain temporary activities and events conducted on public or private property and to promote safe and orderly special events within the Town. This Chapter is intended to provide fair and reasonable regulations governing the time, place, and manner in which a special event may take place.
- (B) It is the duty and responsibility of the Permitting Administrator to administer the provisions of this Chapter. The Permitting Administrator will issue, deny, and revoke Permits as required by this Chapter as well as enforce civil violations in accordance with Chapter. An application for a Permit will be granted or denied within the timeframes established by the Permitting Administrator. Pursuant to these duties, the Permitting Administrator has the authority to create rules, regulations, and policies related to special events and Permits consistent with the purpose of this Chapter.

DEFINITIONS

The terms of this Chapter have the below meanings, whether or not the term is capitalized, unless the context requires otherwise. Words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Definitions set forth in this Section apply only to this Chapter and do not affect and are not to be applied to any other Town Code.

APPLICANT: A person who applies for a Permit pursuant to this Chapter and who, upon approval of the application, will be the permittee.

TOWN: The Town of Berthoud, Colorado.

DIRECTOR: The Town's Business Services Director or designee.

PERMIT: A special event permit issued to a person in accordance with the provisions of this Chapter.

PERMITTEE: The person who applied for a permit pursuant to this Chapter and in whose name such Permit was issued by the Town pursuant to this Chapter.

PERMITTING ADMINISTRATOR: The Town's Business Permitting and Revenue Collections Administrator, or other such Town employee who supervises the Permitting Office or designee.

PERSON: An individual, firm, partnership, joint venture, association, corporation, any other group or combination acting as a unit, or any other entity of whatever kind or nature.

SCHEDULE OF FEES AND CHARGES: The Town's then current schedule of fees and charges approved by the Town Board.

SPECIAL EVENT: *Special event* means an organized, temporary activity or series of temporary activities held outdoors on public property or private property that is inconsistent with the legal use of the property under the Town's Zoning Ordinance and open to the public by advertisement or invitation, with or without charge. Any reference to "special event" in the Code other than in this Chapter shall mean "special event" as defined herein.

VENDOR: Any person engaged in or continuing in the business of sale of personal property, good, merchandise, ware, thing, or service at a special event.

VENDOR LIST: A written list on the form prescribed by the Permitting Administrator of every vendor scheduled to participate in the proposed special event, and upon completion of the special event, every vendor that did participate in the special event, including the business name, address, and current transaction privilege tax Permit numbers issued by the Town and the State of Colorado to each vendor.

PERMITTING REQUIREMENTS

- (A) It is unlawful for a person to conduct a special event within the Town without a valid Permit.
- (B) A Permit is only valid for the specific location, date, time, and special event for which the Permit was issued. A Permit is non-transferable and non-assignable. Any attempted transfer or assignment will void the Permit and all fees paid will be forfeited.
- (C) A person desiring to obtain a Permit must apply to the Town by presenting a complete application on the forms prescribed by the Permitting Administrator and accompanied by the applicable fees prescribed in the schedule of fees and charges to the Permitting Administrator by the deadlines set forth in this Subsection.
 - (1) Application for a Permit for a small-scale special event must be submitted no later than fourteen (14) calendar days prior to the first day of the special event.
 - (2) Application for a Permit for a large-scale special event must be submitted no later than thirty (30) calendar days prior to the first day of the special event, except that when the large-scale special event requires closure of an "arterial street" as that term is defined in Town Code, the application must be submitted no later than ninety (90) calendar days prior to the first day of the special event.
 - (3) An applicant who fails to timely submit an application pursuant to this Subsection (C) will be assessed fees as prescribed in the schedule of fees and charges.

