Commerce City

7887 E. 60th Ave.
Commerce City, CO
80022
c3gov.com

Master

File Number: Ord 2266

File ID:	Ord 2266	**Type:**	Ordinance	**Status:**	Passed
Version:	1	**Reference:**		**In Control:**	City Council
				File Created:	08/03/2020
File Name:				**Final Action:**	03/15/2021

Title: AN ORDINANCE RELATING TO THE REGULATION AND ENFORCEMENT OF OIL AND GAS DEVELOPMENT BY AMENDING THE COMMERCE CITY REVISED MUNICIPAL CODE, INCLUDING SECTION 3-2304 AND ARTICLES III, V, VI, AND XI OF THE COMMERCE CITY LAND DEVELOPMENT CODE, REPEALING AND RESERVING SECTION 21-3216 OF THE LAND DEVELOPMENT CODE, ENACTING A NEW SECTION 21-3235 OF THE LAND DEVELOPMENT CODE, APPROVING AND IMPLEMENTING A BEST MANAGEMENT PRACTICES DOCUMENT, AND ESTABLISHING RELATED PENALTIES AND PROCEDURES

Notes:

Sponsors:

Enactment Date:

Attachments: Council Communication (Second Reading), Ord 2266 (Approved on First Reading), Council Communication (First Reading), Ord 2266 (Pre-Amended First Reading), Minor Staff Changes (Pre-Amended First Reading), PASSED 2/11/21 - Proposed Amendment 1 to Ordinance 2266 (School Facility Setback), PASSED 2/11/21 - Proposed Amendment 2 to Ordinance 2266 (Noise Regulation), PASSED 2/11/21 - Proposed Amendment 3 to Ordinance 2266 (Community Outreach), PASSED 2/11/21 - Proposed Amendment 4 to Ordinance 2266 (Location Pictures - Reclamation), NOT PASSED 2/11/21 - Proposed Amendment 5 to Ordinance 2266 (PC Recommendation of Revised Exhibit G), NOT INTRODUCED Council Member Noble Proposed Amendment 1 (First Reading) - Setbacks, NOT INTRODUCED Council Member Noble Proposed Amendment 2 (First Reading) - Setback from Plugged and Abandoned Wells, Redline Exhibits (A,B,C,D,E,F,H) (as proposed), Staff Report PC, Planning Commission Letter - Findings of Fact, Presentation ORD 2266, Overview of Changes – Oil and Gas LDC Updates from November 2019 to January 2021, Resources - Publications Reviewed, Written Comments (First Reading) - Received as of 2/11/2021, Written Comments (Second Reading) - Received as of 3/15/2021, Council Member Noble

Enactment Number:

Proposed Amendment 1 (Second Reading) - Setbacks, Council Member Noble Proposed Amendment 2 (Second Reading) - Setback from P&A Wells, Council Member Noble Proposed Amendment 3 (Second Reading) - Financial Assurance Reductions and Releases, Council Member Noble Supplemental Materials

utside Presenter:

Hearing Date:

Drafter: jmain@c3gov.com

Effective Date:

Related Files:

History of Legislative File

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	02/11/2021	introduced by council as seated and approved on first reading				Pass

Notes: *Domenic Martinelli, environmental planner, Robert Sheesley, city attorney, and Matt Sura, outside legal counsel provided the presentation.*

A motion was made by Council Member Nobel, seconded by Council Member Guardiola, to move public comment on the ordinance before Council asked questions of staff. 3 - Aye, 6 - Nay (Madera, Hurst, Grimes, Smith, Frank, Huseman). Motion Failed.

