



STAFF REPORT

Planning Commission

Ordinance #2266

PC Date:	January 5, 2021	Case Planner:	Domenic Martinelli
CC Date:	February 1, 2021		
Location:	City-Wide		
Applicant:	The City of Commerce City		
Address:	7887 E. 60 th Avenue, Commerce City, CO 80022		

Case Summary

Request:	Commerce City is requesting to amend various sections of Article III of the City's Land Development Code (LDC), modify section 21-5266, and establish a new section 21-6280, as it pertains to subsurface extraction operations in the city. Staff is also requesting to establish a supplemental Best Management Practices Document to apply to all Oil and Gas Facilities
Project Description:	The proposed ordinances shall modify significant portions of the city's Oil and Gas regulations, in response to Senate Bill 19-181, City Council direction, and various COGCC rulemakings and other events and developments that have occurred since 2012.
Staff Recommendation:	Approval

Attachments for Review:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Proposed Language of Amendments | <input checked="" type="checkbox"/> Timeline & Overview of Changes |
| <input checked="" type="checkbox"/> Focus Group Summary Document | |
| <input checked="" type="checkbox"/> List of Scientific Studies | |

Oil and Gas Overview

Background

Colorado is well-known for its natural resources and history of oil and gas exploration. Commerce City has numerous permitted oil and gas well sites within and adjacent to Commerce City, many of which were established in the late 1970s. In the last 10-15 years, new technology advancements have led to an entirely new form of oil and gas development, which involves drilling wells horizontally for multiple miles at depths around 6,000-7,000 feet below the surface, and using hydraulic fracturing methods to access previously difficult to access resources trapped within shale rock formations. This technology has altered how wells are distributed in terms of surface use, with more wells (anywhere from 12-36) being concentrated in less frequent locations, but with greater surface impacts overall.

This form of oil and gas development has taken over as the primary method in the state of Colorado (70% of wells permitted in 2016 utilize this method), and has become an issue that has received significant community interest and attention. Prior to 2019, local regulation of oil and gas development was pre-empted by state law in many areas. Generally speaking, implementation of regulations that far exceed the requirements of the state often resulted in litigation from the industry.

Parties interested in the development of oil and gas resources believe that the geology underlying Commerce City contains marketable amounts of oil and gas resources that can only be accessed through horizontally-drilled, hydraulically fractured wells from well pad locations within or near Commerce City, particularly in regions in which residential and other non-industrial development has grown rapidly in recent years.

The use of land for the exploration and extraction of oil and gas, and related operations and activities, presents actual and potential adverse impacts to public health, safety, and welfare and the environment in Commerce City, including substantial adverse impacts to the use and integrity of surface and underground water supplies, water infrastructure, air quality, odor, noise, dust, traffic, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife, vegetation, cultural and historic resources, recreation opportunities, aesthetic values, the social fabric of the community, and the public's health, safety, and security. Significant incidents resulting in death, personal injury, and property damage have occurred in Colorado in connection with oil and gas exploration and extraction activity.

Scientific studies have identified potential health risks associated with oil and gas exploration and extraction operations, including: a study by the University of Colorado that found that air pollutant concentrations and associated health risks, including neurological, hematological, and developmental health effects and cancer risks, increased with proximity to oil and gas facilities (McKenzie, L.M. et al. (2018). Ambient Nonmethane Hydrocarbon Levels Along Colorado's Northern Front Range: Acute and Chronic Health Risks. *Environmental Science & Technology*, 52(8), pp. 4514-4525), and an October 17, 2019, released by the Colorado Department of Public Health and the Environment ("CDPHE") entitled "Human Health Risk Assessment for Oil & Gas Operations in Colorado" that implicated potential short-term health impacts in worst- case scenarios for locations under 2,000 feet from wells to building units.

Senate Bill 19-181

In April of 2019, passed Senate Bill 19-181 was enacted, which law gave local governments more authority to regulate the surface impacts of resource extraction. The bill expressly modified concepts of state pre-emption by authorizing local government regulation that is more stringent than state standards. This now allows local governments to regulate areas that previously may have been pre-empted by the state's regulations, including:

- Location and siting of O&G facilities and locations
- Impacts on government facilities and services
- Water quality and source, noise, vibration, odor, light dust, emergency preparedness, security, traffic, transportation impacts
- Financial securities, indemnification and insurance
- All other nuisance-type effects of O&G development
- Inspect all O&G facilities
- Impose fees for both the direct and indirect costs of monitoring and inspections programs to address impacts and enforce local regulations

- Receive technical assistance from the COGCC

The bill primarily tasked the COGCC with reforming their current regulations through a series of rulemakings, which would cover the following aspects of regulation at the state level:

- Mission Change
- 500 Series (notification)
- Alternative Location Analysis
- Cumulative Impacts
- Flowlines

COGCC Rulemakings

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. Formal adoption of these regulations will be codified into law on January 15, 2021, and modify series 200-600 of the State regulations. Ultimately, the rulemaking fundamentally alters many of the existing statewide Oil and Gas regulations, but in many respects generally mirrors the requirements that Commerce City staff has brought forward in its proposed LDC amendments. A comprehensive assessment of the COGCC rulemaking has not been provided by Commerce City Staff, but the *Statement of Basis, Specific Statutory Authority, and Purpose for New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission* document has been provided as a link within the packet attachments, that serves as a comprehensive assessment of these changes, conducted by COGCC staff. While the overall modifications to the state regulations are fairly broad and comprehensive, a highlighted summary of major changes are listed below:

