



Oil & Gas LDC Updates

Ordinance 2266

Background / Timeline

- 2009: Oil and gas regulated in City for first time via LDC
- 2012: Major updates to the LDC Oil and Gas Regulations
- November 2018: Minor LDC updates adopted
- April 8th 2019: Study Session with Council on code impacts of SB-181
- April 16th 2019: SB19-181 signed by Governor Polis
- April 24th – June 26th 2019: Focus Group Meetings conducted
- June 2019: Oil & Gas Transportation Impact Fee open house & stakeholder meetings
- July 2019: Staff begins Oil and Gas LDC amendment process in response to SB19-181



Background / Timeline

- August 5th 2019: Oil and Gas Impact Fee Adopted
- September 9th 2019: Study Session 1 – City Council
- October 14th 2019: Study Session 2 – City Council
- October 30th 2019: Planning Commission voted 5-0 to recommend *approval* to City Council on Ordinance 2235
- November 4th, 2019: Ordinance 2235 was continued by City Council, due to issues raised at public hearing
- January – May 2020: Additional stakeholder meetings were held for feedback on draft ordinance
- February 10th, 2020: Study session with City Council to discuss progress on issues raised
- March 10th – May 31st, 2020: Revised draft released for public comment period



Background / Timeline

- May 7th, 2020: Town hall meeting held on draft ordinance
- June 8th, 2020: Study session held with City Council to discuss proposed changes brought forward by City staff in response to public comments received
- June 22nd & July 21, 2020: Study sessions held to discuss and review additional draft changes proposed by member of City Council
- July 27th, 2020: Staff received direction from City Council to incorporate a revised reverse setback value of 1,000'
- October 19th, 2020: City Council provided additional guidance to City staff on the financial provisions section in Article V.



Mission Change Rulemaking

- On November 23, 2020, the COGCC unanimously adopted rules addressing the Mission Change, Alternative Location Analysis, and Cumulative Impacts directives from Senate Bill 19-181.
- The rulemaking 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. Major revisions include:
 - Setbacks: 500' hard setback, 2,000' “soft setback” from homes or businesses
 - Alternative Location Analysis requirement
 - Application Consolidation: Oil and Gas Development Plan in place of Form 2A & Drilling and Spacing Unit application
 - Standing: “Affected Person” standing to participate in COGCC hearings is expanded to relevant local governments, persons within 2,000' of facility, and other people or local governments that can demonstrate they may be adversely impacted. Cumulative Impacts: Creation of form 2B to assess the cumulative impacts of Oil and Gas development
 - PWS protection: 1,000' setback from groundwater intakes critical to public water supplies (GUDI & Type III Aquifers)



Objectives of Code Update

- Amend the City's procedures, requirements, and standards for the submission, processing, review, public notification of, and approval of permits for oil and gas development;
- Establish minimum standards and restrictions for land use and the location and siting of oil and gas facilities, including an initial site assessment, a restriction to certain zone districts, a prohibition in a floodplain, a distance restriction for oil and gas facilities from certain properties and structures; and distance restrictions for new residential lots from existing or approved oil and gas sites;
- Address impacts to public infrastructure and public services;
- Address impacts to water quality and source, noise, vibration, odor, light, air emissions and air quality, land disturbance, cultural and environmental resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts, and to establish reclamation procedures;



Objectives of Code Update

- Amend regulatory conditions for oil and gas permits and site development standards for oil and gas sites;
- Amend prohibitions on specific types of facilities associated with oil and gas development;
- Amend and establish terms for the provision of financial assurances, indemnification, insurance, fines, and penalties as this City Council deems appropriate to ensure compliance with Commerce City's regulations and to address the potential impacts of operations;
- Establish regulations for the inspection of oil and gas operations and the enforcement of City regulations;
- Authorize and adopt a standalone regulatory document for best management practices; and
- Establish and amend definitions in the City's codes.



Current Code Overview

- Current process is an administrative review
- Current land use regulations
 - Allowed in all standard zone districts with an Oil & Gas Permit
 - Must meet all use requirements contained within LDC Section 21-5266
 - Regulations focus on surface impacts
- All operators required to sign an extraction agreement as part of each Oil & Gas permit
- Regional Operator Agreement is optional, may be executed to establish broad operations standards





Summary of Changes – Nov 2019 to Jan 2021

Overview of Changes

- **Process** – Approval process changed from a two tiered approval process, to all Oil and Gas Permits requiring approval by City Council
- **Setbacks** – Additional setback of 1,500' from 10 or more homes, or from a High Occupancy Building Unit (as defined by the COGCC)
- **Reverse Setbacks** – Reverse setback proposal increased from original proposed value (between 300'-500' depending on facility size), to 1,000'
- **Setback Measurement** – clarification added that for both regular setback and reverse setbacks - synonymous with COGCC definition of Working Pad Surface
- **Gathering Line Regulations** – Requirement for the removal of gathering lines removed from draft
- **Modification to Oil and Gas Standards** – 20% reduction from setback or reverse setback requirement. Reviewed by Planning Commission & approved by City Council.



