

# ***City Council***

## ***Special Meeting Minutes***

**July 30, 2019  
Library Meeting Room  
951 Spruce Street  
7:00 PM**

**Call to Order** – Mayor Muckle called the meeting to order at 7:00 p.m. and the following members were present:

***City Council:***        ***Mayor Robert Muckle  
Mayor Pro Tem Jeff Lipton  
Councilmember Jay Keany  
Councilmember Susan Loo  
Councilmember Dennis Maloney  
Councilmember Ashley Stolzmann***

***Absent:***                ***Councilmember Chris Leh***

***Staff Present:***       ***Heather Balsler, City Manager  
Megan Davis, Deputy City Manager  
Rob Zuccaro, Planning & Building Safety Director  
Katie Baum, Sustainability Specialist  
Meredyth Muth, City Clerk***

***Others Present:***    ***Kathleen Kelly, City Attorney***

### **DISCUSSION/DIRECTION – SETTING RENEWABLE ENERGY AND CARBON EMISSIONS REDUCTION GOALS**

Sustainability Coordinator Baum stated in 2018 the City entered into a partnership with Xcel Energy. The 2019 work plan included setting alternative energy and carbon reduction goals. They have met to discuss baseline energy information, available programs, and goal-setting for municipal and community-wide energy usage and renewable energy. Based on data provided by Xcel and input from staff and Council, municipal and community goals were developed for City Council to consider. This replaces the current broad goal in the sustainability action plan with specific goals.

She stated Xcel's current renewable energy resource mix is 29% carbon-free. By 2025, the carbon-free percentage will increase to 55% and 100% by 2050, according to their energy plan. City's is currently at 46% carbon-free and the community at 32%.

Councilmember Maloney asked how the numbers capture residential rooftop solar arrays. Baum stated it is not captured as it is an offset not a generator.

Baum stated conserving energy and transitioning to carbon-free energy sources provides an opportunity to reduce Louisville's greenhouse gas (GHG) emissions. The total GHG emissions in 2016 for Louisville accounts for 5% of Boulder County's total GHG emissions. Electricity was the largest source of emissions at 50%, followed by natural gas at 17%.

Baum reviewed a comparison of various neighboring communities' goals and reviewed the proposed goals:

**Municipal Proposed Goals**

- Meet all of the City's municipal electric needs with 100% carbon-free sources by 2025. (This results in a 28% gap in 5 years assuming Xcel meets its 55% carbon-free goal by 2025.)
- Reduce core municipal GHG emissions annually below the 2016 baseline through 2025.

**Community-Wide Proposed Goals**

- Generate 75% of Louisville's residential and commercial/industrial electric from carbon-free sources by 2030. (This results in a 17% gap in 10 years assuming Xcel meets its 55% carbon-free goal by 2025.)
- Reduce core community GHG emissions annually below the 2016 baseline through 2030.

Lucas McConnell, Xcel Area Manager, stated Xcel has a lot of partnerships with various towns. He stated every City has a different set of goals and Xcel will work with each City to reach those goals.

Councilmember Maloney asked if Xcel thinks it can reach the goals on which we are then dependent. Councilmember Stolzmann stated that in her meetings with Xcel they have shown they can do this and have the technology to do this. She stated we can meet these goals by buying in to the various Xcel programs. She feels these are achievable and measurable goals, not just aspirational. This is something we can realistically accomplish.

Councilmember Maloney asked what the cost will be to the community; if it will be fiscally responsible. Councilmember Stolzmann stated it may depend on what programs Xcel can offer us and in what time frame. Councilmember Maloney stated he wants to make sure the goals are responsible.

Councilmember Loo stated these goals and numbers are meant to be as honest as we can and show exactly what we can actually do, not just to have aspirational discussions.

Councilmember Maloney agreed that additional information about the solar should be noted. Baum stated staff can add some information about that but cannot amend the standard equation being used.

Mayor Pro Tem Lipton stated there seems to be an emphasis on the supply side. He would like to see some demand side information (building efficiencies, appliance efficiencies) and how it affects this discussion.

Councilmember Loo stated a recent report states that one thing that really is working to decrease emissions is for Cities to pass mandatory regulations. We have always been incentive based more than mandatory. Mayor Pro Tem Lipton stated mandatory building codes have been passed.

Mayor Pro Tem Lipton stated that future councils will have to look at land use issues and land use strategies about more walkable communities, mass transit and centralizing population. That is the future to solve energy issues.

Councilmember Stolzmann stated she supports the goals as written or even stronger. Mayor Muckle agreed.

Councilmember Maloney stated he would like something in the goals related to costs.

Mayor Pro Tem Lipton stated it is acceptable as presented and it won't affect the budget detrimentally; it is the right thing to do. This is just a marginal increase in what we have been doing.

