

Attachments: [Agenda Summary.pdf](#)
[Highway Easement Appd 031114.pdf](#)
[Resolution.pdf](#)

Ms. Morita noted that the property owner of the subject parcels had recently been in front of the Brownfield Redevelopment Authority due to contamination resulting from the previous gas station's leaking underground storage tanks. She questioned whether the City could incur potential liability if it accepts the easement and whether an agreement could be obtained from the developer regarding liability.

John Staran, City Attorney, stated that the proposed highway easement would accommodate road improvements and a pathway. He noted that under the laws of the State of Michigan, through the Natural Resources Protection Act, municipalities are immune from liability from environmental problems. He noted that liability could occur should some future action of the City exacerbate or release contamination. He pointed out that the right-of-way will be under the Michigan Department of Transportation's jurisdiction, and commented that it is unlikely that the City will be undertaking any projects in that area with the exception of any bike path. He noted that it might not be considered unreasonable to require that the developer include an indemnification provision and hold harmless clause. He suggested the item either be postponed or accepted subject to the condition of the inclusion of appropriate language.

Postponed.

ORDINANCE FOR INTRODUCTION

2014-0146 Discussion regarding a Proposed Oil and Gas Wells Ordinance

Attachments: [Agenda Summary.pdf](#)
[Staran Letter 040214.pdf](#)
[Proposed Ordinance.pdf](#)
[Howell Twp Pipeline Ordinance.pdf](#)

President Hooper noted that the proposed Ordinance would be discussed tonight and no vote would be taken to accept the Ordinance.

Public Comment:

Clark Barrett, 1376 Kingspath, recounted instances of accidents and explosions due to oil and gas exploration and stated that these activities are too much for a high density bedroom community.

Gail Hammill, 1434 Burhaven, commented that Jordan came to Rochester Hills at the license or encouragement of the Mayor. She stated that the Michigan Attorney General has filed suit against two companies for collusion. She noted that Auburn Hills is preparing an Ordinance for consideration this month.

Phil Barker, 1434 Burhaven, requested Council rescind the lease.

Denise Doyle, 1446 Burhaven, expressed concern of the effect of oil and gas exploration on property values. She said that horizontal drilling is a form of fracking, and exploration activities will result in additional traffic and cause noise, odor and light pollution.

Mike Powers, 3632 Aynsley, commented that it may take lawsuits and courts to decide whether exploration can take place. He stated that residential communities all over America are saying no to drilling. He noted that there is a leadership opportunity that the City should take against drilling.

Jose Ortiz, 3430 Aquinas, commented that it is important that Council understands the potential for what could occur, and noted that Ordinances cannot control the actions of a driver on the road. He stated that his personal encounter with Jordan Oil representatives indicated that they were not entirely forthcoming. He expressed concerns that those selling homes would encounter difficulties if their mineral rights have been deeded out.

Lee Zendel, 1575 Dutton, displayed a map that indicated that Jordan will locate its well in Auburn Hills and drill horizontally under Rochester Hills; therefore, sections within the proposed Ordinance concerning well site activities are meaningless. He stated that the proposed Ordinance is a waste of time.

Scot Beaton, 655 Bolinger, noted that City Ordinances are good unless challenged in court, and stated that the Ordinance needs to reflect the City's Mission Statement. He commented that drilling should only take place in industrial zoned properties in Rochester Hills.

In response to Public Comment, **President Hooper** noted that the rights for oil and gas exploration are granted by the State of Michigan and not by local communities. He stated that whatever Auburn Hills is doing, it cannot stop drilling. He questioned whether placing zoning restrictions on drilling sites could be done.

John Staran, City Attorney, responded that the proposed Ordinance amends the City's Zoning Ordinance. He commented that oil can only be extracted where it can be reached, and if an ordinance will restrict or designate well sites to industrial zoned areas, it must establish that these areas are viable. Otherwise, it would be subject to an exclusionary zoning challenge. He commented that if the City takes action by adopting an Ordinance or denying a permit that someone believes deprives them of their property rights, the City would be facing potential civil damages. He stated that there is a risk to the City to take that approach.

President Hooper questioned whether the City could limit any actual drilling sites to industrial areas if horizontal drilling could reach oil and gas.

Mr. Staran responded that this might make it more defensible; however, he is not certain that the facts would be borne out by that approach.