Overview of Changes

- **Financial Assurances** – Raised the assurance amount \$90,000 per well, tied to the consumer price index starting in January 2021. Limiting bonding types to ensure that the bonding amount covers the plugging, abandonment, and reclamation of well sites, and other minor changes.
- **Cumulative Impacts** – Additional language added requiring operators to assess cumulative impacts of air and noise from proposed operations.
- **Definitions** – Significant cleanup and additional context added to existing Oil and Gas terminology. Addition of the terms Cumulative Impacts, Drilling and Spacing Unit, Gas Storage Well, Oil and Gas Location, Public Water Supply Well, Surface Owner, Surface Use Agreement, Working Pad
- **Chemical Disclosure** – clarification added stating that the City would not be requesting proprietary information regarding chemical disclosure



Overview of Changes

- **Initial Assessment Process** – Minor changes to the evaluation criteria in the Initial Assessment Process. Inclusion of the provision for director to waive 2 out of 3 alternative sites in analysis
- **Permit Lapse & Forfeiture** – Three year lapse period, or terminus with COGCC 2A permit issuance
- **Permit Transferability** – Process for permit transfer review and approval, where operator ability to comply with regulations, demonstration of adequate insurance, remediation of any on-site noncompliance, and 90 day duration before operator can transfer a permit after original approval.
- **Fines & Fees** – removal of requirement that operator pays duplicative fine to State & City, clarification of minimum municipal fine amounts to be consistent with Colorado Revised Statutes, and Consumer Price Index escalation.



Overview of Changes

- **Neighborhood Meetings** – A minimum of one neighborhood meeting required for all Oil and Gas Permit Applications
- **Plug & Abandonment of Wells** – Modification made to draft, stating request, rather than require plugging & abandonment of certain wells, due to state pre-emption of regulation of downhole activities
- **Air Quality Monitoring** – changed the notification period for SUMMA canister deployment from 10 days to one hour, modified requirement for monitoring of specific VOC's & HAP's, to reviewing a specific monitoring plan with a range of potential pollutants to be measured, and continuous monitoring for well sites within 1,000' of a home may be required for the lifetime of the well.





Overall Proposed Regulations

Changes to Article III

- Approval Criteria
 - Significant re-working of the approval criteria for public hearing & admin Oil & Gas Permit
 - Highly similar to CUP Approval Criteria Language
 - Specific language on reducing impacts on health, safety, general welfare & the environment
- Lapse & Forfeiture
 - Establishes a general three-year term, but maintains alignment with term of COGCC 2A permit to drill and complete all wells approved within the permit. If all wells are not drilled, operator must amend permit, or forfeit right to drill wells. Provides an option for one-time administrative extension of up to one year .
- Assignment of Permits
 - Restricts assignment of permits by requiring the consent of the Director and establishes approval criteria and a report to the City Council (Exhibit D, 21-3235(14).



Initial Assessment Process (Art III)

- Requirement established for mandatory initial assessment process
- Alternative site analysis required as part of process
 - Operator submits a minimum of 3 locations for review
 - Staff reviews for distance with the following criteria:
 - Platted or existing residential
 - Schools
 - Parks
 - Recreation facilities
 - Streams
 - Future Land Use
 - Facilities defined as a High Occupancy Building unit by the COGCC
 - Assisted living facilities
 - Public Water Supply Wells
 - Reservoirs
 - Areas unsuitable for development
 - Staff informs applicant which sites are eligible, then applicant is eligible to apply **only** for those sites
 - If a proposed location is at least 2,000' from the stated criteria, a full analysis would not be required.
- City currently has an alternative location analysis requirement, but the approval criteria are minimal



Review Process (Art III)

- Proposed quasi-judicial review
 - All Oil and Gas permits would receive final decision from the City Council, following review from Planning Commission
- All Oil and Gas Permits currently administrative review
 - Unless PUD zoning requires a CUP (Reunion)
 - If the PUD doesn't contemplate Oil and Gas facilities as an allowed use, a rezoning is required