Councilmember Maloney stated he is concerned these goals will have a large budget impact that we are not taking into consideration. He would like more specificity in the draft resolution addressing this.

#### Public Comments

Den Fahey, 1118 West Enclave Circle, stated this is a good first step but it is not enough. The cost is small now to prevent permanent damage that affects those that can't afford it. We need to be much more aggressive than this and address other issues.

John Cowley, 303 Fairfield, suggested the City create a solar garden to sell power to residents. He stated taxes and fees are 50% of his Xcel bill. If there were a way for a solar garden to generate power allocated to his address, he wouldn't have such fees. He guesses it would be a low cost investment for the City. It is a reasonable thing to look at.

Mayor Muckle supports the goals as proposed.

Councilmember Stolzmann stated staff can look at the resolution and amend the language if needed to meet Councilmember Maloney's concerns.

Councilmember Maloney supports the goals and the direction we are headed on this.

City Manager Balser stated staff can look at some language around the cost issue. Staff will bring this back for action at a regular meeting.

Mayor Pro Tem Lipton asked for more communications efforts on this issue.

### **DISCUSSION/DIRECTION – IMPLEMENTATION OF 2019 LEGISLATION**

Deputy City Manager Davis stated now that the legislative session is over, staff is bringing back those items that need to be addressed specifically. She reviewed HB-19 regarding Police records related to internal investigations. Staff has made changes to our Police Department policy manual to address this.

Davis stated SB-85 the Equal Pay for Equal Work Act does not take full effect until 2021 but the City has made changes already including eliminating the request for past wage information on the employment application and advertising all opportunities within the organization to all employees.

Councilmember Loo asked if there is any way to get some information on past wages. Deputy City Manager Davis stated if an applicant is coming from another city we can get wage information as it is public record, but we cannot do that for applicants coming from the private sector.

Deputy City Manager Davis noted SB-232 is a new requirement that all campaign finance complaints be handled by the local municipality. An ordinance may come to Council for consideration related to this.

Deputy City Manager Davis stated SB-181 clarified and expands local authority in many areas related to oil and gas. The COGCC is currently completing a rule making process. The Council has regulatory options it may want to consider, however there are no current applications.

City Attorney Kelly stated local government authority has been substantially expanded. This presents an opportunity to local governments, but there is no requirement for a City to do anything. She noted local governments are still not allowed to prohibit drilling within their jurisdictions. The bill places in priority the protection of public safety, health and welfare, and the environment where as before it focused on economic extraction with due regard to health and welfare. This is an opportunity for the Council to review the City's regulations, but there has been no oil and gas activity in Louisville since 1999.

She stated that if new regulations are requested Council should determine if a moratorium would be appropriate while that work is being completed.

Kelly noted the legislation requires operators to get local siting requirements approved first before applying to the COGCC for a permit, however the legislation is not clear.

She noted many neighboring communities have enacted temporary moratoria. There are some concerns that while there has not been much activity in this area for years, new technologies have made it easier for operators to reach their resource from a surface location quite a ways away. This could mean a company may be able to use a surface location in Louisville to reach into another jurisdiction.

The risk of not enacting a moratorium is that an application could be filed. At that time Council could enact a moratorium but it would not apply to that application.

She reviewed some options available for consideration:

1. Conduct a comprehensive review of the City's current regulations and determine if they adequately address and identify additional local government authorities granted under SB 181 that are not currently addressed in the City's Oil and Gas code.
2. Work with neighboring jurisdictions to understand the need for consistency and alignment around local oil and gas regulations, particularly related to the protection of unincorporated lands adjacent to the City, City and jointly owned Open Space lands, and other natural resources including but not limited to streams and waterways.
3. Modify the current permitting process through a code ordinance change to require a pre-proposal application or registration process. Then, if and when the City becomes aware that a permit application is likely to be filed, a moratorium can be considered to ensure the regulations with regard to the particular type of application sought are up to date and reflect the most recent rulemaking, research and data, and best practices.
4. Update the City's regulations to incorporate new local government regulatory authority granted under SB 181 that is not currently addressed in the City's code.
5. If updates to the City code are deemed necessary, consider a moratorium on oil and gas permits, so that future applications will be subject to such code updates.

Kelly noted Boulder County has a process with a pre-application which is required 30-days in advance of a pre-application meeting. That gives staff the opportunity to evaluate the registration information they have received and give a timeframe in which to enact a moratorium by emergency ordinance if needed, before an application is accepted.

Staff is looking for direction on if Council would like to enact new regulations and if so, does Council want to consider a temporary moratorium. If not, are there other measures Council may want to add to existing regulations. Alternatively, the Council can choose to do nothing at this time.

Councilmember Keany asked how long a moratorium can last. City Attorney Kelly stated 6-9 months is generally acceptable; longer than that may start to look like a ban and not be considered reasonable by the Courts. As long as the City is actively working on rules during that time extensions are generally considered reasonable.