- Setbacks - In Rule 604, the COGCC will adopt a “hard setback” that prevents the oil and gas “working pad surface” from being located less than 500 feet from homes or 2,000 feet from school facilities (school property lines). There is also a “soft setback” of 2,000 feet from a building unit (homes or businesses). This 2,000 foot setback can be overcome if, after a hearing, the COGCC Commission finds the proposed operations will provide “substantially equivalent” protections.
- Alternate Location Analysis - The purpose of the alternative location analysis is to create a tool to use to identify the best location to avoid adverse impacts to public health, safety, welfare, the environment, and wildlife resources. If no locations that an operator proposes in an alternative location analysis are appropriate, Rule 304.b.(2).A.ii authorizes the Commission and Director to request that an operator analyze additional locations. If, ultimately, the Commission’s Staff determine that none of the locations an operator proposes in an alternative location analysis adequately avoid adverse impacts to public health, safety, welfare, the environment, or wildlife resources, the Director may recommend that the Commission deny the proposed oil and gas location pursuant to Rule 306. Similarly, if the Commission determines that none of the proposed oil and gas locations analyzed in the alternative location analysis adequately avoid adverse impacts, the Commission may deny the proposed oil and gas location pursuant to Rule 307.
- Applications – The existing Form 2, Form 2a, and Spacing Unit applications have been combined into one permit review at the state level.
- Proximate Local Governments - Operators must give Relevant and Proximate Local Governments (within 2,000 feet) at least 30 days’ notice prior to submission of an Oil and Gas Development Plan (OGDP). Upon request of Relevant Local Government, the Operator and

COGCC Director will participate in Formal Consultation Process prior to submission of OGD. The COGCC will participate as a referral agency to identify any potential conflicts with COGCC rules. In an OGD, the Operator must state the disposition of the Relevant Local Government. Director will defer to local government unless location is within 2,000 feet of a municipality, a home, or other sensitive areas listed in Rule 304.b.(2)B. The Operator can choose to first file with local government, COGCC, or simultaneous permitting. (Rule 303a.(6)).

- Cumulative Impacts – The COGCC created a new Form 2B to collect data about cumulative impacts from each newly proposed oil and gas development plan. This information will populate a database that can be used to evaluate cumulative impacts. Additionally, operators must submit a cumulative impacts plan as an attachment to a Form 2A pursuant to Rule 304.c.(19), in which operators must demonstrate their plans to address cumulative impacts of each proposed oil and gas location by avoiding, minimizing, and mitigating those impacts.
- Public Water Supply Protection – minimum 1,000’ setback from groundwater intakes from groundwater under the direct influence of surface water supply wells (“GUDI Wells”) and PWS supply wells completed in Type III aquifers (“Type III Wells”).

Air Quality Control Commission Rulemakings

In September 2020, the Air Quality Control Commission finalized revisions to its series 7 rule, regarding addressing control of emissions from natural gas-fired reciprocating internal combustion engines, oil and gas flowback tanks, and oil load out at underground injection facilities, as well as co-benefits to regional haze, ozone, and Rocky Mountain National Park nitrogen deposition. The commission also passed rules requiring ambient monitoring of emissions at oil and gas facilities for pre-production and the first 6 months of production, specified the pollutants required to be monitored, and the public disclosure of monitoring data.

Previous & Current Regulations

Prior to 2009, Commerce City had no city-wide regulations specifically addressing oil and gas development. Commerce City had established generally applicable, comprehensive regulations relating to zoning and land use, building safety, nuisances, streets and public rights-of-way, storm drainage, and motor vehicles and traffic. Occasionally, some language would be found within a PUD zoning district, but little regulation was included. Then, in the 2009 zoning ordinance rewrite, the new Land Development Code provided for some basic regulations entitled “21-5266 Subsurface Extraction.” Regulations generally mimicked COGCC regulations at the time, and limited new Oil and Gas operations to I-1, I-2, and I-3, and AG zone districts, and only with approval of a Use-by-Permit granted by the Board of Adjustment.

In 2012, Commerce City adopted its current set of Oil and Gas regulations through Ordinance 1891, which were generally similar to the standards in the COGCC rules, but addressed traditional home rule issues such as traffic, flood plain prohibition, landscape standards, a prohibition on injection wells, nuisance controls, financial assurances, and visual mitigation. Due to the potential for state level pre-emption, the regulations were designed primarily to provide some base level protections through the Land Development Code, but offered an opportunity to provide significant protections through a negotiated “Extraction Agreement” based on an approved model. The Model Extraction Agreement included a number of provisions and regulations as a starting point for negotiations, but were not adopted as official regulations.

In 2018, Commerce City enacted minor amendments to the LDC relating to Oil and Gas Permits and Subsurface Extraction through Ordinance 2183. Commerce City also enacted an impact fee related to

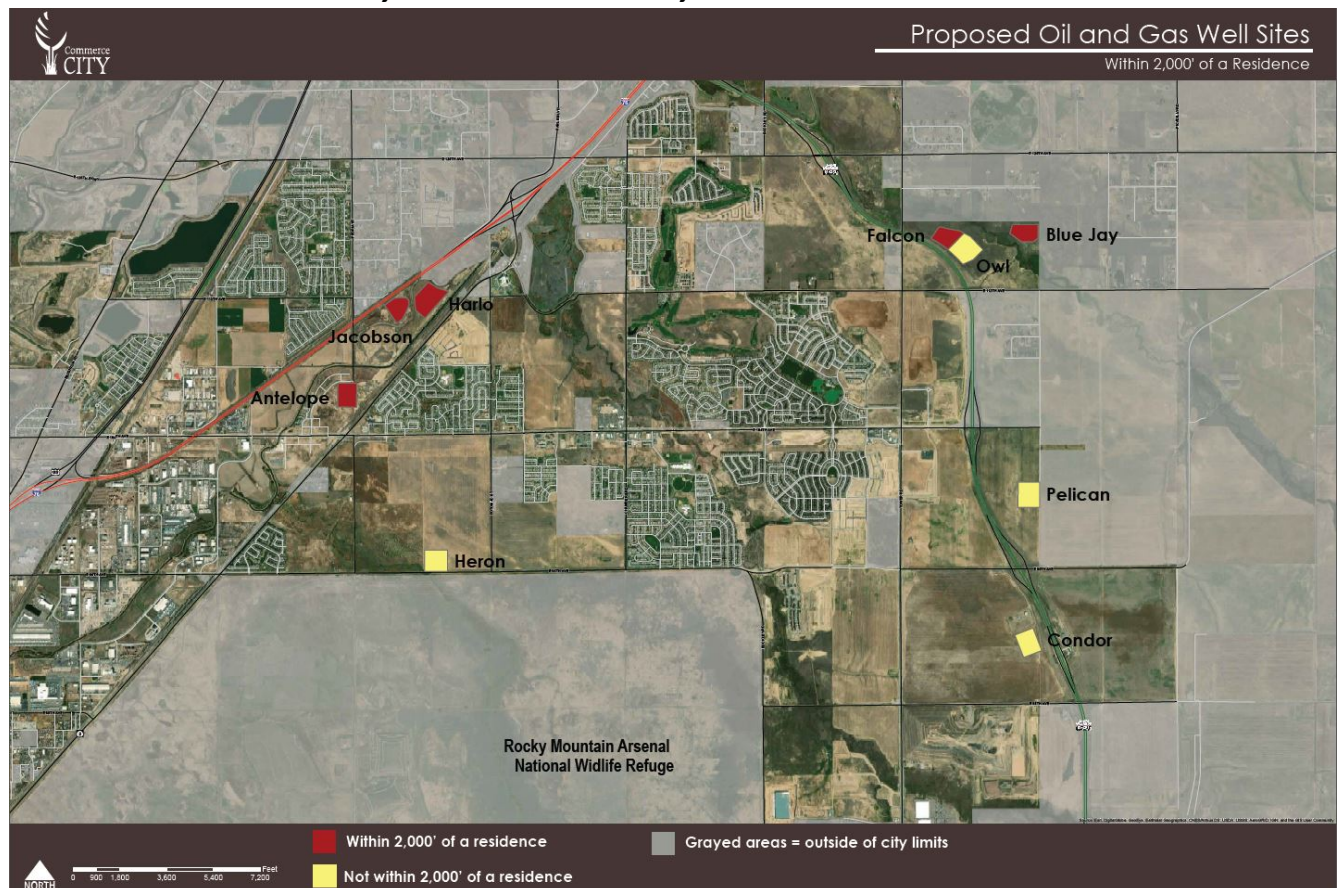
oil and gas development's impact on transportation infrastructure, set forth in Section 21-9260 of the LDC.