The following spoke on the ordinance:
Ronna Sanchez
James Hayes
Blake Fulenwider
Ferd Belz
Andrew Forkes-Gudmundson
Ryan Seastrom
Vicki Kettler
Christopher McGowne
Lisa Gudmundson
Erik Gudmundson
Cristen Logan
Lois Vanderkooi
Katherine Merlin
Sara Kettler
Derek Seifried
Brittany Severyn
Kristi Douglas
Steve Douglas

A motion was made by Council Member Madera, seconded by Council Member Nobel, to amend Ordinance 2266 by inserting in Exhibit F, a new Section 21-5266(6)(c) and renumbering that section as shown in Proposed Amendment 1 (School Facility Setback). VOTE: 9 -Aye

A motion was made by Council Member Madera, seconded by Mayor Pro Tem Frank, to amend Ordinance 2266 by amend Ordinance 2266 by modifying the language of Exhibit F, at Section 21-5266(9(b)(ii) and renumbering that section, and striking subsection F(6)(c)(4)(iv) in Exhibit I, as shown in Proposed Amendment 2 (Noise Regulations). VOTE: 9 - Aye

A motion was made by Council Member Nobel, seconded by Council Member Madera, to amend Ordinance 2266 by modifying Exhibit I, Section G(1) by modifying subsection (a) and adding a new subsection (b) as shown in Proposed Amendment 3 (Community Outreach). VOTE: 9 - Aye

A motion was made by Mayor Pro Tem Frank, seconded by Council Member Madera, to amend Ordinance 2266 by modifying Exhibit I, Section I beginning at page 24, line 31, by adding a new subsection 1 and renumbering that section, as shown in Proposed Amendment 4 (Reclamation - Location Pictures). VOTE: 9 - Aye

A motion was made by Council Member Grimes, seconded by Council Member Hurst, to amend Ordinance 2266 by substituting Exhibit G with Proposed Amendment 5 (PC Recommendation of Revised Exhibit G).

Council Member Grimes amended their motion to modify the 1000 foot reverse setback requirement in the Proposed Amendment 5 to a 500 foot reverse setback requirement. The amendment was accepted by Council Member Hurst.

Council Member Grimes amended their motion to strike Exhibit G subsection (1) and (2) from Proposed Amendment 5 and consider those separately from Ordinance 2266 at a later date. The amendment was accepted by Council Member Hurst.

After Council discussion, a motion was made by Council Member Noble, seconded by Council Member Madera, to call the question. VOTE: 8 - Aye, 1 - Nay (Hurst)

Council voted on Council Member Grimes' motion. VOTE: 2 - Aye (Grimes, Hurst), 7 - Nay. Motion failed.

A motion was made by Council Member Grimes,seconded by Council Member Hurst, to strike Exhibit G subsections (1) & (2) from Ordinance 2266 and to discuss the matter at a later meeting.VOTE: 2 - Aye , 7 - Nay (Madera, Allen-Thomas, Noble, Guardiola, Smith, Frank, Huseman). Motion Failed.

A motion was made by Council Member Madera, seconded by Council Member Hurst, to modify the 1000 foot reverse setback requirement in Exhibit G subsections 1 & 2 to a 650 foot reverse setback requirement regardless of well count. VOTE: 4 - Aye, 5 - Nay (Allen- Thomas, Noble, Guardiola, Frank, Huseman). Motion Failed.

1	City Council	03/15/2021	approved on second & final reading	Pass

Notes: *A motion was made by Council Member Nobel, seconded by Council Member Gaurdiola, to amend Ordinance 2266 in Exhibit D and Exhibit F, by striking subsection 21-3235(5) and substituting a new subsection 21-5266(6) as shown in the document titled “Noble Amendment 1 (Second Reading) – Setbacks.” VOTE: 3 - Aye, 5 - Nay (Madera, Hurst, Grimes, Smith, Huseman)*

A motion was made by Council Member Nobel, seconded by Council Member Allen-Thomas, to amend Ordinance 2266 in Exhibit G, by increasing the plat restriction for habitable structures from plugged and abandoned wells to 150 feet as shown in the document titled “Noble Amendment 2 (Second Reading) – Setback from Plugged and Abandoned Wells.” VOTE: 4 - Aye, 4 - Nay (Madera, Hurst, Grimes, Smith)

