City Staff Responses to Comments

Key:
~~Removed Language~~
Added Language

Note: Some comments have been consolidated for clarity, and ease of providing singular staff responses to comments with similar concerns. The public comments in their full entirety can be found on www.c3gov.com/oilgas, and attached within the June 8th Study Session Packet.

Comment Received from Susan Lea:
Please use best practices, and avoid actual harm or potential harm by designing and engineering systems to avoid human use, habitat use and proximity to water sources.

Comment Received from John and Judy:
Monitor-monitor air, water and spills. Greeley Tribune and the COGCC have made it perfectly clear that spills at sites are an issue. lets not forget, the sites aren't in rural areas where the impact is minimal, theses sites are near neighborhoods and our water sources.

Staff Response:
Air quality monitoring requirements, water quality monitoring requirements, and best management practices to prevent, and quickly and effectively report spills and leakages have previously been incorporated into the code to provide protections. Additionally, 1,000' setbacks are proposed from public water supply wells and reservoirs.

Comment Received from John and Judy:
The City needs to have ALL operators pay bonds in the amount of 1 million dollars. The 10,000.00 bond requirement in place is a slap in the face and is useless. Considering the amount of damage this industry can do 10,000.00 wont cover anything if something happens.

Staff Response:
21-5266(15b)(i) mandates a minimum bond amount of $86,000 per well located on a pad site. For a Well Site with 24 wells, this would equate to over a $2 million bond. The $86,000 per well figure was based on a study conducted to assess the potential financial impacts of wells, and associated costs necessary to remedy the well in the event of financial setback by the operator. Additional significant insurance requirements exist within BMP H.

Comment Received from Erica:
We are concerned about spills either oil or fracking fluid, on the site or during transit. The City and the company need to determine how this will would be paid, I would suggest all financial burdens be placed on the company putting us in danger.

Staff Response:
Operators will be required to provide a spill prevention, control, and countermeasure plan, and demonstrate compliance with a number of spill mitigation requirements under the Best Management Practices, including spill response kits, containment berm requirements, and strict notification requirements in the event a spill does occur. Additionally, requiring pipelines and limited tank storage on well pads reduces the likelihood of spills significantly.

Comment Received from Charlotte:
My ask during this comment period is this-DO NOT allow these companies to use our water.

City Staff Responses to Comments

Staff Response:
The city will not be providing any of it's water rights to potential operators for hydraulic fracturing purposes.

Comment Received from CJ and Rodney:
We would like to suggest the following for the new Regulations: hire a team or make the oil and gas company pay for a team, that twill do 24/7 air monitoring.

Staff Response:
The city will be requiring operators to cover costs for a third party air monitoring company, which would be selected by the city

Comment Received From COGA:
Why the disparate treatment for oil and gas operations? What are the grounds for treating oil and gas differently from other industries?

Staff Response:
Requiring fines for violations of the city's Land Development Code that occur within city limits is not disparate treatment of a single industry. Exempting an individual industry from fines when other businesses in the city are penalized for violations would be inconsistent treatment. Given fines that are levied by the state against an operator do not go to local governments in any form to assist on a local level for remediation of the violation.

Comment Received From COGA:
Please explain how the City calculates penalties where the violation lasts more than one day. For example, if an Operator inadvertently does not submit a report required by the Code, COGA believes that should count as one violation.

Staff Response:
Fines are typically levied per instance, rather than cumulative each day the fine occurs. In certain circumstances, the city does retain the right to issue a new Notice of Violation (NOV) each day a fine is present and not remedied.

Comment Received from COGA
Instead of presuming significant impacts, which is a negative assumption treating oil and gas operations disparately from other impactful industries, the City may simply require the neighborhood meeting.

Staff Response:
Staff agrees with this revision

Proposed Language Modification:
(2) Applicability. The city may require a neighborhood meeting when it appears that an application may have significant neighborhood impacts, including without limitation, impacts related to: traffic; provision of public services such as safety, schools, or parks; compatibility of building design or scale; or operational compatibility such as hours of operation, noise, dust, or glare. Notwithstanding the foregoing, unless exempted by 21-3216(8), ~~significant neighborhood impacts shall be presumed for all oil and gas permit applications and~~ a minimum of one neighborhood meeting shall be required for all oil and gas permit applications.

Comment Received from COGA:
For consistency and clarity, COGA recommends the City update the first two below drafted terms to match with the Colorado Oil and Gas Commission's ("COGCC") definitions. "Well Site" to "Oil and Gas Location" or "Working Pad Surface," depending on context. "Production Site(s)" & "Well Site(s)" – "Production Site(s)" is undefined, and COGA recommends using the COGCC's definition of Oil and Gas Location (which

encompasses booth well pads with or without facilities, as well as facility only pads) and the COGCC's draft definition of "Working Pad Surface," again depending on context

Staff Response:
Staff agrees with this. Staff proposes to include these definitions, but not replace them in lieu of Well Site or Production Site

Proposed Language Modification:
OIL AND GAS LOCATION shall mean a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.
WORKING PAD SURFACE means the portions of an Oil and Gas Location that has an improved surface upon which Oil and Gas Operations take place.

Comment Received from COGA:
Sec. 21.5266(3)(k) – "Nature Area", please define

Staff Response:
Nature areas in the previous draft was a typo. Intended language was "Natural areas" which was used in Code but not defined, to mean *Sensitive Wildlife Habitats and Natural Areas*.

Proposed Language Modification:
(k) The location of existing sensitive wildlife habitats~~,~~ and natural areas, or open space within 1500' of the well site or Production Site, if any;

Comment Received from COGA:
As currently drafted, COGA questions whether any parcel of land in Commerce City would meet the criteria outlined in this section. If there are no parcels of land that meet these criteria, COGA urges Commerce City to re-draft these provisions to allow for the reasonable extraction and development of minerals.

Staff Response:
Staff conducted analyses based on the criteria, and found that land is available that meets this criteria, where an operator could apply for an adminstrative Oil and Gas permit. Staff had previously calculated that a much larger portion of available land area in the city could be eligible to submit a permit, and per council direction a two tiered review and approval system was incorporated into the draft to encourage siting at greater distances from a variety of different land uses. Considerable amounts of developable land area are available in non-exempt areas, and as the City continues to annex to the east within it's IGA growth boundary, the total amount of available limited exemption areas will continue to increase. Minor changes to subsection 2 are necessary to ensure consistency with 21-5266(6), and staff proposes adding the future land use area of "DIA Technology" to the definition.

Proposed Language Modification:
1. Is located more than 2,000' from the following:
   a. Any existing residential, platted residential, or property currently entitled for residential use, not including properties zoned Agricultural over 10 acres in size;
   b. Any facility classified as a High Occupancy Building Unit, as defined by the COGCC;
   c. Any Public Park or Public Recreation facility, not including trails or City designated open space;
   d. Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor public assembly; and
   e. Senior living or assisted living facilities;
2. Is located more than ~~500~~1,000' from the following:
   a. The centerline of all USGS perennial streams;
   b. Public Water Supply Wells;

c. Reservoirs; and
d. Areas defined as land unsuitable for development in Section 21-7100.
3. Is outside of FEMA 100 Year Floodplain boundary and any surface water features; and
4. Meets at least one of the following criteria
a. Is currently zoned I-2, I-3, or PUD with a use category of "general industrial;" or identifies Oil and Gas resource extraction (i.e. subsurface extraction) as an allowed use; or
b. Has a future land use designation of Industrial / Distribution ~~or,~~ General Industrial~~.~~, or DIA Technology.

Comment Received from COGA:
It is unreasonable and unnecessary to require operators to provide a list of all features listed in section 21-3216(5)(b)(i)(1-3) within 1-mile of all drilling and spacing units proposed. Drilling and spacing units (DSUs) may extend several miles outside of the City's jurisdiction depending on the DSU shape, location, and size. What is the City's purpose for knowing these features outside its jurisdiction? Operators take great care to identify sites that allow for safe development and provide city and community benefit. Given the constraints listed in the proposed code, there is a high probability that an operator may not be able to provide a minimum of three alternative sites for the City to review. COGA suggests the City revisit these requirements to make compliance achievable.

Staff Response:
Staff believes it is necessary to evaluate the context surrounding the inidividual proposed wellpad and spacing unit that is being applied for. By evaluating the content described, staff can evaluate, and open a discussion with the operator if potential consolidation of surface use locations, relocation of Drilling and Spacing Units, and relocation of well sites is possible to determine an outcome that is least impactful of public health, safety, welfare, and the environment. Staff believes it is reasonably possible to provide a minimum of three proposed sites in an alternative location analysis. If the specific circumstances of a planned facility does not allow for at least three sites to be proposed, staff is proposing language to address this scenario.

Proposed Language Modification:
4. In the event significant site constraints limit the reasonable submission of at least three sites, the applicant may propose in writing as to what specific circumstances are occuring that prohibit other sites to be considered. The director will have authority to waive the requirement of up to two (2) additional sites, based on the review of supplemental information submitted by the applicant.

Comment Received from COGA:
The ability to negotiate and acquire a surface use agreement (SUA) is a key factor in finding a location for oil and gas development. The City should take SUAs into consideration when reviewing site eligibility. This is important because an operator may not be able to secure an SUA for a location that Commerce City deems more appropriate for an oil and gas operation.

Staff Response:
In the event a surface use agreement is not able to be negotiated by an applicant once a permit submittal has been allowed to proceed forward, other eligible sites approved by staff during the initial assessment may be allowed to proceed forward in it's place. This provision is in place to ensure a potential applicant engages potential landowners during or after the initial assessment process, not before consulting with the city on the feasibility of planned locations, and evaluating the city's comprehensive plan and potential development occurring in the area.

Comment Received from COGA:
COGA firmly believes that when an oil and gas permit application meets the criteria of the Code, it should be approved with no opportunity for denial. If all Code criteria are met and a permit application is denied, the application was necessarily denied for some reason not within the Code. This evades transparency and shatters expectations.

Staff Response:
All administrative reviews and public hearing reviews defined in Article III of the Land Development Code (ex. Conditional Use Permits, Building Permits, Re-zonings), have the language *may* in the preceding text. The director ultimately has the discretion in the decision to grant a permit, based on the ability to meet the applicable criteria defined. Utilizing the word *shall* as opposed to *may* in this scenario would prove an inconsistency for Oil and Gas permits compared to all other permits that are issued by the city.

Comment Received from COGA:
As drafted, language in this provision suggests that an operator must comply with any amendments made to the code after an Oil and gas Permit is granted. COGA comments that this provision could lead to the illegal impairment of a vested right, and that the language "and any subsequent amendments thereto as set forth therein" is struck from the drafted code. There are also practical reasons why this draft provision is misguided. For example, a new amendment might purport to require a retrofit of some kind that extends the surface foot print of the Oil and Gas Location beyond what was negotiated in the SUA.

Staff Response:
This language is intended to state that when the operator receives a permit, by doing so they are bound to comply to that permit. The term "amendments" applies to any future amendment of that permit, and compliance with the applicable code at the time the operator requests such amendment. It is not intended to imply that oil and gas permits would be required to comply with future updates of the land development code, beyond the requirements of the applicable code at the time they were issued a permit. This language was removed during the March draft.

Comment Received from COGA:
The sentence "All Oil and Gas Permit holders shall at all times comply with the BMP Document, as it may be amended" should be struck from the draft code for the same reasons set forth in the paragraph above. As interpreted by COGA, this language would effectively allow Commerce City to shut down operations if the City enacts a new BMP that makes compliance impossible or impracticable. As stated previously, retrospectively applying new regulations can lead to the illegal impairment of a vested property right. If this is not the city's intention behind the language, please clarify.

Comments Received from API:
The final issue is again retrospective in nature. Section 18 governs enforcement and penalties, and the new language seems to seek the ability to apply the new code's enforcement mechanisms to already in place permits and developments. Thus, we would suggest you insert the word "prospective" in front of the term Regional Operator Agreement to clarify that the code only applies to future agreements, not those that are already in place and governed by their own terms. Any in-place ROA certainly contains its own enforcement mechanisms, and under Colorado law those will control.

We also understand you view an oil and gas permit as analogous to a business or franchise license which is not transferrable under city statute and requires a prospective purchaser to reapply. There are several important distinctions with respect to this comparison. First, it is important to note we are not asking to be exempted from the transfer requirements for a permit, rather we seek to be treated as other private property where the purchaser is required to continue compliance with those regulations that governed its original development. This is similar to personal property such as a house. We can find no regulation that requires the retroactive application of building requirements prior to the sale of a house in Commerce City. We believe this issue can be resolved with the substitution of a provision that provides that any new operator "will continue compliance with all rules, regulations, or governing contracts applicable at the time of development." This simply means that any prospective buyer will know they will be required to continue compliance in the same manner as the current owner of the assets. Further, this will remedy any issue with impairment of property rights as any owner

will be free to sell or transfer their assets upon any new buyer agreeing to the original terms governing development, and the city can feel comfortable that compliance with its rules will be continued.

Staff Response:
The intent of this language is not to imply that instituting additional Best Management Practices or code requirements would apply to legal, existing permitted Oil and Gas Operations retroactively. At the time additional BMP's are adopted, existing permitted Oil and Gas Permits would be required to comply with the applicable code at the time of approval, including at the time of permit transfer, but any additional amendments an operator would seek to the existing permit would require compliance with newly adopted Best Management Practices, unless vested. Enforcement would correspond with the applicable code the permit application is bound to.

Under the Land Development Code, approval of an Oil and Gas Permit (or any other land use approval outlined in the city) does not automatically create vested property rights as defined in the Colorado Revised Statutes, unless the applicant specifically request vesting under the provisions defined in 21-3234.

Proposed Language Modification:
All Oil and Gas Permit holders shall at all times comply with the BMP Document, ~~as it may be amended.~~ applicable at the time of permit approval.

Comment Received from COGA:
Given the number of plans (~21) and other items that Commerce City is now requiring operators to submit, it appears highly likely that the City will rely on outside consultants to help staff review future oil and gas permit applications. However, as currently drafted, the language provides little protections for operators against financial abuse by the City's contractors and outside consultants. COGA suggests that the following provisions be added to this section:
• Allow operators to review the scope of work and estimated costs from a third-party consultant before the contractor is hired
• Commerce City will provide regular updates and accountings of the expended fees for third-party consultant to operators
• If funds are deposited to the City prior to any work, they shall be placed into an interest-bearing account. Unused funds, along with interest, shall be refunded to operators

Staff Response:
Allowing operators to review scope of work and estimated costs of a third-party would conflict with procurement policies of the city, and constitute a conflict of interest in the selection of a contractor. Regular updates and accountings of expended fees are standard practice, and a reasonable request. Refunding of interest and interest bearing accounts in this situation is not standard practice.

Comment Received from COGA:
Per C.R.S. 29-20-105.5(2)(a), "A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development." Because Commerce City already has a traffic impact fee in place, COGA suggests the following language is added to this section: "In accordance with the Traffic Impact Study, the Operator shall not pay ongoing repair or maintenance costs that exceeds the costs reasonably necessary to defray the impacts of the Operations." Additionally, what financial assurances shall be mandatory when an Operation will require the construction or reconstruction of a public or private road?

Staff Response:
Staff believes this instance is accounted for within Section 21-9260(5): *Limitation. Where the applicant for an Oil and Gas Permit is also required to pay the Road Impact Fee pursuant to Sec. 21-9220, then only to the extent the Road Impact Fee defrays the impacts to the same capital facilities as those addressed by this section as*

determined by the Director, may the Applicant be excused only from the duplicative portion of the Road Impact Fee.

