

CITY OF LAFAYETTE

ORDINANCE NO. 21, Series 2021

INTRODUCED BY: Councilor Wong

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES REGARDING LAND USE REGULATIONS PERTAINING TO OIL AND GAS DEVELOPMENT, FACILITIES, AND OPERATIONS

WHEREAS, the current City of Lafayette Oil and Gas land use regulations were enacted in 1994, and have not been significantly updated since initial adoption; and

WHEREAS, the density and intensity of oil and gas development has increased around the City since adoption of the City's Oil And Gas land use regulations while the City has continued to grow and urbanize, thereby raising concerns about potential impacts of existing and proposed oil and gas development, facilities, and operations that could be detrimental to public health, safety, and welfare, the environment, and wildlife resources; and

WHEREAS, on November 6, 2017, the City Council of the City of Lafayette ("City Council") passed Ordinance No. 43, Series 2017, imposing a temporary moratorium on the submission, acceptance, processing, and approval of land use applications related to oil and gas exploration and extraction activities (the "Moratorium") and, after several extensions, the Moratorium is set to expire on November 30, 2021; and

WHEREAS, since the enactment of Ordinance No. 43, Series 2017, Lafayette has engaged special legal counsel to assist the City's staff in preparing proposed regulations to address the use of land in Lafayette for the exploration and extraction of oil and gas materials; and

WHEREAS, on April 16, 2019, the Governor signed SB 19-181 - Protect Public Welfare Oil and Gas Operations (SB 19-181), which expands local government authority to regulate surface and nuisance impacts of oil and gas operations, including in a manner more protective or stricter than the rules promulgated by the Colorado Oil and Gas Conservation Commission ("COGCC"); and

WHEREAS, SB 19-181 permits municipalities to regulate the surface impacts of oil and gas operations through municipal land use and zoning powers in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources; and

WHEREAS, SB 19-181 permits municipalities to regulate the siting and location of oil and gas operations and to enact regulations to avoid, minimize, and mitigate the impacts of such operations on public facilities and services, water quality and sources, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance and reclamation, cultural resources, emergency preparedness, security, and traffic and transportation; and

WHEREAS, SB 19-181 specifically gives local governments additional authority related to financial assurances, inspections, fines, and the ability to impose fees on operators to cover the reasonably foreseeable direct and indirect costs of permitting and regulations and the costs of any monitoring and inspection program necessary to address the impacts of development and to enforce regulations; and

WHEREAS, beginning in the Fall of 2019 and continuing throughout 2020, the Colorado Oil and Gas Conservation Commission (“COGCC”) and the Colorado Air Quality Control Commission (CAQCC) held numerous rulemaking hearings to consider rule changes necessitated by enactment of SB 19-181; and

WHEREAS, on November 23, 2020, the COGCC announced the completion of the rulemaking hearings addressing Mission Change, Flowlines, Cumulative Impacts, Alternative Location Analysis, and Compensatory Mitigation for Wildlife, as required by SB 19-181, and to implement the change to the COGCC’s mission from “fostering” to “regulating” oil and gas development in a manner that protects public health, safety, and welfare, the environment, and wildlife resources; and

WHEREAS, oil and gas development creates both short-term and long-term impacts on public health and the environment and in order to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources, it is necessary to consider and address the direct, incremental, and cumulative impacts of any oil and gas development when added to other past, present, and reasonably foreseeable future actions, regardless of what entity or operator undertakes such actions; and

WHEREAS, Lafayette recognizes that air quality has been greatly affected by oil and gas development and that air quality in the Front Range and Denver Metropolitan Areas, including in the City and in Boulder County, fails to meet federal health-based standards for ozone; and

WHEREAS, in adopting and applying regulations, Lafayette takes into account the necessity of taking precautions when an activity, such as oil and gas development, raises threats of harm to human health or the environment, even if the cause-and-effect relationships are not fully established scientifically; and

WHEREAS, a study by the Colorado Department of Public Health and Environment (“CDPHE”), titled the “[Final Report: Human Health Risk Assessment for Oil & Gas Operations in Colorado](#)” released on October 17, 2019, shows that acute exposures to benzene, toluene, and ethyltoluenes could be above health guideline levels out to 2,000 feet from oil and gas wells during pre-production (drilling and completions, including hydraulic fracturing and flowback); and

WHEREAS, the CDPHE report states that the chemicals identified in the study can have acute hematological and neurotoxic effects, which can cause blurred vision, diminished reflexes, decreased alertness, and changes to white and red blood cell populations; and