A motion was made by Council Member Nobel , seconded by Council Member Allen-Thomas(?), to amend Ordinance 2266 in Exhibit F, by adding language to Section 21-5266(15)(b)(ii) and (iii)(2) requiring prohibiting the reduction or early release of financial assurances as shown in the document titled “Noble Amendment 2 (Second Reading) – Financial Assurances Reductions or Releases.” VOTE: 6 - Aye, 2 - Nay ()

A motion was made by Council Member Hurst, seconded AT, to extend the meeting by 30 minutes. VOTE: 8 - Aye

Minor Motion: Mover Mayor Huseman, seconded by Madera; language in the video

Hurst Motion to go back to planning commission setbacks: seconded Grimes VOTE: check video

A motion was made by CM Grimes, seconded by CM Hurst, to amend Ordinance 2266 (Video). VOTE - Aye, - Nay, 1 - Excused (Frank)

A motion was made by Council Member Grimes, seconded by Council Member Hurst, to amend Ordinance 2266 on second reading to amend subsection 3(a) and (c) of Section 21-6280 of the Land Development Code as shown in the written comments submitted by David Foster. VOTE: 2 - Aye, 6 - Nay, 1 - Excused (Frank)

Text of Legislative File Ord 2266

AN ORDINANCE RELATING TO THE REGULATION AND ENFORCEMENT OF OIL AND GAS DEVELOPMENT BY AMENDING THE COMMERCE CITY REVISED MUNICIPAL CODE, INCLUDING SECTION 3-2304 AND ARTICLES III, V, VI, AND XI OF THE COMMERCE CITY LAND DEVELOPMENT CODE, REPEALING AND RESERVING SECTION 21-3216 OF THE LAND DEVELOPMENT CODE, ENACTING A NEW SECTION 21-3235 OF THE LAND DEVELOPMENT CODE, APPROVING AND IMPLEMENTING A BEST MANAGEMENT PRACTICES DOCUMENT, AND ESTABLISHING RELATED PENALTIES AND PROCEDURES

Summary and Background Information:
In 2012, Commerce City adopted its current set of Oil and Gas regulations, which require any potential operators to obtain an Oil and Gas Permit, and execute an Extraction Agreement. Since of the adoption of these rules, the landscape of oil and gas regulation at the state level has increased significantly. Since 2012, the Colorado Oil and Gas Conservation Commission (COGCC) has conducted a number of rulemaking procedures, which have modified requirements such as school setbacks, flowline regulations, spill reporting, and many other items. Enacted on April 16, 2019, SB19-181 substantially modified the Oil and Gas Conservation Act, C.R.S. §§ 34-60-101 et seq. and related case law, including clarifying the land use and police power authority of local governments, overriding or limiting the effect of recent court rulings, and restructuring the mission, purpose, and authority of the COGCC and its current rules. SB19-181 granted explicit authority to local governments to regulate the surface impacts of oil and gas operations in a reasonable manner to address certain matters and to protect and minimize adverse impacts to public health, safety, and welfare and the environment. *See* C.R.S. 29-20-104(h) (also defining "minimize adverse impacts" to mean "to the extent necessary and reasonable, to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimizing and mitigating the extent and severity of those impacts that cannot be avoided"). Local government regulations approved pursuant to SB19-181 may be more protective or stricter than state requirements. C.R.S. 34-60-131.

On November 23, 2020, the COGCC unanimously voted to adopt rules addressing the Mission Change, Alternative Location Analysis, and Cumulative Impacts directives from Senate Bill 19-181 (effective January 15, 2021). The rule making is a comprehensive overhaul of existing regulations, and makes a number of significant changes to how Oil and Gas Permits are reviewed and approved by the state.