Mr. Tisdell questioned what sections of any proposed Ordinance would sustain a challenge.

Mr. Staran responded that he did not believe that a local ordinance that is in conflict with or contrary to what the State and Federal regulations allow would be defensible. He noted that the proposed Ordinance is consistent with State Law in many respects, mirrors the State Law in other respects, and supplements State Law to regulate the areas that are of a nuisance and safety-related variety. The City would be in the best position to be effectively responding to complaints rather than relying on the Michigan Department of Environmental Quality (MDEQ) to respond. He listed the following sections that he noted go beyond and supplement the State Law:

- 5. Screening. State Law and State regulations do not have anything that specifically requires security fencing.
- 7. Exterior lighting would be brought under regulation of the local Zoning Ordinance.
- 9. Height limitations would be applied to any of the production facilities, rigs or equipment, based on the particular zoning district where the well site is located.
- 12. Site maintenance, trash, weed cutting, and not allowing equipment to be stored on the site that is not actively being used.
- 13. Landscape and screening requirements would be applied as a Type E Buffer, which is the highest level of screening and buffering standard.
- 14. The City's Traffic Engineer would regulate truck routes that can be used.
- 14. Storage and processing of oil, gas and petroleum extracted would be prohibited at the well site.

He added that additional provisions are fairly consistent with what State and Federal regulations already provide. He stated that rather than rely entirely on MDEQ to administer, oversee and enforce these requirements, the Ordinance would also give the City the ability to administer and enforce. He likened it to wetland regulations where by law, the City of Rochester Hills is allowed to regulate smaller wetlands than the State. He noted, however, that the actual standards and approval processes are identical to the State's. He stated that the City's Wetlands Ordinance allows the City to oversee, regulate and enforce wetland regulations that may otherwise go unnoticed by the State due to a lack of their oversight and resources. The City can respond to problems when they arise rather than being limited to placing a phone call to Lansing requesting someone.

Mr. Tisdell stated that the supplements give the City the authority to enforce the State and Federal regulations.

Mr. Staran responded that to some extent, this was correct.

Mr. Tisdell pointed out that many of the provisions are a part of the City's Zoning Ordinance and questioned what impact that has on its sustainability.

Mr. Staran responded that he believes it actually makes it a stronger case for the City to defend that it is not being discriminatory, rather it is applying the same type of performance standards regarding air pollution, noise, smoke, odors and

trash that it expects every other land use in the City of Rochester Hills to adhere to and observe. He commented that it makes it a stronger Ordinance than it would be if it pertained only to oil and gas alone.

Mr. Tisdell commented that there is a 200 barrel per day production cap in all of Oakland County. He noted that this equates to approximately two tanker trucks per week. He questioned whether this limitation would add to construction or traffic if that production is not being stored on site or an oil pipeline is not immediately available.

Mr. Staran responded that it would be dependent on a number of things. He stated that should some form of an Ordinance go further, the City will want to continue to review that particular section of the Proposed Ordinance. He commented that it is his understanding from conversations he's had with MDEQ personnel as well as the representations that Jordan's representatives have made to the City over time that there is neither a need nor an intention to have storage at the actual well site. He noted that this is in part due to the limitations that the State imposes as to how much oil can be produced at the site on a given day. He explained that typically the facility would have separators or tanks to separate the gas or oil from the water and soil. From those storage tanks, there could be some sort of holding facility until the oil or gas would either be trucked out or would go directly into a pipeline. He stated that Jordan represented to the City that although they have not made any plans for a facility in Rochester Hills, they indicated that their preference would be to tie into existing pipelines that are located very close to this area near the City limit of Auburn Hills and Rochester Hills. He noted that there are a number of existing pipelines that could potentially be connected to. In that case there would be no need for storage on the site as the crude oil would flow directly into those flow lines to a larger transmission line.

Mr. Wiggins questioned whether the Ordinance should also address non-hydrocarbons.

Mr. Staran responded that the Ordinance uses the terminology that the State Law and State regulations use in referring to oil, gas and hydrocarbons. He noted that this particular Ordinance would not pertain to a well to extract water or any other type of resource.

Mr. Wiggins questioned whether the City's other Ordinances such as those pertaining to site maintenance or timetables for reporting updated contact names would apply, or if the draft Ordinance could include tighter requirements.