Councilmember Loo asked if staff has a recommendation of the five options. She asked if this work will be done in house or contracted out if we move forward; what are the costs in dollars and in staff time.

City Manager Balser stated it is not exactly known, but the assumption is it would be in house and we could base our work on that from other municipalities as a start.

Councilmember Loo stated #3 buys some time and gives some protections. Mayor Muckle stated he agreed it would be nice to only institute a moratorium if we need it.

Mayor Pro Tem Lipton stated #3 is not enough protection for the community and this process has not been legally tested. He stated the simplest and most cost effective process is a simple moratorium. We may want to have this in place for any possible applications.

City Attorney Kelly stated #3 can only be effective if the Council at that time has the appetite to enact a temporary moratorium on an emergency basis.

Mayor Pro Tem Lipton stated he would like to have a strong message by enacting a moratorium.

Councilmember Maloney stated he would like a moratorium connected to the rule making at the COGCC. Deputy City Manager Davis stated much of the COGCC's work will relate to the State and not pertain to local governments.

Councilmember Stolzmann stated she thinks most residents want a total ban even though that is not a tool available to us. She stated #3 gives us the option to wait the longest possible time without a moratorium. Making rules now will require a great deal of time and cause unrest in the community with no real benefit.

Deb Fahey asked where drilling is allowed now in Louisville. Director Zuccaro stated an applicant can apply for an SRU for any zone district in the City with a 350-foot setback from a structure. This complies with state law from the time when these rules were written. There are large areas of open space where drilling is still feasible and new horizontal drilling options may make our areas useful for drilling.

Mayor Pro Tem Lipton stated he feels putting a pre-application process in place just to allow for a moratorium is dishonest. We would be better off being clear what we want by having a moratorium now and putting regulations in place in the time available.

Councilmember Loo stated it behooves us to let other municipalities to go through the hard work and wait for that information. If we have a moratorium we have to act on changes and move the process forward as it would be temporary and we can't have serial moratoria. It is more cost effective and responsible for us to allow other cities to test the legal risk and wait to see what happens.

Councilmember Maloney stated we are trying to gauge the risk of a moratorium. City Attorney Kelly stated it would be defensible for more than one extension on a moratorium if the City Council is actively working on rules, at least for a reasonable time. Councilmember Maloney stated both tools could work but the moratorium may be safer.

Councilmember Stolzmann stated starting working on rules will require we take other projects off the work plan. It might take more staff time and money than it is worth.

City Attorney Kelly stated if the Council wants a moratorium the City would have to show they are making progress on rules with the clear goal of drafting regulations.

Mayor Pro Tem Lipton would like a quick moratorium to be clear we are not open for business.

Councilmember Keany stated a moratorium may encourage people to apply for a permit to get it in as soon as possible.

Mayor Muckle noted the risk is very low now because of the geology. There are advantages to not having a moratorium and upsetting the oil and gas industry for no reason. He stated that because the risk is so low #3 makes sense. To invest the time and effort on new rules and to create public uproar seems unnecessary right now.

City Attorney Kelly stated one consideration is that the approach in #3 has not been court-tested.

Councilmember Keany supports #3 to allow the City the most options at the least cost.

City Manager Balser stated some municipalities are well along the way with regulations and we can use that information as a basis for ours, but a significant effort and large amount of staff time would be needed for this as well as a funding allocation.

Mayor Pro Tem Lipton stated we will need to make an effort in the next year or so due to the new state laws and changes in technology regardless of the cost. Our residents will want us to do this.

Councilmember Loo stated she is comfortable with #3 and waiting for the work of other municipalities that we can piggyback on. The risk is low for us due to the geology. A moratorium is a financial and time commitment we may not be ready to make.

Councilmember Maloney wants to update the code based on our new options; but he doesn't want to pattern our rules on other municipalities but rather on the COGCC's rule making.

Councilmember Stolzmann asked if the City has the option for imposing additional excise or severance taxes on oil and gas extraction. Staff can look into that.

The consensus was to have staff bring back option #3; a registration and pre-application process for Council consideration.

Mayor Pro Tem Lipton stated he would like to discuss HB-1033 and HB-1036 about local nicotine sales rules and indoor air in 2020.

Councilmember Stolzmann would like a discussion in 2020 about HB-1033 regarding fees in addition to state tax on cigarette taxes and if it can be applied to an end user.

### **ADVANCED AGENDA & IDENTIFICATION OF FUTURE ITEMS**

Members discussed the items on the advanced agenda.

Councilmember Stolzmann suggested a joint meeting with Louisville, Superior, and the JeffCo County Commissioners regarding the airport discussion on August 20.

### **ADJOURN**

Members adjourned at 9:43 pm.

---

Robert P. Muckle, Mayor

---

Meredyth Muth, City Clerk