Comment Received from Oakwood, Shea Homes, and Fulenwider:
21-5266: Reverse setbacks of 1,000 feet during production phase. We believe the standards in 21-5266 to be changed to match the language in 21-6280. In Reunion Ridge, this would allow us to plat lots within 400 feet once all wells enter Completions. The two sections are inconsistent. The rest of the section clarifies when wells have entered Completions the setback is reduced per the table. We do not have a problem with the table showing the final setback for Reunion Ridge will be 400 feet based on up to 24 well heads. The challenge is how the City proposes to measure the setback referenced in the new code. We believe the City is attempting to define the edge of the Production Site as the fence rather than the nearest tank, equipment, well pad, etc. This is a new standard and a change from the prior versions. We have raised this concern before and the City have been assured us the new code would not conflict with the Extraction Agreement. It clearly does with this latest draft.We believe the City either needs to delete this language or clarify the measurements in 21-5266 (6c) are taken from the nearest well pad, equipment, tank, etc. not the enclosed area. The proposed ordinance also includes a setback measurement between well operations and residential lots. It is important to note this is more restrictive that the current COGCC measurement standards which permit measurement to the wall of the building rather than the lot line. In addition, a Surface Use Agreement in Reunion has this standard for measuring setbacks. In summary, we believe the recommended revisions:

- Maintain the setback requirements of the original draft
- Consistent with the intent of original draft
- Reliable and transparent for landowners and operators
- Consistent with private agreements already executed

Staff Response:
The city is aware that the proposed setback measurement definition differs from COGCC standards. The purpose for this measurement standard is to account for *ongoing* impacts that may exist on-site during the lifetime of the well. The Production Site, as defined in 21-11120(351), accounts for a greater extent of potential impacts that may occur during the lifetime of a well, including potential re-drilling and recompletion of wells, emissions from truck traffic that may be present and other potential impacts that exist beyond the edge of the nearest production equipment. By measuring from the edge of the production equipment (which can vary greatly depending on the specific topographical constraints and layout of a site), rather than the fence, wall or enclosed area of the Production Site, the setback does not account for those potential impacts. The decision to conduct measurements to the edge of a residential lot line, rather than the edge of a unit is intended to maintain consistency with 21-11145, which specifies that distance or spacing requirements for *all* land uses contained within the Land Development code are measured from the edge of a lot line. Modifying the definition to measure setbacks from the edge of the nearest home, rather than the lot line would create inconsistency in that regard. Other local governments have adopted similar reverse setback measurements, with measurements that are defined in the same manner.

As it pertains to consideration of private existing agreements, the specific scenario of the Heron Pad referenced in your comment letter, and other instances in the future that may have unique characteristic or constraint not generally shared by properties of the same size, shape and nature, some flexibility in the process should be allowed. Staff is proposing a variance process for some operations that have above and beyond best management practices and protections on site, which would require an additional Conditional Use Permit to be approved by City Council.

Proposed Language Modification:
(3) Measurements shall be taken from the edge of the Production Site, in the same manner as defined in 21-5266(6).

Staff also proposing to include clarifying exhibit showing how measurements are conducted to 21-5266(6).

Comment Received from COGA:
A spike or elevated level of a particular constituent on a graph does not constitute health impacts. If Commerce City plans to analyze and publish air data, it must do its due diligence to itself and to the general public and be able to explain the toxicological impacts of such data. Air studies, both public and private, throughout Colorado have shown that emissions from oil and gas development do not pose any long-term health impacts.

Staff Response:
This provision was removed in staff's most recent draft released in March.

Comment Received from COGA:
Sections of this provision counter one another. Section (g) requires monitoring for the lifetime of each wellsite while section (h)(ii) requires continuous monitoring only under specific circumstances. If the entire provision is not struck, COGA requests that the City clarify which regulation to follow.

Staff Response:
Comment has been addressed in March draft.

Comment Received from COGA:
Currently available sensors are not capable of monitoring for all the constituents listed in the code. The reliability and quality of currently available sensors also varies widely and needs further development.

Staff Response:
Understood. Continuous monitoring of all pollutants was not intended.

Proposed Language Modification:
(d) Ambient Air Monitoring. Operator shall create and submit an air monitoring plan describing how the Operator will conduct baseline monitoring prior to construction of the well site. Plan shall also describe how the Operator will ~~shall~~ conduct continuous monitoring and collect periodic canister samples (or equivalent method) during the drilling, completion and production phases of development. ~~Monitored~~ Air pollutants monitored by canister samples shall include, but are not limited to, methane, VOCs, Hazardous Air Pollutants (HAPs), Oxides of Nitrogen (NOx), Particulate Matter (PM), and Fine Particulate Matter (PM 2.5). At Operator's cost, a third-party consultant approved by the City shall conduct baseline and ongoing air sampling and monitoring. Such sampling and monitoring shall comply with the following requirements:

Comment Received from COGA:
Continuous monitoring for the lifetime of each wellsite is technically impractical and not reasonable or necessary. Commerce City only needs to review the latest study from CDPHE modeling emissions from oil and gas development. Additionally, as wells begin to decline, they may operate on a very limited basis and may be shut-in for long periods of time. This would give very little potential for fugitive emissions.

Staff Response:
Noted.

Proposed Language Modification:
ii. Continuous monitoring for hydrocarbons shall occur during the drilling and completions phase of oil and gas development. Each hydrocarbon monitor shall include a sampling device to automatically collect an air sample when the monitor levels reach a trigger level defined below in (iii). Monitors shall also include

meteorological monitoring capabilities. Continuous monitoring may not cease until three years have passed from the date the last well drilled on the site has entered the production phase, unless any use defined in 21-5266(6a) is within 1,000' of the edge of the well site. In such instance, continuous monitoring ~~shall~~ may be required until all wells are plugged and abandoned.

Comment Received from COGA:
A 10-day turnaround on canister samples is outside of an operator's control. An operator is dependent on the lab for turnaround time.

Staff Response:
Noted.

Proposed Language Modification:
iv. In the event a canister sample is triggered, the ~~analysis of such sample shall be provided to the~~ city shall be notified on the next ~~no less than ten (10)~~ business day~~s~~ after the occurrence of such event. Depending on the circumstances, expedited lab analysis may be required.

Comment Received from COGA:
The provision requiring continuous monitoring if, "…any use defined is 21-5266(6a) is within 1,000' of the edge of the well site." is simply prejudicial. If the City is concerned with development near oil and gas facilities, it should not approve the development in the first place. To do so otherwise, and place further financial burden upon an operator, is irresponsible.

Staff Response:
Through the initial assessment process, and corresponding responses from staff, the operator will gain an understanding of entitled and future land uses that may occur adjacent to the facility in the future. By ultimately accepting a permit, the burden would be on the operator for understanding the potential development that may occur in the future, and potential obligations for air quality monitoring requirements that may arise from such development.

Comment Received from API:
This issue can be illustrated through your proposed air quality regulations. Sec. 21-5266(12)(a) requires that "Operator must eliminate, capture, or minimize all potentially harmful emissions, including Volatile Organic Compounds (VOC's) and BTEX through compliance with these provisions and the BMP Document." As an initial matter, this is a scientific and technical impossibility. Not just with respect to oil and gas, but with any and all business development that is proposed within the city. No industry, business, or otherwise can eliminate and control all emissions. Further, the city has proposed to required a baseline air monitoring plan that is subjective at best, which will then set a "baseline" that essentially requires continuous air monitoring throughout the life of the well. This provision assumes that technology related to continuous emissions monitoring is feasible for various pollutants, proven for a number of different applications, and commercially available. API does not believe that the technology has advanced to this level. Further, the BMP document requires mandatory participation in what are voluntary programs, outlines prohibitions requires the implementation of technology that may either be unnecessary or impracticable, outlines subjective standards that may be amended at any time, and requires other standards that in sum, will essentially prohibit any operator, current of future, from being able to comply. We would suggest one avenue would be for the city to contact the APCD to discuss your proposal. We would also note that APCD will be considering rules for emissions monitoring of its rulemaking docket in 2020 and 2021, which should be helpful to local governments and the public in understanding the potential for application of this technology.

Staff Response:

Language has been tailored to specify that continuous monitoring requirements does not apply to each of the pollutants listed. The city has engaged numerous stakeholders on proposed air quality regulations, and has engaged the APCD on their future rulemaking processes. Baseline air monitoring plans are standard, and a current requirement of the city's ROA, and has been proven to provide a location specific baseline for ambient air quality conditions.

Comment Received from COGA:
Draft Sec. 21-5266 (d)(i) would require an operator to provide a copy of any Colorado Oil and Gas Conservation Commission ("COGCC") enforcement order to the City, regardless of whether that enforcement order pertains to downhole enforcement issues outside of the City's jurisdiction. COGA posits it is more appropriate for the City to limit requests of copies of COGCC enforcement orders to those relating to areas where the City also has jurisdiction and further noting that this submittal is for information purposes only. As well, the provision should make clear that it applies only to enforcement orders related to Oil and Gas Locations within Commerce City.

Staff Response:
The goal of the provision is to make sure that transparency is achieved by requiring that Operators provide information relevant to City residents and City government identifying violations on their sites and with their operations. COGA's objection that such information should be limited only to those items the City has authority to regulate disregards the importance of that information to Commerce City residents and their health, safety, and welfare. Hiding such information from disclosure would cause further conflict between the industry and those skeptical of industry and its impacts on public health, welfare, and safety. Transparency, on the other hand, has the ability to improve these relationships.

Comment Received from COGA:
Draft Sec. 21-5266 (d)(ii) would require an operator to pay to the City a fine equal to what was assessed by the COGCC in a COGCC enforcement order. This is flawed in several respects. First, as just mentioned, the fine might relate to a downhole issue over which the City has no authority to regulate. Second, this provision raises due process concerns because the City would be assessing a fine for conduct that may or may not have occurred and which the City did not determine to have occurred. The most common type of "enforcement order" from the COGCC is an Administrative Order on Consent (AOC). This is a type of settlement agreement in which the operator agrees to the order only for purposes of resolving the issue expeditiously without need for an adversarial hearing. Oftentimes an operator will dispute a violation but decide for a variety of practical reasons not to take the alleged violation to hearing and will negotiate an AOC. It is inappropriate for Commerce City to assess fines agreed to for settlement purposes, and even were the COGCC enforcement order to be issued following a hearing and affirmative factual finding that an operator did in fact violate aa rule, it is inappropriate for Commerce City to assess a penalty for a violation that it personally did not find and a duplicative fine offends fundamental fairness.

Staff Response:
Addressed in forthcoming confidential Legal Memo to City Council. Language has also been clarified to correct intent.

Proposed Language Modification:
i. With submission of the Enforcement Order to the City, the Operator shall pay to the City ~~a fine~~ an amount equal to that mandated by the Enforcement Order unless the Enforcement Order is subject to a pending appeal.
ii. Where subject to an appeal, the Operator is excused from the payment ~~of the fine~~ to the City pending final disposition of the appeal. If the Enforcement Order, or any part thereof, is upheld on appeal or remand, the Operator shall pay ~~a fine~~ an amount to the City equal to that mandated upon disposition of the appeal and within five (5) days of disposition. If the appeal is disposed of by means other than a final disposition by the reviewing tribunal, and unless remanded, then the Operator shall pay the ~~fine~~ amount to the City as mandated in the original Enforcement Order within five (5) days of disposal.

Comment Received from COGA:
Finally, Commerce City lacks authority to assess fines for violations that are not violations of the Commerce City Code, § 31-16-101, C.R.S, and the COGCC fine may be in excess of what the City is permitted to assess pursuant to the same. The City is statutorily limited assessing fines no greater than $2,650. Id. Further, there is no reason or justification provided for an operator to pay a duplicative sum of money to the local government for a violation, real or alleged, assessed at the state level for a violation of a state regulation. COGA does not interpret § 31-16-101, C.R.S. to authorize a municipality to assess penalties of regulations adopted by the state. Rather, Commerce City is limited by that statue to assessing penalties no greater than $2,650 for violations of Commerce City's regulations, not the state's regulations.

If an operator's violation did impact Commerce City in some manner (e.g. use of emergency services), the operator is already required, as outlined in Sec. 21-5266(21)(a)(b), to reimburse the City for any expenses incurred. Specifically, "An operator shall be strictly liable to the City and any emergency service provider for all costs of an emergency response to any Well Sites," and, "An operator shall be strictly liable to the City…for all damages to any and all City owned or operated property and infrastructure…" COGA is concerned the intent of this provision is to add revenue to the City rather than to actually address any potential, real impacts from operations.

Regarding draft Sec. 21-3216(d), COGA submits that if an operator applicant marks information as confidential, and the City discloses or handles it improperly, Commerce City should take financial responsibility for their mistake. It does not make sense for the proposed regulation to provide that the applicant "shall be solely responsible" for the confidentiality of its information when the applicant is not the only custodian of the information. The applicant cannot be held responsible for disclosure it did not make.

Staff Response:
Addressed in forthcoming confidential Legal Memo to City Council.

Comment Received from COGA:
Draft Sec. 21-3216(e) is problematic because it proposes that "Materials submitted for review as part of the Initial Assessment Process and site eligibility determination shall not constitute an application for development for purposes of C.R.S. § 24-68-101, et. seq." But the Initial Assessment Process and site eligibility determination undeniably constitute the first stage of the City's process of authorizing oil and gas operations. As such, this provision is in direct conflict with §24-68-102, C. R.S., which explicitly states, "For local governments that have provided specific development plans in multiple stages, "application" means the original application at the first stage in any process that may culminate in the ultimate approval [of a site specific development plan.]"

Staff Response:
The Initial Assessment Process is intended to act as a pre-application exercise, where the operator and city staff evaluate the feasiblity of potential and planned locations prior to receiving an actual permit submittal. Similar pre-application correspondence occurs with a number of prospective land development projects, which is intended to work potential issues of signficant concern prior to receiving a permit application, to ensure smooth, effective, and timely review of a permit application. City staff intends for the initial assessment process to work in such a manner.

Comment Received from COGA:
COGA finds 21-3216(14) problematic because it gives the City control over a private property transfer. It makes sense to COGA that if one operator intends to transfer its assets to another entity, the City would like to know that this new entity can fulfill the obligations of the previous operator. However, the Director should not have discretion to deny the transfer when the elements of the Code are satisfied, so the use of the permissive "may" is misguided. Also, the new operator's financial assurance requirements should not necessarily be the same as the prior operator's. If a to-be transferred well already has been drilled and completed, that well arguably

presents less risk, and certainly presents less impacts, than an undrilled and uncompleted well. Section (c) of this provision is also problematic because it conflicts with the responsible party determinations found in the Oil and Gas Conservation Act, §34-60-124, C.R.S. A prior operator may be responsible for reclamation or other remedial activities after transfer pursuant to that statute. So long as there is an operator held responsible, the City should not mandate that the current operator is the responsible party.

Staff Response:
This is standard with the City's current Conditional Use Permit process, which was used as a basis for the standards developed for an Oil and Gas Permit under this draft. Uses with potential significant externalities such as Oil and Gas development are reviewed under similar authority. The city retains discretional authority to approve permit transfer based on demonstrating the operator is fully able and willing to comply with the regulations that are in place, and the operating standards approved in the previous permit. This is a critical function, in order to proevent future enforcement concerns.

Comment Received from API:
Sec. 21-3216 Section 14 governs the assignment of permits. We appreciate the city's desire to ensure future compliance with any permitted and operating well in the instance of a sale or transfer. With that in mind, our concerns lie with subsection c which states that " The new Operator will remedy any on-site noncompliance with any applicable local or state regulations and permits, as a condition of the assignment." This provision would require any new owner of the assets to redevelop the already producing wells in a fashion not in accordance with the laws and regulations in place at the time of development. In other words, this code provision would apply new code standards retrospectively. Essentially the city is requiring that any well that is governed by a private contract or previously issued permit, and has continued to meet those obligations, would be required to be redeveloped under a set of rules and regulations that were not in effect at the time the permit was issued or under contract terms other than those governing the original development. The well, the mineral rights, and the associated permit are all vested personal property rights and requiring a new purchaser to conform to a new set of standards would certainly impact the primary owner's right to sell or transfer those assets.

Staff Response:
Applicable local or state regulations would consist of regulations that apply to that permit directly, and the applicable state or local code that it is was applied under. This is to ensure permit transfer of does not occur for a site that is currently in violations of it's permit conditions.

Comment Received from COGA:
As drafted, 21-3216(10)(d) is unworkable. The COGCC's permit may not be, and in fact is very unlikely to be, granted within 180-days of the City's approval. COGA suggests that the City consult with the COGCC on permit processing times if the City wishes to establish a set timeframe. The last sentence of this provision is also ambiguous. It states, "…an Oil and Gas Permit shall automatically lapse and have no further effect if the use is discontinued for 180 consecutive days[,]" which could be interpreted that a temporarily shut-in well would trigger the lapse of a permit. COGA asks that this provision been revised to avoid that interpretation, which would necessarily implicate downhole concerns and be outside of the City's jurisdiction.

Staff Response:
Intent of the regulation was to not lapse approval of an oil and gas permit between any gap in permitting between a local permit and a state permit. Minor revisions proposed to provide clarity. Discontinuation of use would not apply to a temporarily individual shut in well as described, but would apply to a scenario where all site activity or production ceases entirely for a period of 180 days.