Changes to Art V

- Application Requirements
 - Significant modifications to the permit submittal requirements, and plans that operators will need to prepare.
 - Generally similar to ROA requirements
- Third Party Technical Review
 - Operators required to cover costs associated with third party review of Oil and Gas land use applications
- Floodplain
 - Prohibition within 100 year floodplain
- Site Development Standards
 - Additional visual mitigation, fencing, landscaping, lighting, and sign standards
- Modifications to Oil and Gas Standards
 - Approved by City Council, & reviewed by Planning Commission
 - Up to 20% deviation in setback requirements in 21-5266(6) or 21-6280(1)



Changes to Art V (cont'd)

- Environmental Standards
 - Minor changes to wildlife mitigation plan requirements, waste management plan, sanitary regulations, and storm water management requirements.
- Noise Standards
 - Maximum dB level of 55dB, or 4dB over baseline sound conditions. Staff recommending updating C scale noise limit of 60dB(c) to reflect new COGCC rule 423b.
- Traffic Mitigation Requirements
 - Requirement for a traffic study
- Prohibition
 - Added prohibition of gas storage wells
 - In addition to previously prohibited practices
 - Disposal pits, commercial disposal facilities, centralized exploration and production waste facilities, subsurface disposal facilities, and injection wells
- Inspections
 - Operator required to reimburse for all inspection costs
 - Added authority to inspect facilities at any time without prior notice



Air Quality Monitoring (Art V)

- Air Quality Monitoring Requirements
 - Baseline sampling conducted over a 90 day period
 - Continuous sampling during drilling and completions
 - Continuous monitoring for the first 3 years of production (may require for lifetime of well if within 1,000')
 - Real-time reporting of air quality data to the city
 - Operator to reimburse city for air quality in the event of an emergency
 - Assessment of cumulative air quality impacts from proposed development
 - Additional sampling or monitoring following certain events
- No such requirements under current code



Setbacks (Art V)

- Minimum setback of 1,000' from the following:
 - Any residential use or platted residential property
 - Any Public Park or public recreation facility, not including trails or city designated open space;
 - Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar place of outdoor public assembly;
 - Senior living or assisted living facilities;
 - Public Water Supply Wells; and
 - Reservoirs.
- Minimum 1,500' setback from the following:
 - 10 or more existing residential or platted residential properties
 - Any building classified as a High Occupancy Building Unit, as defined by the COGCC