In addition to the authority expanded by SB19-181, Commerce City, as a home rule municipality, has broad authority to exercise its zoning and police powers to promote and protect the health, safety, and welfare of the community and its citizens, as well as the environment, including with respect to oil and gas exploration and extraction activities and associated land uses, pursuant to Article XX, Section 6 of the Constitution of the State of Colorado, the Charter of the City of Commerce City, including but not limited to Sections 2.2 and 10.8, and state law, including, but not limited to, Sections 29-20-101 *et seq.*, 31-15-401 *et seq.*, and 31-23-301 *et seq.* of the Colorado Revised Statutes.

Commerce City's existing regulations need to be updated with respect to the passage of Senate Bill 19-181, current regulatory best management practices, updated and pending COGCC Rules, Commerce City's growth, current technologies of the oil and gas exploration and extraction industry, and continuing concerns for risks to the community's health and property. The city's population has increased by nearly 20%, including substantial residential development in the northern part of the city where oil and gas development is anticipated.

The proposed ordinance relies on the City's authority recited above and will avoid the actual and reasonably anticipated adverse surface impacts of oil and gas operations, or to minimize and mitigate the extent and severity of such impacts where they cannot be avoided, in a manner that is both necessary and reasonable for the purpose of protecting public health, safety, and welfare and the environment.

Creation of Regulations: Following the passage of SB19-181, Commerce City has spent substantial time and resources to develop new regulations to address the impacts of oil and gas development in the community, including substantial industry, community, and other stakeholder participation. On November 4, 2019, Ordinance 2235 was continued by City Council. A number of concerns were raised during the public hearing, and council voted to continue the ordinance indefinitely. The major concerns raised regarding the proposed ordinance were the following:

- Lapse and Forfeiture of permits
- Permit transferability
- Air quality monitoring requirements
- Measurement of setbacks
- Reverse setbacks
- Gathering line regulations
- Chemical disclosure

On February 10th, 2020, a study session with Council was held to discuss the progress that had been made on those outstanding issues, and to receive additional feedback regarding the LDC update process. Following that study session, staff began to draft a revised ordinance for public release. During this process, staff conducted additional stakeholder meetings with the following groups between January and Mid-May:

- Environmental Regulatory Groups
- TCHD, CDPHE, Denver Environmental Quality Division (Air Quality)
- COGA, API & Oil and Gas Operators

- COGCC
- North Range Concerned Citizens
- Oil and Gas Focus Group (2 meetings)
- Developers and Homebuilder Stakeholder Group
- LOGIC (League of Oil and Gas Impacted Coloradans)
- Conservation Colorado

Following the February 10 study session, a revised draft based on public comments was released on March 10, 2020 for a public comment period originally to end on April 10. Due to COVID-19, the comment period was ultimately extended to May 31.

Additionally, a Town hall meeting was conducted on May 7th with a city staff panel to gather feedback on the proposed ordinance. A total of 60 community members were in attendance, and 8 members of the public utilized live Spanish translation services. A recording of the meeting can be found here <https://www.youtube.com/watch?v=_iUSK9Qg8LQ&feature=emb_title>.

Following the public comment period and town hall, staff made a series of revisions to the draft based on comments received. On June 8th, a study session was held to discuss proposed changes brought forward by staff, in response to comments from the public, the stakeholder processes that have occurred, and parallel rule makings occurring at the COGCC. It was determined in the study session that council wanted to have additional time to review the proposed changes, and provide written comments, proposed policy changes, or proposed language changes to the publicly released draft.

One June 22, a study session was held to review council's proposed recommendations, comments, and general discussion topics, and provide staff direction on each topic raised. All of the items contained within the study session presentation were not covered within the allotted time.

On July 21, 2020 a study session was held to review council's proposed recommendations, comments, and general discussion topics, and provide staff direction on each topic raised.

On July 27, 2020 Staff received direction from City Council to incorporate a revised reverse setback value of 1,000'.

On October 19, 2020 City Council provided additional guidance to City staff on the financial provisions section in Article V.

Update: Ordinance 2266 was introduced and approved on first reading, included amendments as noted below, on February 11, 2021.