WHEREAS, Lafayette residents have communicated their concerns to City Council regarding the effects of emissions and from oil and gas facilities and operations within and near the city limits; and

WHEREAS, by Ordinance No. 02-2017, enacted by the Lafayette City Council on March 21, 2017, known as the “Climate Bill of Rights and Protections,” City Council acknowledged that the people of Lafayette possess the right to a healthy climate and life-sustaining resources, which includes the right to be free from activities within the City that interfere with that right; and

WHEREAS, oil and gas development in municipalities and counties throughout the Denver-Julesburg basin and in the Greater Wattenberg Area contribute to impacts in other communities and require regional cooperation and consideration and, therefore, the City staff, along with special legal counsel for oil and gas, also worked in conjunction with Boulder County’s staff to comprehensively update and revise Lafayette’s land use regulations pertaining to oil and gas operations to ensure consistency between the County’s and the City’s new regulations; and

WHEREAS, throughout the COGCC and CAQCC’s rulemaking processes in 2019 and 2020, the City staff, along with the City’s special legal counsel for oil and gas, also participated in the rulemaking processes at the state level and worked to draft new oil and gas land use regulations to take into account, and conform such regulations to, the substantial regulatory changes at the state level; and

WHEREAS, the City’s new regulations are intended to fully employ the scope of authority given to local governments under SB 19-181, and the City Council is now in a position to consider an ordinance enacting revised land use regulations pertaining to oil and gas activities; and

WHEREAS, it is the intent of City Council to enact new oil and gas land use regulations that require oil and gas development, facilities, and operations in the City to be conducted in a manner consistent with, and subject to, the rights set forth in the “Climate Bill of Rights and Protections” through the protection of the public health, safety, and welfare of the City’s residents and businesses, the environment, and wildlife resources; and

WHEREAS, it is the City Council’s intent, by enacting new regulations to minimize, mitigate, and avoid the adverse impacts from land use activities associated with oil and gas development and operations, to further protect the health, safety, and welfare of the City’s residents and businesses, and the environment and wildlife resources within the City, pursuant to the City’s land use authority and general police powers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. That Section 26-22.1 (Oil and Gas Development) of the Code of Ordinances, City of Lafayette, Colorado, is repealed in its entirety and reenacted to read as provided in **Exhibit A** attached hereto.

Section 2. That section 26-14-2 (Utilities) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:¹

Sec. 26-14-2. Utilities.

Nothing in this chapter shall be construed to prevent construction or installation of a public utility use or structure necessary for the transmission of commodities or services of a utility company, including mains, or distribution lines, substations or exchanges in any zone district. Storage, maintenance facilities and business offices shall be restricted to an appropriate zone district. Location of power transmission lines with a capacity of 100KV or over shall be subject to review and approval by the planning commission. Notwithstanding the foregoing, pipelines associated with oil and gas operations shall be subject to, and comply with, the provisions of Section 26-22.1.

Section 3. That Section 26-15 (Special Use Application Requirements and Procedures) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

SECTION 26-15. SPECIAL USE APPLICATION REQUIREMENTS AND PROCEDURES

Sec. 26-15-1. Special use application requirements and procedures, intent.

[Not amended by this ordinance.]

Sec. 26-15-2. When allowed.

(a) Special uses, other than oil and gas development, facilities, and operations, may be permitted in designated districts as set forth in Table 26-A upon approval by the Planning director, or city council, as provided for in this chapter.

(b) Oil and gas development, facilities, and operations may be permitted in designated districts as set forth in Table 26-A only in accordance with the provisions of Section 26-22.1

Sec. 26-15-3. Application requirements.

Except for applications for oil and gas development, facilities, and operations, all special use applications shall be processed according to the procedure in this Section and Section 26-16. Applications will require the preparation and submittal of materials and information as specified in Section 26-17.

¹ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~.

Sec. 26-15-4. Review criteria.

(a) Except for applications for oil and gas development, facilities, and operations, which shall be processed and reviewed in accordance with Section 26-22.1 of this chapter, the criteria for review of a special use application shall include:

- (1) Compliance of the application with the Municipal Code.
- (2) The compatibility of the proposal with the character of the surrounding area.
- (3) The potential for adverse environmental influences that might result from the proposed use.
- (4) Compatibility of the proposed use and the site plan with the comprehensive plan.