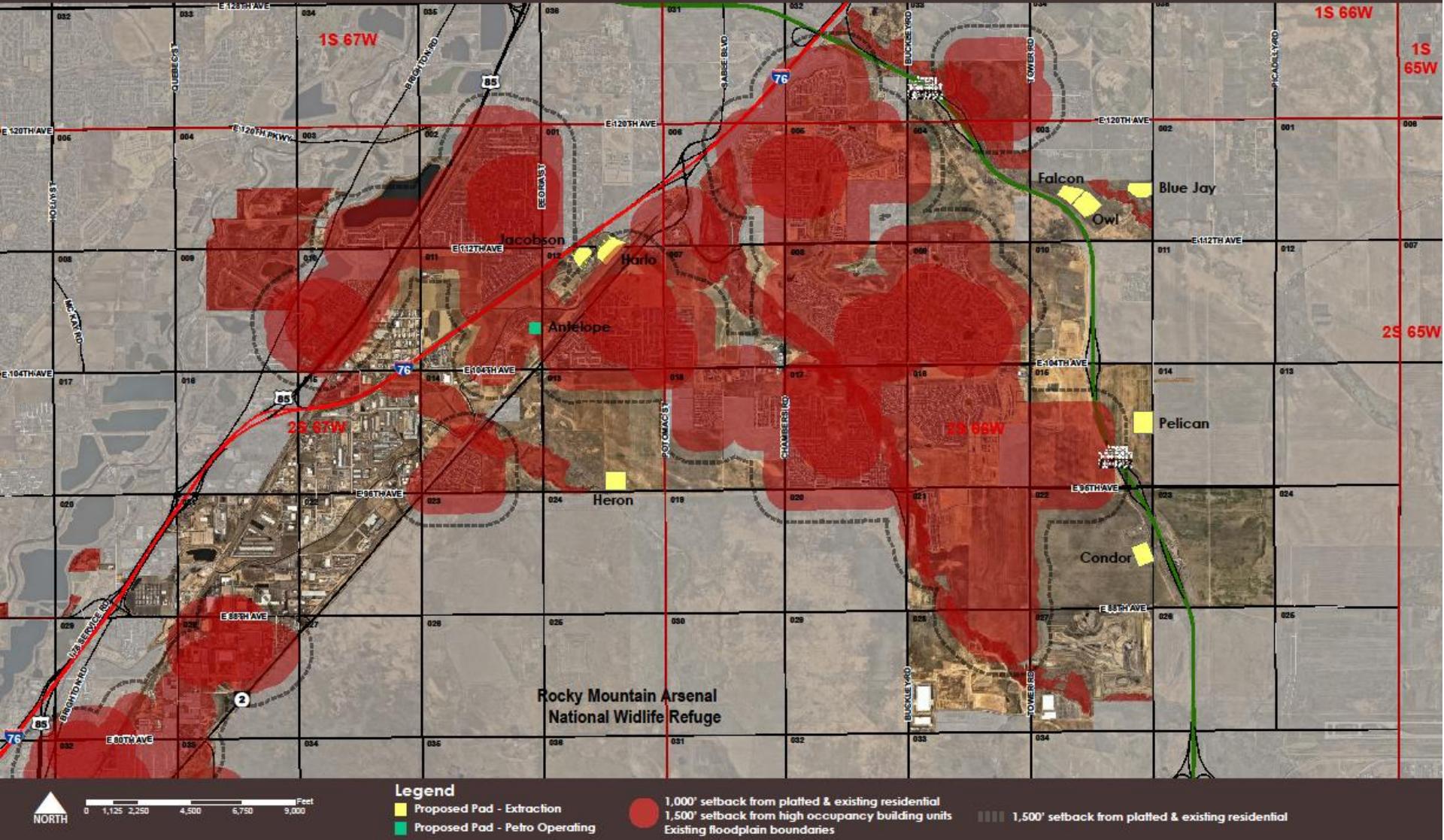


Setback Map – Northern Range



Setback Analysis

Northern Range

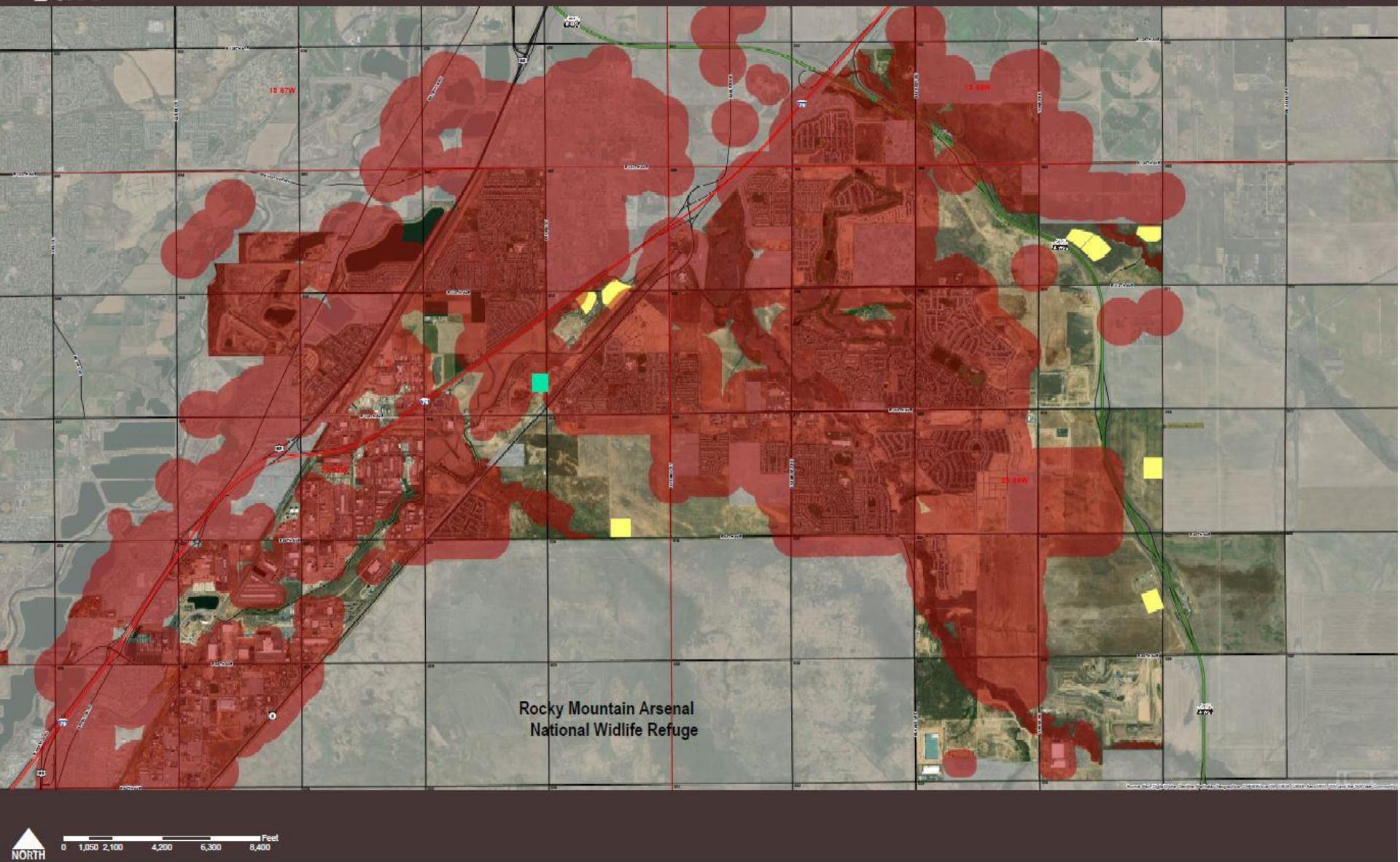


City Setbacks + COGCC Setbacks



Setback Analysis - Northern Range

Based on Proposed Criteria

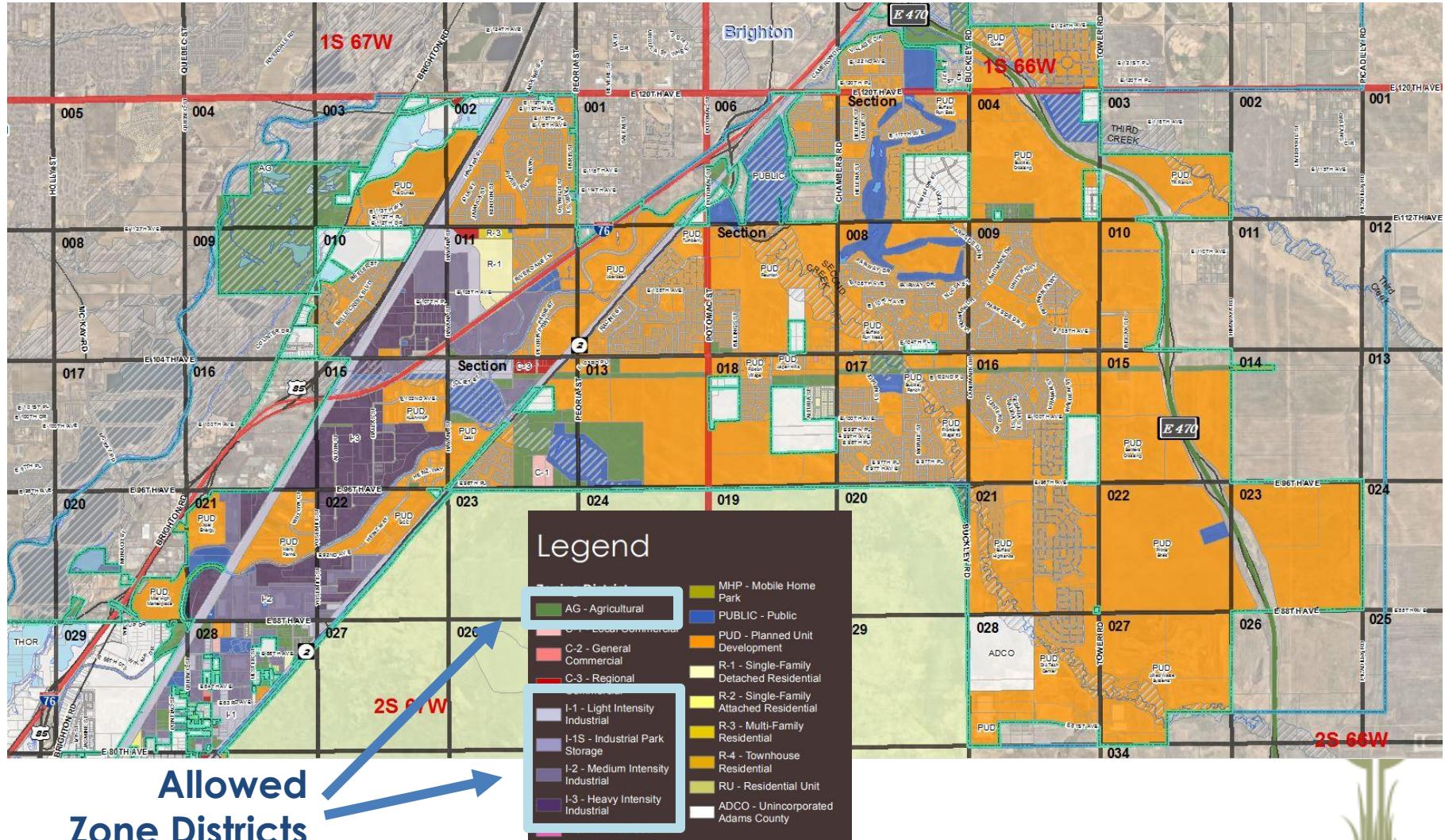


Land Use Table Amendments

- 21-5200, Table V-1
 - Proposed to allow I-1, I-1S, I-2, I-3, and AG (over 10 acres in size)