Proposed Language Modification:
d. If construction of a structure is required, an Oil and Gas Permit shall lapse unless a City building permit has been issued and construction diligently pursued within two (2) years of approval or at such alternative time specified in the approval. In the event no new

structure is required for the operation, the Oil and Gas Permit shall lapse if the Operation is not commenced within 180 days of the ~~approval~~ issuance of either a state permit or city permit, whichever occurs later. In addition, an Oil and Gas Permit shall automatically lapse and have no further effect if the use is discontinued for 180-consecutive days.

Comment Received from COGA:
Regarding paragraph A.(3), COGA is concerned with defining "practicable" to mean "in the Director's opinion that: (a) there is no technology reasonably available to conduct…" What may be deemed "practicable" by the Director may not be possible for a specific oil and gas operation and the Director may not have the oil and gas knowledge and experience necessary to make an informed "opinion". The Director's "opinion" must be objective and based in fact. Second, COGA suggests that the phrase, "and commercially" be added to "reasonably and commercially available." Certain requirements outlined in the BMP document, such as Tier 4 hydraulic fracturing fleets, may not be readily available for use.

Staff Response:
Staff interprets reasonably available to account for commercially available and viable technology. If a technology is not reasonably available to an operator, it is not possible to require it.

Comment Received from COGA:
As drafted, this BMP states, "Operator shall provide access to the Well Sites to the City's designated personnel or agent to allow air sampling to occur, without condition." But conditions may be necessary for the safety of the designated personnel or agent and to ensure that the air sampling is conducted properly. COGA recommends that the "without condition" language be stricken and substituted with language explaining that non-operator personnel should be escorted on site and the operator should have the opportunity to observe the air sampling.

Staff Response:
Local inspection authority was granted to Local Governments under Senate BIII 19-181, without prior notice. In the event of a potential life safety hazard, or other item of timely significance, the city believes the authority for timely inspection access is critical. Having the operator present to observe during monitoring does not present a significant issue, and is implied as a possibility.

Comment Received from COGA:
Because the COGCC does not regulate gas gathering lines, this provision needs modification.

Staff Response:
Although the COGCC does not specifically regulate gathering lines, the requirement for homebuilders to denote during the platting process is not restricted. Gathering line removal requirement removed from 21-5266(13) in latest March draft. Removal of requirement in BMP 1.2.a is necessary.

Proposed Language Modification:
Remove all pipelines~~, gathering lines~~ and flowlines after one (1) year of non-use when last well utilizing lines are plugged and abandoned unless this requirement is waived in writing by the Director;

Comment Received from COGA:
COGA has concerns about sharing proprietary information with the City. Where specific information regarding hydraulic fracturing chemicals is confidential, the information should not be made available to the public. The information may be confidentially provided on a "need to know basis" to medical professionals or emergency responders.

Staff Response:
Since the November draft, this language has been modified to include only non-proprietary information, that is accessible to the pubic via the fracfocus site. All information listed under 1a does not require release of information that would otherwise be considered proprietary or confidential.

Comment Received from COGA:
COGA has serious confidentiality and safety concerns with this provision, and recommends it be struck from the draft regulations. As the City is aware, the COGCC recently completed a flowline rulemaking pursuant to SB19-181 that will "allow the public disclosure of flowline information." As such, the COGCC has created a mapping system that shows the locations of existing flowlines without compromising safety. COGA suggests that Commerce City contact the COGCC for specific files related to flowlines.

Staff Response:
The city believes this provision is necessary to avoid future conflicts with development over previously abandoned oil and gas sites, as has been required by other jurisdictions. Recordation with the Clerk and Recorder shall ensure that flowline information is made available to prospective buyers inquiring on a specific parcel during title search, and ensure information is reflected accordingly during any potential future subdivision platting. Relating to city access of GIS data, additional language can be included to ensure confidentially of flowline data consistent with COGCC 1100 series rules.

Proposed Language Modification:
f. Operator will provide the City with GIS files for the location of flowlines. Flowlline data provided to the city shall only made publicly available at a resolution greater than 1:6,000.

Comment Received from COGA:
COGA recommends this provision be struck in its entirety because local governments cannot regulate downhole aspects of oil and gas operations, such as plugging and decommissioning oil and gas wells.

Staff Response:
Staff agrees with this assessment. Proposed language change of "may request" to address circumstances of potential health, safety, and welfare concerns.

Proposed Language Modification:
b. Based on the results of the assessment, the City may ~~require~~ request the Operator to plug and abandon, in compliance with all COGCC rules in relation to abandonment and plugging, any of the Operator's existing oil and gas or disposal wells or such wells under the Operator's ownership, control or authority. Additionally, the City may request Operator to attempt to negotiate the plugging and abandonment of other wells of concern, that are not owned by the Operator, but that are within 1500' of the completion interval of the projected track of the borehole of the proposed new well. If wells of concern are not plugged and abandoned, Operator must supply a mitigation plan and a follow-up monitoring plan that will be used to prevent or detect any communication between the well of concern and the proposed wells.

Comment Received from COGA:
COGA believes the draft lighting provisions in the BMP document are too prescriptive. COGA recommends instead a flexible approach (or at minimum the ability to obtain a variance, as discussed above), as safety concerns and OSHA requirements may dictate lighting specifics different from those drafted.

Staff Response:
Due to the potential negative externalities of lighting on nearby residences and wildlife, staff believes the provisions stated are necessary to fully evaluate and mitigate potential impacts from operations. The requirement for a lighting plan is standard for all development applications within the city.

City Staff Responses to Comments

Comment Received from COGA:
COGA comments that this provision be struck from the draft code. Downhole matters are outside of Commerce City's jurisdiction.

Staff Response:
If instances of this do occur, it presents an extreme public health and safety hazard, and would have significant surface impacts. Staff believes that this language is pertinent and should be included in the rare event that this scenario would occur. Further addressed in confidential Legal Memo to City Council.

Comment Received from LOGIC:
Sec. 21-5266(6) Setbacks and Floodplains states that no oil and gas production site may be located within 1,000' of homes, schools, and businesses, among other locations. This standard is likely to be well under the distance the COGCC ends of up adopting. As of May 26th, the COGCC is working off a draft that includes a 1,500' setback from ten or more homes. However, LOGIC and numerous other organizations have offered amendments to that proposal to expand the distance to 2,640' from schools, and 2,500' from an individual home, any other dwelling, high occupancy buildings, and outdoor activity areas.

The Town of Superior has recently enacted a 1,500' setback and zoning restriction, and the City and County of Broomfield raised the bar by enacting a 2,500' setback.

All of this points to the need to increase the setback distance from 1,000' to 2,500' in order to better protect the residents of Commerce City from the adverse health impacts associated with oil and gas development.

Comment Received from NRCC:
We appreciate the willingness of the city council to consider setback distances beyond the woefully inadequate state setback requirements. However, we strongly encourage the City to consider going further than its current 1,000-foot proposal. Article V, §21-5266(6). Peer-reviewed scientific studies and anecdotal evidence of the harm caused by oil and gas operations near populated areas continues to expand at a rapid pace. The Town of Superior recently enacted a 1,500-foot setback and the City and County of Broomfield is considering a setback of 2,000 feet. Several other jurisdictions have also noted the latest evidence and asked their staff and counsel to consider setbacks longer than 1,000 feet for their updated oil and gas regulations. We ask Commerce City to do the same, as the evidence of harm to the health and safety of nearby residents from oil and gas facilities is beyond dispute at this point.

Comment Received from Public (Multiple):
Increased setback distances between homes and oil and gas facilities to be at least 2,500 feet from any home, playground, school, or any other high occupancy area. We would like to prevent drilling near the property lines of schools, the new rec center, already established homes and businesses.

Staff Response:
Staff acknowledges the body of research regarding potential health impacts in relation to Oil and Gas Well Sites. As part of the City Council packet, staff will be providing (and has provided in the past) a list of resources and publications reviewed during the development of these rules. Staff believes that while that the ultimate minimum setback that an operator could potentially apply for would be 1,000 feet from the criteria stated in 21-5266, the in-depth requirements within the initial assessment process criteria will ultimately lead to sites that are submitted to the city that far exceed the minimum setback instituted. The initial assessment process requires a minimum of 3 potential sites to be contemplated, with the most protective option of the three being approved by staff to move forward with an application. Staff is proposing to add an additional setback restriction of 1,500' from either 10 or more existing or platted residential units, or a high occupancy building unit, to be consistent with COGCC's latest draft. Additionally, allowing for an administrative process for sites that exceed 2,000' in

distance from a number of the stated criteria, further encourages locations to be farther away from potential sources of conflict. Setbacks are to be measured from the property lines of homes and schools.

Proposed Language Modification:
(6) Setbacks and Floodplain Restriction.
(a) No Oil and Gas Production Site may be located within 1000' of the following:
(i) Any existing residential or platted residential property,
~~(ii) Any building classified as a High Occupancy Building Unit, as defined by the COGCC;~~
~~(iii)~~(ii) Any Public Park or public recreation facility, not including trails or city designated open space;
~~(iv)~~(iii) Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar place of outdoor public assembly;
~~(v)~~(iv) Senior living or assisted living facilities;
~~(vi)~~(v) Public Water Supply Wells; and
~~(vii)~~(vi) Reservoirs.
(b) No Oil and Gas Production Site may be located within 1,500' of ten (10) or more existing residential or platted residential properties, or any building classified as a High Occupancy Building Unit, as defined by the COGCC;
~~(b)~~(c) No Oil and Gas Facilities may be located in the Floodplain.
~~(c)~~(d) Measurements shall be taken from the edge of the proposed Production Site to the parcel boundary. For agricultural properties over 10 acres in size with residential uses, the measurement shall be taken from the nearest edge of any occupied dwelling unit.

Comment Received from LOGIC:
In the current draft Sec. 21-6280(1), Commerce City proposes adopting a tiered reverse setback system. The current proposal has different standards for producing wells and wells that have not yet gone into production. For wells that have not gone into production, the current draft proposes a setback of 1,000' between production site and the new home plat. For well that are already producing, the proposal would set back new housing development 300' from 1-10 wells, 400' from 11-24 wells, and 500' from 25 or more wells.

While LOGIC can certainly understand the arguments from housing developers that any increase in reverse setback increase would limit their ability to build new houses, we are more concerned with the health and safety of the residents of Commerce City. We also understand the intent in making the setback distances different for producing wells and wells still being drilled and completed. Oil and gas facilities certainly emit more hazardous chemicals during drilling and completion operations than they do during production. However, that does not meet that they emit nothing once they have gone into production.

Even in production, oil and gas production facilities are still major sources of pollution, odors, and noise. The arguments made above in favor of a greater setback between new wells and existing homes apply equally to the setbacks between new homes and existing wells. Furthermore, operators can frack a well more than once. Nothing in the current draft addresses the fact that operators are allowed to re-enter wells to re- complete them. This activity would subject the people living and working within the reverse-setback distance to the same level of emissions as the initial drilling and completion process. The only way to avoid this issue is to either prohibit recompletion operations or expand the reverse setback distance to acknowledge this fact.

For those reasons, we request that Commerce City adopt a uniform 2,500' setback between new homes and existing oil and gas facilities to protect the health and safety of all Commerce City residents.

Comments Received from NRCC:
The increasing weight of authority and experience shows 1,000-foot setbacks are an important starting point for local government discussions but ultimately inadequate to protect public health, safety, and welfare. Many Commerce City residents have rightfully asked for longer setbacks, and those requests are backed by an ever-increasing amount of data.

In the same vein, the currently proposed reverse setback distances are wholly inadequate. Just as the health and safety of residents is not appropriately addressed by a 1,000-foot setback between new oil and gas facilities and existing residential areas, a reverse setback as short as 300 feet (or just one football field) between existing facilities and new residential development is totally deficient. Health and safety concerns about oil and gas facilities do not end once production begins; issues with air emissions and accidents in particular continue throughout the life of the well. Whatever its ultimate decision is on setbacks, the rationale used by Commerce City to justify those setbacks should equally apply to the distances assigned to reverse setbacks as well.

Staff Response:
It is acknowledged that some impacts do exist during the production phase of the well site, and a minimum reverse setback is needed in some form during the lifetime of the active well. In comparison, the scale and the significance of air quality impacts, risk of hazards, and other potential negative externalities is far greater during the drilling and completions phase of development. For that reason, staff has proposed a uniform minimum 1,000' setback during the drilling and completions phases, and allowing the setback to scale back to a reduced size (depending on number of wells on a pad site) after all the wells on the permitted pad site have been drilled.

Comment Received from LOGIC:
Commerce City is facing the prospect of a massive amount of new oil and gas development. Though one of the companies proposing to conduct these operations (Extraction Oil & Gas) is on the cusp of bankruptcy, the amount of oil and gas operations proposed within Commerce City remains unchanged. Extraction Oil & Gas alone has submitted applications for a total of 154 oil and gas wells on seven locations.

Given the potential for massive increases in local emissions, it is deeply troubling that the draft regulations have no plan to deal with the cumulative impacts of all the existing and foreseeable development in the area.

We strongly encourage Commerce City to develop a plan to require a cumulative impact assessment prior to the approval of any oil and gas development permit. This could be accomplished by including a definition of Cumulative Impacts in the definition section of the proposed regulation. We propose the following definition:

Cumulative Impact means the total impact to air quality, water quality, traffic, noise levels, odor, soil and visual aesthetics caused by the proposed new or expanded oil and gas facility in combination with all such existing and reasonably foreseeable development of any type within 20 miles, regardless of the jurisdiction in which the activity is taking place. We include soil impacts in this list to address the issues within the Rocky Mountain Arsenal. The background pollution levels must be accounted for in all cumulative impact assessment work. Commerce City must also be able to expand this area if the local topography requires a greater assessment area.

We also request that the City add a cumulative impact assessment plan to the Section 21-3216(8) Review criteria.

Comment Received from NRCC:
Commerce City is the target for at least ten upcoming large-scale oil and gas development projects, most of which are likely to occur at approximately the same time if the Council and COGCC approve all of the forthcoming permits. Those projects would add to the high emissions activity of several existing industrial facilities, including but not limited to the Suncor refinery, which already contribute to diminished air quality for Commerce City residents.

There is no mention in the latest draft regulations of the cumulative impacts new oil and gas operations would have upon the health, safety, and welfare of Commerce City residents. This is an unfortunate omission because the cumulative impacts of increased oil and gas drilling in a small geographical area would result in a significant degradation of health, safety, and welfare of Commerce City residents.

The cumulative impacts of a proposed new or expanded oil and gas site should be analyzed by Commerce City using information already available to it about existing and reasonably foreseeable future land uses in addition to information provided by the operator-applicant. The analysis should consider the effect of proposed oil and gas facilities on areas of importance to public health, safety, and welfare like air emissions, water quality, traffic, noise, odor, and visual aesthetics.

Comment Received from Public (Multiple):
Use of cumulative impacts (or the total impacts of oil and gas development across and within 5 miles of Commerce City on public health, safety, welfare and environmental resources) as criteria for determining the City's approval, denial, or conditions regarding oil and gas development

Staff Response:
Staff acknowledges the need to provide greater assessment for cumulative impacts under our draft regulations. With the COGCC not taking up the topic of cumulative impacts in a significant way during their rulemaking, no clear state guidance existed at the time of drafting these regulations. Staff agrees that operators should have some form of obligation to assess the total impact of air quality planned from not only each well site, but all of their planned operations combined with current ambient air quality conditions, and potential contributions to ozone, total VOC's, and other measures of regional air quality. Review of site specific noise impacts, visual aesthetics, and traffic impacts are already required through these draft regulations, and typically assess the impacts that occur beyond that specific location. Staff agrees that at a minimum, a definition of cumulative impacts should be included, and to the greatest extent feasible, demonstrate how the operator's proposed impacts would contribute to regional air quality issues, and potentially demonstrate reduction in emissions over time.

Proposed Language Modification:
Sec. 21-11200. Definitions
(114) Cumulative impacts shall mean the effects of an action that are added to or interact with other effects in a particular place and within a particular time. Cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of the effects of all actions over time. The cumulative impacts of an action can be viewed as the total effects on a resource, ecosystem, or human community of that action and all other activities affecting that resource.