Mr. Staran responded that if Council desires, additional requirements could be included in the Ordinance language.

Mr. Wiggins stated that he would like to see timetables included for information reporting.

Mr. Staran commented that the exploration company does have reporting requirements as a part of their State permit; however, it would ensure that the City has the same information in order to be able to react quickly.

Ms. Morita expressed her thanks to Mr. Staran for his work on the Ordinance. She commented that she would concur with including time limits in the Ordinance language. She suggested that the emergency contact specified in Paragraph 4 be located within Oakland County. She stated that she did not wish to see an emergency contact located at a distance, which would require a several hour drive should a problem occur. She noted that the draft Ordinance contained a typographical error with two paragraphs numbered 14. She mentioned that the draft Ordinance was a third or fourth version over the last couple of months and is a collaboration between herself, Mr. Staran and Mr. Kochenderfer. She noted that Mr. Staran also suggested that a pipeline ordinance be considered and stated that groundwater issues are also being discussed. She suggested that the draft Ordinance be reviewed and welcomed comments.

President Hooper noted that Howell Township's pipeline ordinance calls for a penalty for each day of violation.

Mr. Staran responded that the City's draft Ordinance includes that provision as well. He mentioned that he read this afternoon in the news that the State Legislature has enacted further legislation that now allows carbon dioxide to be transported through pipelines under the jurisdiction of the Michigan Public Service Commission (MPSC). He explained that injecting carbon dioxide into older wells could allow for the extraction of another 10 to 15 percent more oil and gas and may make older wells more attractive.

Mayor Barnett commented that these types of bills are flying through Lansing.

Ms. Morita questioned whether Council is also interested in the development of a pipeline ordinance.

Mr. Staran noted that there are different types of pipelines. He explained that the Sunoco pipeline in existence in the City is interstate and is under Federal jurisdiction, with neither the City nor the State of Michigan having regulation authority. Transmission lines, whereby two or more companies transport product, fall under the jurisdiction of the MPSC. He commented that a pipeline ordinance prepared for the City would deal with transport lines from a well site to a processing or storage facility.

Council agreed that a pipeline ordinance should be explored.

President Hooper suggested that the next step would be to refer the draft Ordinance to the Planning Commission for review and recommendation.

Mr. Staran questioned whether Council would prefer to have a pipeline ordinance drafted for Planning Commission review prior to Council.

President Hooper responded that Council should review a draft pipeline ordinance first.

A motion was made by Morita, seconded by Tisdell, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 5 - Hooper, Morita, Tisdell, Webber and Wiggins

Absent 2 - Brown and Kochenderfer

Enactment No: RES0082-2014

Resolved, that the Rochester Hills City Council refers the Proposed Oil and Gas Wells Ordinance to the Planning Commission for a Public Hearing, review, and recommendation to City Council.

ORDINANCE FOR ADOPTION

2014-0112 Acceptance for Second Reading and Adoption - An Ordinance to amend Section 102-321, Chapter 102, Utilities, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to disallow bypass of a water meter unless approved by the Department of Public Services Director, repeal conflicting or inconsistent Ordinances, and prescribe a penalty for violations

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[031714 Agenda Summary.pdf](#)
[031714 Resolution.pdf](#)
[Resolution.pdf](#)

A motion was made by Tisdell, seconded by Webber, that this matter be Accepted for Second Reading and Adoption by Resolution. The motion carried by the following vote:

Aye 5 - Hooper, Morita, Tisdell, Webber and Wiggins

Absent 2 - Brown and Kochenderfer

Enactment No: RES0083-2014

Resolved, that an Ordinance to amend Section 102-321, Chapter 102, Utilities, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to disallow bypass of a water meter unless approved by the Department of Public Services Director, repeal conflicting or inconsistent Ordinances, and prescribe a penalty for violations, is hereby accepted for Second Reading and Adoption, and shall become effective on Monday, April 14, 2014 following its publication in the Oakland Press on Sunday, April 13, 2014.

2014-0119 Acceptance for Second Reading and Adoption - An Ordinance to amend Sections 18-3, 18-5, 18-6, 18-7, 18-8, and 18-41 of Chapter 18, Building and Building Regulations, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to modify contractor license registrations, and to repeal conflicting or inconsistent Ordinances

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