 - PUD's that specifically allow it as a contemplated use remain unchanged
 - Prohibited in all Commercial, Residential, and Public Zone districts
 - Currently allowed in all districts except Public, subject to alternative site location analysis



Zoning Map – Northern Range



Allowed Zone Districts

Additions to Article VI

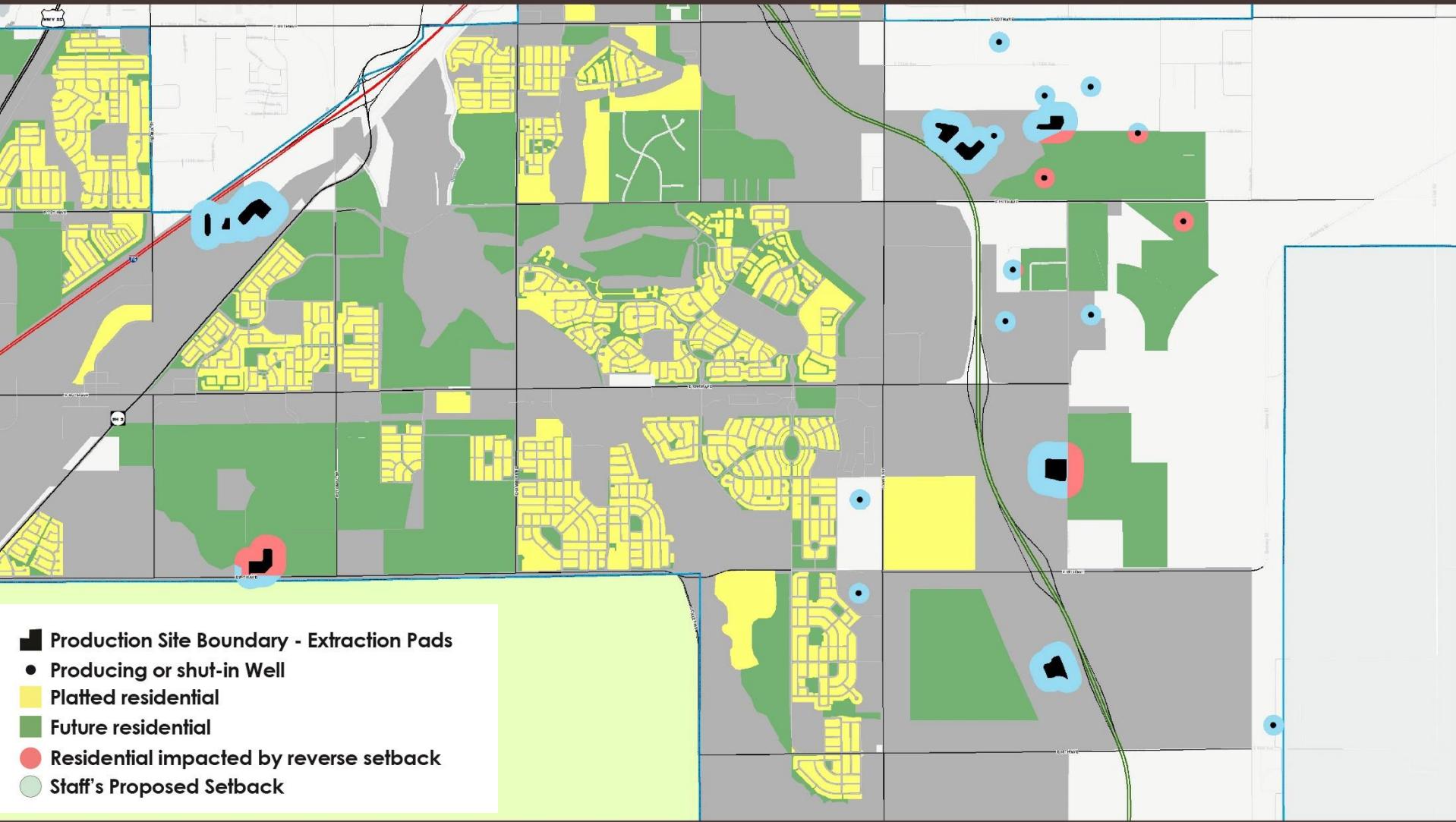
- Reverse setback
 - New reverse setback prohibiting the platting of new residential lots within 1,000' of existing well sites where all wells have not been plugged and abandoned
 - 50' setback from plugged & abandoned wells
 - Previous staff recommendation of 300' – 500', depending on facility size
- Platting requirements
 - Specifies requirements for final plats
 - Denote the location of flowlines, easements, surface use agreements, location of plugged and abandoned wells