Sec. 21-5266. Subsurface Extraction (3) Application Requirements
(u) An Air Quality Mitigation Plan showing a modeling assessment of cumulative air quality impacts and a plan and schedule to maintain air quality, including a plan to minimize VOC emissions in compliance with the BMP Document;

Sec. 21-5266. Subsurface Extraction (12) Air Quality Standards and Monitoring
(a) The Air Quality Mitigiation Plan must consider the cumulative impacts of existing air quality and all planned and existing oil and gas operations within one mile of the City. The Plan must describe how the Operator will eliminate, capture, or minimize all potentially harmful emissions, including Volatile Organic Compounds (VOC's) and BTEX through compliance with these provisions and the BMP Document.

BMP Document F(6)
b. Operator shall conduct a Baseline Noise Mitigation Study to ascertain baseline and expected cumulative noise levels at each Well Site to demonstrate that noise is expected to be mitigated to the extent practicable. A copy will be provided to the City. All baseline measurements considered for compliance with this Section shall be taken by a third-party contractor using sound monitoring industry standards and practices

Comment Received from LOGIC:

The current market conditions highlight the need for revisions to Commerce City's regulations on the transferability of oil and gas permits. Sec. 21-3216(14) states that a permit may only be assigned with the consent of the Director, and that the Director may only offer consent to the assignment when certain conditions are met.

We request that an additional condition be added to this section. The new operator must certify that they will comply with all relevant regulations and requirements in the Best Management Practices document, even if these have been updated after the permit was approved. Commerce City must also be able to add any additional conditions to the permit to address any issues that have arisen during the operations on the permitted location.

Staff Response:
While staff believes it is important to have some langauge in place to review transfers of a permit to ensure new operators are able to comply with the applicable code and permit conditions, it may not be practical or possible from a legal standpoint to require the transferee of a permit to comply with new regulations that were not in effect at the time of approval. In the event operations have already commenced on site and production has occured, it may not technically be possible to retrofit the existing site to conform with new regulations.

Comment Received from LOGIC:
The draft regulations do recognize the City's authority to deny applications that would adversely impact public health and safety, we want to reaffirm the basis for that authority here.

Furthermore, in order for a regulatory takings claim to prevail, the claimant has to prove that the regulations eliminate virtually the whole value of the property. Colorado courts have allowed regulations that reduced the value of property by up to 93% to survive without a takings finding. Courts have also found that the intent to protect public health and safety weighs in favor of allowing the regulation, even in the result of a total takings. The extensive evidence already provided in the record of this regulatory process is ample support the City's intent to protect public health and safety.

Thus, when alleging a regulatory taking, a plaintiff generally must prove that a government decision eliminated most of a property's value and such a reduction was not justified by other factors like investor expectations, the nature of the government action, or any other relevant reason. A government action justified by appropriate public and safety findings provides considerable protection against a takings claim, even if the action resulted in a significant reduction of value.
Even prior to SB19-181, oil and gas related takings claims were rarely filed in Colorado. Most recently, when the City of Longmont enacted its fracking ban, the plaintiff initially filed a takings claim but later dismissed it to focus on their state preemption argument when lack of standing became an issue. Even in New York, when fracking was banned statewide, very few takings cases were filed, and none were successful. Post SB19-181, the bar to demonstrate that a local government regulation, designed to protect public health and safety, rises to the level of a regulatory taking is extremely high. The commonsense regulations laid out in this draft fall far below that bar.

Comment Received from NRCC:
Changes made to Colorado law by SB 181 further strengthen local governments' defenses against regulatory takings claims. First, SB 181 expressly elevates the importance of public health, safety, and welfare relative to other considerations, including the state's interest in developing minerals. Second, SB 181 changed the definition of resource "waste" to clarify that it "does not include the nonproduction of oil or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources." C.R.S. §34-60-103(11)(b),(12)(b),(13)(b). Therefore, if a government entity denies a permit because a proposed location is inconsistent with protecting public health and the environment, temporarily preventing an operator from accessing its mineral rights, it will not constitute "waste" of the resource.

Additionally, a government decision limiting oil and gas drilling in a particular geographic area does not mean

those minerals are forever deprived of all economically viable use. They remain in the ground, to be possibly extracted in the future with different technologies or using different safeguards. Many minerals presently coveted were unobtainable and worthless as few as ten years ago. Changes in drilling technology could lead to future extraction consistent with public health and safety. In light of the possibility that a 93% diminution of property value may still not result in a regulatory takings, it is not difficult to imagine that someone might be willing to purchase mineral rights at 7% of their prior value to have the option of producing at a future time when technology and drilling techniques address public health and safety concerns in a satisfactory way.

In summary, enacting regulations adequately protective of public health, safety, and welfare as well as denying an oil and gas permit based upon the same criteria provide ample protection against a regulatory takings claim. SB181 allows local governments to treat oil and gas drilling as any other type of land use. A local government would not be liable for a takings if it denied permission to build a large chemical plant on the desired property due to health and safety concerns; the same principle now applies to oil and gas drilling.

Staff Response:
Staff has included significant improvements to the Oil and Gas Approval Criteria under 21-3216(8), and for administrative permits, the director has the authority to approve, approve with conditions, or deny an Oil and Gas permit. Staff believes this criteria is robust enough to potentially deny a permit if the operator is not able to demonstrate through the application that The proposed operations and facility will not result in substantial orundue adverse impacts or effects (during any phase of operation orduring any potential operational, environmental, or meteorological condition) on public health, safety, welfare, or the environment; adjacent property; occupied structures within 2,500' of the proposed facility; the character of the neighborhood; and traffic conditions. For Oil and Gas permits where staff is not the final approval authority, but is instead approved by resolution by City Council, staff will utilize this criteria to provide a staff recommendation, which Council may utilize in their review and analysis.

