



David Katz, Chair
Ted Shepard, Vice Chair
Michelle Haefele
Per Hogestad
Adam Sass
Jeff Schneider
Julie Stackhouse

City Council Chambers
City Hall West
300 Laporte Avenue
Fort Collins, Colorado

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**Regular Hearing
November 17, 2022**

Chair Katz called the meeting to order at 6:00 p.m.

Roll Call: Haefele, Hogestad, Katz, Sass, Schneider, Shepard, Stackhouse

Absent: None

Staff Present: Everette, Yatabe, Sizemore, Myler, Schumann, Mapes, Geary, Dinger, Axmacher, Claypool, Vonkoepping, Hahn, Mounce, Lorson, Lindsey, Kleer, Longstein, and Manno

*******Excerpt from approved minutes**

10. Oil and Gas Land Development Code Regulations

Project Description: This is a request for a recommendation to City Council regarding proposed Land Development Code amendments to regulate the zoning, siting, and design of new oil and gas facilities. The code amendments address regulatory gaps and opportunities that were created with the adoption of Colorado Senate Bill 19-181.

Recommendation: Approval

Staff Presentation

Kirk Longstein, Senior Environmental Planner, commented on the focus areas of oil and gas regulation work: new oil and gas facilities, operational standards, and reverse setbacks, and stated this presentation will focus on new oil and gas facilities. He discussed the state and local roles in regulation and stated this draft Code language aims at regulating surface activities as it is outside of the local purview to regulate in-hole operations.

Longstein discussed the October Council work session during which general support was provided for restricting new oil and gas wells to industrial zone districts and continuing to align with Colorado Oil and Gas Conservation Commission (COGCC) minimum setbacks of 2,000 feet from occupied buildings, trails, and natural areas. He noted the original proposed Code regulations would have added oil and gas facilities as an allowed use to industrial zone districts and add oil and gas pipelines as an allowed use to all zone districts. He commented on feedback received that pipelines should not be allowed on public lands or in residential areas; therefore, staff's current recommendation is to remove oil and gas pipelines as an allowed use within public open lands and residential zone types, including mixed-use neighborhoods. He discussed the proposed setback regulations for new oil and gas facilities, which would be 2,000 feet from residential buildings and 1,000 feet from wetlands, water, ditches, conservation easements. For new oil and gas pipelines, a 50- to 100-foot setback from buildings and a 150-foot setback from surface water features are being proposed. He also noted there are quite a few buffering requirements related to wildlife at the state level.

Longstein noted the intent of the draft language is to make new oil and gas facilities and pipelines fall under Planning and Zoning Commission review with a quicker basic development review process being used for plugging and abandoning existing wells. He noted this was based on public stakeholder feedback related to public notices and input opportunities being minimal and inadequate.

Longstein stated the draft also includes some prohibitive oil and gas facilities, including injection wells, some gas storage wells, and disposal pits. He also commented on included development standards related to landscaping, fencing, artificial lifts, and environmental protection and discussed the regulations and requirements related to plugging and abandoning wells.

Longstein commented on the ways in which the draft Code addresses financial security in the development agreement language. He also noted all existing development standards within the Land Development Code will apply when a PDP is submitted for oil and gas facilities. He stated the staff recommendation is for support of the draft oil and gas Code regulations including updates to the table of primary uses.

Member Haefele asked if the City could add financial security requirements with bonding specifically for City resources. Longstein replied that could be a possible inclusion and it would likely be similar to the existing development agreement language.

Rebecca Everette, Planning Manager, noted financial securities are required for public infrastructure, natural habitat buffer zone restoration, and landscaping. She requested clarification as to what other financial securities would be desired.

Member Haefele asked if the state financial securities would cancel any the City would require. Everette replied the state has multiple financial securities, including some that give the state the ability to reclaim a well and plug it if an operator goes out of business and abandons a well without plugging it.

Member Haefele asked about landscaping for fire safety. Longstein replied there is a buffer distance between the facilities and where landscaping would be allowed.

Member Haefele asked if there are requirements for landscaping to mitigate the impacts of the screening. Longstein replied in the negative and stated the fencing requirement is not specific to screening or aesthetics.

Chair Katz asked if other parts of the Code would cover mitigating impacts of screening. Everette replied in the affirmative noting there are requirements related to operational compatibility.

Member Haefele asked if the City is required to add oil and gas facilities as an allowed use in the industrial zone. Assistant City Attorney Yatabe replied he would recommend an executive session to discuss those types of legal issues.

Member Schneider stated the use must be added to comply with SB181 and the ultimate effect of the regulations will be a prohibition on drilling new wells in Fort Collins, though that cannot be explicitly stated.

Member Stackhouse stated the proposed regulations do not prohibit oil and gas development, nor is the City attempting to do that; however, the conditions under which oil and gas development can occur are going to be extremely narrow.

Assistant City Attorney Yatabe stated, prior to SB181, the City's ability to regulate the surface impacts of oil and gas facilities was severely limited, and post-SB181, the City acquired much greater authority. He stated the COGCC has the ability to regulate surface impacts if the City does not adopt regulations.

