

January 14, 2021

City of Commerce City  
City Council  
7887 E. 60<sup>th</sup> Ave.  
Commerce City, CO 80022

Subject: Ordinance 2266: Subsurface Extraction Operations

Dear City Council:

This letter is a follow up to Planning commission's approval of ordinance 2266 in regard to subsurface extraction operations and best management practices. On January 5, 2021, the Commerce City Planning Commission unanimously voted to approve ordinance 2266. The approval included amendments to the originally proposed ordinance as it relates to the oil and gas setbacks included in Section 21-6280, exhibit G.

To provide clarity of Planning Commissions recommended amendment, a comparison of the ordinance and the Commission's recommendation is as follows:

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EXHIBIT G TO ORDINANCE 2266

Sec. 21-6280. Additional Subdivision Standards relating to Oil & Gas Sites

Oil & Gas Site Setbacks.

(1)

For permitted or existing Well Sites where all permitted wells have not been plugged and abandoned in compliance with all applicable COGCC standards and regulations, no new residential lots may be platted within 1,000' of such site.

(2)

Measurements shall be taken from the edge of the production site, in the same manner as defined in 21-5266(6)

(3)

Plat requirements. The following information shall be denoted on all final plats:

a.

The location of any oil and gas wells, flowlines, and gathering lines, and any associated easements;

b.

The location of all recorded surface use agreements; and

c.

The location of any plugged and abandoned oil and gas wells, flowlines and gathering lines, including a plat designation surrounding such wells and expressly prohibiting any habitable building or structure within 50 feet.

(4)

Vacation of Existing Easements. No easement may be vacated for a previous or existing well, flowline, or gathering line, unless documentation is provided to the city demonstrating such well, flowline, or gathering line has been vacated in compliance with all applicable COGCC regulations.

PLANNING COMMISSION ENDORSED  
EXHIBIT G TO ORDINANCE 2266

Sec. 21-6280. Subdivision Standards relating to Oil & Gas Sites: Oil & Gas Site Setbacks

(1)

For permitted or existing Well Sites where all permitted wells have not entered Completions, no new residential lots may be platted within 1,000' of such site.

(2)

For permitted Well Sites where all permitted wells have entered Completions, but have not been plugged and abandoned in compliance with all applicable COGCC standards and regulations, or the permit has otherwise lapsed, been revoked, or forfeited, and is not subject to renewal or reissuance, then no new residential lots may be platted within the minimum setbacks set forth in Table VI-1:

Table VI-1. Setback from new residential lots to Production Sites

Well Count	Setback
1-10	300'
11-24	400'
25 or more	500'

(3)

Measurements shall be taken from the edge of the production site, in the same manner as defined in 21-5266(6)

(4)

Plat requirements. The following information shall be denoted on all final plats:

a.

The location of any oil and gas wells, flowlines, and gathering lines, and any associated easements;

b.

The location of all recorded surface use agreements; and

c.

The location of any plugged and abandoned oil and gas wells, flowlines and gathering lines, including a plat designation surrounding such wells and expressly prohibiting any habitable building or structure within 50 feet.

Original Ordinance

Updated Ordinance 2266

### Original Ordinance

### Updated Ordinance

The Planning Commission's recommended amendment was not done inadvertently and was after careful consideration of the proposed ordinance along with public testimony during the meeting. Furthermore, public testimony and written comments were received from Oakwood Homes, L.C. Fulenwider, and the Home Builders Association that all opposed the approval of ordinance 2266. The following highlights the comments received:

- Clayton Properties Group II, Inc. dba Oakwood Homes ("Oakwood") and L.C. Fulenwider
  - "The City's comments are ***inconsistent with the terms of multiple agreements*** between development parties and the mineral operator, which agreements were negotiated in partnership with the City."
  - "Under the proposed City regulations, the phased reverse setbacks applicable to land developers under Section 21-6280 and the oil and gas facility 1000-foot setback applicable to operators under Section 21-5266(6) are both measured from the edge of the "Production

*Site” to the residential unit boundary. The City definition of “Production Site” includes any fenced or enclosed area. In applying these measurement standards to the Village Plan, Oakwood would not be able to plat lots according to the 400-foot buffer because that buffer would be extended outward under the proposed measurement standard. If the 400-foot buffer is pushed out to meet the proposed measurement standard, a total of **35 lots would become ineligible** for platting.”*

- *“In short, we strongly encourage the City Council to consider the effect of these important policy matters on **our vested property rights**”.*
- Home Builders Association of Metro Denver
  - *“We **strongly recommend the City Council maintain the Production Phase setbacks** as outlined in the most recent draft ordinance. The reduced setbacks are consistent with private agreements, recent City entitlement approvals, and commitments from the City.”*
  - *“With average densities of five to six homes per acre, a 1,000-foot setback would eliminate the ability to build **500-700** homes.”*
  - *“we strongly encourage the City Council to consider the **legal implications** of this important policy matter on property rights and current private agreements”*

The Commission’s insight was the overall ordinance and best management practices met the criteria for approval and was generally thought to be in the best interest of the City. As outlined above, the oil and gas 1,000-foot reverse setback included in Section 21-6280, Exhibit G, could not be approved as written. The determination for the amended Exhibit G was based on the following:

- As presented in the public testimony, 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.
- As presented in the public testimony, the reverse setback, as currently proposed, presents 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 (e.g., Oakwood/Reunion) 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. Should these not be maintained, the ordinance could result in significant hardships on current, future development, and the development community in general.
- The amendment considered that homebuyers would be aware of the existence of an oil and gas facility nearby and make an informed decision.

In conclusion, the Planning Commission unanimously approved ordinance 2266 with the amended Section 21-6280, Exhibit G to reduce the reverse setback. The Planning Commission requests City Council consider the revised ordinance for approval and carefully consider the feedback provided by the Planning Commission and valued community partners.

Sincerely,

Commerce City Planning Commission

Jonathan Popiel

Andrew Amador

Dennis Cammack

Jordan Ingram

David Yost