

ORDINANCE NO. 116, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE LAND USE CODE REGARDING BUFFERING BETWEEN
BUILDINGS WITH OCCUPIABLE SPACE AND OIL AND GAS FACILITIES

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the “Land Use Code”); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, several active oil and gas facilities are located in the northern part of the City; and

WHEREAS, several active oil facilities are located within the City's Growth Management Area in unincorporated Larimer County; and

WHEREAS, there is potential for additional oil gas activity within the City and within the City's Growth Management Area; and

WHEREAS, oil and gas facilities are an industrial use that can pose serious health risks to humans and damage to the environment from the potential release of chemicals and potential accidents, including fires and explosions; and

WHEREAS, the buffer distances between proposed buildings containing habitable space and existing oil and gas facilities align with and are based upon the required distances between proposed oil and gas facilities and existing development adopted in City Council Ordinance No. 151, 2022; and

WHEREAS, the Planning and Zoning Commission at its July 20, 2023, regular meeting unanimously recommended that City Council adopt the proposed buffer standards and amend the existing Land Use Code; and

WHEREAS, it is necessary to impose the buffers set forth in this Ordinance between proposed buildings containing habitable space and existing oil and gas facilities to protect the public health, safety, and welfare from the risks posed by oil and gas facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 3.8.26 of the Land Use Code is hereby amended to read as follows:

3.8.26 Buffering for ~~Between~~ Residential and ~~Industrial Uses~~ ~~High Occupancy Building Units~~

- (A) **Applicability.** These standards apply only to applications that include residential uses ~~proposed to be located in proximity to existing industrial uses, and, to the extent legally applicable, high occupancy building units.~~ Standards regarding Buffer Yard D shall not apply to any lot for which a site specific development plan with vested rights was approved prior to September 14, 2018 so long as such site specific development plan was, or is, valid at the time of issuance of any building permit for the construction or modification of any dwelling unit or high occupancy building unit on such lot. ~~Buffering between buildings containing occupiable space and oil and gas facilities is addressed in Section 3.8.36.~~
- (B) **Purpose.** The purpose of this Section is to provide standards to separate residential land uses ~~and high occupancy building units~~ from existing industrial uses in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, air pollutants, hazardous materials or site contamination, or danger from fires or explosions.
- (C) **Buffer standards.** Buffer yards shall be located on the outer perimeter of a lot or parcel and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.
- (1) Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.
- (2) There are four (4) types of buffer yards which are established according to land use intensity as described in Chart 1 below. Buffer yard distances are established in Chart 2 below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.
- (3) The buffer yard requirements shall not apply to temporary or seasonal uses or to properties that are separated by a major collector street, arterial street, or highway.
- ~~(4) **Additional Standards Applicable to Buffer Yard D.** The following requirements shall also apply to development located in Buffer Yard D:~~

- (a) ~~Measured.~~ For purposes of Buffer Yard D standards, the buffer yard shall be measured as either the distance from the outer edge of an oil and gas location to the nearest wall or corner of any dwelling or high occupancy building unit location or, if any Colorado Oil and Gas Conservation Commission adopted setback measurement method applicable to a dwelling or high occupancy building unit results in a greater distance between the existing oil and gas operation site location and the dwelling or high occupancy building unit at issue, then the Colorado Oil and Gas Conservation Commission setback measurement method shall be used. Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above.
- (b) ~~Minimum Buffer Distances.~~ The following minimum buffer distances shall apply:
1. ~~Residential Development.~~ The minimum buffer between a dwelling and any oil and gas location shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public playgrounds, parks, recreational fields, or community gathering spaces shall not be placed within a buffer. Private common areas within a buffer shall not contain playgrounds, parks, recreational fields, or community gathering spaces.
 2. ~~High Occupancy Building Units.~~ The minimum buffer between a high occupancy building unit and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public or private playgrounds, parks, recreational fields, or community gathering spaces shall not be allowed within a buffer.
- (c) ~~Alternative compliance buffer reduction from plugged and abandoned wells.~~ Upon applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned well and meets the requirements specified below.