- (4) The Permitting Administrator has the authority to establish rules used in determining whether a special event is small-scale or large-scale. The rules established by the Permitting Administrator to determine whether a special event is small-scale or large-scale will be published and readily available to the public.
- (D) An application must include, but not be limited to, the following information regarding the proposed special event:
 - (1) Names, addresses, and contact information of the applicant, event organizers, and event planners;
 - (2) Location of the special event, assembly areas, display areas, and travel routes, and permission of private property owner to locate the special event on that private property;
 - (3) Date, time, and description;
 - (4) Site plan with map or diagram depicting the area to be used and the location of specific uses within the area (e.g., booths, stands, stages, tents, restroom facilities);
 - (5) Description of any closure of a "right-of-way" as that term is defined by Berthoud Town Code 9-1-1;
 - (6) Estimated number of individuals, animals, vehicles, equipment, vendors, and temporary facilities;
 - (7) Vendor list;
 - (8) Insurance, as set forth in Subsection (F) below; and
 - (9) The following information, as applicable: description of signage to be used; plan for overnight accommodations of vehicles and trailers; description of open flame devices, flammable or combustible liquids, gases, fireworks, pyrotechnic materials to be used.
- (E) An event located in a "park," as that term is defined by Town Code, is subject to additional regulations set forth in Town Code sections regulating the use of Town Parks.
- (F) The Permitting Administrator has the authority to determine whether insurance is required for a special event. If required by the Permitting Administrator, the applicant must obtain insurance from an insurance company duly licensed by the State of Colorado, naming the Town as an additional insured in amounts as required by the Town. The specific policy form, limits, and endorsements must reflect the type of activity anticipated by the Permit and must be approved by the Town's risk manager prior to issuance of a Permit.

- (G) A Permit must be posted in a conspicuous place at the special event and must be available for inspection upon demand of any Town official, at all times while the special event is ongoing.
- (H) A Permittee must submit an updated and revised vendor list to the Permitting Administrator, containing every vendor that participated in the special event, no later than seven (7) calendar days after the final day of the special event.
- (I) The Permitting Administrator may refuse to issue a Permit for any of the following reasons:
 - (1) The application was incomplete, the applicant made false or misleading statements to Town staff during the application process, the application contains false or misleading statements, or fees required by the schedule of fees and charges were not paid;
 - (2) The proposed area for the special event is previously reserved or otherwise unavailable for use or the special event will unreasonably interfere with a previously scheduled special event or Town event;
 - (3) The special event will unreasonably interfere with or detract from the promotion of public health, safety, or welfare;
 - (4) The special event has a documented history of police calls for service or citations for violation of applicable law;
 - (5) The applicant, within the ten (10) year period immediately preceding the submission of the application, was convicted of a crime involving moral turpitude.

PERMIT CONDITIONS; VIOLATIONS; REVOCATION

- (A) It is unlawful for a person to violate or fail to comply with any of the conditions or prohibitions of this Section.
- (B) The following conditions and prohibitions are applicable to every special event:
 - (1) An applicant must not make a false or misleading statement to Town staff or officials during the application process or on an application form, and a Permittee must not make a false or misleading statement to Town staff or officials while a special event is ongoing;
 - (2) A Permittee and every vendor must conduct the business of a special event in compliance with all applicable federal, state, county, and local laws, including Berthoud Town Code, the Model Town Tax Code, and laws regarding the sale or offering for sale of goods or services;
 - (3) A special event must not unreasonably interfere with or detract from the promotion of public health, safety, or welfare and must not cause undue hardship on nearby residents or businesses;

- (4) A special event must not create or result in unsafe or dangerous conditions for attendees or members of the public, as reasonably determined by the Permitting Administrator, such as substantial interruptions to the safe and orderly movement of traffic, inadequate security or crowd control, inadequate parking control measures, inadequate restroom facilities or trash receptacles;
 - (5) A special event must not incite violence or crime;
 - (6) The Permittee and attendees of a special event must not engage in conduct that would constitute disorderly conduct under A.R.S. § 13-2904, as amended;
 - (7) A special event must not interfere with the operations of a police department, fire department, or other emergency personnel and must not interfere with Town maintenance or construction;
 - (8) A special event must comply with the noise regulations of Town Code unless an exemption is obtained;
 - (9) A special event must comply with the fire regulations of Town Code; and
 - (10) A Permittee and special event must comply with all conditions of approval of the Permit and must not materially deviate from the approved plans and specifications for the special event.
- (C) The Permitting Administrator, sheriff deputy, fire inspector, code compliance officer, or other Town official may, at any time, revoke a Permit for violation of or noncompliance with any provisions of this Chapter including the conditions listed in Subsection (B) above. Upon revocation of a Permit, the special event must immediately cease, the Permittee and vendors must immediately remove or properly dispose of all property and trash of the special event, and the Permittee, vendors, and attendees must immediately disperse.