Comment Received From	Comment	Applicable Draft Code Section	Applicable Code Language from 3/10 Draft	Staff Response	Proposed Language Modifications
COGA	Why the disparate treatment for oil and gas operations? What are the grounds for treating oil and gas differently from other industries?	Sec. 3-2304. - Penalties.	https://www.c3gov.com/home/showdocument?id=9210	Requiring fines for violations of the city's Land Development Code that occur within city limits is not disparate treatement of a single industry. Exempting an individual industry from fines when other businesses in the city are penalized for violations would be inconsistent treatment. Given fines that are levied by the state against an operator do not go to local governments in any form to assist on a local level for remediation of the violation.	None
COGA	Please explain how the City calculates penalties where the violation lasts more than one day. For example, if an Operator inadvertently does not submit a report required by the Code, COGA believes that should count as one violation.	Sec. 3-2304. - Penalties.	https://www.c3gov.com/home/showdocument?id=9210	Fines are typically levied per instance, rather than cumulative each day the fine occurs. In certain circumstances, the city does retain the right to issue a new Notice of Violation (NOV) each day a fine is present and not remedied.	None
COGA	Instead of presuming significant impacts, which is a negative assumption treating oil and gas operations disparately from other impactful industries, the City may simply require the neighborhood meeting.	Sec. 21-3110. Neighborhood Meetings	(2) Applicability. The city may require a neighborhood meeting when it appears that an application may have significant neighborhood impacts, including without limitation, impacts related to: traffic; provision of public services such as safety, schools, or parks; compatibility of building design or scale; or operational compatibility such as hours of operation, noise, dust, or glare. Notwithstanding the foregoing, significant neighborhood impacts shall be presumed for all oil and gas permit applications and for all oil and gas permit applications.	Staff agrees with this revision	(2) Applicability. The city may require a neighborhood meeting when it appears that an application may have significant neighborhood impacts, including without limitation, impacts related to: traffic; provision of public services such as safety, schools, or parks; compatibility of building design or scale; or operational compatibility such as hours of operation, noise, dust, or glare. Notwithstanding the foregoing, unless exempted by 21-3216(8), ~~significant neighborhood impacts shall be presumed for all oil and gas permit applications and~~ a minimum of one neighborhood meeting shall be required for all oil and gas permit applications.
COGA	For consistency and clarity, COGA recommends the City update the first two below drafted terms to match with the Colorado Oil and Gas Commission's ("COGCC") definitions.	Sec. 21-11200 Definitions	(505) Well Site shall mean, as it relates to Oil and Gas Operations, a definable area where an Operator has disturbed or intends to disturb the land surface in order to locate an Oil and Gas well facility, and includes a Production Site.	Staff agrees with this. Staff proposes to include these definitions, but not replace them in lieu of Well Site or Production Site	OIL AND GAS LOCATION shall mean a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility. WORKING PAD SURFACE means the portions of an Oil and Gas Location that has an improved surface upon which Oil and Gas Operations take place.
COGA	"Well Site" To "Oil and Gas Location" or "Working Pad Surface," depending on context				
COGA	"Production Site(s)" & "Well Site(s)" – "Production Site(s)" is undefined, and COGA recommends using the COGCC's definition of Oil and Gas Location (which encompasses booth well pads with or without facilities, as well as facility only pads) and the COGCC's draft definition of "Working Pad Surface," again depending on context				
COGA	Sec. 21.5266(3)(k) – "Nature Area", please define	21-5266(3)(k)	(k) The location of existing sensitive wildlife habitats, nature areas, or open space within 1500' of the well site or Production Site, if any;	*Nature areas* in the previous draft was a typo. Intended language was "Natural areas" which was used in Code but not defined, to mean *Sensitive Wildlife Habitats and Natural Areas* .	(k) The location of existing sensitive wildlife habitats~~,~~ and natural areas, or open space within 1500' of the well site or Production Site, if any;
COGA	As currently drafted, COGA questions whether any parcel of land in Commerce City would meet the criteria outlined in this section. If there are no parcels of land that meet these criteria, COGA urges Commerce City to re-draft these provisions to allow for the reasonable extraction and development of minerals.	21-3216(5)(b)(i)(1-4)	Limited exemption. Proposed locations shall automatically be deemed eligible for the submission of an application and exempt from the requirement of an alternative location analysis if the site meets all of the following criteria: 1. Is located more than 2,000' from the following: a. Any existing residential, platted residential, or property currently entitled for residential use, not including properties zoned Agricultural over 10 acres in size; b. Any facility classified as a High Occupancy Building Unit, as defined by the COGCC; c. Any Public Park or Public Recreation facility, not including trails or City designated open space; d. Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor public assembly; and e. Senior living or assisted living facilities; 2. Is located more than 500' from the following: a. The centerline of all USGS perennial streams; b. Public Water Supply Wells; c. Reservoirs; and d. Areas defined as land unsuitable for development in Section 21-7100. 3. Is outside of FEMA 100 Year Floodplain boundary and any surface water features; and 4. Meets at least one of the following criteria a. Is currently zoned I-2, I-3, or PUD with a use category of "general industrial;" or identifies Oil and Gas resource extraction (i.e. subsurface extraction) as an allowed use; or b. Has a future land use designation of Industrial / Distribution or General Industrial.	Staff conducted analyses based on the criteria, and found that land is available that meets this criteria, where an operator could apply for an adminstrative Oil and Gas permit. Staff had previously calculated that a much larger portion of available land area in the city could be eligible to submit a permit, and per council direction a two tiered review and approval system was incorporated into the draft to encourage siting at greater distances from a variety of different land uses. Considerable amounts of developable land area are available in non-exempt areas, and as the City continues to annex to the east within it's IGA growth boundary, the total amount of available limited exemption areas will continue to increase. Minor changes to subsection 2 are necessary to ensure consistency with 21-5266(6), and staff proposes adding the future land use area of "DIA Technology" to the definition.	1. Is located more than 2,000' from the following: a. Any existing residential, platted residential, or property currently entitled for residential use, not including properties zoned Agricultural over 10 acres in size; b. Any facility classified as a High Occupancy Building Unit, as defined by the COGCC; c. Any Public Park or Public Recreation facility, not including trails or City designated open space; d. Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor public assembly; and e. Senior living or assisted living facilities; 2. Is located more than ~~500~~1,000' from the following: a. The centerline of all USGS perennial streams; b. Public Water Supply Wells; c. Reservoirs; and d. Areas defined as land unsuitable for development in Section 21-7100. 3. Is outside of FEMA 100 Year Floodplain boundary and any surface water features; and 4. Meets at least one of the following criteria a. Is currently zoned I-2, I-3, or PUD with a use category of "general industrial;" or identifies Oil and Gas resource extraction (i.e. subsurface extraction) as an allowed use; or b. Has a future land use designation of Industrial / Distribution ~~or.~~ General Industrial~~.~~, or DIA Technology.
COGA	It is unreasonable and unnecessary to require operators to provide a list of all features listed in section 21-3216(5)(b)(i)(1-3) within 1-mile of all drilling and spacing units proposed. Drilling and spacing units (DSUs) may extend several miles outside of the City's jurisdiction depending on the DSU shape, location, and size. What is the City's purpose for knowing these features outside its jurisdiction? Operators take great care to identify sites that allow for safe development and provide city and community benefit. Given the constraints listed in the proposed code, there is a high probability that an operator may not be able to provide a minimum of three alternative sites for the City to review. COGA suggests the City revisit these requirements to make compliance achievable.	21-3216(5)(b)(ii)(2-3)	2. The absence of any significant impacts the proposed site location may have on adjacent properties; 3. Adequate surface acreage and suitable topography for safe and efficient operations;	individual proposed wellpad and spacing unit that is being applied for. By evaluating the content described, staff can evaluate, and open a discussion with the operator if potential consolidation of surface use locations, relocation of Drilling and Spacing Units, and relocation of well sites is possible to determine an outcome that is least impactful of public health, safety, welfare, and the environment. Staff believes it is reasonably possible to provide a minimum of three proposed sites in an alternative location analysis. If the specific circumstances of a planned facility does not allow for at least three sites to be proposed, staff is proposing language to address this scenario.	4. In the event significant site constraints limit the reasonable submission of at least three sites, the applicant may propose in writing as to what specific circumstances are occuring that prohibit other sites to be considered. The director will have authority to waive the requirement of up to two (2) additional sites, based on the review of supplemental information submitted by the applicant.
COGA	The ability to negotiate and acquire a surface use agreement (SUA) is a key factor in finding a location for oil and gas development. The City should take SUAs into consideration when reviewing site eligibility. This is important because an operator may not be able to secure an SUA for a location that Commerce City deems more appropriate for an oil and gas operation.	21-3216(5)(b)(iii)(8)	The existence of a surface use agreement between any landowner and a potential operator shall not be a factor of consideration in the city's review of an alternative location analysis; and	In the event a surface use agreement is not able to be negotiated by an applicant once a permit submittal has been allowed to proceed forward, other eligible sites approved by staff during the initial assessment may be allowed to proceed forward in it's place. This provision is in place to ensure a potential applicant engages potential landowners during or after the initial assessment process, not before consulting with the city on the feasibility of planned locations, and evaluating the city's comprehensive plan and potential development occuring in the area.	None
COGA	COGA firmly believes that when an oil and gas permit application meets the criteria of the Code, it should be approved with no opportunity for denial. If all Code criteria are met and a permit application is denied, the application was necessarily denied for some reason not within the Code. This evades transparency and shatters expectations.	21-3216(8)	8. Approval Criteria. An Oil and Gas Permit may be approved if all of the following criteria are met...	All administrative reviews and public hearing reviews defined in Article III of the Land Development Code (ex. Conditional Use Permits, Building Permits, Re-zonings), have the language *may* in the preceding text. The director ultimately has the discretion in the decision to grant a permit, based on the ability to meet the applicable criteria defined. Utilizing the word *shall* as opposed to *may* in this scenario would prove an inconsistency for Oil and Gas permits compared to all other permits that are issued by the city.	No change proposed
COGA	As drafted, language in this provision suggests that an operator must comply with any amendments made to the code after an Oil and gas Permit is granted. COGA comments that this provision could lead to the illegal impairment of a vested right, and that the language "and any subsequent amendments thereto as set forth therein" is struck from the drafted code. There are also practical reasons why this draft provision is misguided. For example, a new amendment might purport to require a retrofit of some kind that extends the surface foot print of the Oil and Gas Location beyond what was negotiated in the SUA.	21-3216(9)(e)	By accepting an Oil and Gas Permit, the Operator expressly stipulates and agrees to be bound by and comply with the provisions of this Code and any subsequent amendments thereto as set forth therein.	This language is intented to state that when the operator receives a permit, by doing so they are bound to comply to that permit. The term "amendments" applies to any future amendment of that permit, and compliance with the applicable code at the time the operator requests such amendment. It is not intended to imply that oil and gas permits would be required to comply with future updates of the land development code, beyond the requirements of the applicable code at the time they were issued a permit. This language was removed during the March draft.	None
COGA	The sentence "All Oil and Gas Permit holders shall at all times comply with the BMP Document, as it may be amended" should be struck from the draft code for the same reasons set forth in the paragraph above. As interpreted by COGA, this language would effectively allow Commerce City to shut down operations if the City enacts a new BMP that makes compliance impossible or impracticable. As stated previously, retrospectively applying new regulations can lead to the illegal impairment of a vested property right. If this is not the city's	21-3216(12)(a)	The City Council may adopt additional standards, protections, and specifications through a series of Best Management Practices ("BMP Document"), adopted by the City Council by ordinance, that shall apply to all Oil and Gas Operations within the City. All Oil and Gas Permit holders shall at all times comply with the BMP Document, as it may be amended.		All Oil and Gas Permit holders shall at all times comply with the BMP Document, ~~as it may be amended.~~ applicable at the time of permit approval.
API	The final issue is again retrospective in nature. Section 18 governs enforcement and penalties, and the new language seems to seek the ability to apply the new code's enforcement mechanisms to already in place permits and developments. Thus, we would suggest you insert the word "prospective" in front of the term Regional Operator Agreement to clarify that the code only applies to future agreements, not those that are already in place and governed by their own terms. Any in-place ROA certainly contains its own enforcement mechanisms, and under Colorado law those will control.	21-5266(18)	https://www.c3gov.com/home/showdocument?id=9220#page=28		None
API	We also understand you view an oil and gas permit as analogous to a business or franchise license which is not transferrable under city statute and requires a prospective purchaser to reapply. There are several important distinctions with respect to this comparison. First, it is important to note we are not asking to be exempted from the transfer requirements for a permit, rather we seek to be treated as other private property where the purchaser is required to continue compliance with those regulations that governed its original development. This is similar to personal property such as a house. We can find no regulation that requires the retroactive application of building requirements prior to the sale of a house in Commerce City. We believe this issue can be resolved with the substitution of a provision that provides that any new operator "will continue compliance with all rules, regulations, or governing contracts applicable at the time of development." This simply means that any prospective buyer will know they will be required to continue compliance in the same manner as the current owner of the assets. Further, this will remedy any issue with impairment of property rights as any owner will be free to sell or transfer their assets upon any new buyer agreeing to the original terms governing development, and the city can feel comfortable that compliance with its rules will be continued.	21-3216(14)	14. Assignment of Permits. An Oil and Gas Permit may be assigned to another Operator only with the written consent of the Director. The Director may consent to an assignment of a permit only if: a. The new Operator can and will comply with all requirements, terms and conditions of the Code, the Oil and Gas Permit and any Regional Operator Agreement and all applicable state, local and federal laws, rules and regulations;. b. The new Operator demonstrates adequate insurance and posts financial assurances required of the previous Operator; c. The new Operator will remedy any on-site noncompliance with any applicable local or state regulations and permits, as a condition of the assignment; d. The Oil and Gas Permit was approved more than 90 days before the assignment.	The intent of this language is not to imply that instituting additional Best Management Practices or code requirements would apply to legal, existing permitted Oil and Gas Operations retroactively. At the time additional BMP's are adopted, existing permitted Oil and Gas Permits would be required to comply with the applicable code at the time of approval, including at the time of permit transfer, but any additional amendments an operator would seek to the existing permit would require compliance with newly adopted Best Management Practices, unless vested. Enforcement would correspond with the applicable code the permit application is bound to. Under the Land Development Code, approval of an Oil and Gas Permit (or any other land use approval outlined in the city) does not automatically create vested property rights as defined in the Colorado Revised Statutes, unless the applicant specifically request vesting under the provisions defined in 21-3234.	None
COGA	Given the number of plans (~21) and other items that Commerce City is now requiring operators to submit, it appears highly likely that the City will rely on outside consultants to help staff review future oil and gas permit applications. However, as currently drafted, the language provides little protections for operators against financial abuse by the City's contractors and outside consultants. COGA suggests that the following provisions be added to this section: • Allow operators to review the scope of work and estimated costs from a third-party consultant before the contractor is hired • Commerce City will provide regular updates and accountings of the expended fees for third-party consultant to operators • If funds are deposited to the City prior to any work, they shall be placed into an interest-bearing account. Unused funds, along with interest, shall be refunded to operators	21-5266(4)	The City may require third-party consultants to participate on behalf of the City in the Initial Assessment Process, to review any submittals or applications to the City, attend meetings, and to advise on other processes deemed by the City to be appropriate and necessary. Reasonable costs associated with such reviews, including third-party consultant fees, shall be paid by the Operator. The Director may require the Operator to deposit funds with the City prior to the execution of such services based on a reasonable estimate provided to the Director from the independent expert or consultant until a final cost is determined. Fees shall be paid from the Operator's deposited funds. Funds not expended shall be refunded to the Operator at the conclusion of the review	Allowing operators to review scope of work and estimated costs of a third-party would conflict with procurement policies of the city, and constitute a conflict of interest in the selection of a contractor. Regular updates and accountings of expended fees are standard practice, and a reasonable request. Refunding of interest and interest bearing accounts in this situation is not standard practice.	None
COGA	Per C.R.S. 29-20-105.5(2)(a), "A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development." Because Commerce City already has a traffic impact fee in place, COGA suggests the following language is added to this section: "In accordance with the Traffic Impact Study, the Operator shall not pay ongoing repair or maintenance costs that exceeds the costs reasonably necessary to defray the impacts of the Operations." Additionally, what financial assurances shall be mandatory when an Operation will require the construction or reconstruction of a public or private road?	21-5266(10)(a-b)	d) If public road improvements are necessary to accommodate an Operation, and before work will be permitted within any City right-of-way, the Operator shall submit construction drawings to be prepared by a Colorado licensed civil engineer, in conformance with City standards, for review and approval by the City Engineer. Financial assurances shall be required when any Operation requires the construction or reconstruction of public or private roads. (b) Maintenance. If Operations or related activities cause any City roadway to become substandard, the City may require the Operator to provide ongoing repair and maintenance of the roadway at the Operator's cost. Such maintenance may include dust control measures and roadway improvements such as(e.g. graveling, shouldering, and/or paving) as determined in the Traffic Impact Study.	Staff believes this instance is accounted for within Section 21-9260(5): *Limitation. Where the applicant for an Oil and Gas Permit is also required to pay the Road Impact Fee pursuant to Sec. 21-9220, then only to the extent the Road Impact Fee defrays the impacts to the same capital facilities as those addressed by this section as determined by the Director, may the Applicant be excused only from the duplicative portion of the Road Impact Fee.*	None
Oakwood Homes / Shea / Fulenwider	21-5266: Reverse setbacks of 1,000 feet during production phase. We believe the standards in 21-5266 to be changed to match the language in 21-6280. In Reunion Ridge, this would allow us to plat lots within 400 feet once all wells enter Completions. The two sections are inconsistent. The rest of the section clarifies when wells have entered Completions the setback is reduced per the table. We do not have a problem with the table showing the final setback for Reunion Ridge will be 400 feet based on up to 24 well heads. The challenge is how the City proposes to measure the setback referenced in the new code. We believe the City is attempting to define the edge of the Production Site as the fence rather than the nearest tank, equipment, well pad, etc. This is a new standard and a change from the prior versions. We have raised this concern before and the City have been assured us the new code would not conflict with the Extraction Agreement. It clearly does with this latest draft.We believe the City either needs to delete this language or clarify the measurements in 21-5266 (6c) are taken from the nearest well pad, equipment, tank, etc. not the enclosed area. The proposed ordinance also includes a setback measurement between well operations and residential lots. It is important to note this is more restrictive that the current COGCC measurement standards which permit measurement to the wall of the building rather than the lot line. In addition, a Surface Use Agreement in Reunion has this standard for measuring setbacks. In summary, we believe the recommended revisions: • Maintain the setback requirements of the original draft • Consistent with the intent of original draft • Reliable and transparent for landowners and operators • Consistent with private agreements already executed	21-5266(6a), 21-6280(1)	(1) For permitted 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, 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 (3) Measurements shall be taken in the same manner as defined in 21-5266(6)	The city is aware that the proposed setback measurement definition differs from COGCC standards. The purpose for this measurement standard is to account for *ongoing* impacts that may exist on-site during the lifetime of the well. The Production Site, as defined in 21-11120(351), accounts for a greater extent of potential impacts that may occur during the lifetime of a well, including potential re-drilling and recompletion of wells, emissions from truck traffic that may be present and other potential impacts that exist beyond the edge of the nearest production equipment. By measuring from the edge of the production equipment (which can vary greatly depending on the specific topographical constraints and layout of a site), rather than the fence, wall or enclosed area of the Production Site, the setback does not account for those potential impacts. The decision to conduct measurements to the edge of a residential lot line, rather than the edge of a unit is intended to maintain consistency with 21-11145, which specifies that distance or spacing requirements for *all* land uses contained within the Land Development code are measured from the edge of a lot line. Modifying the definition to measure setbacks from the edge of the nearest home, rather than the lot line would create inconsistency in that regard. Other local governments have adopted similar reverse setback measurements, with measurements that are defined in the same manner. As it pertains to consideration of private existing agreements, the specific scenario of the Heron Pad referenced in your comment letter, and other instances in the future that may have unique characteristic or constraint not generally shared by properties of the same size, shape and nature, some flexibility in the process should be allowed. Staff is proposing a variance process for some operations that have above and beyond best management practices and protections on site, which would require an additional Conditional Use Permit to be approved by City Council.	(3) Measurements shall be taken from the edge of the Production Site, in the same manner as defined in 21-5266(6). Staff also proposing to include clarifying exhibit showing how measurements are conducted to 21-5266(6).
COGA	Real-time reporting is also problematic, as the data must be adjusted for background concentrations and environmental interferences such as temperature, humidity, and others. Additionally, real-time monitoring data, if made public, would only serve to raise more questions than it answers. Commerce City can look at other municipalities for guidance in this area. For example, Broomfield has invested $2.6 million in contractors monitoring for air quality that resulted in what the city's Director of Strategic Initiatives called a "flood of questions" to these contractors.			This provision was removed in staff's most recent draft released in March.	No changes needed
COGA	A spike or elevated level of a particular constituent on a graph does not constitute health impacts. If Commerce City plans to analyze and publish air data, it must do its due diligence to itself and to the general public and be able to explain the toxicological impacts of such data. Air studies, both public and private, throughout Colorado have shown that emissions from oil and gas development do not pose any long-term health impacts.			This provision was removed in staff's most recent draft released in March.	No changes needed
COGA	Sections of this provision counter one another. Section (g) requires monitoring for the lifetime of each wellsite while section (h)(ii) requires continuous monitoring only under specific circumstances. If the entire provision is not struck, COGA requests that the City clarify which regulation to follow.			Comment has been addressed	No changes needed
COGA	Currently available sensors are not capable of monitoring for all the constituents listed in the code. The reliability and quality of currently available sensors also varies widely and needs further development.			Understood. Continuous monitoring of all pollutants was not intended.	(d) Ambient Air Monitoring. Operator shall create and submit an air monitoring plan describing how the Operator will conduct baseline monitoring prior to construction of the well site. Plan shall also describe how the Operator will ~~shall~~ conduct continuous monitoring and collect periodic canister samples (or equivalent method) during the drilling, completion and production phases of development. ~~Monitored~~ Air pollutants monitored by canister samples shall include, but are not limited to, methane, VOCs, Hazardous Air Pollutants (HAPs), Oxides of Nitrogen (NOx), Particulate Matter (PM), and Fine Particulate Matter (PM 2.5). At Operator's cost, a third-party consultant approved by the City shall conduct baseline and ongoing air sampling and monitoring. Such sampling and monitoring shall comply with the following requirements:
COGA	Continuous monitoring for the lifetime of each wellsite is technically impractical and not reasonable or necessary. Commerce City only needs to review the latest study from CDPHE modeling emissions from oil and gas development. Additionally, as wells begin to decline, they may operate on a very limited basis and may be shut-in for long periods of time. This would give very little potential for fugitive emissions.			Noted.	ii. Continuous monitoring for hydrocarbons shall occur during the drilling and completions phase of oil and gas development. Each hydrocarbon monitor shall include a sampling device to automatically collect an air sample when the monitor levels reach a trigger level defined below in (iii). Monitors shall also include meteorological monitoring capabilities. Continuous monitoring may not cease until three years have passed from the date the last well drilled on the site has entered the production phase, unless any use defined in 21-5266(6a) is within 1,000' of the edge of the well site. In such instance, continuous monitoring ~~shall~~ may be required until all wells are plugged and abandoned.