Commerce City Environment

Commerce City is one of the fastest growing cities in Colorado. Since the adoption of the 2012 LDC Updates, Commerce City's population has increased from approximately 48,000 to over 62,100 in 2020 (Jan 1, 2020 estimate). Significant residential development has occurred in the area bounded by 96th and 88th Avenues to the south, E-470 to the north and east, and Highway 2 to the west. As distinctly suburban environment has developed in an area that was primarily farm land 25 years ago.

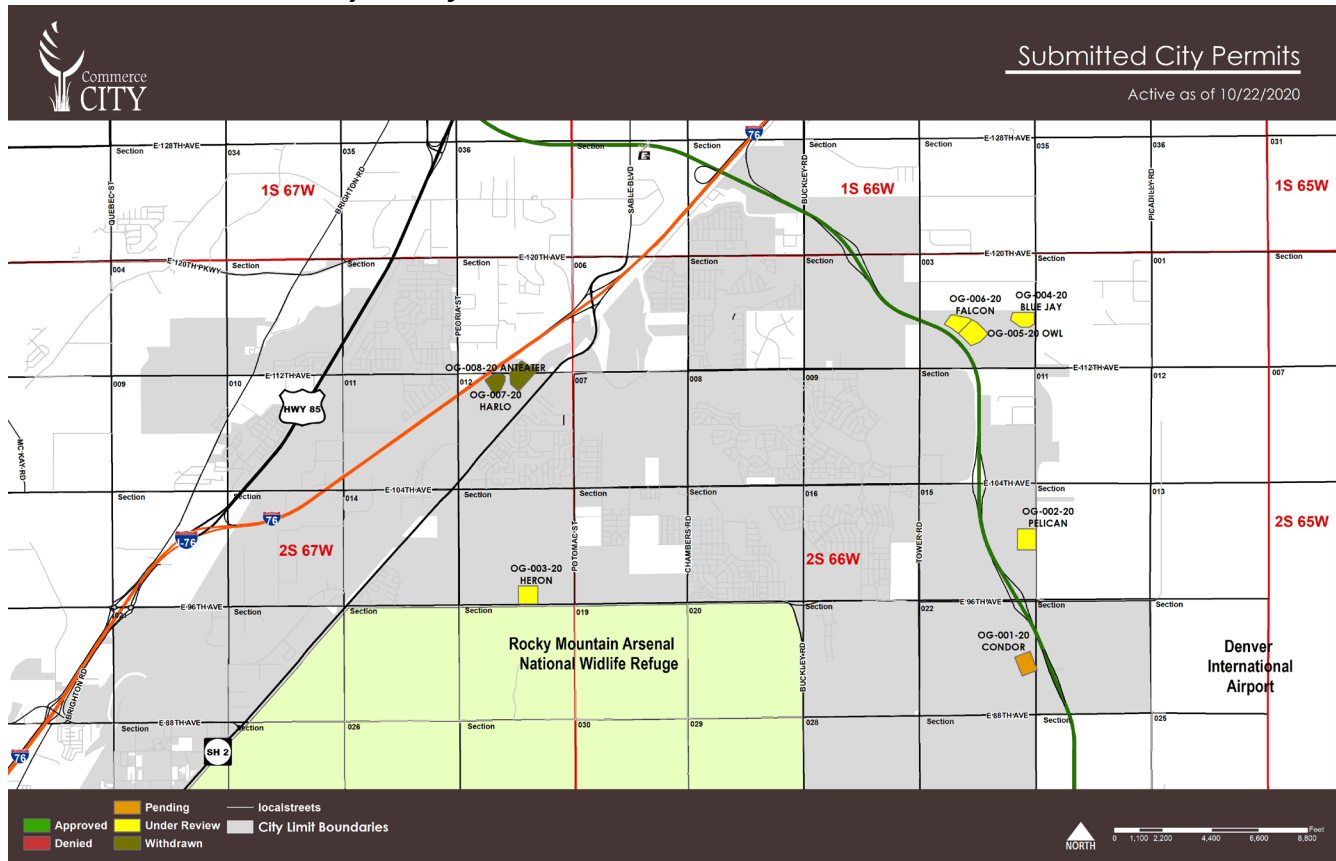
There exist sizeable deposits of hazardous materials on the surface or in the underground area of the Rocky Mountain Arsenal National Wildlife Refuge, which is surrounded by Commerce City on three sides and stretches from the southern to the northern parts of Commerce City.

