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ORDINANCE NO. 2178

AN ORDINANCE AMENDING CERTAIN SECTIONS OF TITLE 16 **AND 17** OF THE BROOMFIELD MUNICIPAL CODE RELATING TO REVERSE SETBACKS FOR RESIDENTIAL LAND USES FROM PRODUCING AND SHUT IN OIL AND GAS FACILITIES AND NOTIFICATION REQUIREMENTS

WHEREAS, on November 17, 2017, Broomfield citizens adopted Ballot Question 301 which mandates that the City and County of Broomfield require all oil and gas development permitted within the City's boundaries to only occur in a manner that does not adversely impact the health, safety and welfare of Broomfield's residents in their workplaces, homes, schools, and public parks in order to protect the public's health, safety, and welfare and to safeguard the environment and wildlife resources; and

WHEREAS, the initial setback for oil and gas facilities set forth in B.M.C. 16-28-180 was passed in 1993 and amended in 1994 and again in 2019; and

WHEREAS, on July 28, 2021, the City amended the Code to modify the existing reverse setbacks from pre-production oil and gas locations; and

WHEREAS, on October 26, 2022, the City amended the Code to establish reverse setbacks from plugged and abandoned oil and gas facilities and amended the existing reverse setback from producing oil and gas locations; 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, Council finds it necessary to consider proximity of oil and gas facilities to residential land uses; and

WHEREAS, the City desires to amend reverse setbacks applicable to new residential land uses from producing and shut in oil and gas wells.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Chapter 16-28-180 of the Broomfield Municipal Code is hereby amended to state as follows:

16-28-180 - Oil and gas wells.

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(A) With the exception of those oil and gas locations identified in (C), no residential lots in any subdivision shall be platted any closer than ~~250~~**500** feet from an oil and gas facility ~~as defined in section 17-54-020, B.M.C.,~~ regardless of whether said oil and gas location is located within or outside of the City and County of Broomfield.

(1) Such distance shall be increased to 2,000 feet if the oil and gas facility is on an oil and gas location with one or more horizontal wells, as defined in COGCC regulations, as amended from time to time.

(2) The setbacks set forth in subsection (A) shall be reduced to 250 feet for the following:

- (i) Residential units constructed prior to the effective date of the ordinance.**
- (ii) Residential lots within a plat approved prior to the effective date of the ordinance.**
- (iii) Residential lots/units planned within a site development plan approved prior to the effective date of the ordinance.**
- (iv) Residential lots/units planned within a planned unit development plan approved prior to the effective date of the ordinance.**
- (v) Property zoned A-1(A) (Adams County Legacy Agricultural).**

(B) With the exception of those oil and gas locations identified in (C), no public or private school building in any subdivision shall be located any closer than 500 feet from an oil and gas location as defined in section 17-54-020, B.M.C., regardless of whether said oil and gas location is located within or outside of the City and County of Broomfield.

(1) Such distance shall be increased to 2,000 feet if the oil and gas facility is on an oil and gas location with one or more horizontal wells, as defined in COGCC regulations, as amended from time to time.

(2) The setbacks set forth in subsection (B) shall be reduced to 500 feet for the following:

- (i) Residential units constructed prior to the effective date of the ordinance.**
- (ii) Residential lots within a plat approved prior to the effective date of the ordinance.**
- (iii) Residential lots/units planned within a site development plan approved prior to the effective date of the ordinance.**
- (iv) Residential lots/units planned within a planned unit development plan approved prior to the effective date of the ordinance.**
- (v) Property zoned A-1(A) (Adams County Legacy Agricultural).**

(C) No residential lots in any subdivision shall be platted and no public or private school building in any subdivision shall be located any closer than:

(1) 2000 feet from a permitted oil and gas location prior to the construction phase or an oil and gas location which is in the construction phase, drilling phase or completion phases as those terms are defined in section 17-54-020, B.M.C., regardless of whether said oil and gas

