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Comparison of Larimer County Oil and Gas Provisions with COGCC Rules and other Local Jurisdictions

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The purpose of this memo is to compare the oil and gas regulations in the Larimer County Land Use Code (LUC) to those of other local governments and to the rules of the Colorado Oil and Gas Conservation (COGCC). Boulder County and Commerce City were used for this comparison because they are the first two local governments to pass new land use regulations since the COGCC adopted new “Mission Change” rules.

The COGCC Mission Change rulemaking was required by Senate Bill 19-181. Prior to Senate Bill 19-181, the mission of the COGCC was to “foster” (or promote) oil and gas development and protect public health safety and welfare but only after considering cost effectiveness. The new COGCC mission no longer requires promoting the industry. The new mission is to simply protect public health and safety—without consideration of cost effectiveness.

Incorporating the new mission of the COGCC required a top to bottom rewrite of the COGCC rules. After nearly a year of work, the COGCC passed the mission change rules on November 23, 2020. The new rules took effect on January 15, 2021.

The documents relied upon for this study include:

- [COGCC Rules](#), adopted on November 23, 2020.
- [Boulder County Land Use Code](#), Article 12, adopted on December 15, 2020
- [Commerce City Land Development Code](#), Adopted on March 15, 2021.
- [Larimer County Land Use Code](#), Sections 8.0 and 17.0, adopted on April, 6, 2020.

Larimer County compared to other jurisdictions

As described below, Larimer County's regulations are either equivalent or more strict than state regulations in all but four categories. Larimer County's regulations also compare favorably to those of other local jurisdictions. At the time Larimer County's regulations were passed they were, in many respects, more stringent than the state's COGCC regulations and among the most stringent local government regulations in the state.

As a result of new COGCC “Mission Change” rules, many local governments throughout Colorado are now reassessing their rules to ensure they are compatible with state rules. For example, state rules place an emphasis on “alternative location analyses” to avoid placing oil and gas facilities near homes, in high priority wildlife habitat, and within floodplains. It is far more efficient to have the alternative location analysis conducted at the local government level, prior to the operator submitting a permit application to either the local government or the COGCC.

Larimer County’s regulations that are applied to oil and gas development are found both in Section 17.0 (“Oil and Gas Facilities”) and in Section 8.0 (“Standards for all Development.”) Applications for new oil and gas facilities go through Larimer County’s “Special Review” process described in Section 4.5.

Oil and gas operators need to comply with both local and state regulations. On most subjects, the COGCC rules provide a floor for regulations. Even if a local government has regulations that are less strict than those of the COGCC, the operator will still be required to comply with state regulations.

The chart below uses the terms “more strict,” “state equivalent,” and “less strict” to describe regulations. Senate Bill 19-181 specifically allowed local governments’ land use regulations to be “stricter” than those of the COGCC.¹ As used in the chart, these terms are imprecise and based on a reading of the regulation as a whole. It did not consider how the regulations are actually administered.

The comparison below is intentionally cursory and incomplete. This comparison is only meant to identify some of the high-level areas where the County may want to focus attention during the update of its Land Use Code. Larimer County will be evaluating these issue areas, and others, during the coming months.

Comparison of Oil and Gas Regulations

| <u>TOPIC</u> | <u>STATE</u> | <u>Boulder County</u> | <u>Commerce City</u> | <u>Larimer County</u> |
|----------------------------------|-----------------------------|-----------------------|----------------------|-----------------------|
| Public Notice | Rule 303.e | Most strict | State equivalent | More strict |
| Meeting with Neighbors | Rule 304.c(20) | Most strict | More strict | More strict |
| Setbacks from Homes | COGCC Rule 604 | Most strict | More strict | Less strict |
| Alternative Loc. Analysis | COGCC Rule 304.b(2) | No standard | State equivalent | No standard |
| Noise Standard | COGCC Rule 423 | Most strict | More strict | Less strict |
| Planning Documents | COGCC Rule 304.c | Less strict | More strict | Less strict |
| Baseline Water Monitoring | COGCC Rule 609; 318A | More strict | More strict | State equivalent |
| Electric Equipment | No requirements | More strict | Most strict | More strict |
| Air Quality Mitigation | 5 CCR 1001-9 (Reg. 7) | More strict | More strict | State equivalent |
| Fencing | COGCC Rule 604.c(2)M | State equivalent | Most strict | More strict |
| Local Gov. Inspections | No requirements | State equivalent | More strict | State equivalent |
| Traffic Management | COGCC Rule 303.c(6) | More strict | More strict | More strict |
| Liquide Pipeline req. | No requirements | Most strict | More strict | More strict |
| Dust Mitigation | COGCC Rule 304.c(5) | State equivalent | More strict | State equivalent |
| Visual Mit. / Landscaping | COGCC Rule 424, 425 | More strict | More strict | State equivalent |
| Wildlife Protection | COGCC 1200 rules | More strict | State equivalent | More strict |
| Emergency Response | COGCC Rule 304.c(8); 602.j. | More strict | More strict | State equivalent |
| Enforcement | COGCC Rules 523-525 | State equivalent | Less strict | Less strict |
| Financial Assurance | COGCC 700 Series | State equivalent | More strict | State equivalent |
| Reverse Setbacks | No requirements | State equivalent | More strict | State equivalent |