Potential Oil and Gas Activity within Commerce City



In early 2018, the city started to receive significant interest in Oil and Gas development within its municipal boundaries. Extraction Oil and Gas, LLC approached the city at that time, with plans to explore resource extraction in a significant portion of the City's Northern Range. At the time, city staff received direction to enter negotiations with the Operator, and negotiate a set of voluntary Best Management Practices to supplement the city's Model Extraction Agreement template to incorporate common industry-wide and environmental practices that had come into place since 2012.

Oil and Gas Permit Activity – As of October 2020



The negotiation process with Extraction concluded in September 2019, after a 21-day public comment period, and additional revisions and negotiations as a result of public comment. The protections negotiated within the Best Management Practices document represent a significant improvement over current protections that currently exist in the LDC. In addition to all of the proposed facilities by Extraction Oil and Gas, LLC, one additional operator (Petro Operating, LLC) has planned facilities within the City but has not proceeded with any application or negotiation of a Regional Operator Agreement.

Development of Regulations

Commerce City's present regulations need to be amended in light of current regulatory, industry, and environmental best management practices, updated COGCC rules, pending COGCC rulemaking, Commerce City's growth, the anticipated growth of the industry in Commerce City, current technologies of the oil and gas exploration and extraction industry, and continuing concerns for risks to the community's health, property, general welfare, and the environment, as identified in numerous scientific studies and reports (see resources – publications reviewed document).

The City Council has received hours of public comment, reviewed studies and reports presented by the City staff, oil and gas industry representatives, and members of the public, and received significant public input in the form of neighborhood meetings, oral comment, and written comment relating to the development of oil and gas resources in Commerce City.

On October 30, 2019, the Planning Commission voted 5-0 to recommend *Approval* to City Council on Ordinance 2235, which included a number of comprehensive revisions to the City's Land Development Code in response to SB 19-181, and previous COGCC rulemakings that had occurred to that point. On

November 4, 2019, Ordinance 2235 was continued by City Council, due to a number of concerns that were raised during the public hearing. Council directed staff to further explore and revise a number of aspects of the proposed ordinance, and bring back for consideration at a later date. A full outline of the issues raised, provisions of the previous ordinance that were revised due to additional public feedback and input received during Council Study sessions can be found in the supplemental document *Overview of Changes – Ordinance 2235 to Ordinance 2266* document included within the Planning Commission Packet.

Overall Objectives: Code Update

The proposed regulations are reasonable and necessary to regulate the surface impacts of oil and gas operations in a reasonable manner that avoids actual and potential adverse impacts to public health, safety, and welfare and the environment in Commerce City from oil and gas operations and minimizes and mitigates the extent and severity of those impacts that cannot be avoided.

The regulations:

- 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;
- 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.

Outreach

City staff has been working with both Planning Commission and City Council on this issue for over one year. In addition to Planning Commission and City Council study sessions, the City hosted several open houses to gather input and feedback from the community. A summary of the feedback is contained in an attachment. Overall, the two tiered review process and initial assessment approaches were well received and the community felt that the proposed regulations were a good step to take to help effectively regulate oil and gas operations within the community.

Community meetings were held on October 2nd and October 3rd, 2019, at Bison Ridge Recreation Center, and Eagle Pointe Recreation Centers, respectively. Some of the specific feedback that was incorporated into the draft regulations included exploring stringent setbacks from public facilities, prohibiting Oil and Gas development within residential and commercial zone districts, increased notification requirements to the public, and increasing insurance standards.

Additionally, following the continuation of Ordinance 2235, the City opened a public comment period on a revised LDC draft from March 10 to May 29th, which was hosted on the City's Oil and Gas webpage, and advertised on the City's social media profiles and other outlets. Based on public comments, a number of revisions were made to the document and discussed with City Council during additional Study Sessions.

Stakeholder meetings were held with a number of regulatory agencies and industry groups, to get feedback on the overall concepts of the city's proposed updates. Feedback was given on overall concepts, and are reflected in the draft ordinances published today. The following meetings were conducted:

- **Government Stakeholder Meeting** – included a variety of attendees, representing the Colorado Oil and Gas Conservation Commission (COGCC), Tri-County Health Department, South Adams County Fire Protection District, and School District 27J. Feedback was received from attendees on setbacks from residences, schools, and reverse setbacks for encroachment of residential construction near existing wells, methodologies for conducting an alternative site location analysis, coordinating with the state on their proposed rulemakings, and potential air quality monitoring regulations.
- **Industry Stakeholder Meeting** – included the industry trade groups Colorado Petroleum Council and the Colorado Oil and Gas Association, and operators with planned operations in or around Commerce City, including Extraction Oil and Gas, Petroshare, and Great Western Operating. The operators raised questions as to what setbacks would be proposed, and what rationale would be used in justifying them, how setbacks would be measured (to the building, or to the property line, etc), how feedback from the Focus Group meetings would be incorporated into the code, and how air quality would be regulated. The operators provided additional feedback on proposed code provisions, including a setback waiver from property owners that willingly approve an oil and gas facility closer than the minimum setback incorporated in the code, evaluation criteria to be included within the alternative site location analysis including feasibility to access pipelines, and evaluating the specific fine schedule that would be proposed as part of the updates.

- **Adams County** – A separate, standalone meeting was held with Adams County Staff regarding their recent code updates. Topics of discussion included insight into their code update process, and how the regulations have been received, shared inspection services between the city and the county, coordination between Oil and Gas permit reviews, and safety standards and regulations.

Additionally, the City has met with the following additional groups since January 2020 regarding the proposed LDC Changes:

- Environmental Regulatory Groups
- Tri-County Health Department (TCHD), Colorado Department of Public Health and Environment (CDPHE), Denver Environmental Quality Division (Air Quality)
- Colorado Oil and Gas Association (COGA), American Petroleum Institute (API) & Oil and Gas Operators
- Colorado Oil and Gas Conservation Commission (COGCC)
- North Range Concerned Citizens
- Oil and Gas Focus Group
- Developers and Homebuilder Stakeholder Group
- League of Oil and Gas Impacted Coloradans (LOGIC)
- Conservation Colorado

Potential Areas for New Drilling Activity in Commerce City

As a part of staff's analysis of the potential impacts of new oil and gas drilling activity in Commerce City, staff mapped potential new oil and gas well locations based on the COGCC standards, which include a minimum 500-foot setback from "building units", which are defined as commercial structures over 5,000 square feet, and industrial buildings over 15,000 feet. Additionally, based on Council feedback and general public feedback, setbacks are proposed as follows in 21-5266(6):