Everette noted the intent in Council directing staff to develop these Code standards was to address what Council perceived as a regulatory gap and to ensure there are strong regulations that reflect the will of Council and the community to ensure that gap no longer exists.

Member Haefele asked if the recommendation as written includes allowing pipelines in all zones. Everette replied it was not feasible to make the Code draft changes related to not allowing pipelines in public open lands and residential zones; however, staff is recommending that amendment and it is possible that language could be changed in the draft that goes before Council.

Public Input (3 minutes per person)

Ed Behan, Larimer Alliance for Health, Safety, and the Environment, expressed concern about the proposed language, specifically related to proposed setbacks that apply to structures rather than property lines, notification requirements only for owners of record, and the application only of basic development review to the siting of pipelines. He requested the Commission not recommend the regulations for adoption without additional time for study by relevant stakeholders and public input.

Tim Gosar requested the Commission seriously consider the process by which these draft regulations are being rolled out and presented to the public and whether there has been meaningful opportunity for the public to read, understand, and engage on the matter. He specifically cited concerns related to setbacks and financial assurance. He requested the regulations be held in abeyance until staff can prepare a more complete and comprehensive set of regulations that truly protect public health, safety, and the environment.

Longstein stated the proposed setbacks include a variety of stipulations, including distance to property lines for parks, playgrounds, and outdoor venues. He acknowledged there was a great deal of input related to allowing additional time for consideration of the draft language; therefore, the item has been pushed to the December 20th Council meeting. He noted some of the pipeline concerns have been addressed by limiting the zones in which they would be allowed. Additionally, oil and gas development does not have eminent domain authority.

Everette noted the public engagement process for these Code updates primarily happened in 2019 and several work sessions with Council have occurred over the last two years. She also noted all Code standards that apply in a type 2 Planning and Zoning Commission process also apply in a Basic Development Review process and any requested modifications are subject to the same review criteria. Regarding notifications only going to property owners of record, Everette noted that is the standard practice within the current development review process. She stated a pilot was done a couple years ago sending mailings to tenants and it was found there is no reliable database upon which to rely and many expensive mailing errors occurred.

Longstein stated the City of Fort Collins was recently awarded an EPA grant through Environmental Services and purchased an infrared camera in partnership with Larimer County to address ongoing leak detection and reporting. He stated this draft language does not relate to ongoing operational inspections.

Member Haefele asked if there are going to be additional regulations developed by another City department for operational issues, such as requiring air quality monitoring. Longstein replied the staff recommendation is to partner with Larimer County, regional partners, and the operator for ongoing monitoring. Everette noted there would be a reliance on Larimer County's operational standards and inspectors given the low number of wells within the city limits.

Vice Chair Shepard asked if these standards generally match the County's. Longstein replied he could not speak to that specifically.

Chair Katz asked if annexation would be triggered by an oil and gas development in the GMA that is adjacent on three sides by city limits. Everette replied certain types of development applications trigger review for annexation; therefore, it would depend on how Larimer County classifies oil and gas facilities.

Member Sass noted monitoring of abandoned wells is required for five years and asked where that information goes. Longstein replied the City would collect the information and that would be a condition of the development agreement. Everette noted Environmental Planning staff would review the reports which would be prepared by an industry professional.

Member Sass asked how the City is financially protected for those five years of monitoring should an issue be detected. Everette replied the first course of action would be coordination with the COGCC and there would be mechanisms at the state level to address replugging a well.

Commission Questions / Deliberation

Member Haefele stated pipelines are not utilities and should not be treated as such. She expressed concern the draft regulations are not yet adequate to fully take advantage of the control the City has been given with SB181.

Vice Chair Shepard requested input as to why oil and gas facilities would be allowed as an addition of permitted use (APU). Everette replied some of the criteria for an APU are conformity with the basic premise of the underlying zone district and ensuring more impact than a permitted use does not occur. She stated those would be high bars to meet for an oil and gas facility.

Member Haefele stated there is no reason to open up the possibility of allowing oil and gas facilities as an APU and she recommended striking that clause all together. She also suggested changing the setbacks from building wall to property boundary for all properties.

Vice Chair Shepard asked if other Code provisions could be invoked to increase setbacks. Everette replied there are few properties that are big enough to accommodate a 2,000-foot buffer without touching a property line. She noted the property line setback is included for schools, playgrounds, and recreational fields.

Member Haefele expressed concern that even though these situations are unlikely, it is inappropriate to be as amenable as possible with the regulations.

Member Schneider noted the Commission is not the final decision maker and Council, as elected officials, will make a decision based on input from the community.

Member Stackhouse stated she is comfortable moving forward.

Vice Chair Shepard made a motion that the Planning and Zoning Commission recommend approval of the proposed Land Development Code changes with regard to new oil and gas facilities including the changes mentioned by staff. Member Schneider seconded the motion.

Chair Katz noted voting against this motion is actually voting for less regulation.

Member Haefele stated voting against the motion is voting against this specific package of regulations.

The motion carried 6-1 with Haefele dissenting.