1. ~~Procedure.~~ To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:
 - a. ~~Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Section than would a plan which complies with the separation and spacing standards of this Section.~~
 - b. ~~Include information regarding environmental testing and monitoring for the site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this subsection b) is required prior to sampling occurring and such plan shall include, but it not limited to, the following:~~
 - i. ~~Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.~~
 - ii. ~~Documentation of plugging activities, abandonment and any subsequent inspections.~~
 - iii. ~~Soil sampling, including soil gas testing.~~
 - iv. ~~Groundwater sampling.~~
 - v. ~~Installation of permanent groundwater wells for future site investigations.~~

vi. ~~A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.~~

e. ~~Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require that the following actions be completed by a qualified professional before development may occur, including but not limited to:~~

i. ~~Remediation of environmental contamination to background levels.~~

ii. ~~Well repair or re-plugging of a previously abandoned well.~~

2. ~~*Review Criteria.* To approve an alternative compliance buffer reduction plan, the decision maker must first find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section. An approved alternative compliance buffer reduction plan shall be exempt from the screening requirements of Chart 2 – Buffer Yard Types and below Subsection (e) regarding fencing.~~

(d) ~~*Disclosure.* If any residential development or dwelling, or high occupancy building unit is proposed to be located within one thousand (1,000) feet of an oil and gas location, the following requirements shall apply:~~

1. ~~At such time as the property to be developed is platted or replatted, the plat shall show the one thousand foot radius on the property from such oil and gas location and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an existing oil and gas location.~~

2. ~~For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwelling may be constructed that are within one thousand (1,000) feet of an oil and gas location. The approved plan for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within one thousand feet of an oil and gas location.~~

(e) ~~*Fencing.* If any residential development is proposed to be located within five hundred (500) feet of an oil and gas location, and if an existing fence does not surround the oil and gas location, the developer must erect a fence that restricts public access to the oil and gas location along the property boundary between the oil and gas location and the development.~~

**Chart 1
Land Use Intensity Categories**

<i>Land Use</i>	<i>Intensity Category</i>	<i>Buffer Yard</i>
Airports/airstrips	Very High	C
Composting facilities	High	B
Dry cleaning plants	Very High	C
Feedlots	Very High	C
Heavy industrial uses	Very High	C
Light industrial uses	High	B
Junkyards	High	B
Outdoor storage facilities	High	B
Recreation vehicle, boat, truck storage	Medium	A
Recycling facilities	High	B
Agricultural research laboratories	High	B
Resource extraction	Very High	C
Oil and gas operations, including plugged and abandoned wells	Very High	D
Transportation terminals (truck, container storage)	High	B
Warehouse & distribution facilities	High	B
Workshops and custom small industry	Medium	A

**Chart 2
Buffer Yard Types**

<i>Type - Base Standard (plants per 100 linearfeet along affected property line)*</i>	<i>Option Width</i>	<i>Plant Multiplier**</i>	<i>Option: Add 6' Wall</i>	<i>Option: Add 3' Berm or 6' Fence</i>
Buffer Yard A:	15 feet	1.00		
	20 feet	.90		
3 Shade Trees	25 feet	.80		
2 Ornamental Trees or Type 2 Shrubs***	30 feet	.70	.65	.80
3 Evergreen Trees	35 feet	.60		
15 Shrubs (33% Type 1, 67% Type 2)	40 feet	.50		
Buffer Yard B:	15 feet	1.25		
	20 feet	1.00		
	25 feet	.90		
4 Shade Trees	30 feet	.80	.75	.85
4 Ornamental Trees or Type 2 Shrubs***	35 feet	.70		
3 Evergreen Trees	40 feet	.60		
25 Shrubs (Type 2)	45 feet	.50		
Buffer Yard C:	20 feet	1.25		
	25 feet	1.00		
	30 feet	.90		
5 Shade Trees	35 feet	.80	.75	.85
6 Ornamental Trees or Type 2 Shrubs***	40 feet	.70		
4 Evergreen Trees	45 feet	.60		
30 Shrubs (Type 2)	50 feet	.50		
Buffer Yard D:	500 feet	1.25		
	525 feet	1.00		
	550 feet	.90		
6 Shade Trees	575 feet	.80	.75	.85
7 Ornamental Trees or Type 2 Shrubs***	600 feet	.70		
5 Evergreen Trees	625 feet	.60		
35 Shrubs (Type 2)	650 feet	.50		

* "Base standard" for each type of buffer yard is that width which has a plant multiplier.