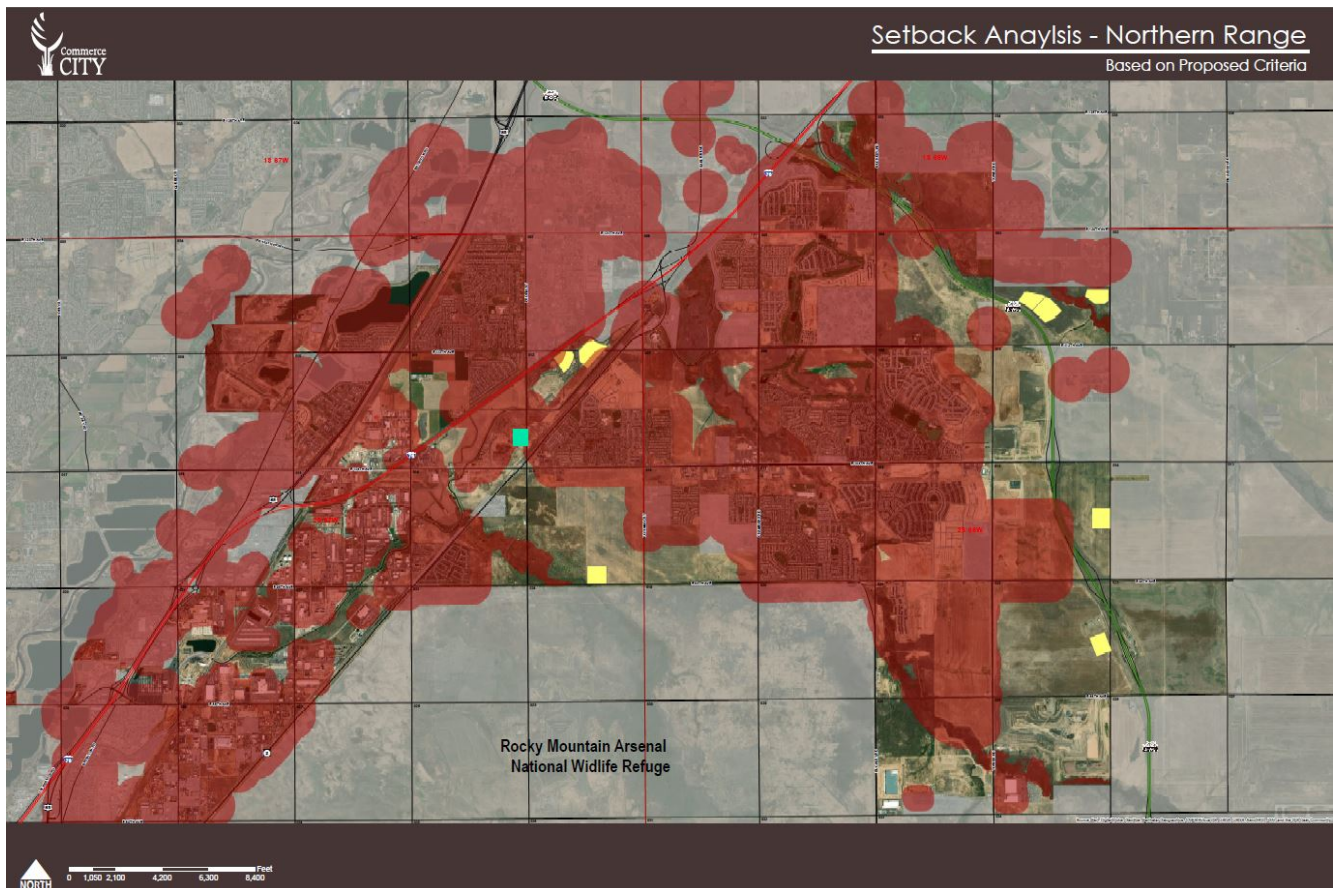
1,000' Setback:

- 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.

1,500' Setback:

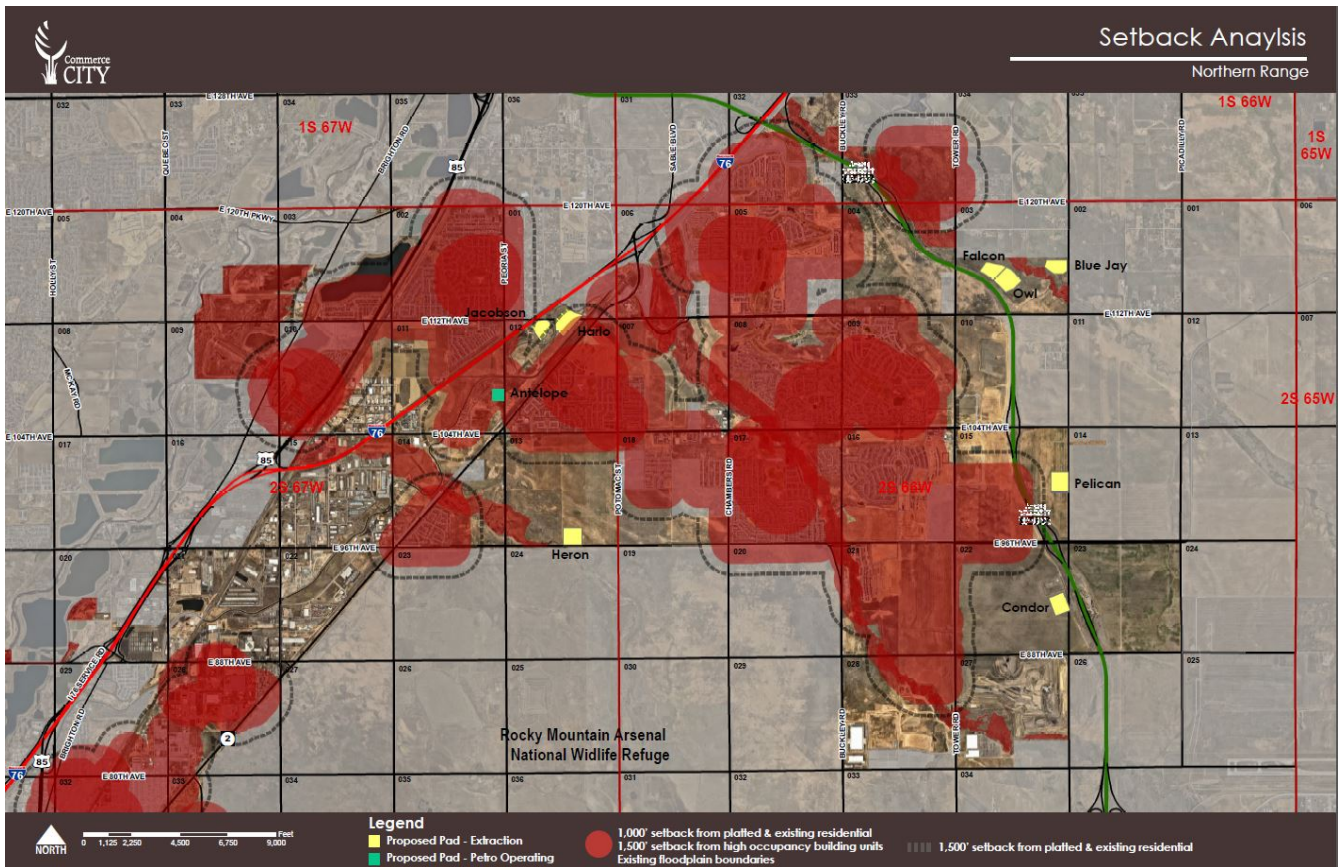
- From 10 or more existing residential or platted residential properties
- Any building classified as a High Occupancy Building Unit, as defined by the COGCC

