



Board Summary Report

File #: 23-672

Agenda Date: 11/14/2023

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To: Board of County Commissioners

Through: Bryan Weimer, Director, Public Works & Development

Prepared By:

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Presenter: Jason Reynolds, Planning Division Manager, Public Works & Development

Subject:

Amendment of the Land Development Code to Revise the Existing Oil and Gas Regulations with New Requirements and Definitions (Phase 2), Planning Case No. LDC23-004

Purpose and Request:

The purpose of this hearing is to seek Board of County Commissioners (Board) approval of the proposed Oil & Gas regulations, as an amendment to the existing Oil and Gas rules in the Land Development Code.

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Background and Discussion: In March 2023, the Board directed staff to proceed with draft amendments to Land Development Code Section 5-3.6 - Regulations for oil and gas development applications. The Board directed staff to complete various updates to the regulations, including:

- Create setbacks from existing and planned reservoirs;
- Add additional language regarding compliance with federal and state rules;
- Add additional language regarding neighborhood meeting noticing;
- Add clarification on required application materials;
- Add post-incident meeting requirements; and
- Add two health and safety-related rules regarding fire access roads and hand washing.

The Board approved these amendments on October 10, 2023. Subsequent to that meeting, the Board directed staff to proceed with additional code amendments for the following areas:

- Expansion of setback distances from occupied structures, platted lots less than 15 acres, landfills, designated outdoor activity areas, riparian areas, and existing and planned reservoirs;
- Develop mechanisms to allow applicants to seek relief from setback standards either administratively or through a Use by Special Review public hearing process;
- Add a new section for Air Quality Monitoring;
- Add mitigation language for Wildlife Urban Interface;
- Increase notification radius for neighborhood meetings;
- Make other editorial changes to the text to change from COGCC to ECOMC, to clarify that Tactical Response

Plans (TRPs) will be included with Emergency Response Plans (ERPs),

- Clarify the definition of Planned Reservoirs and Downgradient;
- Add additional spill & release reporting requirements;
- Add language to groundwater sampling & monitoring requirements;
- Add a section for surface water monitoring; and
- Add a requirement for continuous noise monitoring.

The Board directed staff to prepare draft regulations with options for setback distances and present the draft regulations to the Planning Commission at their November 8th meeting for recommendations to be presented to a Board of County Commissioners public hearing on November 14th. Moreover, the Board directed staff to explore additional code amendments related to financial sureties, reverse setbacks (setbacks from new development to an existing oil/gas pad), commercial injection wells, and a potential inspection program in 2024.

Review and Outreach Process

Due to the limited amount of time between the Board's direction to staff to prepare additional amendments and the requested hearing date of November 8th for the Planning Commission meeting, staff was not able to complete a robust outreach process of the draft regulations. However, staff did post the draft regulations in advance of the Planning Commission hearing to the County's oil and gas website and also emailed over 500 stakeholders with information about the public hearing dates and a link to the draft regulations for comment. Additionally, newspaper notification was published prior to the Planning Commission hearing as well as today's Board hearing. Furthermore, staff have received numerous comments related to setbacks, air quality monitoring, etc. since March related to the efforts to update the County's current regulations.

Stakeholder Comments

County staff received feedback from the petroleum industry as well as from the community. Copies of correspondence received is located in Attachment 3. In addition, staff consulted with Aurora Water, Rangeview Metropolitan District, the Office of Emergency Management and area fire districts, and have not received any objections to the proposed code amendments.

Proposed Regulations

The currently proposed Oil and Gas regulations, shown as redlines to the existing Oil and Gas regulations in Attachment 1, reflect direction received from the Board. The Planning Commission held a public hearing on November 8, 2023, to discuss the proposed code amendment (see attached Planning Commission Staff Report and attachments in Attachment 2) and voted 7-0 to recommend denial of the proposed code amendments due to the lack of time to review and seek stakeholder input. Specifically, the Planning Commission approved a motion to recommend denial of the proposed code amendment, with the following three comments:

- 1.) The proposed regulations should be left as-is.
- 2.) Any proposed changes should include scientific studies for proposed setback standards.
- 3.) Any proposed changes that include off-ramps to the setback standards should be standardized across all setbacks (i.e., USR required for all, not administrative for some, and criteria for all).

Planning Commissioners noted in their discussion that they felt the process went too quickly without adequate time for public outreach and comment, and that it was not fair to residents, who have a right to due process, and to the Planning Commission to rush the process through without adequate time to consider all points of view. Approximately 40 people spoke regarding the regulations, with near universal opposition to the short timeline. Approximately 17 spoke in favor of stricter regulations and 23 spoke in favor of relying on the state's regulation.

Fiscal Impact: Fiscal impact is expected to be minor and will entail increased staff time in Planning and the Office of Emergency Management for review of more application materials and additional recordkeeping.

Alternatives: Alternatives for the draft Oil & Gas rules are as follows:

1. Approve LDC23-004 as currently written and recommended by staff and with the Board's decision on the various setback options identified in the draft;
2. Approve LDC23-004 with other specific changes; provided that the other specific changes can be said to have been submitted to the Planning Commission for recommendations, the Board may specify the nature of the change and allow staff to finalize language or may direct staff to bring updated language back to the Board for further consideration;
3. Continue the hearing to a date certain for additional information; or
4. Deny LDC23-004. This would be consistent with the Planning Commission recommendation and maintain the currently adopted rules in the Land Development Code.

Alignment with Strategic Plan:

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

Staff Recommendation: Staff recommends that the Board adopt the amendments considered by the Planning Commission on November 8, 2023, with the increased setback distances and variance procedures. The motions include several options for setbacks for the Board to choose from; the motions include prompts to select a setback and setback reduction process.

Concurrence: The Public Works & Development Department Director and Planning Division Managers support the proposed amendments to the Land Development Code.