

**Item 4(A) (Oil and Gas Code)**

**Supplement to Staff Report**

Staff have received various comments from interested parties regarding the proposed updated oil and gas ordinance. A brief summary of the comment(s) and response to those comments is provided, below. Please note that these responses are not intended to be exhaustive, and are otherwise supplemented by the information in the administrative record for this matter.

1. COMMENT: The City does not have authority to regulate oil and gas use.

RESPONSE: The City does have authority to adopt an ordinance imposing zoning and land use regulations for surface activities regarding the conduct and location of oil production activities, including zoning, fire prevention, public safety, nuisance, appearance, noise, etc. The City already regulates land use including petroleum (although its current ordinance is over a half a century old). In fact, the Western State Petroleum Association website acknowledges that companies are required to “conform to oversight and regulations from ... local agencies.” ([www.wspa.org/issue/safety](http://www.wspa.org/issue/safety)) The City is a local agency.

2. COMMENT: DOGGR has jurisdiction over “down hole” activities.

RESPONSE: Yes. However, the City’s proposed ordinance does not impermissibly regulate “down hole” activities, and instead regulates surface activities under its police powers, etc.

3. COMMENT: It might be possible to interpret the ordinance to include “down hole” requirements due to findings regarding impacts on water quality.

RESPONSE: The City is the one who interprets its own ordinance. As long as that interpretation is reasonable and applied consistent with the law, it will be upheld even if there could be a convoluted reading of an alternative interpretation. Here, the City is not interpreting its ordinance to provide for down hole regulations. Instead the ordinance provides a process to confirm that an applicant has complied with the requirements other agency (who do have such authority) requirements for wellbore integrity to ensure that the City’s drinking water sources are protected (i.e., the City is not making a determination as to wellbore integrity itself). Additionally, surface contamination issues (such as drainage, storm water runoff, wastewater, etc.) are surface activities within the City’s regulatory authority.

4. COMMENT: There are already too many regulations.

RESPONSE: Many industries are subject to regulations by a variety of federal, state and local agencies. In the U.S., laws and regulations are a result of the democratic process,

and the people ultimately determine if federal, state and local agency regulations are “too much.”

Regulatory agencies are typically focused on narrow fields (air quality, hazardous materials, coastal protection, etc.), and not land use regulations per se. Land use regulatory is generally reserved to the local jurisdiction, such as the City. The proposed ordinance update is such a land use regulation designed to protect the specific health, safety and welfare needs of this community.

5. COMMENT: The proposed ordinance does not acknowledge all the other regulations that may be applicable to the petroleum industry.

RESPONSE: See above. There is no legal requirement that this be included in local ordinances, nor would it be practical as state and federal regulations are constantly being update. However, the ordinance does state its intent that “oil and gas operations shall be permitted within this city (except were expressly prohibited herein), subject to the application of this ordinance and all other applicable laws, regulations and requirements.” (See section 17.46.01(B); see also section 17.46.05.)

Although other agencies may regulate non-land use items, it is not clear whether these agencies will have adequate funding in the future, that regulations may change, or agencies may be dissolved at some future date.

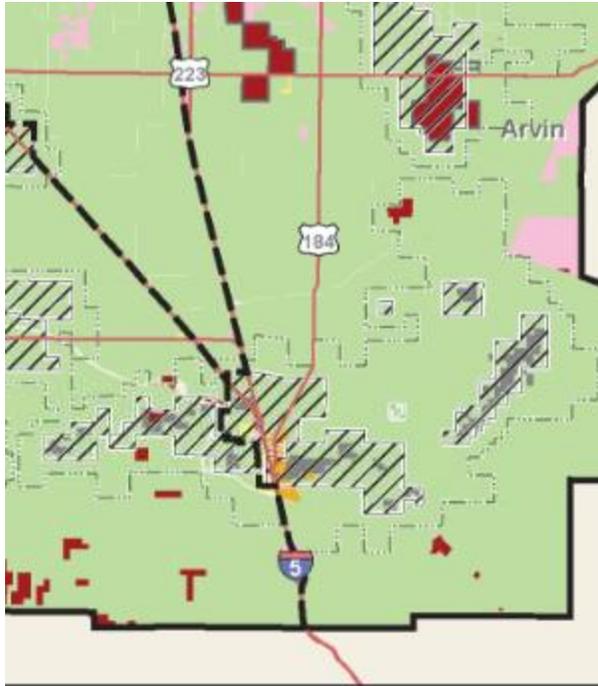
6. COMMENT: The ordinance fails to acknowledge DOGGR’s jurisdiction and role.

