

ORDINANCE NO. 114, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE 3 OF THE LAND USE CODE REGARDING BUFFERING
REQUIREMENTS FOR DEVELOPMENT IN RELATION TO OIL AND GAS FACILITY
LOCATIONS

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, since its adoption, City staff and the Planning and Zoning Board have continued to review the Land Use Code and identify and explore various issues related to the Land Use Code and have now made new recommendations to the Council regarding certain issues that are ripe for updating and improvement; and

WHEREAS, the proposed changes to the Residential Buffering Land Use Code requirements are to ensure the health and safety of the residents of development in close proximity to oil and gas facility locations; and

WHEREAS, the City Council has determined that the recommended Land Use Code amendments are in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 3.8.26 of the Land Use Code is hereby amended to read as follows:

3.8.26 Buffering for Residential and High Occupancy Building Units

- (A) *Applicability.* These standards apply only to applications that include residential uses and, to the extent legally applicable, high occupancy building units. Standards regarding Buffer Yard D shall not apply to any lot for which a site specific development plan with vested rights was approved prior to September 14, 2018 so long as such site specific development plan was, or is, valid at the time of issuance of any building permit for the construction or modification of any dwelling unit or high occupancy building unit on such lot.

- (B) **Purpose.** The purpose of this Section is to provide standards to separate residential land uses and high occupancy building units from existing industrial uses; in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, air pollutants, hazardous materials or site contamination, or danger from fires or explosions.
- (C) **Buffer standards.** Buffer yards shall be located on the outer perimeter of a lot or parcel and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.
- (1) Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.
 - (2) There are four (4) types of buffer yards which are established according to land use intensity as described in Chart 1 below. Buffer yard distances are established in Chart 2 below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.
 - (3) The buffer yard requirements shall not apply to temporary or seasonal uses or to properties that are separated by a major collector street, arterial street, or highway.
 - (4) *Additional Standards Applicable to Buffer Yard D.* The following requirements shall also apply to development located in Buffer Yard D:
 - (a) *Measured.* For purposes of Buffer Yard D standards, the buffer yard shall be measured as either the distance from the outer edge of an oil and gas location to the nearest wall or corner of any dwelling or high occupancy building unit location or, if any Colorado Oil and Gas Conservation Commission adopted setback measurement method applicable to a dwelling or high occupancy building unit results in a greater distance between the existing oil and gas operation site location and the dwelling or high occupancy building unit at issue, then the Colorado Oil and Gas Conservation Commission setback measurement method shall be used. Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above.

(b) *Minimum Buffer Distances.* The following minimum buffer distances shall apply:

1. *Residential Development.* The minimum buffer between a dwelling and any oil and gas location shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public playgrounds, parks, recreational fields, or community gathering spaces shall not be placed within a buffer. Private common areas within a buffer shall not contain playgrounds, parks, recreational fields, or community gathering spaces.
2. *High Occupancy Building Units.* The minimum buffer between a high occupancy building unit and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public or private playgrounds, parks, recreational fields, or community gathering spaces shall not be allowed within a buffer.

(c) *Alternative compliance buffer reduction from plugged and abandoned wells.* Upon applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned well and meets the requirements specified below.

1. *Procedure.* To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:
 - a. Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Section than would a plan which complies with the separation and spacing standards of this Section.

- b. Include information regarding environmental testing and monitoring for the site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this subsection b) is required prior to sampling occurring and such plan shall include, but is not limited to, the following:
- i. Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.
 - ii. Documentation of plugging activities, abandonment and any subsequent inspections.
 - iii. Soil sampling, including soil gas testing.
 - iv. Groundwater sampling.
 - v. Installation of permanent groundwater wells for future site investigations.
 - vi. A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.
- c. Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require that the following actions be completed by a qualified

professional before development may occur, including but not limited to:

- i. Remediation of environmental contamination to background levels.
- ii. Well repair or re-plugging of a previously abandoned well.

2. *Review Criteria.* To approve an alternative compliance buffer reduction plan, the decision maker must first find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section. An approved alternative compliance buffer reduction plan shall be exempt from the screening requirements of Chart 2 – Buffer Yard Types and below Subsection (e) regarding fencing.