APPEALS

- (A) An applicant or Permittee aggrieved by a decision of the Permitting Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Director. The Director may deny an appeal without further review if the requirements of this Subsection are not met.
- (B) If an appeal meets the requirements of Subsection (A), the Director will issue a decision to sustain, modify, or overrule the Permitting Administrator's decision.
- (C) A decision of the Permitting Administrator, if not appealed, will be the Town's final decision on a matter pursuant to this Chapter. If the decision of the Permitting Administrator is appealed, the decision of the Director will be the Town's final decision on the matter.

CONCLUSION: Finally, the Town of Berthoud can also engage in conversations with LCSO on topics beyond the scope of the IGA. Some of these conversations can include other law enforcement options that need not be articulated in an IGA. Non-agreement topics can include use of plainclothes/under-cover officers on scene to identify criminal conduct, use of Body-worn cameras, mobile cameras, CCTV or drone surveillance. These options are specific to enforcement activity at events, and as such, are tools that may be utilized but may not be best addressed in a formal agreement.

While these changes cannot guarantee a positive outcome in all future events, these changes address issues consistent with contemporary legal and law enforcement standards.

As can be seen in articles from Police Chief Magazine, Police Executive Research Forum, International Association of Chiefs of Police, the Denver Post, the Colorado Attorney General's office and numerous other law enforcement publications, First Amendment rights to protest or counterprotest, crowd control, law enforcement authority and responsibility in these situations is one of the hottest topics currently facing law enforcement in this country. Berthoud is in a unique position of not having its own law enforcement agency but contracting with LC SO to provide law enforcement services. As such the Town as well as Town leadership have the authority and responsibility to review and provide input into how these activities are handled within its jurisdiction.



ADMINISTRATION DEPARTMENT

TOWN BOARD OF TRUSTEES INFORMATION SHEET

MEETING DATE: January 11, 2022
ITEM: Oil and Gas Regulations

BACKGROUND:

As the Board is aware, Senate Bill (SB) 19-181 was signed into law on April 16, 2019. The primary effect of SB 19-181 was to modify the mission of the Colorado Oil and Gas Conservation Commission (COGCC) from “fostering” oil and gas development, to “regulating” it. It also expanded the land use authority of local agencies regarding the “surface impacts” of oil and gas operations.

Since that time, the Town has had an administrative suspension in place for the development of new oil and gas (O&G) facilities in the Town limits. For most of this time, the Town has not received any requests or applications for new facilities. This has changed in the last 60 days as informal inquiries regarding the O&G development process have been made for properties in the eastern parts of Town near I-25.

As the Board may also recall, on February 25, 2020, the Town Board received a presentation from former Colorado University professor, Detlev Helmig on the air quality impacts of oil and gas development and operation. The video of that meeting can be found at the link below, beginning at the approximately 7:30 mark:

<https://berthoudco.swagit.com/play/02262020-1297>

On July 13, 2021, the Town board received a presentation from a representative of the COGCC regarding the states rulemaking process that created updated oil and gas development and operations regulations statewide. The video of that meeting can be found at the link below, beginning at the approximately 12:00 mark:

<https://berthoudco.swagit.com/play/07142021-1019>

In parallel with that effort, larger municipalities and counties in our region were moving forward with the development of their own regulations regarding the surface impacts of oil and gas development and operations. Larimer County and Boulder County are examples of local agencies who have adopted and implemented new regulations since the passage of SB 19-181. Links to their regulations can be found below.

- Larimer County: <https://www.larimer.org/planning/oil-and-gas-regulations/oil-and-gas-facilities>
- Boulder County: <https://assets.bouldercounty.org/wp-content/uploads/2017/02/land-use-code-article-12.pdf>

Prior to the adoption of SB 19-181, the Town adopted new land use provisions related to Oil and Gas well permitting via Ordinance 1225 on March 21, 2017. A summary of the Town's current regulations, along with citations to the State rules and the Larimer County code for similar issues, is attached to this memo.

Lastly, a map of existing oil and gas wells in our area, in varying states of operation and non-operation, is attached to this memo for reference.

