



Planning, Development & Transportation Services

Community Development & Neighborhood Services

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MEMORANDUM

DATE: August 10, 2023

TO: Mayor and City Council

THRU: Kelly DiMartino, City Manager
 Tyler Marr, Deputy City Manager
 Caryn Champine, Director of Planning, Development and Transportation ^{DS} CC
 Paul Sizemore, Community Development and Neighborhood Services Director ^{DS} PS
 Clay Frickey, Interim Planning Manager ^{DS} CF

FROM: Kirk Longstein, Senior Environmental Planner ^{DS} KL

RE: Land Use Code buffer standards near existing oil and gas facilities

Bottom Line:

The purpose of this memo is to provide Council with a summary of stakeholder feedback related to updates to the land use code that increase setback requirements for new and existing homes near oil and gas facilities. Based on public engagement, staff has incorporated feedback into the draft ordinance for Council’s consideration on September 5. Below is a summary of feedback themes and how staff has incorporated feedback into the draft ordinance.

Background:

Based on Council direction during the October 25, 2022, work session discussion and the April 2023 adoption of Ordinance no. 151, 2022 for new oil and gas well sittings, Staff seek to update the reverse setback development standards (LUC 3.8.26) to reflect recent changes in the Colorado Energy and Carbon Management Commission (ECMC) regulations and lessons learned over the past 4 years, including:

- Apply reverse setbacks to all occupiable buildings, not just residential uses; and,
- Explicitly state required setbacks, rather than refer generally to ECMC rules; and,
- Create a more predictable pathway for abandoned/inactive well types; and,
- Eliminate the buffer exemption for crossings of arterial roadways.

Summary of proposed oil and gas reverse setback Code updates:

A draft of the Code was posted to the public ahead of the planning and zoning commission hearing on July 17, 2023. The staff recommendations included the following:

1. Apply oil and gas reverse setbacks to all occupiable buildings, not just residential uses.
2. Eliminate the buffer exemption for crossings of arterial roadways.
3. Increase buffer for developments near existing oil and gas operations from 500' to 2,000' to match ECMC and Fort Collins new code setbacks.
4. Allow modification of standards for Enhanced Oil Recovery (EOR) Injection well buffers, no less than 500'.
5. Decrease soil-gas and ground water monitoring requirements for plugged and abandoned wells from once every 5 years to once prior to permits and once again at the end of a five-year construction guarantee.
6. No change to buffer for developments near existing abandoned wells (not fully reclaimed) at 500'
7. No change to buffer near plugged and abandoned wells (fully reclaimed) at 150'
8. No change to disclosure requirements for future property owners via a property covenant
9. Add requirements for point-of-sale disclosure notice for new developments and existing homes within a 2,000' buffer.
10. Add prohibition on detached occupiable buildings from existing buildings located within the oil and gas buffer.

Community Feedback Summary:

Staff coordinated a series of group meetings and continues to seek feedback from community partners and private landowners impacted by proposed buffering standards. Focused meetings were held to gather general community input on regulating reverse setbacks from existing oil and gas wells. The following group engagement is planned to inform code updates:

Date	Group
5/31/2023	Larimer Alliance
6/1/2023	Sonders
6/6/2023	Sonders
6/7/2023	Montava
6/9/2023	Larimer Alliance/Earthworks/Colorado Department of Public Health and Environment
6/13/2023	Sonders/Tami McMullin, PhD Toxicologist
6/21/2023	City of Fort Collins Parks Planning
6/22/2023	Larimer Alliance/Fort Collins Sustainability Group/Sierra Club
7/7/2023	Home Builders Association
7/17/2023	Air Quality Advisory Board
7/19/2023	Natural Resources Advisory Board
7/20/2023	Planning and Zoning Commission
7/26/2023	Sierra Club
8/8/2023	Board of Realtors
8/9/2023	Land Conservation Stewardship Board
9/12/2023	Urban Land Institute