(5) Taking into consideration any proposed mitigation measures, special use shall not create significant adverse impacts on government services and existing developments in the surrounding neighborhood or on any anticipated future development permitted by this chapter. Significant impacts included but are not limited to:

- a. Significant impact in traffic generation and parking;
- b. Lack of screening of parking, loading, traffic circulation, or outdoor activities; garbage collection facilities and storage;
- c. Significant intrusions of noise, light, dust, or glare onto nearby properties;
- d. Significant increases in burdens on housing, schools, public utilities, or governmental services such as fire, ambulance, police, library and recreation; or
- e. Hours of operation.

(b) In addition to the review criteria specified in subsection 26-15-4(a) above, the following criteria shall also apply to all drive-up restaurants, gas stations (fuel facilities), car washes and drive-up facilities.

(1) Drive-up restaurants, gas stations (fuel facilities), car washes, and drive-up facilities shall be located a minimum of two hundred (200) feet from the following, as measured from the nearest proposed building wall or other structure of the drive-up restaurant, gas station (fuel facility), car wash or drive-up facility:

- a. Residentially zoned lot lines;

- b. Tracts zoned DR that have a residential land use designation in the Comprehensive Plan;
- c. Property having a residential land use designation in the Comprehensive Plan when such property is not currently zoned.

The 200-foot separation requirement of this section may be reduced by the planning commission, if the planning commission finds that, because of topography, site design conditions, or other attendant circumstances, the affected residential parcel will not be adversely affected by the development of a drive-up restaurant, gas station (fuel facility), car wash or drive-up facility.

(2) All drive-up windows or point of drive-up service shall be at least one hundred fifty (150) feet from the drive-up window or point of drive-up service of any other lot, or other drive-up window or point of service for a separate use on the same lot. The planning commission may approve a reduction of this separation requirement subject to design techniques that address and minimize the potential for traffic conflicts or visual aesthetics.

(3) Carwashes that are proposed in conjunction with a gas station (fuel facility) shall be treated as a single use for the purpose of the locational requirements of criteria 2 above.

(4) Every drive-up restaurant shall include an indoor dining component that features tables and chairs sufficient to service year-round walk-in trade.

Sec. 26-15-5. Reserved.

Section 4. That section 26-16-1 (Review procedures, general) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 26-16-1. - Review procedures, general.

The purpose of this section is to set forth procedures for review of applications required by this chapter, including subdivision, planned unit development, special use, site plan and architectural review in connection with building permit applications, rezoning, and annexation applications. A single application procedure is utilized to the extent practicable in order to streamline development reviews and to allow an applicant to process simultaneously applications requiring more than one (1) approval. Additional or different procedural requirements are specified where they pertain to certain applications. The foregoing notwithstanding, applications for oil and gas development, facilities, and operations shall be processed in accordance with Section 26-22.1 of this chapter.

Section 5. That subsection (e) of section 26-16-2 (Required process) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

(e) *Special use.* A special use shall be processed in accordance with section 26-16-3 and 26-16-6.1 of this chapter, except that a special use for oil and gas development, facilities, and operations shall be processed in accordance with Section 26-22.1 of this chapter.

Section 6. That subsection (b) of section 26-16-6 (Staff review of certain applications) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

(b) Review procedure.

(1) Conference with planning director. The applicant shall schedule an informal conference with the planning director prior to completing an application.

(2) Staff review.

a. The planning director shall refer the application to any appropriate representatives of various departments and agencies assigned to the technical review committee for review and comment fifteen (15) days prior to making a decision. The planning director may require that the applicant reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application.

b. The planning director shall mail a notice to all real property owners who own property located within the distance specified in subsection 26-16-9(a) of the subject property. Such notice shall be mailed at least ten (10) days prior to the decision of the planning director and shall contain those items specified in section 26-16-9(d)(2) and (3).

c. Any property owner entitled to notice may submit oral or written comments on the application to the planning director.

d. Using the criteria set forth in this chapter, the comprehensive plan, and the Code of Ordinances, the planning director may approve the application as submitted, approve it with modifications, or deny the application no sooner than ten (10) days after mailing notice to neighboring property owners. In approving any application, the planning director may impose any reasonable conditions to ensure that the proposal satisfies the criteria set forth in this chapter, the comprehensive plan, and the Code of Ordinances. A written notice of the planning director's decision shall be submitted to the planning commission.

e. Unless extended by the planning director, for good cause shown, approval of any application under this section 26-16-6 shall be valid for ninety (90) days, unless a longer time period was approved as part of the application. The applicant must submit to the planning director final documents and evidence that all conditions or requirements for approval are

satisfied within ninety (90) days after conditional approval was granted, or such longer time period approved as part of the application, otherwise approval of the application by the city shall be deemed withdrawn.