Planning Commission Recommendation: All feedback received during these study sessions were consolidated into a revised draft, and brought forward to the City's Planning Commission on January 5, 2021. Additional background detail and supporting information is located in the **Staff Report** to the Planning Commission (updated to include additional

information for Council) included in the packet.

During that meeting, the Commission voted 5-0 to recommend *approval* to the City Council, with revisions to reduce the scope of Exhibit G (Reverse Setbacks). In the Planning Commission's recommendation to City Council, they provided a letter (included in the packet) containing findings of fact regarding their recommendation.

Planning Commission's recommended modification is included as **Proposed Amendment 5 (PC Recommendation of Revised Exhibit G)** ***(Not passed on 2/11/21)***. Council could adopt the Planning Commission's recommendation by an amendment to the proposed ordinance or consider the ordinance without reverse setbacks by striking Exhibit G entirely.

- Motion to Incorporate PC Recommendation: I move to amend Ordinance 2266 by substituting Exhibit G with Proposed Amendment 5 (PC Recommendation of Revised Exhibit G).

Additional Minor Changes:
Staff incorporated minor changes to the draft ordinance for consistency with recently enacted COGCC regulations. These minor changes are reflected in the **Minor Staff Changes** document in the packet and include updated COGCC rule references, a requirement for the submission of a Disproportionately Impacted Communities plan and Fluid Leak Detection plan, and substituting "reduced emission completion practices" in place of "green completions." No amendment is needed to include these items but Council could choose to strike any or all of these changes.

Additional Recommended Amendments:
Staff is recommending four additional amendments to ensure consistency with the recently adopted COGCC rules. These more substantive items are presented as separate amendments for Council consideration. Each proposed amendment is identified specifically in the packet.

- Proposed Amendment 1 (School Facility Setbacks) ***(Passed & included in ordinance as approved on first reading)*****:**

- Recommended Motion: I move to amend Ordinance 2266 by inserting in Exhibit F, a new Section 21-5266(6)(c) and renumbering that section as shown in Proposed Amendment 1 (School Facility Setback).

- Effect: This amendment would change the setback distance from school facilities to 2,000 feet to be consistent with new COGCC rules. The COGCC defines 4 specific school facilities from which the setback would be measured:

a. **CHILD CARE CENTER** means a child care center as defined in § 26-6-102(5), C.R.S., that is in operation at the time of the pre-application notice pursuant to Rule 305.a.(4). A child care center will include any associated outdoor play areas adjacent to or directly accessible from the center and is fenced or has natural barriers, such as hedges or stationary walls, at least four (4) feet high demarcating its boundary.

b. **FUTURE SCHOOL FACILITY** means a school facility that is not yet built, but that the school or school governing body plans to build and use for students and staff within three years of the date the school or school governing body receives a pre-application notice pursuant to Rule 305.a.(4). In order to be considered a future school facility, the following requirements must be satisfied:

i. For public, non-charter schools, the school governing body must affirm the nature, timing, and location of the future school facility in writing; or

ii. For charter schools, the school must have been approved by the appropriate school district or the State Charter School Institute, § 22-30.5-505, C.R.S., at the time it receives a pre- application notice pursuant to Rule 305.a.(4), and the school governing body must affirm the nature, timing, and location of the future school facility in writing; or

iii. For private schools, the school governing body must be registered with the Office of the Colorado Secretary of State at the time it receives a pre-application notice pursuant to Rule 305.a.(4), and must provide documentation proving its registration with the Office of the Colorado Secretary of State, its tax exempt status, and its submitted plans to the relevant local government building and planning office.

c. **SCHOOL** means any operating Public School as defined in § 22-7-703(4), C.R.S., including any Charter School as defined in § 22-30.5-103(2), C.R.S., or § 22-30.5-502(6), C.R.S., or Private School as defined in § 22-30.5-103(6.5), C.R.S.

d. **SCHOOL FACILITY** means any discrete facility or area, whether indoor or outdoor, associated with a school, that students use commonly as part of their curriculum or extracurricular activities. A school facility is either adjacent to or owned by the school or school governing body, and the school or school governing body has the legal right to use the school facility at its discretion. The definition includes Future School Facility.