Reverse Setback Analysis

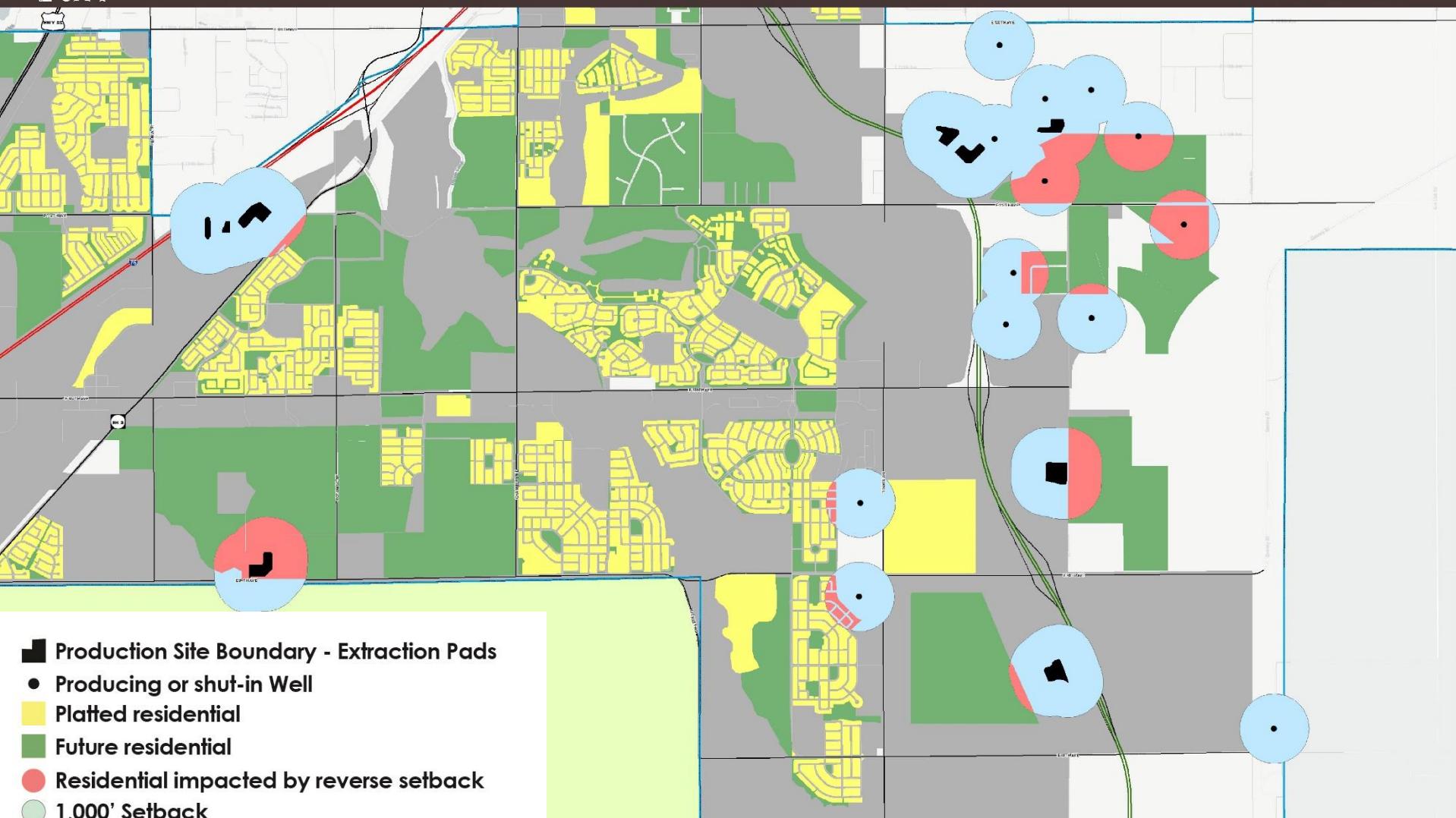
Based on Proposed 21-6280 Language





Reverse Setback Analysis

1,000' Reverse Setback



0 750 1,500 3,000 4,500 6,000 Feet

Article XI (Definitions)