RESPONSE: As noted above, like other uses there are multiple agencies that have regulatory authority over particular aspects of petroleum operations. There is no requirement that a local ordinance identify all regulatory agencies, nor regularly update its ordinances for every change in the law or modification of agency oversight. Regardless, the updated ordinance does expressly acknowledge the role of DOGGR. (See section 17.46.05 – Consistency with Other Laws, Rules and Regulations.)

7. COMMENT: The industry is already subject to Kern County ordinances, so an updated City ordinance is not required.

RESPONSE: As a matter of law, Kern County ordinances do not apply within the City of Arvin.

Additionally, Kern County’s Oil and Gas Production Ordinance also expressly states “The procedures and standards contained in this chapter shall apply to all exploration drilling and production activities related to oil, gas, and other hydrocarbon substances carried out within the unincorporated San Joaquin Valley portion of Kern County (see Figure 19.98.015). (KC 19.98.010.) Figure 19.98.015 shows that Arvin is “non jurisdictional” for the purposes of Kern County’s ordinance.



Tier Levels

 Tier 1	 Tier 4
 Tier 2	 Tier 5
 Tier 3	 Non-jurisdictional

Kern County regulations also have a rural, not urban, focus. Finally, there is still no final determination by the courts that the Kern County ordinance is valid.

8. COMMENT: The City should use the Kern County EIR to streamline the review process.

RESPONSE: The Kern County ordinance is a different statutory scheme, with different environmental impacts. It would not be appropriate to apply the EIR to a completely different ordinance.

Although Kern County used its EIR process to streamline approvals for future projects, this is not mandated by CEQA, and the City may require future projects to specifically assess their impacts under CEQA when they are actually proposed.

Given the number of wells historically proposed in Arvin (there are currently 10 active wells and 3 idle wells, with the most recent new well approved in the 1980's), it does not make economic sense to spend \$500,000+ now in public funds to prepare an EIR to streamline a potential application that may occur 10 or more years from now if an EIR is not required by CEQA. Additionally, and environmental conditions and circumstances change, and even if an EIR were prepared now, it may require substantial revisions or updates to address those changes.

Finally, there is still no final determination by the courts that the Kern County EIR is valid.

9. COMMENT: If an EIR is not used for streamlining purposes, and if there are approvals for permits and other items required, it could provide more opportunities for the public to oppose projects.

RESPONSE: The City of Arvin supports the right of all individuals to participate in the public process and seek redress of grievances consistent with the Constitution and the law. Other industries are also subject to obtaining permits, licenses, conditional use permits, etc.

10. COMMENT: Other ordinances don't require setbacks from sensitive uses, etc.

RESPONSE: Setbacks are common where the use is regulated. For example, even Kern County has setback requirements from sensitive and other uses. (See KC 19.98.060.)

11. COMMENT: The ordinance will isolate potential resources along the "Meyer Street corridor"

RESPONSE: The ordinance will not isolate resources along the Meyer Street corridor. A diagram purporting to show this isolation did not measure access from the nearest location from where well uses could be located (such as zones where drilling uses could occur or jurisdictions outside of the City of Arvin, such as the County of Kern) and is therefor inaccurate.

Like other uses, petroleum uses can seek to rezone property to allow the proposed use. Additionally, like other uses, under state law variances may be allowed where the owner would otherwise suffer unique hardship under the general zoning regulations because a particular parcel is different than others due to size, shape, topography or surroundings.

12. COMMENT: The ordinance does not set deadlines for certain approvals by the City Manager, etc.

RESPONSE: The ordinance is not required to set specific deadlines for certain approvals; this is common throughout local ordinances. The City is subject to the Permit Streamlining Act, which provides remedies to ensure that approvals are timely made consistent with the requirements of the law including CEQA.

13. COMMENT: The updated ordinance will have a significant impact on the oil and gas industry in Kern County and economy.