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location is located within or outside of the City and County of Broomfield;
and/or

(2) Except as stated in this subsection (2), 250 feet from a plugged and abandoned well, as defined in section 17-56-030(F), B.M.C regardless of whether said oil and gas well is located within or outside of the City and County of Broomfield. Such setback shall be reduced to 150 feet if, as determined by the City, the well was plugged and abandoned after April 1, 2009 and the following requirements have been met by the applicant / home builder / developer:

- i. Subslab, horizontal venting piping with atmospheric venting above the roof line.
- ii. Impervious membrane beneath foundation.
- iii. Gravel blanket beneath impervious membrane and around horizontal pipes.
- iv. Mechanical extraction/ventilation system with explosion proof mechanical systems.
- v. Gas detection system and alarm for lowest occupied space.
- vi. Utility trench dams.
- vii. Control panel for all mechanical systems.
- viii. Operating/as built instructions submitted to Broomfield Building Department prior to the issuance of the building permit for review and approval by the building official.
- ix. Prior to the system's installation as required by (iv) and (v) the builder shall provide to the building official an independent third party verification by an engineer, including a certification/stamp by a professional engineer with experience in the area of vapor mitigation, that the design is adequate.
- x. Builder shall have an approved system design from the City prior to the issuance of a building permit for the systems required by (iv) and (v) .
- xi. After the systems required by (iv) and (v) are installed, the builder shall provide to the building official an independent third party certification by an engineer, including a certification/stamp by a professional engineer with experience in the area of vapor mitigation, that the systems were installed and operate in general conformance with the approved design and installation standards. Such certification shall be provided to the City prior to the issuance of a Certificate of Occupancy.
- xii. An independent third party review of all reports, logs, and forms of all plugged and abandoned oil and gas wells within the proposed subdivision to determine if such wells were adequately plugged and abandoned under applicable COGCC regulations and do not pose a danger to the proposed residential lot(s). The review will be written and the resulting report shall describe any corrective action necessary based on the review and any required remedial action will be undertaken by the applicant at their expense. Nothing in this subsection shall preclude the City from consulting with the COGCC's technical review board for added expertise to evaluate the report(s), any remedial work

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plan, and any final assessment of the remedial action completed.

(D) The setbacks set forth in subsection (C) above shall not apply to:

- (1) Residential units constructed prior to the effective date of the ordinance.
- (2) Residential lots within a plat approved prior to the effective date of the ordinance.
- (3) Residential lots/units planned within a site development plan approved prior to the effective date of the ordinance.
- (4) Residential lots/units planned within a planned unit development plan approved prior to the effective date of the ordinance.
- (5) Property zoned A-1(A) (Adams County Legacy Agricultural).

(E) No final plat shall be submitted to the City for approval if such plat includes any lot, upon which a dwelling unit or public or private school could be built, within ~~4,340~~ **2000** feet from an existing, permitted or proposed oil or gas location (regardless of whether said oil and gas location is located within or outside of the City and County of Broomfield) unless the subdivider records against title to such lots the following notice, in at least 14-point font:

"As required by Section 16-28-180 of the Broomfield Municipal Code, notice is hereby given that [insert description of lot] contains, or in the future could contain, a dwelling unit or public or private school within ~~4,320~~ **2000** feet of a producing, permitted or proposed oil or gas location. For more information contact the City and County of Broomfield or the Colorado Oil and Gas Conservation Commission."