As of this date, the Town Board has not explicitly stated which aspects of oil and gas development or operations it would like Staff to consider though the following list of items represent some of the issues previously discussed:

1. Transparency and community involvement in new well development applications.
2. Traffic impacts associated with O&G facilities.
3. Air and water quality impacts associated with O&G facilities.
4. Visual impacts associated with O&G facilities, including landscaping, lighting, site planning issues, etc.
5. Setback distances of O&G facilities from existing development.
6. Reverse setback distances from existing O&G facilities.

It is Staff's opinion that the Larimer County regulations generally address these issues and many others, and therefore serve as a good starting place for the Town. During the study session on February 1, Town Staff would like to receive additional clarity from the Board regarding the Board's priorities for the regulation of the surface impacts of O&G development and operation.

	Town of Berthoud	State of Colorado	Larimer County Land Use Code (Do not apply to Berthoud but may be a reference point)
Zoning	Condition Use Permit (CUP) for all approvals. (30-11-103(a)(1)). Must be approved by resolution of the Board. (30-11-106(1)). Use by right in Ag Zone. Conditional Use in M1 and M2. (30-3-104 Table 3.3)		Administrative Special Review Process (LCLUC 11.2.2 and LCLUC 6.4.3). Zoning restrictions (LCLUC 11.3.2).
Public Notice	All property owners within 300 feet and newspaper. Planning Commission Review and Town Board Approval required. (30-3-106)		Property owners within 1/2 mile and neighborhood meeting (LCLUC 11.2.5)
Road Impacts	A road access and street damage mitigation plan is required and must be approved by the Town (30-11-104(3)(g)). Must pay a fee that is sufficient to pay the estimated cost for all impacts to public infrastructure (30-11-112).		Traffic Impact Analysis and Routing Plan required (LCLUC 11.3.13).
Air Quality Impacts	Not addressed.	COGCC 900 Series Rules, Colorado Air Quality Control Commission Reg No. 7, Reg No. 22	Air Quality Mitigation Plan required (LCLUC 11.3.3). Odor Mitigation Plan Required (LCLUC 11.3.5). Fugitive Dust Control Plan required (LCLUC 11.3.12).
Water Quality Impacts	Location of all water bodies and watercourses within 400 feet must be identified with application. (30-11-104(2)(a))	COGCC 900 Series Rules	Water Quality Report/Plan required (LCLUC 11.3.6).
Noise Impacts			Noise Report and Mitigation Plan Required (LCLUC 11.3.11)
Aesthetics	Dark sky lighting required. Uniform colors that match surrounding landscape. Visual mitigation plans may be required that may include construction of buildings or other enclosures where oil and gas sites create impacts that are not mitigatable because of proximity to adjacent land use. Enhanced landscaping may also be required based on location. (30-11-108)		LCLUC 11.3.17
Setbacks	Not addressed.	COGCC 600 Series Rules	LCLUC 11.3.2
Reverse Setbacks	Buildings not necessary for the operation of the well shall not be constructed within 200 feet of existing wells. (30-11-108(a)(1)). Assembly occupancies shall not be within 350 feet of any well (30-11-108(a)(2)).		LCLUC 2.9.4(G)
Flowlines	Not addressed.	COGCC 1100 Series Rules	LCLUC 11.3.23
Abandoned Wells and Plugging	Not addressed.	COGCC 200 Series Rules, 700 Series	LCLUC 11.3.18
Emergency Response	An emergency response plan is required. Must be approved by fire district. A fire protection plan is also required. (30-11-104(3)(d) and 30-11-104(3)(f))	COGCC 600 Series Rules	Emergency Response Plan required (LCLUC 11.3.8). Additional Incident and Accident Reporting Requirements (11.3.9)
Wildlife Impacts	May have to prepare wildlife impact mitigation plans depending on location (30-11-113).	COGCC 1200 Series Rules	LCLUC 11.3.14
Review Criteria not already addressed	Application must be compatible with existing conforming surrounding land uses (30-11-105(7)). Whether the proposed use and operations plan will not unreasonably interfere with existing uses of adjacent and nearby properties. (30-11-105(8)).		LCLUC 11.2.4

Oil an Gas Well Locations