- Definitions section has been expanded to include a variety of new and specific definitions which apply to terms used when referring to Oil and Gas Operations
- Update of some existing terms
- Remove terms that no longer are specifically defined or have a reference in the code



Fines (CCRM^CC)

- Additional fines for Oil and Gas Operations added to 3-2304 of the Commerce City Revised Municipal Code
 - Minimum \$500 fine for a first time violation
 - Second time: \$1,000
 - Third time: \$2,000
 - Four or more: \$3,084.63 (maximum municipal fine amount authorized by Colorado Revised Statutes)



Best Management Practices

- Best Management Practices adopted by code
 - Any changes would need to go through code amendment process
 - City Council final approval authority
- Air Quality Requirements
 - 25 specific BMP's, including requirement for electric powered permanent equipment, prohibition on glycol and dessicant dehydrators, low odor drilling muds, and a leak detection and repair program, among other protections.
- Water Quality Requirements
 - Specific prohibition on certain chemicals during the hydraulic fracturing stage, requirement for closed loop pitless systems, containment berm standards, and requirement for a water quality monitoring plan.
- Safety Standards
 - Pipelines required where feasible, Braden head monitoring requirement, flowline regulations, plugged and decommissioned well testing, and flowback best management practices.
- Reclamation
 - Requirement for an interim and final reclamation plan



Best Management Practices (cont'd)

- Noise Mitigation
 - Additional measures regarding noise issues that will supplement the LDC standards
- Visual Mitigation
 - Use of low profile tanks, facility painting standards, berm requirements
- Landscaping
 - Specifications on irrigation, preservation of existing significant trees
- Lighting
 - Standards specified to ensure no off-site spillage, and reduce impacts
- Community Outreach
 - Maintain a list of residents within $\frac{1}{4}$ mile, bi-annual update requirement to the city, requirement for a dedicated operator phone line, risk management assessment, incident and accident reporting, safety sign standards, emergency response plan
- Insurance Requirements
 - Stated insurance policy minimums, and specified insurance types operator is required to hold.



PC Recommendation

- On January 5, 2021, the Planning Commission recommended for City Council to **approve** Ordinance 2266, with a revised Exhibit G.



PC Findings of Fact – Revised Exhibit G

- Based on public testimony during January 5 PC, and comment letters received from Oakwood Homes, L.C. Fulenwider, and the Home Builders Association, the Planning Commission felt Exhibit G could not be approved as written.
- Planning Commission's determination for it's revised Exhibit G was based on:
 - The economic and possible legal ramifications of the 1,000-foot reverse setback would be detrimental to the overall development and future of Commerce City.
 - The 1,000' reverse setback presented an untested regulation that could expose the City to regulatory claims.
 - Any landowner could potentially challenge the City's proposed reverse setback as a "regulatory taking" under the second, Penn Central test, by asserting that they are deprived of the ability to develop property.
 - Landowners in the City have development plans and master planning involving substantial investment and coordination with the City. The City's responsibility to maintain existing development commitments is essential.
 - The original reverse setback considered that homebuyers would be aware of the existence of an oil and gas facility nearby and make an informed decision.



Minor Staff Changes – Since Jan 5 PC

- Staff initiated minor amendments to the draft ordinance, to conform to terminology changes in the new COGCC rules effective January 15, 2021
 - Exhibit D
 - Exhibit F
 - Exhibit I
- Changes include updated COGCC rule references and technical terms and require a Disproportionately Impacted Communities plan and Fluid Leak Detection plan
- Changes are shown in packet as “Minor Staff Changes”



Additional Recommended Modifications

- Staff recommends that the City Council adopt changes to the proposed ordinance to conform to certain new COGCC rules effective January 15, 2021. These include:
 - Change the setback distance from school facilities to 2,000 feet to be consistent with COGCC rules.
 - Incorporating in draft Sec. 21-5266 (9) and in the BMP document the new COGCC noise limits as set forth in Rule 423.b. If passed, Commerce City's noise limits within residential / rural areas will be stricter than COGCC rules which allow higher noise limits during drilling and completion operations.
 - Expand the list of business owners and residents maintained by an operator from those within 1,320' to 2,000'.
 - Require creation of a community outreach plan with specified contents similar to COGCC requirements (Rule 304(c)(20)).

Scripted language for this motion is included in the Council Communication (recommended motion)





**Staff is available to answer any
questions that City Council may have.**