COGA	A 10-day turnaround on canister samples is outside of an operator's control. An operator is dependent on the lab for turnaround time.		12) Air Quality Standards and Monitoring. (a) Operator must eliminate, capture, or minimize all potentially harmful emissions, including Volatile Organic Compounds (VOC's) and BTEX through compliance with these provisions and the BMP Document. (b) Operator shall minimize dust associated with onsite activities and traffic on access roads pursuant to the terms as identified herein. (c) Operator shall comply with all applicable state and federal regulations including regulations promulgated by CDPHE, COGCC and US EPA. (d) Ambient Air Monitoring. Operator shall create and submit an air monitoring plan describing how the Operator will conduct baseline monitoring prior to construction of the well site. Operator shall conduct continuous monitoring and collect periodic canister samples (or equivalent method) during the drilling, completion and production phases of development. Monitored air pollutants shall include, but are not limited to, methane, VOCs, Hazardous Air Pollutants (HAPs), Oxides of Nitrogen (NOx), Particulate Matter (PM), and Fine Particulate Matter (PM 2.5). At Operator's cost, a third-party consultant approved by the City shall conduct baseline and ongoing air sampling and monitoring. Such sampling and monitoring shall comply with the following requirements: i. Baseline sampling shall be conducted within 500 feet of a proposed facility over a 90-day period.. Baseline sampling shall track levels and changes in monitored air pollutant concentrations. Baseline sampling data shall be provided as part of the Oil and Gas permit submittal. ii. Continuous monitoring for hydrocarbons shall occur during the drilling and completions phase of oil and gas development. Each hydrocarbon monitor shall include a sampling device to automatically collect an air sample when the monitor levels reach a trigger level defined below in (iii). Monitors shall also include meteorological monitoring capabilities. Continuous monitoring may not cease until three years have passed from the date the last well drilled on the site has entered the production phase, unless any use defined in 21-5266(6a) is within 1,000' of the edge of the well site. In such instance, continuous monitoring shall be required until all wells are plugged and abandoned. iii. An increase in the detection of hydrocarbon greater than the ambient levels determined during baseline sampling plus the anticipated change based on Operator-provided impacts of modeled operations shall require the Operator to collect a further sample utilizing an 8-hour canister sample immediately after detection. iv. In the event a canister sample is triggered, the analysis of such sample shall be provided to the city no less than ten (10) business days after the occurrence of such event.	Noted.	iv. In the event a canister sample is triggered, the ~~analysis of such sample shall be provided to the~~ city shall be notified on the next ~~no less than ten (10)~~ business days~~-~~ after the occurrence of such event. Depending on the circumstances, expedited lab analysis may be required.
COGA	The provision requiring continuous monitoring if, "…any use defined is 21-5266(6a) is within 1,000' of the edge of the well site." is simply prejudicial. If the City is concerned with development near oil and gas facilities, it should not approve the development in the first place. To do so otherwise, and place further financial burden upon an operator, is irresponsible.			Through the initial assessment process, and corresponding responses from staff, the operator will gain an understanding of entitled and future land uses that may occur adjacent to the facility in the future. By ultimately accepting a permit, the burden would be on the operator for understanding the potential development that may occur in the future, and potential obligations for air quality monitoring requirements that may arise from such development.	None
API	This issue can be illustrated through your proposed air quality regulations. Sec. 21-5266(12)(a) requires that "Operator must eliminate, capture, or minimize all potentially harmful emissions, including Volatile Organic Compounds (VOC's) and BTEX through compliance with these provisions and the BMP Document." As an initial matter, this is a scientific and technical impossibility. Not just with respect to oil and gas, but with any and all business development that is proposed within the city. No industry, business, or otherwise can eliminate and control all emissions. Further, the city has proposed to required a baseline air monitoring plan that is subjective at best, which will then set a "baseline" that essentially requires continuous air monitoring throughout the life of the well. This provision assumes that technology related to continuous emissions monitoring is feasible for various pollutants, proven for a number of different applications, and commercially available. API does not believe that the technology has advanced to this level. Further, the BMP document requires mandatory participation in what are voluntary programs, outlines prohibitions requires the implementation of technology that may either be unnecessary or impracticable, outlines subjective standards that may be amended at any time, and requires other standards that in sum, will essentially prohibit any operator, current of future, from being able to comply. We would suggest one avenue would be for the city to contact the APCD to discuss your proposal. We would also note that APCD will be considering rules for emissions monitoring of its rulemaking docket in 2020 and 2021, which should be helpful to local governments and the public in understanding the potential for application of this technology.	21-5266(12)		Language has been tailored to specify that continuous monitoring requirements does not apply to each of the pollutants listed. The city has engaged numerous stakeholders on proposed air quality regulations, and has engaged the APCD on their future rulemaking processes. Baseline air monitoring plans are standard, and a current requirement of the city's ROA, and has been proven to provide a location specific baseline for ambient air quality conditions.	None
COGA	Draft Sec. 21-5266 (d)(i) would require an operator to provide a copy of any Colorado Oil and Gas Conservation Commission ("COGCC") enforcement order to the City, regardless of whether that enforcement order pertains to downhole enforcement issues outside of the City's jurisdiction. COGA posits it is more appropriate for the City to limit requests of copies of COGCC enforcement orders to those relating to areas where the City also has jurisdiction and further noting that this submittal is for information purposes only. As well, the provision should make clear that it applies only to enforcement orders related to Oil and Gas Locations within Commerce City.			The goal of the provision is to make sure that transparency is achieved by requiring that Operators provide information relevant to City residents and City government identifying violations on their sites and with their operations. COGA's objection that such information should be limited only to those items the City has authority to regulate disregards the importance of that information to Commerce City residents and their health, safety, and welfare. Hiding such information from disclosure would cause further conflict between the industry and those skeptical of industry and its impacts on public health, welfare, and safety. Transparency, on the other hand, has the ability to improve these relationships.	
COGA	Draft Sec. 21-5266 (d)(ii) would require an operator to pay to the City a fine equal to what was assessed by the COGCC in a COGCC enforcement order. This is flawed in several respects. First, as just mentioned, the fine might relate to a downhole issue over which the City has no authority to regulate. Second, this provision raises due process concerns because the City would be assessing a fine for conduct that may or may not have occurred and which the City did not determine to have occurred. The most common type of "enforcement order" from the COGCC is an Administrative Order on Consent (AOC). This is a type of settlement agreement in which the operator agrees to the order only for purposes of resolving the issue expeditiously without need for an adversarial hearing. Oftentimes an operator will dispute a violation but decide for a variety of practical reasons not to take the alleged violation to hearing and will negotiate an AOC. It is inappropriate for Commerce City to assess fines agreed to for settlement purposes, and even were the COGCC enforcement order to be issued following a hearing and affirmative factual finding that an operator did in fact violate aa rule, it is inappropriate for Commerce City to assess a penalty for a violation that it personally did not find and a duplicative fine offends fundamental fairness.			Addressed in forthcoming confidential Legal Memo to City Council. Langague has also been clarified to correct intent.	i. With submission of the Enforcement Order to the City, the Operator shall pay to the City ~~a fine~~ an amount equal to that mandated by the Enforcement Order unless the Enforcement Order is subject to a pending appeal. ii. Where subject to an appeal, the Operator is excused from the payment ~~of the fine~~ to the City pending final disposition of the appeal. If the Enforcement Order, or any part thereof, is upheld on appeal or remand, the Operator shall pay ~~a fine~~ an amount to the City equal to that mandated upon disposition of the appeal and within five (5) days of disposition. If the appeal is disposed of by means other than a final disposition by the reviewing tribunal, and unless remanded, then the Operator shall pay the ~~fine~~ amount to the City as mandated in the original Enforcement Order within five (5) days of disposal.
COGA	Finally, Commerce City lacks authority to assess fines for violations that are not violations of the Commerce City Code, § 31-16-101, C.R.S, and the COGCC fine may be in excess of what the City is permitted to assess pursuant to the same. The City is statutorily limited assessing fines no greater than $2,650. Id. Further, there is no reason or justification provided for an operator to pay a duplicative sum of money to the local government for a violation, real or alleged, assessed at the state level for a violation of a state regulation. COGA does not interpret § 31-16-101, C.R.S. to authorize a municipality to assess penalties of regulations adopted by the state. Rather, Commerce City is limited by that statue to assessing penalties no greater than $2,650 for violations of Commerce City's regulations, not the state's regulations.		(d) COGCC Enforcement Orders. (i) Within five (5) business days of the receipt of a COGCC Enforcement Order for a violation occurring in the City, the Operator shall provide the Enforcement Order to the City. (ii) With submission of the Enforcement Order to the City, the Operator shall pay to the City a fine equal to that mandated by the Enforcement Order unless the Enforcement Order is subject to a pending appeal. (iii) Where subject to an appeal, the Operator is excused form payment of the fine pending final disposition of the appeal. If the Enforcement Order, or any part thereof, is upheld on appeal or remand, the Operator shall pay a fine to the City equal to that mandated upon disposition of the appeal and within five (5) days of disposition. If the appeal is disposed of by means other than a final disposition by the reviewing tribunal, and unless remanded, then the Operator shall pay the fine to the City as mandated in the original Enforcement Order within five (5) days of disposal.	Addressed in forthcoming confidential Legal Memo to City Council.	
COGA	If an operator's violation did impact Commerce City in some manner (e.g. use of emergency services), the operator is already required, as outlined in Sec. 21-5266(21)(a)(b), to reimburse the City for any expenses incurred. Specifically, "An operator shall be strictly liable to the City and any emergency service provider for all costs of an emergency response to any Well Sites," and, "An operator shall be strictly liable to the City…for all damages to any and all City owned or operated property and infrastructure…" COGA is concerned the intent of this provision is to add revenue to the City rather than to actually address any potential, real impacts from operations.	21-5266(18d)(i-iii)		Addressed in forthcoming confidential Legal Memo to City Council.	
COGA	Regarding draft Sec. 21-3216(d), COGA submits that if an operator applicant marks information as confidential, and the City discloses or handles it improperly, Commerce City should take financial responsibility for their mistake. It does not make sense for the proposed regulation to provide that the applicant "shall be solely responsible" for the confidentiality of its information when the applicant is not the only custodian of the information. The applicant cannot be held responsible for disclosure it did not make.	21-3216(d)	d. Confidentiality. To the extent permitted by law, information submitted to the City by an applicant in support of the Initial Assessment Process and site eligibility determination may be deemed confidential by the applicant provided that the public release of such information has the potential to negatively impact the applicant's business activities, including the applicant's negotiating position with surface use owners. If the applicant designates any information as confidential, the information may not be released by the City unless required by law. The applicant shall be solely responsible for the protection of its information and shall indemnify the City for any attorneys' fees and costs, and any award thereof, incurred in the defense of the applicant's assertion of confidentiality.	Addressed in forthcoming confidential Legal Memo to City Council.	
COGA	Draft Sec. 21-3216(e) is problematic because it proposes that "Materials submitted for review as part of the Initial Assessment Process and site eligibility determination shall not constitute an application for development for purposes of C.R.S. § 24-68-101, et. seq." But the Initial Assessment Process and site eligibility determination undeniably constitute the first stage of the City's process of authorizing oil and gas operations. As such, this provision is in direct conflict with §24-68-102, C. R.S., which explicitly states, "For local governments that have provided specific development plans in multiple stages, "application" means the original application at the first stage in any process that may culminate in the ultimate approval [of a site specific development plan.]"	21-3216(5e)	Materials submitted for review as part of the Initial Assessment Process and site eligibility determination shall not constitute an application for development for purposes of C.R.S. §24-68-101, et. seq. Any opinions expressed during the Initial Assessment Process and site eligibility determination are informational only and do not represent a commitment on behalf of the city regarding the acceptability or approval of the development proposal, except the eligibility of a site for application.	The Initial Assessment Process is intended to act as a pre-application exercise, where the operator and city staff evaluate the feasiblity of potential and planned locations prior to receiving an actual permit submittal. Similar pre-application correspondence occurs with a number of prospective land development projects, which is intended to work potential issues of signficant concern prior to receiving a permit application, to ensure smooth, effective, and timely review of a permit application. City staff intends for the initial assessment process to work in such a manner.	None
COGA	COGA finds this provision problematic because it gives the City control over a private property transfer. It makes sense to COGA that if one operator intends to transfer its assets to another entity, the City would like to know that this new entity can fulfill the obligations of the previous operator. However, the Director should not have discretion to deny the transfer when the elements of the Code are satisfied, so the use of the permissive "may" is misguided. Also, the new operator's financial assurance requirements should not necessarily be the same as the prior operator's. If a to-be transferred well already has been drilled and completed, that well arguably presents less risk, and certainly presents less impacts, than an undrilled and uncompleted well. Section (c) of this provision is also problematic because it conflicts with the responsible party determinations found in the Oil and Gas Conservation Act, §34-60-124, C.R.S. A prior operator may be responsible for reclamation or other remedial activities after transfer pursuant to that statute. So long as there is an operator held responsible, the City should not mandate that the current operator is the responsible party.			This is standard with the City's current Conditional Use Permit process, which was used as a basis for the standards developed for an Oil and Gas Permit under this draft. Uses with potential significant externalities such as Oil and Gas development are reviewed under similar authority. The city retains discretional authority to approve permit transfer based on demonstrating the operator is fully able and willing to comply with the regulations that are in place, and the operating standards approved in the previous permit. This is a critical function, in order to proevent future enforcement concerns.	None
API	Sec. 21-3216 Section 14 governs the assignment of permits. We appreciate the city's desire to ensure future compliance with any permitted and operating well in the instance of a sale or transfer. With that in mind, our concerns lie with subsection c which states that " The new Operator will remedy any on-site noncompliance with any applicable local or state regulations and permits, as a condition of the assignment." This provision would require any new owner of the assets to redevelop the already producing wells in a fashion not in accordance with the laws and regulations in place at the time of development. In other words, this code provision would apply new code standards retrospectively. Essentially the city is requiring that any well that is governed by a private contract or previously issued permit, and has continued to meet those obligations, would be required to be redeveloped under a set of rules and regulations that were not in effect at the time the permit was issued or under contract terms other than those governing the original development. The well, the mineral rights, and the associated permit are all vested personal property rights and requiring a new purchaser to conform to a new set of standards would certainly impact the primary owner's right to sell or transfer those assets.	21-3216(14)	14. Assignment of Permits. An Oil and Gas Permit may be assigned to another Operator only with the written consent of the Director. The Director may consent to an assignment of a permit only if: a. The new Operator can and will comply with all requirements, terms and conditions of the Code, the Oil and Gas Permit and any Regional Operator Agreement and all applicable state, local and federal laws, rules and regulations:. b. The new Operator demonstrates adequate insurance and posts financial assurances required of the previous Operator; c. The new Operator will remedy any on-site noncompliance with any applicable local or state regulations and permits, as a condition of the assignment; d. The Oil and Gas Permit was approved more than 90 days before the assignment."	Applicable local or state regulations would consist of regulations that apply to that permit directly, and the applicable state or local code that it is was applied under. This is to ensure permit transfer of does not occur for a site that is currently in violations of it's permit conditions.	None
COGA	As drafted, this provision is unworkable. The COGCC's permit may not be, and in fact is very unlikely to be, granted within 180-days of the City's approval. COGA suggests that the City consult with the COGCC on permit processing times if the City wishes to establish a set timeframe. The last sentence of this provision is also ambiguous. It states, "…an Oil and Gas Permit shall automatically lapse and have no further effect if the use is discontinued for 180 consecutive days[,]" which could be interpreted that a temporarily shut-in well would trigger the lapse of a permit. COGA asks that this provision been revised to avoid that interpretation, which would necessarily implicate downhole concerns and be outside of the City's jurisdiction.	21-3216(10)(d)	d. If construction of a structure is required, an Oil and Gas Permit shall lapse unless a City building permit has been issued and construction diligently pursued within two (2) years of approval or at such alternative time specified in the approval. In the event no new structure is required for the operation, the Oil and Gas Permit shall lapse if the Operation is not commenced within 180 days of the approval. In addition, an Oil and Gas Permit shall automatically lapse and have no further effect if the use is discontinued for 180-consecutive days.	Intent of the regulation was to not lapse approval of an oil and gas permit between any gap in permitting between a local permit and a state permit. Minor revisions proposed to provide clarity. Discontinuation of use would not apply to a temporarily individual shut in well as described, but would apply to a scenario where all site activity or production ceases entirely for a period of 180 days.	d. If construction of a structure is required, an Oil and Gas Permit shall lapse unless a City building permit has been issued and construction diligently pursued within two (2) years of approval or at such alternative time specified in the approval. In the event no new structure is required for the operation, the Oil and Gas Permit shall lapse if the Operation is not commenced within 180 days of the ~~approval~~ issuance of either a state permit or city permit, whichever occurs later. In addition, an Oil and Gas Permit shall automatically lapse and have no further effect if the use is discontinued for 180-consecutive days.
COGA	Regarding paragraph A.(3), COGA is concerned with defining "practicable" to mean "in the Director's opinion that: (a) there is no technology reasonably available to conduct…" What may be deemed "practicable" by the Director may not be possible for a specific oil and gas operation and the Director may not have the oil and gas knowledge and experience necessary to make an informed "opinion". The Director's "opinion" must be objective and based in fact. Second, COGA suggests that the phrase, "and commercially" be added to "reasonably and commercially available." Certain requirements outlined in the BMP document, such as Tier 4 hydraulic fracturing fleets, may not be readily available for use.	BMP A (3)	3. Where used in this BMP Document, the term "practicable" shall mean, in the Director's opinion, that: (a) there is no technology reasonably available to conduct the proposed Operations in compliance with the BMP and waiver of the provision will not have a significant adverse effect on public health, safety, welfare, or the environment; (b) an alternative approach not contemplated by the BMP is demonstrated to provide a level of protection of public health, safety, welfare, and the environment that would be at least equivalent to the BMP; or (c) application of the BMP would create an undue hardship because of unique physical circumstances or conditions existing on or near the site of the Oil and Gas Facility, which may include without limitation topographical conditions, shape or dimension of the site, or inadequate public infrastructure, provided adequate protection of public health, safety, welfare, and the environment will be ensured through other means. Except where the term "practicable" is used, modifications of these BMPs shall not be permitted.	Staff interprets reasonably available to account for commercially available and viable technology. If a technology is not reasonably available to an operator, it is not possible to requre it.	None
COGA	As drafted, this BMP states, "Operator shall provide access to the Well Sites to the City's designated personnel or agent to allow air sampling to occur, without condition." But conditions may be necessary for the safety of the designated personnel or agent and to ensure that the air sampling is conducted properly. COGA recommends that the "without condition" language be stricken and substituted with language explaining that non-operator personnel should be escorted on site and the operator should have the opportunity to observe the air sampling.	21-5266(16a)	The City has the right to inspect all Well Sites, Operations, and Oil and Gas Facilities. No person shall refuse entry to, impede, obstruct, delay, or in any manner interfere with the inspection of Oil and Gas Facilities subject to an Oil and Gas Permit or the regulations of this section or section 21-3216 by any federal, state, county, or local inspector who is either permitted or required to inspect the premises. Entry and inspection shall be permitted to all areas of the Oil and Gas Facility as defined by this code. No inspector shall be required to be escorted or accompanied during an inspection.	Local inspection authority was granted to Local Governments under Senate Bill 19-181, without prior notice. In the event of a potenial life safety hazard, or other item of timely significance, the city believes the authority for timely inspection access is critical. Having the operator present to observe during monitoring does not present a significant issue, and is implied as a possibility.	None
COGA	Because the COGCC does not regulate gas gathering lines, this provision needs modification.	Various areas within the code	a. Remove all pipelines, gathering lines and flowlines after one (1) year of non-use when last well utilizing lines are plugged and abandoned unless this requirement is waived in writing by the Director;	Although the COGCC does not specifically regulate gathering lines, the requirement for homebuilders to denote during the platting process is not restricted. Gathering line removal requirement removed from 21-5266(13) in latest March draft. Removal of requirement in BMP 1.2.a is necessary.	Remove all pipelines~~, gathering lines~~ and flowlines after one (1) year of non-use when last well utilizing lines are plugged and abandoned unless this requirement is waived in writing by the Director; and
COGA	COGA has concerns about sharing proprietary information with the City. Where specific information regarding hydraulic fracturing chemicals is confidential, the information should not be made available to the public. The information may be confidentially provided on a "need to know basis" to medical professionals or emergency responders.	BMP D.1	1. Chemical Disclosure. a. Before transporting fracturing chemicals to a Well Site, the Operator shall submit to the City, in table format, the name, Chemical Abstracts Service (CAS) number, storage, containment and disposal method for all such chemicals. The identification of such chemicals shall not be considered confidential or proprietary and the City may make the same available to the public as public records.	Since the November draft, this language has been modified to include only non-proprietary information, that is accessible to the pubic via the fracfocus site. All information listed under 1a does not require release of information that would otherwise be considered proprietary or confidential.	None
COGA	COGA has serious confidentiality and safety concerns with this provision, and recommends it be struck from the draft regulations. As the City is aware, the COGCC recently completed a flowline rulemaking pursuant to SB19-181 that will "allow the public disclosure of flowline information." As such, the COGCC has created a mapping system that shows the locations of existing flowlines without compromising safety. COGA suggests that Commerce City contact the COGCC for specific files related to flowlines.	BMP E.6	e. Abandonment of any recorded flowlines shall be recorded with the Adams County Clerk and Recorder within thirty (30) days after abandonment. f. Operator will provide the City with GIS files for the location of flowlines.	The city believes this provision is necessary to avoid future conflicts with development over previously abandoned oil and gas sites, as has been required by other jurisdictions. Recordation with the Clerk and Recorder shall ensure that flowline information is made available to prospective buyers inquiring on a specific parcel during title search, and ensure information is reflected accordingly during any potential future subdivision platting. Relating to city access of GIS data, additional langauge can be included to ensure confidentialy of flowline data consistent with COGCC 1100 series rules.	f. Operator will provide the City with GIS files for the location of flowlines. Flowlline data provided to the city shall only made publicly available at a resolution greater than 1:6,000.
COGA	COGA recommends this provision be struck in its entirety because local governments cannot regulate downhole aspects of oil and gas operations, such as plugging and decommissioning oil and gas wells.	BMP E.8	integrity of all oil and gas and disposal wells (Active, Dry & Abandoned, Injecting, Plugged & Abandoned, Producing, Shut-In, and Temporarily Abandoned) where the surface location of such wells are within the City and within 1500' of the completion interval of the projected track of the borehole of the proposed new well, based upon examination of COGCC and other publicly available records. This shall include assessment of leaking gas, oil, or water to the ground surface or into subsurface water resources, taking into account plugging and cementing procedures described in any recompletion or plugged and abandoned report filed with the COGCC. The analysis shall be provided to the City. b. Based on the results of the assessment, the City may require Operator to plug and abandon, in compliance with all COGCC rules in relation to abandonment and plugging, any of the Operator's existing oil and gas or disposal wells or such wells under the Operator's ownership, control or authority. Additionally, the City may request Operator to attempt to negotiate the plugging and abandonment of other wells of concern, that are not owned by the Operator, but that are within 1500' of the completion interval of the projected track of the borehole of the proposed new well. If wells of concern are not plugged and abandoned, Operator must supply a mitigation plan and a follow-up monitoring plan that will be used to prevent or detect any communication between the well of concern and the proposed wells. c. Operator shall provide notification to the City and applicable fire district not less than fourteen (14) days prior to commencing plugging operations. Operator shall notify the City and COGCC of the results of plugging and cementing procedures. d. For each well abandoned by Operator within the City for which access and permission to test is granted, a soil gas survey to test the soil within a 10' radius of the well shall be completed prior to production from a proposed new well and again one (1) year after production has commenced on the new well. Every well abandoned by Operator shall also be subject to the testing one (1) year after production has commenced on a new well. Operator shall provide the results of the soil gas survey to the City and the COGCC within one (1) month of conducting the survey or advise the City that access to the previously abandoned wells could not be obtained from the surface owner.	Staff agrees with this assessment. Proposed language change of "may request" to address circumstances of potential health, safety, and welfare concerns.	b. Based on the results of the assessment, the City may ~~require~~ request the Operator to plug and abandon, in compliance with all COGCC rules in relation to abandonment and plugging, any of the Operator's existing oil and gas or disposal wells or such wells under the Operator's ownership, control or authority. Additionally, the City may request Operator to attempt to negotiate the plugging and abandonment of other wells of concern, that are not owned by the Operator, but that are within 1500' of the completion interval of the projected track of the borehole of the proposed new well. If wells of concern are not plugged and abandoned, Operator must supply a mitigation plan and a follow-up monitoring plan that will be used to prevent or detect any communication between the well of concern and the proposed wells.