Additionally, development would be prohibited within floodplains. The following two maps are an approximation of what these standards would yield for Commerce City and more specifically the Northern Range. Areas in red would not be available for development based on proposed city regulations, and existing COGCC setback rules. The yellow squares are proposed pad locations from Extraction, and the blue square is the proposed Petro Operating, LLC location. The first map shows the areas that would be prohibited from development under current state regulations, plus the proposed city setbacks:



The second map (see next page), for context shows the areas that are prohibited from development only based on the proposed city setbacks. This distinction is noted, since a waiver process exists at the state level from defined "building units."

While the City has an overall size of approximately 35 square miles, the area available for new well sites is 21.5% of the available city land area. Based on the analysis, it is evident that due to full buildout in the core city, there is virtually no location to place a facility within city limits, regardless of any setback distance, while the most potential for new well sites exists further east along the E-470 corridor. It is important to note that these maps reflect current conditions only. As increased development occurs throughout the city, the potential drilling areas will continue to shrink in size, due to the setback requirements.



Proposed Regulatory Framework

Council's input on the draft regulations intend to strengthen health, safety, welfare, and environmental protections for the Commerce City community and its residents.

- Mandatory Initial Assessment Process** – Based on future COGCC rulemakings, and feedback from various stakeholder groups, city council, and the public, a mandatory pre-application process is proposed to evaluate potential locations that have the least impact on public health, welfare, safety, and the environment. Operators would need to hold a minimum of one initial consultation meeting with the city to discuss their planned operations. The operator would then need to submit a minimum of three potential locations within a drilling and spacing unit (DSU) for the city to review. The city would then review the proposed location against the stated review criteria, and provide a written assessment (eligibility letter) of which, if any, sites are eligible to submit for a permit. Only the most protective site of health, welfare, and public safety submitted in the analysis will be deemed eligible to submit. The operator would be exempt from the alternative site location analysis requirement if their proposed facility is at least 2,000 feet from the setback criteria defined in the code, as well as 500' from public water supply wells, perennial and intermittent streams, public water supply wells, reservoirs, and land unsuitable for development.
- LDC Standards** – The proposed amendments to the LDC would act as a baseline set of standards that would apply to all new or "recompleted" wells in Commerce City. The provisions in the LDC generally include non-technical regulations and general standards, such as review procedures, approval criteria, application requirements, use standards, zoning, setbacks, and platting requirements, among other regulations.

- *Best Management Practices (BMPs)* - In addition to items regulated within the code, more specific, technical regulations are included within a separate Best Management Practices Document. The BMP Document would not be included within the Land Development Code, but would be adopted by Council as a standalone document, similar to the city's construction standards or drainage standards. As technology is rapidly advancing in the Oil and Gas industry, a standalone BMP document is proposed, to allow for more flexible and rapid update of the document in response to changing technologies.
- *Municipal Code Revisions* – Revisions are proposed to section 3-2304 of the City's Revised Municipal code, in order to impose additional fines for violations of Article III and Article V of the LDC, as it applies to Oil and Gas regulations.

LDC Amendments

The current draft version of the LDC oil and gas section is attached for Planning's Commission's review. The following is a summary of the highlights of the proposed amendments. The attached drafts will control in the event of any conflict with this summary.

Article III – Exhibits B, C & D – Review and Approval Process

- *Review Process* – Changes the review process for Oil and Gas Permit from an Administrative Review approved by the Director of Community Development to a quasi-judicial proceeding and decision of the City Council following review by the Planning Commission. Section re-numbered from 21-3216 to 21-3235 (Exhibits C (21-3200) & D (21-3235(7))).
- *Initial Assessment Process* – Establishes the requirement for one initial consultation meeting, specifies when (and if) an alternative site location analysis is required, the approval criteria for reviewing the analysis, and the process for issuing an eligibility letter for permit submittal (Exhibit D, 21-3235(5)).
- *Notification Requirements* – Remain unchanged (2500-foot notification radius of a potential new well site). Further, the LDC requires that notice of the permit application be posted on the property and in a newspaper consistent with the requirements in the LDC.
- *Neighborhood Meeting* – Requirement for at least one neighborhood meeting for all Oil and Gas permit applications (Exhibit B, 21-3110(2)).
- *Approval Criteria* – Establishes revised approval criteria that must be met for an Oil and Gas Permit to be approved. Criteria frequently mirror approval criteria for Conditional Use Permits (CUP) and including additional criteria relating to site eligibility, BMP and operator agreement compliance, Subsurface Extraction standards, and specific language on reducing impacts on health, safety, general welfare, and the environment (Exhibit D, 21-3235(8)).
- *Permit period; Lapse & Forfeiture* – Establishes a general three-year term, but maintains alignment with term of COGCC 2A permits. Maintains a two-year window to obtain a building permit and begin construction if structures are required. Establishes a three-year window 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 (Exhibit D, 21-3235(10)).