- Proposed Amendment 2 (Noise Impacts) *(Passed & included in ordinance as approved on first reading)*:

- Recommended Motion: I move to amend Ordinance 2266 by modifying the language of Exhibit F, at Section 21-5266(9(b)(ii) and renumbering that section, and striking subsection F(6)(c)(4)(iv) in Exhibit I, as shown in Proposed Amendment 2 (Noise Regulations).

- Effect: This would modify the regulations and BMP document to incorporate the new COGCC rule limiting C scale noise of 60db(C) as set forth in COGCC Rule 423. If passed, Commerce City's noise limits within residential / rural areas will remain more strict than COGCC rules which allow higher noise limits during drilling and completion operations.

- Proposed Amendment 3 (Community Outreach) *(Passed & included in ordinance as approved on first reading)*:

- Recommended Motion: I move to amend Ordinance 2266 by modifying Exhibit I, Section G(1) by modifying subsection (a) and adding a new subsection (b) as shown in Proposed Amendment 3 (Community Outreach).

- Effect: This would: (a) expand the list of business owners and residents maintained by an operator from those within 1,320' to 2,000'; and (b) require creation of a community outreach plan with specified contents similar to COGCC requirements (Rule 304(c)(20)).

- Proposed Amendment 4 (Reclamation - Location Pictures) *(Passed & included in ordinance as approved on first reading)*:

- Recommended Motion: I move to amend Ordinance 2266 by modifying Exhibit I, Section I beginning at page 24, line 31, by adding a new subsection 1 and renumbering that section, as shown in Proposed Amendment 4 (Reclamation - Location Pictures).

- Effect: This will require, consistent with COGCC Rule 304(b(4)), photographs of the existing condition prior to development to aid reclamation.

Staff Responsible (Department Head): Jason Rogers, AICP, Community Development Director
Staff Member Presenting: Domenic Martinelli, AICP LEED AP ND, Environmental Planner, Local Government Designee (LGD)

Financial Impact: N/A
Funding Source: N/A

Staff Recommendation: ***Update: Recommended for approval on second reading.*** Approval, with proposed changes 1-4. Proposed amendment 5 is consistent with staff's original recommendation. The ordinance is within the City's home rule authority under Article XX, § 6 of the Constitution of the State of Colorado and its police powers and land use regulation powers, including, but not limited to, Sections 29-20-101 *et seq.*, 31-15-401 *et seq.*, and 31-23-301 *et seq.* of the Colorado Revised Statutes. The proposed ordinance is more protective than state regulations where similar topics are concerned, is focused on surface impacts of oil and gas operations, and will avoid the actual and reasonably anticipated adverse impacts of oil and gas operations, or to minimize and mitigate the extent and severity of such impacts where they cannot be avoided, in a manner that is both necessary and reasonable for the purpose of protecting public health, safety, and welfare and the environment.

Recommended Motions on First Reading (after amendments considered):

- To introduce and approve on first reading: I move to introduce and approve Ordinance 2266 on first reading by Council as seated.

- To introduce and continue to another meeting: I move to introduce Ordinance 2266 by Council as seated and continue the ordinance to [insert date].

- To stop consideration of the ordinance: I move to postpone consideration of Ordinance 2266 indefinitely.

Recommended Motions on Second Reading (after amendments considered):

- To introduce and approve on second reading: I move to approve Ordinance 2266 on second and final reading.

- To introduce and continue to another meeting: I move to continue Ordinance 2266 to [insert date].

- To stop consideration of the ordinance: I move to postpone consideration of Ordinance 2266 indefinitely.

*Recommended Motions for Amendments are included in the discussion above.