COGA	COGA believes the draft lighting provisions in the BMP document are too prescriptive. COGA recommends instead a flexible approach (or at minimum the ability to obtain a variance, as discussed above), as safety concerns and OSHA requirements may dictate lighting specifics different from those drafted.	BMP F.3	a. Exterior lighting shall be directed away from residential and other sensitive areas or shielded from said areas to eliminate glare. Light spillage beyond the perimeter of a Well Site should be minimized. b. All permanent lighting or lighting higher than a perimeter wall must be downward facing. c. All bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture. d. Prior to installation of permanent lighting on any Well Site, Operator shall submit to the City a Lighting Plan and the City shall communicate with Operator any modifications to the plan that it deems appropriate. Operator shall make such modifications as reasonably required by the City and as required by law. e. The Lighting Plan shall indicate the location of all outdoor lighting on the site and any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures. f. During the Drilling and Completion Phases, consistent with applicable law, Operator will construct a minimum 32 ft.in height wall around as much of the perimeter of the well pads as operations allow to reduce light escaping from the site, unless taller, shorter, or no walls are mutually agreed to by City and Operator on a site-specific basis.	Due to the potential negative externalities of lighting on nearby residences and wildlife, staff believes the provisions stated are necessary to fully evaluate and mitigate potential impacts from operations. The requirement for a lighting plan is standard for all development applications within the city. A variance process (in the form of an additional Conditional Use Permit) is being included in the next draft.	none
COGA	COGA suggests that Commerce CIty add language to this section that would relieve an operator of the obligation of responding to a comment lacking credibility, such as when repeat complaints by the same individual are determined to be unfounded or when the complaint relates to an activity that is not ongoing. For example, if a complainant purports to complain about drilling noise at a time when there is no drilling, that complaint des not warrant a response.	BMP G.3	3. Complaint Response. a. Operator shall maintain a dedicated phone line to receive complaints that is open 24 hours per day, 7 days a week. The phone number shall be posted at all Well Sites and provided to the City's LGD. Page 19 of 26 b. Operator shall document and review all complaints and provide the complainant with an initial response within twenty four (24) hours. Responses to complaints shall also be provided to the City's LGD and, if appropriate, state officials. c. Any additional responses or corrective actions will be communicated to the complainant, landowner, City's LGD, and, if appropriate, state officials.	The city takes the position that any form of comment or complaint that is received should be responded to, in the greatest extent feasible. Repeat complaints can be addressed in groupings, or by simply stating that no action is needed because the referenced activity is not ongoing. Removing the obligation to respond to complaints is not feasible.	none
COGA	COGA comments that this provision be struck from the draft code. Downhole matters are outside of Commerce City's jurisdiction.	BMP G.7.c.viii	v.iii: A project-specific plan for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas;	If instances of this do occur, it presents an extreme public health and safety hazard, and would have significant surface impacts. Staff believes that this language is pertinent and should be included in the rare event that this scenario would occur. Further addressed in confidential Legal Memo to Cuty Council.	None
N/A	Staff initiated change	Sec. 21-5266. Subsurface Extraction	(b) Surety for Financial Setback. (i) Prior to the commencement of any work, including Well Pad construction at any permitted Well Site, the Operator shall provide the City with a single surety in the form of a letter of credit or bond in the amount of eighty six thousand dollars (86,000.00) per), adjusted annually for inflation commencing in 2021, multiplied by the number of approved wells on any planned well site to insure the immediate availability of finances for any costs incurred by the City following a Financial Setback of the Operator. Financial Setback shall be defined as the Operator filing for protection under the bankruptcy laws, making an assignment for the benefit of creditors, appointing or suffering appointment of a receiver or trustee over its property, filing a petition under any bankruptcy or insolvency act or having any such petition filed against it which is not discharged within ninety (90) days of the filing thereof. (ii) Operator shall notify the City of the existence of a Financial Setback with within five (5) business days of the Financial Setback. Upon the occurrence of a Financial Setback, the City may call upon the surety effective immediately upon written notice to the Operator for purposes associated with the need to secure the well sites, associated well site lands and infrastructure, or in response to a demonstrated need to protect the public health, welfare and, safety, or the environment. The City shall not be liable to the Operator or any surety, guarantor, or financial institution for consequential damages arising from the City's exercise of its rights under this section, including without limitation a claim for impairment of bonding capacity. (iii) The letter of credit or bond shall remain in effect until all drilling operations have been completed and the entire well site is in the production phase, without exception.The bond or letter of credit shall be released within ten (10) business days of the City's verification of completion in response to Operator's written request for such release following completion whereby all wells at the well site have been turned to production. (iv) This financial assurance provision, which shall be provided in a form accepted acceptable by the City, is not a substitute for any bonding required by the state regulatory agencies for plugging and abandoning wells. The Operator shall comply with all state regulatory agencies agencies' bonding requirements. (v) The bond or letter of credit shall be released within ten (10) business days of the City's verification of completion in response of Operator's written request for such release following completion whereby all wells at the well site have been turned to production.	N/A	(b) Surety for Financial Setback. (iii) The letter of credit or bond shall remain in effect until all drilling operations have been completed and the entire well site is in the production phase, without exception. The bond or letter of credit shall be released within ten (10) business days of the City's verification of completion in response to Operator's written request for such release following completion whereby all wells at the well site have been turned to production. In the event the bond posted with the COGCC is not sufficient to plug, abaondon, and reclaim the wells within Commerce City, then the bond, or a portion thereof, shall be held by the CIty until the wells have been plugged, abandoned, and adequately reclaimed. (iv) This financial assurance provision, which shall be provided in a form accepted acceptable by the City, is not a substitute for any bonding required by the state regulatory agencies for plugging and abandoning wells. The Operator shall comply with all state regulatory agencies agencies' bonding requirements. (v) The bond or letter of credit shall be released within ten (10) business days of the City's verification of completion in response of Operator's written request for such release following completion whereby all wells at the well site have been turned to production.
LOGIC	Sec. 21-5266(6) Setbacks and Floodplains states that no oil and gas production site may be located within 1,000' of homes, schools, and businesses, among other locations. This standard is likely to be well under the distance the COGCC ends of up adopting. As of May 26th, the COGCC is working off a draft that includes a 1,500' setback from ten or more homes. However, LOGIC and numerous other organizations have offered amendments to that proposal to expand the distance to 2,640' from schools, and 2,500' from an individual home, any other dwelling, high occupancy buildings, and outdoor activity areas. The Town of Superior has recently enacted a 1,500' setback and zoning restriction, and the City and County of Broomfield raised the bar by enacting a 2,500' setback. All of this points to the need to increase the setback distance from 1,000' to 2,500' in order to better protect the residents of Commerce City from the adverse health impacts associated with oil and gas development.	21-5266(6)	(6) Setbacks and Floodplain Restriction. (a) No Oil and Gas Production Site may be located within 1000' of the following: (i) Any existing residential or platted residential property, (ii) Any building classified as a High Occupancy Building Unit, as defined by the COGCC; (iii) Any Public Park or public recreation facility, not including trails or city designated open space; (iv) Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar place of outdoor public assembly; (v) Senior living or assisted living facilities; (vi) Public Water Supply Wells; and (vii) Reservoirs. (b) No Oil and Gas Facilities may be located in the Floodplain. (c) Measurements shall be taken from the edge of the proposed Production Site to the parcel boundary. For agricultural properties over 10 acres in size with residential uses, the measurement shall be taken from the nearest edge of any occupied dwelling unit.	Staff acknolwledges the body of research regarding potential health impacts in relation to Oil and Gas Well Sites. As part of the City Council packet,staff will be providing (and has provided in the past) a list of resources and publications reviewed during the development of these rules. Staff believes that while that the ultimate minimum setback that an operator could potentially apply for would be 1,000 feet from the crtieria stated in 21-5266, the in-depth requirements within the initial assessement process crtieria will ultimately lead to sites that are submitted to the city that far exceed the minimum setback instituted. The initial assessment process requires a minimum of 3 potential sites to be contemplated, with *the most protective* option of the three being approved by staff to move forward with an application. Staff is proposing to add an additional setback restriction of 1,500' from either 10 or more existing or platted residential units, or a high occupancy building unit, to be consistent with COGCC's latest draft. Additionally, allowing for an administrative process for sites that exceed 2,000' in distance from a number of the stated criteria, further encourages locations to be farther away from potential sources of conflict. Setbacks are to be measured from the property lines of homes and schools.	(1) (6) Setbacks and Floodplain Restriction. (a) No Oil and Gas Production Site may be located within 1000' of the following; (i) Any existing residential or platted residential property, ~~(ii) Any building classified as a High Occupancy Building Unit, as defined by the COGCC;~~ ~~(iii)~~(ii) Any Public Park or public recreation facility, not including trails or city designated open space; ~~(iv)~~(iii) Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar place of outdoor public assembly; ~~(v)~~(iv) Senior living or assisted living facilities; ~~(vi)~~(v) Public Water Supply Wells; and ~~(vii)~~(vi) Reservoirs. (b) No Oil and Gas Production Site may be located within 1,500' of ten (10) or more existing residential or platted residential properties, or any building classified as a High Occupancy Building Unit, as defined by the COGCC; ~~(b)~~(c) No Oil and Gas Facilities may be located in the Floodplain. ~~(c)~~(d) Measurements shall be taken from the edge of the proposed Production Site to the parcel boundary. For agricultural properties over 10 acres in size with residential uses, the measurement shall be taken from the nearest edge of any occupied dwelling unit.
NRCC	We appreciate the willingness of the city council to consider setback distances beyond the woefully inadequate state setback requirements. However, we strongly encourage the City to consider going further than its current 1,000-foot proposal. Article V, §21-5266(6). Peer-reviewed scientific studies and anecdotal evidence of the harm caused by oil and gas operations near populated areas continues to expand at a rapid pace. The Town of Superior recently enacted a 1,500-foot setback and the City and County of Broomfield is considering a setback of 2,000 feet. Several other jurisdictions have also noted the latest evidence and asked their staff and counsel to consider setbacks longer than 1,000 feet for their updated oil and gas regulations. We ask Commerce City to do the same, as the evidence of harm to the health and safety of nearby residents from oil and gas facilities is beyond dispute at this point.				
Public (multiple)	Increased setback distances between homes and oil and gas facilities to be at least 2,500 feet from any home, playground, school, or any other high occupancy area. We would like to prevent drilling near the property lines of schools, the new rec center, already established homes and businesses.				
LOGIC	In the current draft Sec. 21-6280(1), Commerce City proposes adopting a tiered reverse setback system. The current proposal has different standards for producing wells and wells that have not yet gone into production. For wells that have not gone into production, the current draft proposes a setback of 1,000' between production site and the new home plat. For well that are already producing, the proposal would set back new housing development 300' from 1-10 wells, 400' from 11-24 wells, and 500' from 25 or more wells. While LOGIC can certainly understand the arguments from housing developers that any increase in reverse setback increase would limit their ability to build new houses, we are more concerned with the health and safety of the residents of Commerce City. We also understand the intent in making the setback distances different for producing wells and wells still being drilled and completed. Oil and gas facilities certainly emit more hazardous chemicals during drilling and completion operations than they do during production. However, that does not meet that they emit nothing once they have gone into production. Even in production, oil and gas production facilities are still major sources of pollution, odors, and noise. The arguments made above in favor of a greater setback between new wells and existing homes apply equally to the setbacks between new homes and existing wells. Furthermore, operators can frack a well more than once. Nothing in the current draft addresses the fact that operators are allowed to re-enter wells to re- complete them. This activity would subject the people living and working within the reverse-setback distance to the same level of emissions as the initial drilling and completion process. The only way to avoid this issue is to either prohibit recompletion operations or expand the reverse setback distance to acknowledge this fact. For those reasons, we request that Commerce City adopt a uniform 2,500' setback between new homes and existing oil and gas facilities to protect the health and safety of all Commerce City residents.		Oil & Gas Site Setbacks. (1) For permitted 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, 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'		
NRCC	The increasing weight of authority and experience shows 1,000-foot setbacks are an important starting point for local government discussions but ultimately inadequate to protect public health, safety, and welfare. Many Commerce City residents have rightfully asked for longer setbacks, and those requests are backed by an ever-increasing amount of data. In the same vein, the currently proposed reverse setback distances are wholly inadequate. Just as the health and safety of residents is not appropriately addressed by a 1,000-foot setback between new oil and gas facilities and existing residential areas, a reverse setback as short as 300 feet (or just one football field) between existing facilities and new residential development is totally deficient. Health and safety concerns about oil and gas facilities do not end once production begins; issues with air emissions and accidents in particular continue throughout the life of the well. Whatever its ultimate decision is on setbacks, the rationale used by Commerce City to justify those setbacks should equally apply to the distances assigned to reverse setbacks as well.	21-6280(1 & 2)		It is acknowledged that some impacts do exist during the production phase of the well site, and a minimum reverse setback is needed in some form during the liftetime of the active well. In comparison, the scale and the significance of air quality impacts, risk of hazards, and other potential negative externalities is far greater during the drilling and completions phase of development. For that reason, staff has proposed a uniform minimum 1,000' setback during the drilling and completions phases, and allowing the setback to scale back to a reduced size (depending on number of wells on a pad site) after all the wells on the permitted pad site have been drilled.	None
LOGIC	Commerce City is facing the prospect of a massive amount of new oil and gas development. Though one of the companies proposing to conduct these operations (Extraction Oil & Gas) is on the cusp of bankruptcy, the amount of oil and gas operations proposed within Commerce City remains unchanged. Extraction Oil & Gas alone has submitted applications for a total of 154 oil and gas wells on seven locations. Given the potential for massive increases in local emissions, it is deeply troubling that the draft regulations have no plan to deal with the cumulative impacts of all the existing and foreseeable development in the area. We strongly encourage Commerce City to develop a plan to require a cumulative impact assessment prior to the approval of any oil and gas development permit. This could be accomplished by including a definition of Cumulative Impacts in the definition section of the proposed regulation. We propose the following definition: Cumulative Impact means the total impact to air quality, water quality, traffic, noise levels, odor, soil and visual aesthetics caused by the proposed new or expanded oil and gas facility in combination with all such existing and reasonably foreseeable development of any type within 20 miles, regardless of the jurisdiction in which the activity is taking place. We include soil impacts in this list to address the issues within the Rocky Mountain Arsenal. The background pollution levels must be accounted for in all cumulative impact assessment work. Commerce City must also be able to expand this area if the local topography requires a greater assessment area. We also request that the City add a cumulative impact assessment plan to the Section 21-3216(8) Review criteria.				Sec. 21-11200. Definitions (114) Cumulative impacts shall mean the effects of an action that are added to or interact with other effects in a particular place and within a particular time. Cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of the effects of all actions over time. The cumulative impacts of an action can be viewed as the total effects on a resource, ecosystem, or human community of that action and all other activities affecting that resource. Sec. 21-5266. Subsurface Extraction (3) Application Requirements (u) An Air Quality Mitigation Plan showing a modeling assessment of cumulative air quality impacts and a plan and schedule to maintain air quality, including a plan to minimize VOC emissions in compliance with the BMP Document; Sec. 21-5266. Subsurface Extraction (12) Air Quality Standards and Monitoring (a) The Air Quality Mitigiation Plan must consider the cumulative impacts of existing air quality and all planned and existing oil and gas operations within one mile of the City. The Plan must describe how the Operator will eliminate, capture, or minimize all potentially harmful emissions, including Volatile Organic Compounds (VOC's) and BTEX through compliance with these provisions and the BMP Document. BMP Document F(6) b. Operator shall conduct a Baseline Noise Mitigation Study to ascertain baseline and expected cumulative noise levels at each Well Site to demonstrate that noise is expected to be mitigated to the extent practicable. A copy will be provided to the City. All baseline measurements considered for compliance with this Section shall be taken by a third-party contractor using sound monitoring industry standards and practices
NRCC	Commerce City is the target for at least ten upcoming large-scale oil and gas development projects, most of which are likely to occur at approximately the same time if the Council and COGCC approve all of the forthcoming permits. Those projects would add to the high emissions activity of several existing industrial facilities, including but not limited to the Suncor refinery, which already contribute to diminished air quality for Commerce City residents. There is no mention in the latest draft regulations of the cumulative impacts new oil and gas operations would have upon the health, safety, and welfare of Commerce City residents. This is an unfortunate omission because the cumulative impacts of increased oil and gas drilling in a small geographical area would result in a significant degradation of health, safety, and welfare of Commerce City residents. The cumulative impacts of a proposed new or expanded oil and gas site should be analyzed by Commerce City using information already available to it about existing and reasonably foreseeable future land uses in addition to information provided by the operator-applicant. The analysis should consider the effect of proposed oil and gas facilities on areas of importance to public health, safety, and welfare like air emissions, water quality, traffic, noise, odor, and visual aesthetics.			Staff acknowledges the need to provide greater assessment for cumulative impacts under our draft regulations. With the COGCC not taking up the topic of cumulative impacts in a significant way during their rulemaking, no clear state guidance existed at the time of drafting these regulations. Staff agrees that operators should have some form of obligation to assess the total impact of air quality planned from not only each well site, but all of their planned operations combined with current ambient air quality conditions, and potential contributions to ozone, total VOC's, and other measures of regional air quality. Review of site specific noise impacts, visual aesthetics, and traffic impacts are already required through these draft regulations, and typically assess the impacts that occur beyond that specific location.Staff agrees that at a minimum, a definition of cumulative impacts should be included, and to the greatest extent feasible, demonstrate how the operator's proposed impacts would contribute to regional air quality issues, and potentially demonstrate reduction in emissions over time.	
Public (multiple)	Use of cumulative impacts (or the total impacts of oil and gas development across and within 5 miles of Commerce City on public health, safety, welfare and environmental resources) as criteria for determining the City's approval, denial, or conditions regarding oil and gas development	Multiple			
LOGIC	In the current draft regulations, there are several opportunities for the Commerce City to exercise its discretion to require consultation with state agencies, specifically the Colorado Department of Public Health and the Environment (CDPHE) and Colorado Parks and Wildlife (CPW). We request that these consultations be made mandatory. Any oil and gas permit application should trigger mandatory consultation with both CDPHE and CPW. This consultation must inform both the consideration of the individual application and the cumulative impact analysis discussed above in Section 3 of this comment letter.			It is standard practice within our development review process to refer this documentation to both entities, and has been current practice with the 7 oil and gas permits that are currently under review by the city at this time. Referral entities are not typically codified within our Land Development Code.	
Public (multiple)	Automatic consultation with the Colorado Department of Public Health and Environment and with Colorado Parks and Wildlife upon an oil and gas proposal	None			None