- *Best Management Practices* – Authorizes the separate Best Management Practices Document (Exhibit D, 21-3235(12)).
- *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)).

Article V – Exhibits E & F – Zoning, Use Standards, and Application Requirements

- *Amendment to Land Use Table* – Previously, Oil and Gas facilities were allowed in all zone districts except public, with an Oil and Gas Permit. This has been reduced to I-1, I-1S, I-2, I-3, and AG (over 10 acres) zone districts only. This limitation does not affect any properties zoned PUD (Exhibit E).
- *Application Requirements* – Modifies permit submittal requirements to reduce unnecessary items and to clarify submittal requirements (Exhibit F, 21-5266(3)).
- *Third Party Technical Review* – Maintains existing requirement for operators to cover costs associated with third party review of Oil and Gas land use applications but now authorizes deposit of funds (Exhibit F, 21-5266(4)).
- *1,000' Setbacks* – Specifying setbacks of Oil and Gas Production Sites of 1,000' from the following (Exhibit F, 21-5266(6)(a)):
 - 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.
- *Additional Setback Requirement of 1,500'* – Specifying setback of Oil and Gas Production Sites of 1,500' From the following (Exhibit F, 21-5266(6)(b)):
 - 10 or more existing residential or platted residential properties
 - Any building classified as a High Occupancy Building Unit, as defined by the COGCC
- *Floodplain* – Prohibition from oil and gas development within a 100-year floodplain (Exhibit F, 21-5266(6)(c)).
- *Site Development Standards* – Additional visual mitigation, fencing, landscaping, lighting, and sign standards requiring conformance to plans approved with the permit and supplemented by the BMP Document (Exhibit F, 21-5266(7)).

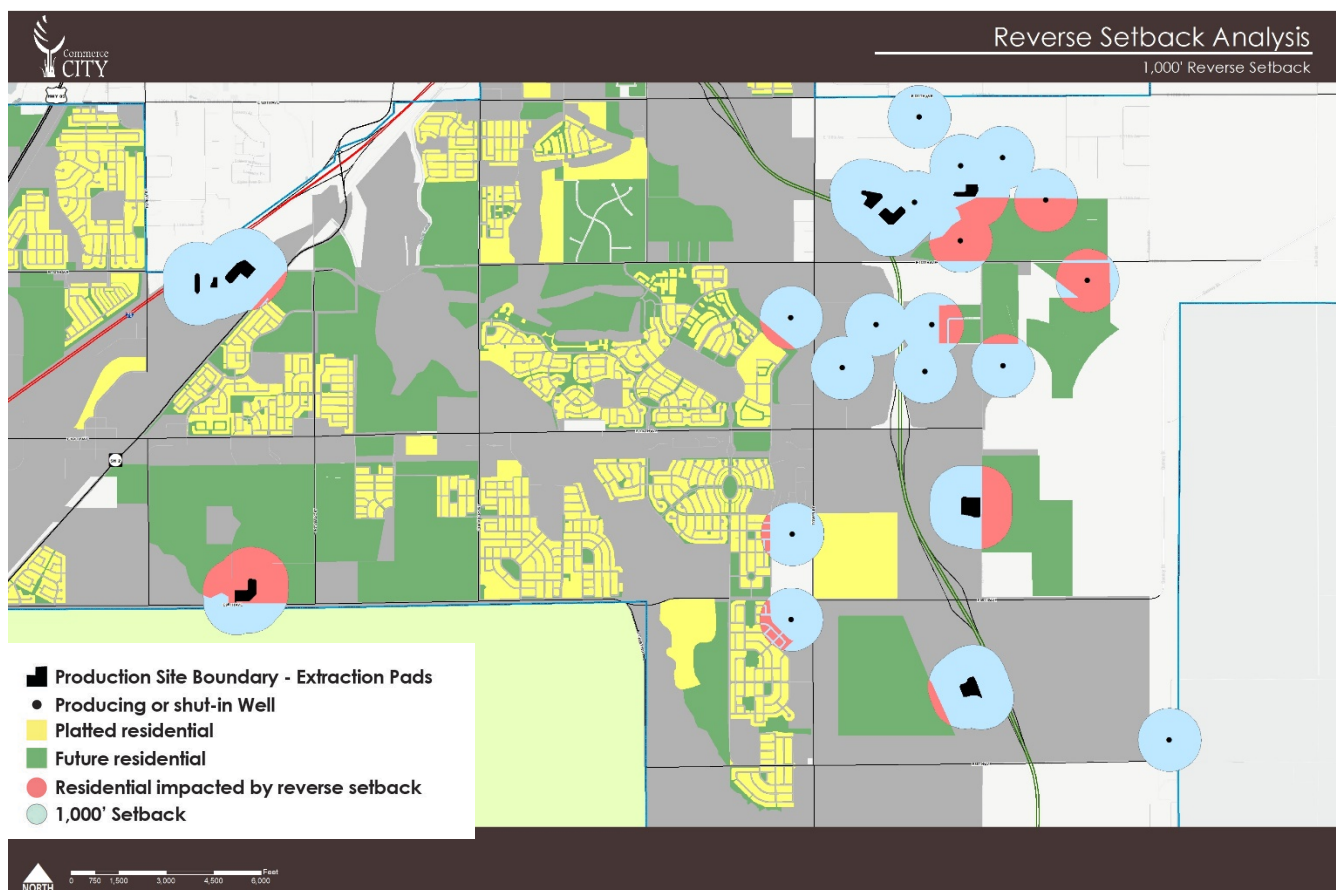
- *Environmental Standards* – Small changes to previous requirements for a wildlife mitigation plan, waste management plan, sanitary regulations, and storm water management requirements. Some standards additionally addressed in BMPs (Exhibit F, 21-5266(8)).
- *Nuisance Standards* – *Maintains nuisance standards but* establishes a maximum decibel level of 55dB, or 4dB over baseline sound conditions (Exhibit F, 21-5266(9)). Staff recommends a revision of this section to mirror new COGCC rules.
- *Traffic Mitigation Requirements* – The proposed LDC amendments outline a much more thorough review of the traffic impacts of potential wells, primarily through the requirement of a Transportation Impact Study. Through the approval of this study, the City will be able to address a number of issues related to traffic, such as truck routes, access, and road paving materials (Exhibit F, 21-5266(10)).
- *Prohibited Facilities* – Added prohibition of gas storage wells and deleted prohibition on temporary housing. This supplements existing prohibitions items, including disposal pits, commercial disposal facilities, centralized exploration and production waste facilities, subsurface disposal facilities, and injection wells (Exhibit F, 21-5266(11)).
- *Air quality monitoring program* – Operator required to provide an air quality monitoring program at its expense, requiring the following (Exhibit F, 21-5266(12)):
 - 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
- *Abandonment and plugging* – Revised abandonment standards and requires plugging and abandonment of existing vertical wells that an operator owns or controls in the applicable spacing unit and the removal of flowlines associated with plugged and abandoned wells (Exhibit F, 21-5266(13)).
- *Inspections* – Operator required to reimburse the city for the full costs of all inspections. City will have authority to inspect facilities at all times without prior notice (Exhibit F, 21-5266(14, 16)).
- *Financial Assurances* - This section requires the operator to provide financial assurances to the City for the life of the well, in the form of surety bonds or irrevocable standby letters of credit, to guarantee Operator permit compliance and proper remediation. Financial assurances are set at an amount of \$90,000 per well and adjusts for inflation, based on the COGCC's estimate for plugging and abandonment and reclamation of orphaned wells in Colorado (Letter from COGCC Director Lepore, October 4, 2017). This amount addresses inadequate blanket bond standards currently set by the COGCC and reduces risks of remediation or non-compliance costs being imposed on the public. Financial assurances will be regulated through rules established by the City Manager and