¹ § 34-60-131 C.R.S.

Summary of Regulations

Public Notice:

- **COGCC Requirement:** COGCC Rule 303.e – operator must notice “all Surface Owners, Building Unit owners, and residents, including tenants of both residential and commercial properties, within 2,000 feet of any Working Pad Surface included in the Oil and Gas Development Plan.”
- **Boulder County:** Must notice pending application to all landowners, local governments, physical addresses, surface and water well owners within one mile (5,280 feet).
- **Commerce City:** Requires notice of pending application to all landowners within 2,000 feet from the proposed site.
- **Larimer County:** Requires written notice for *affected property owners* for ½ mile (2,640 feet). Does not appear to notice residents such as renters. (LUC Section 17.2.C.).

Meeting with Neighbors:

- **COGCC Requirement:** COGCC Rule 304.c(20) requires operator have a “community outreach plan” if within 2,000 feet of disproportionately impacted community. Must “be available” to meet with building unit owners within 2,000 feet of proposed location *if requested*.
- **Boulder County:** Must notice required neighborhood meeting to all parties requiring notice (one mile) and also allow public to attend.
- **Commerce City:** Neighborhood meeting may be required at staff discretion.
- **Larimer County:** Neighborhood meeting is required. Requires written notice for affected property owners for ½ mile (2,640 feet). (LUC Section 12.2.4; 17.2.C.).

Setbacks from Homes:

- **COGCC Requirement:** The COGCC Rule 604 requires a minimum 500-foot setback from homes and “building units” and 2,000-foot setback from school facilities. From 500 – 2,000 feet a hearing is required and operator may present “substantially equivalent protections” including BMPs, size of pad, results of alternative location analysis, etc..
- **Boulder County:** In all cases, a Well Pad at an oil and gas facility must be located a minimum of 2,000 feet from: an existing Dwelling and related residential uses; an Educational Facility or licensed Child Care Center; and public trails and trailheads owned and maintained by the County or any municipality; and workplaces located in the LI, GI, C, B, and T zoning districts. Expectation is for greater than 2,500-foot setback.
- **Commerce City:** Minimum 1,000 feet from homes or residential platted property; minimum 1,500 feet from ten or more homes or “high occupancy building unit”; minimum 2,000 feet from schools and childcare centers.
- **Larimer County:** requires a minimum setback of 1,000 feet from building units (LUC Section 17.3.B)

Alternative Location Analysis:

- **COGCC Requirement:** The COGCC Rule 304.b(2) required whenever location is within: a city, 2,000 feet of a home, 2,000 feet of local government boundary, a floodplain, high priority wildlife habitat, 2,640 feet of a public water supply, etc...
- **Boulder County:** Not required.
- **Commerce City:** Alt. Location analysis is required unless proposed o&g location is greater than 2,000 feet from homes, schools, public parks, and outdoor venues.
- **Larimer County:** Code does not contain a requirement for the evaluation of alternative locations.

Noise Mitigation:

- **COGCC Requirement:** COGCC Rule 423 requires allows oil and gas drilling and completion operations at light industrial noise levels of up to 65 dB(A)s in residential areas. Sets limit of 65 dB(C) during drilling and completions. Requires continuous noise monitoring when within 2,000 feet of home.
- **Boulder County:** In no instance may an oil and gas operation produce noise exceeding 60 dB(C). All locations require continuous noise monitoring.
- **Commerce City:** Maximum permissible noise levels is the greater of “50 dB(A) in the hours between 7:00 p.m. to 7:00 a.m. and 55 dB(A) in the hours between 7:00 a.m. to 7:00p.m. or 4 dB(A) higher than baseline ambient sound measured.”
- **Larimer County:** Larimer County has no c-scale noise limits and does not require continuous noise monitoring. (LUC Section 17.3.H.).