LOGIC	The current market conditions highlight the need for revisions to Commerce City's regulations on the transferability of oil and gas permits. Sec. 21-3216(14) states that a permit may only be assigned with the consent of the Director, and that the Director may only offer consent to the assignment when certain conditions are met. We request that an additional condition be added to this section. The new operator must certify that they will comply with all relevant regulations and requirements in the Best Management Practices document, even if these have been updated after the permit was approved. Commerce City must also be able to add any additional conditions to the permit to address any issues that have arisen during the operations on the permitted location.	21-3216(14)	14. Assignment of Permits. An Oil and Gas Permit may be assigned to another Operator only with the written consent of the Director. The Director may consent to an assignment of a permit only if: a. The new Operator can and will comply with all requirements, terms and conditions of the Code, the Oil and Gas Permit and any Regional Operator Agreement and all applicable state, local and federal laws, rules and regulations;. b. The new Operator demonstrates adequate insurance and posts financial assurances required of the previous Operator; c. The new Operator will remedy any on-site noncompliance with any applicable local or state regulations and permits, as a condition of the assignment; d. The Oil and Gas Permit was approved more than 90 days before the assignment.	While staff believes it is important to have some langauge in place to review transfers of a permit to ensure new operators are able to comply with the applicable code and permit conditions, it may not be practical or possible from a legal standpoint to require the transferee of a permit to comply with new regulations that were not in effect at the time of approval. In the event operations have already commenced on site and production has occured, it may not technically be possible to retrofit the existing site to conform with new regulations.	None
LOGIC	The draft regulations do recognize the City's authority to deny applications that would adversely impact public health and safety, we want to reaffirm the basis for that authority here. Furthermore, in order for a regulatory takings claim to prevail, the claimant has to prove that the regulations eliminate virtually the whole value of the property. Colorado courts have allowed regulations that reduced the value of property by up to 93% to survive without a takings finding. Courts have also found that the intent to protect public health and safety weighs in favor of allowing the regulation, even in the result of a total takings. The extensive evidence already provided in the record of this regulatory process is ample support the City's intent to protect public health and safety. Thus, when alleging a regulatory taking, a plaintiff generally must prove that a government decision eliminated most of a property's value and such a reduction was not justified by other factors like investor expectations, the nature of the government action, or any other relevant reason. A government action justified by appropriate public and safety findings provides considerable protection against a takings claim, even if the action resulted in a significant reduction of value. Even prior to SB19-181, oil and gas related takings claims were rarely filed in Colorado. Most recently, when the City of Longmont enacted its fracking ban, the plaintiff initially filed a takings claim but later dismissed it to focus on their state preemption argument when lack of standing became an issue. Even in New York, when fracking was banned statewide, very few takings cases were filed, and none were successful. Post SB19-181, the bar to demonstrate that a local government regulation, designed to protect public health and safety, rises to the level of a regulatory taking is extremely high. The commonsense regulations laid out in this draft fall far below that bar.		8. Approval Criteria. An Oil and Gas Permit may be approved if all of the following criteria are met: a. The Operator has submitted the appropriate and complete application form and submitted the required fees (except those payable upon the issuance of a permit) to the City; b. The proposed location has been deemed eligible pursuant to section 21-3216(5); c. The proposed operation conforms with any Regional Operator Agreement and any site-specific Extraction Agreement between the operator and the city; d. The characteristics of the site are suitable for the proposed facility considering size, shape, location, topography, existence of improvements and natural features; e. The proposed operations and facility will not result in substantial or undue adverse impacts or effects (during any phase of operation or during any potential operational, environmental, or meteorological condition) on public health, safety, welfare, or the environment; adjacent property; occupied structures within 2,500' of the proposed facility; the character of the neighborhood; and traffic conditions; f. The proposed facility will be adequately served by and will not impose an undue burden on existing public and private improvements, facilities, and services of the city or its residents, either as such improvements, facilities, and services presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program or ordinance adopted by the City. Where any improvements, facilities, utilities or services are not available or are not adequate to service the proposed use in the proposed location, the applicant shall, as a condition of approval, be required to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use; g. Any adverse impacts, effects, and burdens have been or will be mitigated to the maximum extent feasible; h. The Operator has entered into a site-specific Extraction Agreement, approved by the Director, if required by the City to establish site-specific protections and public improvements not addressed in the BMP Document, this code, or state law or regulation but necessitated by the proposed operation to address matters of public health, welfare, safety, and the environment; i. The proposed facility is consistent with any applicable zoning ordinance, subdivision plat, and other plans or land use approvals applicable to the site; j. The proposed facility complies with all regulations and standards of the BMP Document adopted by the City Council, as such may be amended; k. The City has approved all plans required by Section 21-5266; and l. The proposed operation will meet the requirements for Subsurface Extraction as set forth in Section 21-5266 and will not violate any other applicable City, state, or federal standards or laws.	Staff has included significant improvements to the Oil and Gas Approval Criteria under 21-3216(8), and for administrative permits, the director has the authority to approve, approve with conditions, or deny an Oil and Gas permit. Staff believes this criteria is robust enough to potentially deny a permit if the operator is not able to demonstrate through the application that *The proposed operations and facility will not result in substantial orundue adverse impacts or effects (during any phase of operation orduring any potential operational, environmental, or meteorological condition) on public health, safety, welfare, or the environment; adjacent property; occupied structures within 2,500' of the proposed facility; the character of the neighborhood; and traffic conditions.* For Oil and Gas permits where staff is not the final approval authority, but is instead approved by resolution by City Council, staff will utilize this criteria to provide a staff recommendation, which Council may utilize in their review and analysis.	None
NRCC	Changes made to Colorado law by SB 181 further strengthen local governments' defenses against regulatory takings claims. First, SB 181 expressly elevates the importance of public health, safety, and welfare relative to other considerations, including the state's interest in developing minerals. Second, SB 181 changed the definition of resource "waste" to clarify that it "does not include the nonproduction of oil or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources." C.R.S. §34-60-103(11)(b),(12)(b),(13)(b). Therefore, if a government entity denies a permit because a proposed location is inconsistent with protecting public health and the environment, temporarily preventing an operator from accessing its mineral rights, it will not constitute "waste" of the resource. Additionally, a government decision limiting oil and gas drilling in a particular geographic area does not mean those minerals are forever deprived of all economically viable use. They remain in the ground, to be possibly extracted in the future with different technologies or using different safeguards. Many minerals presently coveted were unobtainable and worthless as few as ten years ago. Changes in drilling technology could lead to future extraction consistent with public health and safety. In light of the possibility that a 93% diminution of property value may still not result in a regulatory takings, it is not difficult to imagine that someone might be willing to purchase mineral rights at 7% of their prior value to have the option of producing at a future time when technology and drilling techniques address public health and safety concerns in a satisfactory way. In summary, enacting regulations adequately protective of public health, safety, and welfare as well as denying an oil and gas permit based upon the same criteria provide ample protection against a regulatory takings claim. SB181 allows local governments to treat oil and gas drilling as any other type of land use. A local government would not be liable for a takings if it denied permission to build a large chemical plant on the desired property due to health and safety concerns; the same principle now applies to oil and gas drilling.	21-3216(8)			
Susan Lea	Please use best practices, and avoid actual harm or potential harm by designing and engineering systems to avoid human use, habitat use and proximity to water sources.	Various	Various	Air quality monitoring requirements, water quality monitoring requirements, and best management practices to prevent, and quickly and effectively report spills and leakages have previously been incorporated into the code to provide protections. Additionally, 1,000' setbacks are proposed from public water supply wells and reservoirs.	
John and Judy	Monitor-monitor air, water and spills. Greeley Tribune and the COGCC have made it perfectly clear that spills at sites are an issue. lets not forget, the sites aren't in rural areas where the impact is minimal, theses sites are near neighborhoods and our water sources.	Various	Various		None
John and Judy	The City needs to have ALL operators pay bonds in the amount of 1 million dollars. The 10,000.00 bond requirement in place is a slap in the face and is useless. Considering the amount of damage this industry can do 10,000.00 wont cover anything if something happens.	21-5266(15)	Prior to the commencement of any work, including Well Pad construction at any permitted Well Site, the Operator shall provide the City with surety in the form of a letter of credit or bond in the amount of eighty six thousand dollars ($86,000.00), adjusted annually for inflation commencing in 2021, multiplied by the number of approved wells on any planned well site to insure the immediate availability of finances for any costs incurred by the City following a Financial Setback of the Operator.	21-5266(15b)(i) mandates a minimum bond amount of $86,000 per well located on a pad site. For a Well Site with 24 wells, this would equate to over a $2 million bond. The $86,000 per well figure was based on a study conducted to assess the potential financial impacts of wells, and associated costs necessary to remedy the well in the event of financial setback by the operator. Additional significant insurance requirements exist within BMP H.	None
Erica	We are concerned about spills either oil or fracking fluid, on the site or during transit. The City and the company need to determine how this will would be paid, I would suggest all financial burdens be placed on the company putting us in danger.	BMP's (Various)		Operators will be required to provide a spill prevention, control, and countermeasure plan, and demonstrate compliance with a number of spill mitigation requirements under the Best Management Practices, including spill response kits, containment berm requirements, and strict notification requirements in the event a spill does occur. Additionally, requiring pipelines and limited tank storage on well pads reduces the likelihood of spills significantly.	None
Charlotte	My ask during this comment period is this-DO NOT allow these companies to use our water.	N/A	N/A	The city will not be providing any of it's water rights to potential operators for hydraulic fracturing purposes.	None
CJ and Rodney	We would like to suggest the following for the new Regulations: hire a team or make the oil and gas company pay for a team, that twill do 24/7 air monitoring.	21-5266(12d)	At Operator's cost, a third-party consultant approved by the City shall conduct baseline and ongoing air sampling and monitoring.	The city will be requiring operators to cover costs for a third party air monitoring company, which would be selected by the city	None