** "Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

*** Shrub types: Type 1: 4' - 8' High Type 2: Over 8' High

Section 3. That Article 3 of the Land Use Code is hereby amended by the addition of a new Section 3.8.36 which reads in its entirety as follows:

3.8.36 Buffering Between Buildings with Occupiable Space and Oil and Gas Facilities

- (A) **Applicability.** These standards apply to all applications to construct buildings containing occupiable space and existing buildings containing occupiable space within the oil and gas buffer of an existing oil and gas facility regardless of whether such oil and gas facility is located within or outside of the City limits. These standards also apply to common outdoor areas within an oil and gas buffer.
- (1) Any applicant that submitted an application prior to September 29, 2023, to construct a building containing occupiable space may construct such building within an oil and gas buffer upon satisfying all applicable Code requirements for approval. However, any lot upon which such building is placed is subject to the restriction described in Subsection (E)(3) and disclosures in Subsection (F).
- (2) Any building containing occupiable space already constructed within an oil and gas buffer prior to September 29, 2023, is exempt from the restriction on such building in an oil and gas buffer. However, any lot upon which the building is placed is subject to the restriction described in Subsection (E)(3) and disclosures in Subsection (F).
- (B) **Purpose.** The purpose of this Section is to protect public health and safety by providing spacing and regulating certain uses within oil and gas buffers to reduce adverse impacts of noise, odor, air pollutants, soil-gas contaminants, groundwater contaminants, hazardous materials, or danger from fires or explosions.
- (C) **General Standard.** Proposed development shall ensure that the risk to public health and safety is sufficiently mitigated from all extended exposure to the main pollutants resulting from oil and gas production, including but not limited to heavy metals, salts, oil and grease (O&G), benzene, toluene, ethylbenzene and xylene (BTEX), total petroleum hydrocarbon (TPH), and polycyclic aromatic hydrocarbon (PAHs). Proposed development must ensure that any potential contaminants associated with existing oil and gas facilities and located on the development site are within the acceptable limits of applicable local, state and federal soil-gas, groundwater, and air quality regulations and standards, including, but not limited to, those regulating odor, dust, fumes, or gases which are noxious, toxic or corrosive, and suspended solid or liquid particles.
- (D) **Oil and Gas Buffers.** This Subsection establishes oil and gas buffers for different oil and gas facilities, and applicable development standards within such buffers are set forth in Subsection (E).

- (1) Oil and Gas Buffer – Well Not Abandoned. The oil and gas buffer for an oil and gas facility whose well is not abandoned shall extend from the outer edge of the oil and gas location for two thousand (2000) feet in all directions. The Planning and Zoning Commission may grant a modification of standards pursuant to Division 2.8 to reduce the two thousand (2000) foot distance to no less than five hundred (500) feet provided the applicant provides a *Phase II Environmental Site Assessment* as part of the modification request showing that levels of oil and gas contaminants, if any, are within Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. Any approved modification shall require as a condition that the applicant annually provide a *Phase II Environmental Site Assessment* for five (5) years from the issuance of a development construction permit. Initial baseline samples and subsequent monitoring samples shall be collected within one-half (1/2) mile radius of the existing well location. If the main pollutants resulting from oil and gas production described in Subsection (C) are identified at the time of assessment, such pollutants must be remediated by the development applicant per Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections.
- (2) Oil and Gas Buffer – Abandoned Well, Not Reclaimed. For oil and gas facilities consisting of an abandoned well that have not been reclaimed pursuant to Section 3.12.6, the oil and gas buffer shall extend five hundred (500) feet in all directions as measured from the center of the well bore. Development plans that include an abandoned well that has not been reclaimed must provide a *Phase II Environmental Site Assessment* as part of the application showing that levels of oil and gas contaminants, if any, are within Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. The approved application shall require as a condition that the applicant annually provide a *Phase II Environmental Site Assessment* for five (5) years from the issuance of a development construction permit. Initial baseline samples and subsequent monitoring samples shall be collected within one-half (1/2) mile radius of the existing well location. If the main pollutants resulting from oil and gas production described in Subsection (C) are identified at the time of assessment, such pollutant must be remediated by the development applicant per Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. This buffer is not subject to the modification of standards process.
- (3) Oil and Gas Buffer – Abandoned Well, Reclaimed. For oil and gas facilities consisting of abandoned wells that have been reclaimed pursuant to Section 3.12.6, the oil and gas buffer shall extend one hundred and fifty (150) feet in all directions as measured from the center of the well bore. Development