Feedback theme	Feedback Summary	How has staff addressed the feedback?
<p>Increase Monitoring requirements adjacent inactive oil and gas wells</p>	<p>In 2018 as well as feedback heard in 2023, environmental community members wish to increase the groundwater/soil gas monitoring requirements adjacent fully reclaimed wells (plugged and abandoned).</p>	<p>Staff recommend updates to the Code that include monitoring once before a permit is issued and again at the end of a 5-year construction guarantee rather than every year of a new development project's guarantee period.</p> <p>Since the city started collecting environmental site assessments in 2018, there is no evidence of contamination adjacent fully reclaimed wells within the proposed buffer. Staff recognize that cement is not a forever product and at some point, in the future, reclaimed wells may need repair.</p>
<p>Disclosure requirements for future homeowners</p>	<p>Stakeholders expressed concern that monitoring is the responsibility of future residents after a developer's 5-year construction guarantee. Due to this time-bound responsibility, stakeholders have asked that disclosures state clearly any potential for hydrocarbon contamination.</p> <p>The Board of Realtors have commented that disclosure requirements should clearly state the responsible party and limit requirements to the specific buffer standards, not a flat 2,000' from all wells.</p>	<p>Staff has updated the draft and provided prescriptive disclosure requirements for new developments and existing homes that is specific to buffer requirements and specifies the seller as the responsible party.</p>
<p>Reduce the 2,000-foot buffer for Injection (EOR) Wells</p>	<p>The development community is suggesting that injection (EOR) wells receive a reduced buffer due to the fact that there is decreased air quality risk from these wells as compared to injection wells with onsite storage tanks or used for waste disposal.</p>	<p>As prescribed by the Colorado Water Quality Control Commission's Regulation 41 and the Federal Safe Drinking Water Act, a specified area which ground water is classified and an area of interest to monitor public health risks adjacent Class II UIC wells (e.g., EOR – Injection well) is identified. The distances where contamination related to a UIC wells ranges from .25 mile up to 2 miles from a potential source of pollution. It is within these distances where the potential for contamination may occur and therefore the Staff 2,000' reverse setback recommendation mitigates the potential risks permeating from the "the Zone of Endangering influence" as defined by the Federal Safe Drinking Water Act.</p>

<p>Increase 2,000-foot buffer for all active oil and gas wells. (e.g., Producing and EOR injection wells)</p>	<p>Although the State ECMC has a presumptive 2,000-foot setback, Fort Collins should ensure public health and safety by increasing setbacks established by EXMC rules.</p>	<p>At this time, staff does not have evidence to support a buffer beyond 2,000-feet.</p> <p>The ECMC has implemented a 2,000-foot setback rule (ECMC Rule 604), which pertains to permitting for new well development, not existing wells. This setback was based on air emission and modeling studies pertaining to unconventional oil and gas operations. Additionally, the State ECMC requires mechanical integrity testing every 5 years which would serve as an indicator of a potential contamination event adjacent EOR injection wells.</p>
<p>Variance from the 2,000-foot buffer</p>	<p>Adopted in 2018, 500' is the current reverse setback standard. Staff has heard strong support from the development community to allow for a modification of standards per criteria listed under Sec. 2.8 of the land use code to provide a variance from the proposed 2,000' setback and no less than 500'.</p> <p>Environmental stakeholders share concerns that aging infrastructure and historic contamination events within the area of concern should preclude a reduced buffer through a modification of standards.</p>	<p>Because the peer-reviewed scientific literature is incomplete for buffering from EOR injection wells, Staff recommend a modification of standards from EOR injection wells where appropriate and when the four standards of LUC 2.8.2 (H) can be met.</p>
<p>Impacts to property values</p>	<p>Real estate professionals have shared concerns that these regulations signal a perception to potential home buyers that may negatively impact home values.</p>	<p>Staff do not assess the impacts to property value as part of development review applications.</p> <p>The city commissioned an appraiser to try to answer this question in 2014 but could not come up with a conclusive determination. To date, few scholarly property impact studies have been published, but the literature does suggest that a negative environmental event associated with fracking will likely have an adverse impact on property values in proximity to the event. www.fcgov.com/oilandgas/pdf/hunsperger-report.pdf?1453314619</p>

Staff Work Plan - Next Steps to Address Fort Collins Oil and Gas wells.

- ✓ **COMPLETED.** Financial assurances have been approved by State and are in place, ensuring operator has sufficient funds to plug, abandon and reclaim.
- ✓ **SCHEDULED.** City Council hearing to adopt updates to the oil and gas reverse setbacks, September 5.
- ✓ **Q4 2023 PRIORITY.** The City will submit an application to the State to order additional low and non-producing wells to be plugged and abandoned.
- ✓ **ONGOING.** Policy discussion to optimize enforcement and operational standards.