



Environmental Services
215 N. Mason
PO Box 580
Fort Collins, CO 80521
970.221-6600
fcgov.com/environmentalservices

MEMORANDUM

Date: May 22, 2018

To: Mayor and City Councilmembers

From: Mark Houdashelt, AQAB Chair

A handwritten signature in black ink that reads "Mark L. Houdashelt".

CC: Air Quality Advisory Board
Darin Atteberry, City Manager

Re: **AQAB Recommendation Related to Oil and Gas Land Use Code Updates**

The Air Quality Advisory Board (AQAB) has considered the issue of development setbacks from oil and gas facilities in Fort Collins. As you are all aware from Fort Collins' failed attempt to enact a moratorium on oil and gas development, this is a complicated and controversial issue. Currently, the Colorado Oil and Gas Conservation Commission (COGCC) has the authority to regulate setbacks of new oil and gas operations from existing development, while local jurisdictions can regulate setbacks of development from existing oil and gas operations. However, the COGCC's authority and decision-making criteria are being challenged by local initiatives in Longmont and Thornton, for example, and by the *Martinez v. Colorado Oil and Gas Conservation Commission* case being considered by the Colorado Supreme Court.

Currently, City Staff is recommending that the Land Use Code be changed, such that:

- The buffer required between new residential development and existing oil and gas operations be increased from 350 feet to 500 feet, and the buffer required between new High Occupancy Building Units and existing oil and gas operations be set at 1000 feet. The proposed buffers are the same as those designated by the COGCC for new oil and gas operations and existing development/HOBUs (the COGCC buffers), and Staff is also proposing that these new buffers automatically vary to match the COGCC buffers should the COGCC buffers change.
- An alternative compliance buffer of no less than 150 feet be considered by the appropriate decision-maker around plugged and abandoned wells, and the fencing requirements in place for the larger buffer not apply for the alternative compliance buffer, if the following specific conditions are met:
 - A site survey confirms the well location;
 - Confirmation that the plugging or replugging of the well meets current State standards;
 - Soil, air and groundwater sampling are performed;
 - Permanent monitoring equipment is installed for future use;
 - The area is deemed safe for residential development; and

- Other site-specific requirements, as needed and appropriate, are met.
- Any new properties or buildings within 1000 feet of a plugged and abandoned well show information about the well in the property covenant, in addition to that currently required to be included in the recorded subdivision plat.

Given the situation within Colorado, and taking into account the proposal from Fort Collins staff, the AQAB recommends the following changes to City Code related to oil and gas setbacks:

- For minimum setbacks of new development from existing oil and gas operations, we recommend that the City implement setbacks consistent with those recommended by staff. Additionally, the Board recommends that:
 - setbacks from active wells are not eligible for variances.
 - setbacks are measured from property lines as opposed to the edge of the nearest occupied building.
- For minimum setbacks of new development from plugged and abandoned wells, the situation is more uncertain, as little research has been performed on the failure rates, health impacts and other potential dangers associated with these types of facilities. Therefore, we recommend that the City implement the same setbacks between new development and plugged and abandoned wells as those adopted between new development and existing oil and gas operations with no alternative compliance buffer allowed, as the Board feels that staff's proposed code changes for alternative compliance buffers is incomplete. For example, there is not any requirement for remediation following initial testing and/or ongoing monitoring (and notifications of testing results) and subsequent remediation.

The AQAB appreciates the opportunity to express our thoughts to City Council on this important issue, and we would be happy to reconsider this recommendation should the Staff proposal change, more information become available, or some of the concerns expressed above be addressed.