The last well that was approved in Arvin was in the 1980's – almost a third of a century ago. Currently, there are 10 active wells and 3 idle wells within the City, and they are

grandfathered in under the proposed ordinance. Further, once drilling operations are complete, maintenance and other items occur only on a periodic basis.

As a practical matter, this will not have a “significant impact” on the industry or economy. For example, a typical well in the Mountain view field produces about 2.5 barrels a day. Even at current prices (\$70/barrel) this is \$175 per day per well. This generates about \$1.75 per day in sales tax for the City, which is 350% less than the sales tax generated by a typical food truck.

14. COMMENT: The findings do not mention the economic significant of oil and gas operations for the City and for Kern County.

RESPONSE: There is no legal requirement for the City to include this as a finding. Additionally, the City is not required to make findings as to economic impacts for Kern County or any other city, county, state or country. Finally, the economic impact in terms of sales tax revenues from petroleum production in Arvin is virtually insignificant (see above).

15. COMMENT: The updated ordinance will impact Kern County’s ability to provide Sheriff’s services to the City, etc.

RESPONSE: See prior comment. Additionally, Arvin has its own police force and does not use the Sheriff’s department.

16. COMMENT: City staff lack expertise in order to make certain determination regarding a highly technical field.

RESPONSE: There are a wide variety of industries that would merit specialty knowledge. However, there is no law that stands for the unique premise that a city cannot regulate a use because its staff might not currently (or in the future) have expertise in the area. Instead, local agencies commonly retain specialists or other consultants to assist with the determination as the circumstances may warrant. There are also appeals and other processes available in the event that an applicant believes that the City has made a decision in error.

17. COMMENT: Re-drills of abandoned wells should not be considered “new development.”

RESPONSE: “Abandoned” means “abandoned.” If new drilling is taking place on an abandoned well, the City can consider this “new development.”

18. COMMENT: Mandating certain uses (such as reclaimed water, pipeline transportation, underground electrical lines, etc.) may not be practical or may increase the use of chemicals.

RESPONSE: The updated ordinance has a process that allows exceptions including where certain uses are infeasible (such as regulatory requirements, initial unavailability during operations or technical considerations) or unwarranted (including secondary environmental impacts such as the increased use of chemicals, surface activities and other items that may be adverse to public health, safety or welfare. Undergrounding of utilities is only required if required for other uses in the vicinity.

19. COMMENT: Horizontal drilling is more expensive, and surface owners may impose excessive costs to allow drilling.

RESPONSE: Land use regulations often result in additional expenses for a wide variety of uses (such as mandatory landscaping, irrigation/water usage requirements, requirements for public utilities, aesthetic requirements, etc.). The potential for additional expenses are not a basis for overturning a valid ordinance to protect public health, safety and welfare – especially when horizontal drilling is already used within Arvin.

It is irrelevant that surface owners can impose costs on drilling, as that occurs whether or not the updated ordinance is adopted. In fact, owners commonly set the costs to buy or lease the land that they own, and this is common across a wide-variety of non-petroleum uses.

20. COMMENT: Petroleum uses should not be required to obtain a conditional use permit (CUP), as it is expensive, requires CEQA review, requires Planning Commission approval, and may be challenged in court.

RESPONSE: CUPs are very common. In fact, a wide variety of uses require a CUP in Arvin per the Municipal Code. While the petroleum industry has been granted a limited exception for over a half a century, the City is well within its authority to require a CUP for “new development” for oil and gas production, and the requirements is both consistent with (and levels the playing field for) other uses that also require a CUP.

21. COMMENT: The periodic review period would not provide certainty for CUPs, add additional costs, etc.

RESPONSE: Section 17.46.010 has been updated to provide clarity that this is a review process. Once a CUP has been granted, an applicant may have vested rights to continue operations as long as all conditions of the permit and CEQA have been met, etc. The City may periodically review whether those conditions are being met at any time, but contemplates doing so at least once every 10 years. If there has been a violation, the section provides for a process for addressing the same.

22. COMMENT: The ordinance gives too much discretion to the City Manager, including determinations of as to what is “feasible.”