may be reduced administratively based on need as determined by the City (Exhibit F, 21-5266(15(b))).

- *Modifications to Oil and Gas Bulk Standards* - This section allows for applicants to seek deviations *only* from the setback requirements in 21-5266(6), or reverse setbacks in 21-6280(1). Such deviations would be subject to approval by the City Council after review by the Planning Commission. The maximum deviation allowed in such circumstances would be 20%.
- *Emergency Response Costs* – Establishes responsibility to reimburse the City and other emergency service providers for costs of emergency response to well sites (Exhibit F, 21-5266(21)).

Article VI – Exhibit G – Reverse Setbacks

- *Reverse Setback* – Establishing a 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 (Exhibit G, 21-6280(1)).



- *Platting Requirements* – Requirements for final plats, denoting the location of flowlines, easements, surface use agreements, and location of plugged and abandoned wells (Exhibit G, 21-6280(3)).

Previously, ordinance 2235 contained a reverse setback value of 300' – 500', depending on facility size, based on staff's initial recommendation. Following the July 27 City Council presentation on reverse setbacks and the potential land use implications of additional setback configurations, Council provided staff with direction to proceed forward with a reverse setback of 1,000' in its updated draft.

Article XI – Exhibit H – Definitions

Article XI (Definitions) 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 existing definitions and terms, as well as remove terms that are no longer specifically defined in the code. The complete list can be found in the attached LDC exhibit.

Best Management Practices Document (BMP's) – Exhibit I

As mentioned earlier, the BMPs are the second layer of regulations found within Commerce City's framework. The BMPs represent minimum standards that may be exceeded voluntarily or through permit conditions. The BMPs would be adopted by City Council, but exist outside the Land Development Code. The proposed BMPs improve on the protections negotiated with Extraction Oil and Gas, LLC, and represent increased protections over state requirements:

- *Air Quality Requirements* – 25 specific BMPs, including requirement for electric powered permanent equipment, prohibition on glycol and desiccant dehydrators, low odor drilling muds, and a leak detection and repair program, among other protections.
- *Water Quality* – Specific prohibition on certain chemicals during the hydraulic fracturing stage, requirement for closed loop pit less 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.
- *Noise Mitigation Requirements* – Additional measures regarding noise issues that will supplement the LDC standards.
- *Visual Mitigation Methods* – Use of low profile tanks, facility painting standards, berm requirements.
- *Landscaping Requirements* – Specifications on irrigation, preservation of existing significant trees.
- *Lighting Standards* – Standards specified to ensure no off-site spillage, and reduce impacts.
- *Community Outreach* – Maintain a list of “affected residents within ¼ 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.
- *Reclamation* – Requirement for an interim and final reclamation plan.

- *Transportation* – Traffic control plan requirement, private access road standards, mud tracking requirements.

Revised Municipal Code – Exhibit A

Revisions to the municipal code were implemented, in order to provide additional fine amounts for Oil and Gas operators compared to the normal fine schedule.

- 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)

All amounts adjusted annually for inflation beginning July 1, 2021 and every January 1 thereafter. In addition to the fines above, operators would need to pay any applicable fines levied by the Colorado Oil and Gas Conservation Commission.

COGCC Rule Conformance

Staff recommends that the Planning Commission recommend that the City Council adopt changes to the proposed amendments to conform to certain new COGCC rules effective January 15, 2021. These include

1. Updating specific citations to COGCC rules that have been re-numbered or re-identified.
2. Incorporating in draft Sec. 21-5266 (9) the new COGCC rule limiting C scale noise of 60db(C) as set forth in Rule 423.b.
3. Requiring that the application include planning documents that are required by COGCC including: Location and Reference Area Pictures (for use in reclamation), Disproportionately Impacted Communities Map, Fluid Leak Detection Plan, and Community Outreach Plan.
4. Changing the setback distance from schools to 2,000 feet to be consistent with COGCC rules.

Development Review Team Recommendation

Based on the information provided above, the Development Review Team recommends that the Planning Commission forward the requested amendments to the LDC to the City Council with a favorable recommendation and a recommendation to conform the amendments to new COGCC rules.

Recommended Motion

To recommend approval (DRT recommendation):

I move that the Planning Commission recommend that City Council approve Ordinance #2266, an ordinance amending the Commerce City Land Development Code, for Subsurface Extraction and Oil and Gas Permits, with amendments conforming the ordinance to new COGCC rules as described by staff.

Alternate Motions

To recommend approval with other modifications:

I move that the Planning Commission recommend that City Council approve Ordinance #2266 with the following modifications:

Insert Modification(s)

To recommend disapproval:

I move that the Planning Commission recommend that City Council not approve Ordinance #2266.