plans that include an abandoned well that has been reclaimed must provide a *Phase II Environmental Site Assessment* as part of the application and a second Phase II Environmental Site Assessment must be provided five (5) years after a Development Construction Permit is issued. If the main pollutants resulting from oil and gas production described in Subsection (C) are identified at the time of assessment, such pollutants must be remediated by the development applicant per Federal Environmental Protection Agency or State health department standards, whichever ensures greater public health protections. This buffer is not subject to the modification of standards process.

(E) Oil and Gas Buffer Standards.

- (1) Except as stated in (E)(3) below, no portion of a building that contains occupiable space may be located within an oil and gas buffer.
- (2) After September 29, 2023, permanent playgrounds, play structures, recreational fields, or permanent community gathering spaces may not be placed within any portion of a homeowner's association owned or maintained common area located within an oil and gas buffer.
- (3) Exceptions to Restriction on Buildings Containing Occupiable Space Within an Oil and Gas Buffer.
 - (a) Any applicant that submitted an application prior to September 29, 2023, to construct a building containing occupiable space may construct such building within an oil and gas buffer upon satisfying all applicable Code requirements for approval. However, no additional building containing occupiable space for which an application was submitted after September 29, 2023, may be constructed on any portion of the same lot located within an oil and gas buffer.
 - (b) Any building containing occupiable space already constructed within an oil and gas buffer prior to September 29, 2023, is exempt from the restriction on such building within an oil and gas buffer. However, no additional building containing occupiable space for which an application was submitted after September 29, 2023, may be constructed on any portion of the same lot located within an oil and gas buffer.

(F) Disclosure. The following disclosure requirements shall apply to any real property upon which a building containing occupiable space is or may be located within any oil and gas buffer described in Subsection (D):

- (1) At such time as the real property to be developed is platted or replatted, the plat shall show the oil and gas buffer on the property and shall contain a note informing subsequent property owners that certain lots shown on the plat are within an oil and gas buffer.
- (2) For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within an oil and gas buffer upon which buildings containing occupiable space may be constructed. The approved plat for such development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within an oil and gas buffer.
- (3) Sellers and lessors of any real property within an oil and gas buffer must provide the following written notice of material facts related to oil and gas facilities identified by environmental site assessments the disclosure notice must be provided in at least fourteen (14) point font to any potential purchaser who intends to resell, occupy and/or lease the property prior to or as part of the purchase or rental agreement:

As required by 3.8.36 of the Fort Collins Land Use Code, notice is hereby given that [insert description of lot] is within [insert buffer standard set forth in Subsection (D) including well status and distance from well]. At the time of [sale or lease], environmental assessments, studies or reports done involving the physical condition of the Property impacted by oil and gas production are within the acceptable Environmental Protection Agency limits. For more information contact the City of Fort Collins Environmental Planner or the Energy and Colorado Carbon Management Commission formerly known as the Colorado Oil and Gas Conservation Commission.

The above notice shall be provided by the prospective seller or lessor to the prospective buyer or lessee of real property no less than thirty (30) days before closing or such shorter time period agreed to by the parties and shall be provided before the signing of any purchase, sale, or rental agreement for the subject property.

Section 4. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of a new definition “*Occupiable space*” which reads in its entirety as follows:

Occupiable space shall mean, as defined in the version of the International Building Code adopted in Chapter 5 of the Code of the City of Fort Collins, a room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is

equipped with means of egress and light and ventilation facilities meeting the requirements of this code.

Section 5. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of a new definition “*Oil and gas buffer*” which reads in its entirety as follows:

Oil and gas buffer shall mean the area located on a development site formed by measuring two thousand (2000) feet in all directions from an oil and gas facility location or, as applicable, the area located on a development site formed by measuring two thousand (2000) feet in all directions from the middle of an oil and gas facility well bore.

Introduced, considered favorably on first reading and ordered published this 5th day of September, 2023, and to be presented for final passage on the 19th day of September, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 19th day of September, 2023.

Mayor

ATTEST:

City Clerk