Such written notice may only be amended or terminated by the owner of such lot to correct typographical errors or to reflect the plugging and abandonment of wells. ~~When any lot subject to the above written notice is first sold after plat approval to a purchaser intending to occupy the dwelling unit, the seller must provide the above written notice, in at least 14-point font, to the purchaser.~~

(F) As used in this section, "dwelling unit" has the meaning set forth in section 17-04-100, B.M.C. "Oil or gas location" has the meaning set forth in section 17-54-020, B.M.C. and excludes wells that have been plugged and abandoned in accordance with state regulations. "Proposed oil or gas location" includes those wells for which a Form 2 or Form 2A has been submitted to the Oil and Gas Conservation Commission (COGCC) and has not expired or been withdrawn or denied by the COGCC. **"Oil and gas facility" has the meaning set forth in section 17-54-020, B.M.C and excludes wells that have been plugged and abandoned in accordance with state regulations.**

(G) **The land use review commission and city council may authorize variances from these setbacks in cases where, due to exceptional topographical conditions or other conditions peculiar to the site, an unnecessary hardship is placed on the subdivider or developer. Such variances shall not be granted if it would be detrimental to the public good or impair the intent and purposes of this title. The conditions of any variance authorized shall be stated in writing.**

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The variance shall be in keeping with the intent of the master plan for the city.

16-28-190 - Oil and gas well notification to subsequent purchasers and lessees

- (A) A seller of any residential lot within 2000 feet from an existing, permitted or proposed oil and gas location or plugged and abandoned well ~~subject to the written notice set forth in subsection 16-28-180(E)~~ must provide the following written notice ~~as specified in 16-28-180(E)~~, in at least 14-point font, to the purchaser who intends to occupy and/or lease the dwelling unit prior to ~~or~~ and as part of the purchase agreement. This notice shall be provided by the seller to the prospective buyer no less than 30 days before closing or such less time as consented to by the parties and shall be provided before the signing of any purchase or sale agreement for the subject dwelling unit.

As required by section 16-28-190 of the Broomfield Municipal Code, notice is hereby given that [insert description of lot] is within 2000 feet of a producing, permitted or proposed oil or gas location or a plugged and abandoned well. For more information contact the City and County of Broomfield or the Colorado Oil and Gas Conservation Commission.

- (B) The owner or lessor of any dwelling unit, including single family units and multi-family units, on a lot within 2000 feet from an existing, permitted or proposed oil or gas location or a plugged or abandoned well ~~subject to the written notice set forth in subsection (E)~~ shall provide the ~~above~~ following written notice ~~as specified in 16-28-180(E)~~, in at least 14-point font, to the lessee(s) intending to occupy any dwelling unit on the lot prior to ~~or~~ and as a part of a lease agreement. This notice shall be provided as part of any written information shared with prospective lessee(s) and shall be provided before the signing of any lease agreement.

As required by section 16-28-190 of the Broomfield Municipal Code, notice is hereby given that [insert description of lot] is within 2000 feet of a producing, permitted or proposed oil or gas location or a plugged and abandoned well. For more information contact the City and County of Broomfield or the Colorado Oil and Gas Conservation Commission.

- (C) It is unlawful to fail to provide the above required notice, and any person convicted of violating the requirements set forth in this section shall be punished as provided in chapter 1-12, B.M.C.

Section 2: Chapter 17-56-040 of the Broomfield Municipal Code is hereby amended to state as follows:

17-56-040 Plugged and abandoned well and former oil and gas production site regulations.

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...

(E) Every final plat, minor subdivision plat, and site development plan within the boundaries of which is located a plugged and abandoned well, or for property within ~~200~~ **2000** feet of a plugged or abandoned well, shall include the following notation: "The owner shall disclose to prospective purchasers of lots within a radius of ~~200~~**2000** feet of the plugged and abandoned well of (1) the location of the plugged and abandoned well, (2) the location of the maintenance and workover easement, and (3) the purpose for the well maintenance and workover easement."

Section 3. This ordinance shall be effective seven days after publication following final passage.

INTRODUCED AND APPROVED after first reading on February 22, 2022, and ordered published in full.

INTRODUCED A SECOND TIME and approved on April 12, 2022, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO

Dan Castellano

Mayor

ATTEST:

Claudia Duran

Office of City and County Clerk



APPROVED AS TO FORM:

Nancy Rodgers

City and County Attorney

First Publication: February 27, 2022

Second Publication: April 17, 2022