(d) *Disclosure.* If any residential development or dwelling, or high occupancy building unit is proposed to be located within one thousand (1,000) feet of an oil and gas location, the following requirements shall apply:

1. At such time as the property to be developed is platted or replatted, the plat shall show the one-thousand-foot radius on the property from such oil and gas location and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an existing oil and gas location.
2. For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwellings may be constructed that are within one thousand (1,000) feet of an oil and gas location. The approved plat for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the property where the dwelling is located indicating that such property is located within one thousand feet of an oil and gas location.

(e) *Fencing.* If any residential development is proposed to be located within five hundred (500) feet of an oil and gas location, and if an

existing fence does not surround the oil and gas location, the developer must erect a fence that restricts public access to the oil and gas location along the property boundary between the oil and gas location and the development.

Chart 1

Land Use Intensity Categories

<i>Land Use</i>	<i>Intensity Category</i>	<i>Buffer Yard</i>
Airports/airstrips	Very High	C
Composting facilities	High	B
Dry cleaning plants	Very High	C
Feedlots	Very High	C
Heavy industrial uses	Very High	C
Light industrial uses	High	B
Junkyards	High	B
Outdoor storage facilities	High	B
Recreation vehicle, boat, truck storage	Medium	A
Recycling facilities	High	B
Agricultural research laboratories	High	B
Resource extraction	Very High	C
Oil and gas operations, including plugged and abandoned wells	Very High	D
Transportation terminals (truck, container storage)	High	B
Warehouse & distribution facilities	High	B
Workshops and custom small industry	Medium	A

Chart 2

Buffer Yard Types

<i>Type - Base Standard (plants per 100 linear feet along affected property line) *</i>	<i>Option Width</i>	<i>Plant Multiplier **</i>	<i>Option: Add 6' Wall</i>	<i>Option: Add 3' Berm or 6' Fence</i>
Buffer Yard A:	15 feet	1.00		
	20 feet	.90		
3 Shade Trees	25 feet	.80		
2 Ornamental Trees or Type 2 Shrubs ***	30 feet	.70	.65	.80
3 Evergreen Trees	35 feet	.60		
15 Shrubs (33% Type 1, 67% Type 2)	40 feet	.50		
Buffer Yard B:	15 feet	1.25		
	20 feet	1.00		

	25 feet	.90		
4 Shade Trees	30 feet	.80	.75	.85
4 Ornamental Trees or Type 2 Shrubs ***	35 feet	.70		
3 Evergreen Trees	40 feet	.60		
25 Shrubs (Type 2)	45 feet	.50		
Buffer Yard C:	20 feet	1.25		
	25 feet	1.00		
	30 feet	.90		
5 Shade Trees	35 feet	.80	.75	.85
6 Ornamental Trees or Type 2 Shrubs ***	40 feet	.70		
4 Evergreen Trees	45 feet	.60		
30 Shrubs (Type 2)	50 feet	.50		
Buffer Yard D:	500 feet	1.25		
	525 feet	1.00		
	550 feet	.90		
6 Shade Trees	575 feet	.80	.75	.85
7 Ornamental Trees or Type 2 Shrubs ***	600 feet	.70		
5 Evergreen Trees	625 feet	.60		
35 Shrubs (Type 2)	650 feet	.50		

* "Base standard" for each type of buffer yard is that width which has a plant multiplier.

** "Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

*** Shrub types: Type 1: 4' - 8' High Type 2: Over 8' High

Section 3. That Section 5.1.2 of the Land Use Code is hereby amended by the addition of three new definitions which read in their entirety as follows:

High occupancy building unit shall mean any building type listed in the Colorado Oil and Gas Conservation Commission definition of a High Occupancy Building Unit set forth in the Code of Colorado Regulations.

Oil and gas facility shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas. This term shall include equipment or improvements associated with active, inactive, temporarily abandoned, and plugged and abandoned wells.

Oil and gas location shall mean: (1) the area where the operator of an oil and gas facility has disturbed the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both; or (2) the area where the operator of an oil and gas facility intends to disturb the land surface in order to locate an oil and gas facility or conduct oil and gas operations, or both, and such facility or operations have received all required permits prior

to submission of a residential development plan for the construction of dwellings or high occupancy building within one-thousand feet of the permitted oil and gas facility or operations, even if disturbance of the land surface to locate the oil and gas facility or conduct operations has yet to occur on the site.

Introduced, considered favorably on first reading, and ordered published this 21st day of August, A.D. 2018, and to be presented for final passage on the 4th day of September, A.D. 2018.

ATTEST:


City Clerk



Passed and adopted on final reading on this 4th day of September, A.D. 2018.

ATTEST:


City Clerk