RESPONSE: The updated ordinance provides clarification regarding what is feasible, etc. Regardless, a definition of feasibility is not required (and may change base on technological advancements and the unique circumstances of a particular project), and a determination by the City Manager would be appropriate as long as it was reasonable. If an applicant believes the decision was not reasonable given the unique characteristics of the particular project, there is a mechanism in place for challenging the determination.

23. COMMENT: Section 17.46.08.5.C is a logical impossibility, as it requires the new operator to be in compliance with the CUP before the CUP can be transferred.

RESPONSE: The City is not clear about this comment. An operator should be complying with its legal requirements under a CUP at all times. The section merely requires that the new operator accept and meet the conditions (including bonding, insurance, etc.) before the transfer becomes effective. Among others, this serves to reduce the likelihood of cleanup and other obligations being transferred to an underfunded entity in an effort of the current operator to avoid its obligations under the CUP.

24. COMMENT: Section 17.46.012.C can be read literally to require filing a notice of an “idle” well every time a well on a timer ceases operating.

RESPONSE: No. See the definition for “idle well,” which is consistent with DOGGR’s definition of the same.

25. COMMENT: Section 17.46.013 requires the reporting of “all complaints,” which is overly vague and could include unsubstantiated complaints.

RESPONSE: The ordinance is clear: “all complaints” means “all complaints.” That section provides for a process for investigating and confirming the validity of complaints once received by the City. The operator has a clear conflict of interest if it were to unilaterally determine which complaints were valid or not, which would not be in the public interest.

26. COMMENT: Section 17.46.016 is over broad in that it provides that “any violation” of the ordinance is a public nuisance.

RESPONSE: Failure to provide complete and truthful required information (such as complaints that have been received) and paperwork (such as showing insurance or DOGGR bonding requirements have been met to ensure abandonment, etc.) have direct impacts on public health, safety or welfare. This type of language is not uncommon in local ordinances.

27. COMMENT: The City should not require monitoring by an environmental compliance coordinator per Section 17.46.017.

RESPONSE: This is a decision well within the scope of the City’s regulatory authority to adopt. This applies to new development requiring a CUP or development agreement.

28. COMMENT: Insurance requirements must be consistent with the types of insurance available in the marketplace.

RESPONSE: This has been addressed in section 17.46.021. If not reasonably commercially available or necessary, the City Manager can authorize equivalent types of insurance.

COMMENT: Section 17.46.028 is a steaming ban.

RESPONSE: This section is not a steaming ban, nor is steaming currently used in Arvin. Instead, it provides a mechanism for ensuring that surface equipment does not have an adverse impact on public health, safety or welfare given the location (including proximity to sensitive uses) and type of operations being conducted.

29. COMMENT: The City should not require an EQAP per section 17.46.032.1.

RESPONSE: This is a decision well within the scope of the City’s regulatory authority to adopt. This applies to new development requiring a CUP or development agreement.

30. COMMENT: Odor complains should be “confirmed” by verifying that the source is originating from a particular facility.

RESPONSE: This is already addressed by the definition and process for confirming a violation. See Section 17.46.032.2.

31. COMMENT: The City should not require groundwater investigation and monitoring wells.

RESPONSE: Arvin relies exclusively on water wells for its drinking water. Among others, safe and clean drinking water has an impact on surface use. Additionally, monitoring can determine if surface spills, undetected leaks, contamination have been properly contained and remediated, etc.

32. COMMENT: Section 17.46.015 provides for penalties, with no direction for determining an appropriate amount.

RESPONSE: That section provides “The City Manager will develop a violation fine schedule for Council approval to specifically identify the fines associated with oil or gas violations.” As with other types of land uses, etc., the City is now approving those fines by resolution rather than ordinance.

33. COMMENT: The bonding and insurance requirements are excessive and duplicative.

RESPONSE: Bonding is only required as necessary to assure completion of the abandonment, restoration and remediation of contamination of the oil or gas site to the extent not fully covered by DOGGR bonds. (17.46.020.) The insurance amounts are consistent with the amounts commonly required for other uses (except for the addition of specialty risks unique to petroleum operations), and are reasonable to insure coverage. For example, the City commonly requires \$1,000,000 coverage for worker's compensation, general liability insurance, commercial liability insurance of at least \$1,000,000, etc.