(3) Referral to planning commission for action. The planning director may refer any application to the planning commission.

(4) Appeal to planning commission. The action of the planning director may be appealed to the planning commission by the applicant, any property owner entitled to notice, or three (3) members of the planning commission. Any such appeal shall be filed, in writing, within fourteen (14) days following the director's decision.

(5) For those matters appealed or referred to the planning commission, the planning commission shall review the application at a public hearing. Using criteria set forth in this chapter, the comprehensive plan, and the Code of Ordinances, the commission shall approve the application as submitted, approve it with modifications, or deny the application. In approving any application the planning commission may impose any reasonable conditions to ensure that the proposal satisfies the criteria set forth in this chapter, the comprehensive plan, and the Code of Ordinances.

Section 7. That subsection (b) of section 26-16-6.1 (Special use review) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

(b) Planning commission and city council review/decision. The planning commission and city council shall, in accordance with subparagraph (c) of this section, review each special use review application for the development of (i) the proposed use of any residential structure containing five or more dwelling units; and (ii) any use that also entails a site plan/architectural review referred to or processed by the Planning Commission and City Council.

Section 8. That section 26-17-1 (Application requirements, general) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 26-17-1. Application requirements, general.

The purpose of this Section 26-17 is to set forth submission requirements for all applications, except applications for oil and gas development, facilities, and operations and access thereto, which shall be governed by Section 26-22.1. Minimum requirements pertaining to all applications are set forth initially, and any additional requirements for each application are then described.

Section 9. That section 26-24-3 (Powers and duties) of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 26-24-3. - Powers and duties.

The board shall have the power, duty and jurisdiction as assigned to it by this chapter and the ordinances of the city which shall include:

- (a) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of this chapter.
- (b) To hear and decide appeals wherein there is question on the interpretation of the zone district map or similar questions as they may arise in the administration of this chapter.
- (c) To hear and decide appeals for special exceptions to the provisions of this chapter, such exceptions to be known as variances.
- (d) The board’s power and jurisdiction shall not extend to appeals of any matters that are the subject of or related to applications or decisions governed by Section 26-22.1.

Section 10. That the rows titled “Extraction of minerals” and “Extraction of oil and gaseous materials” in Table 26-A (PERMITTED USES) in Chapter 26 (Development and Zoning) of the Code of Ordinances, City of Lafayette, Colorado, are hereby amended to read as follows:

Use ²	AG	RE1 RE2	RO R1	R2	OTR	R3 R4	RSR	T1	B1	C1	M1	DR	P
Extraction of minerals (other than oil and gas development, facilities, and operations)	*	*	*	*	*	*	*	*	*	*	S	*	S
Oil and gas development, facilities, and operations	S	*	*	*	*	*	*	*	*	S	S	S	*

[All other rows in Table 26-A, as well as the Key and Notes following Table 26-A, are not amended or otherwise affected by this ordinance.]

² Table 26-A KEY:
P —Permitted
S —Special review
* —Not permitted
† —Uses permitted subject to the review process provided in section 26-22.5-6

Section 11. That the notes following Table 26-B (SPATIAL REQUIREMENTS) in Chapter 26 (Development and Zoning) of the Code of Ordinances, City of Lafayette, Colorado, are hereby amended to read as follows:

1. Commercial/industrial uses must maintain a 20-foot setback from residentially-zoned areas.
2. Heights to 35 feet with special review approval.
3. No part of a building may project into an easement.
4. All spatial requirements for oil and gas development, facilities, and operations are governed by Section 26-22.1 of Chapter 26.
5. Setback requirements for an accessory building or structure and for an accessory dwelling unit are referenced in sections 26-14-6 and 26-14-19.
* To be determined during the special use review, required of all projects.

Section 12. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 13. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 14. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 15. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 16. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 17. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 19TH DAY OF OCTOBER, 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 1ST DAY OF NOVEMBER, 2021.

CITY OF LAFAYETTE, COLORADO

DocuSigned by:
Jamie Harkins

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Jamie Harkins, Mayor

ATTEST:

DocuSigned by:
Lynnette Beck

7A88D74A0C8447
Lynnette Beck, CMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Mary Lynn Macsalka

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Mary Lynn Macsalka, City Attorney