Planning Documents:

- **COGCC Requirement:** COGCC Rule 304.c lists 20 separate plans that are required including a cumulative impacts plan, community outreach plan, topsoil protection plan, operations safety management plan, flood shut-in plan, and interim reclamation plan.
- **Boulder County:** Requires most of the same plans required by Larimer County.
- **Commerce City:** Requires 26 separate plans including a Risk Management Plan, Temporary Sanitary Facilities Plan, and an Emergency Resource Mobilization/Cache Plan,
- **Larimer County:** Larimer County requires a dozen plans in its oil and gas regulations and additional plans in Section 8 “Standards for all Development.” (LUC Section 17.3 and Section 8).

Baseline Water Monitoring:

- **COGCC Requirement:** COGCC Rule 615 requires baseline testing of up to four nearby water wells and follow-up testing in six months and six years.
- **Boulder County:** Same requirements as COGCC except must offer to provide baseline testing of all wells within one-mile of the location.
- **Commerce City:** Requires water quality tests of all available sources within ½ mile (as opposed to four required by Rule 615) and requires testing of constituents beyond what is required by the state.
- **Larimer County:** State requirements. (LUC Section 17.3.F.2).

Electric Equipment:

- **COGCC Requirement:** No state requirement to use grid power.
- **Boulder County:** Operations will be electrified to the highest degree possible. Renewable energy sources will be required unless the Applicant proves that they are not feasible in which case off-site renewable offsets may be substituted.
- **Commerce City:** Requires all permanent equipment to be electrified from the power grid. Requires drilling rigs to also use electric line power if within 2,000 feet of a home.
- **Larimer County:** O&GFs shall be equipped with electric-powered engines for motors, compressors, drilling and production equipment, and pumping systems unless no adequate electricity source is available, or it is technically infeasible. (LUC Section 17.3.C.4).

Air Quality Monitoring and Mitigation:

- **AQCC Requirement:** Reg. 7 requires control of emission sources of more than 3 tons of VOCs per year as well as regular leak detection inspections, continuous monitoring, and banning methane emissions from pneumatic controllers.
- **Boulder County:** Continuous air quality monitoring program. Requirement to use pipelines for both oil and produced water.

- **Commerce City:** Requires monthly inspections, prompt repair of leaks and public reporting of inspections and repairs for five years. Continuous monitoring program. Requirement to use pipelines for oil.
- **Larimer County:** Requires an Air Quality Report and Plan that includes baseline air quality data that details how they intend to meet state AQCC air quality requirements. The Leak Detection and Repair Plan requires repairs of leaks within 72 hours (better than state standard). (LUC Sections 8.11 and 17.3.C).

Fencing:

- **COGCC Requirement:** COGCC Rule 603.h requires fencing, subject to surface owner approval, if “determined necessary by director.” Pumps and pits require fencing.
- **Boulder County:** Site must be kept secure from trespassers but no specific fencing requirements.
- **Commerce City:** Above-ground Operations shall be fenced and gated as part of the Visual Mitigation Plan and Security Plan. Fencing shall be eight-foot (8') high, wrought iron fencing, Ameristar Impasse, Stronghold fencing, or an equivalent, or better, as approved in the Visual Mitigation Plan. Eight-foot (8') high masonry may be used as an alternate.
- **Larimer County:** “For all phases of site development, fencing shall be installed for security and visual aesthetics of the use.” As part of standards for all development, “If fencing is proposed around the perimeter of a development, any fencing adjacent to a county road or state or federal highway must be compatible with existing land uses, topography and landscaping in the immediate vicinity.” (LUC Section 8.16; 17.3.C.4)

Local Government Inspections:

- **COGCC Requirement:** The state has its own (40+) inspectors but does not require local governments to inspect oil and gas facilities. State law does allow local governments to fund inspectors through fees, “to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and to enforce local governmental requirements.” C.R.S. 29-20-104(2)(c).
- **Boulder County:** Boulder County retains the right to inspect but does not appear to charge for oil and gas inspections.
- **Commerce City:** Commerce City provides for inspections and requires City inspections to be paid for by the operator.
- **Larimer County:** “The County reserves the right to inspect the property for compliance.” There is not a requirement that the operator pays for the inspections. (LUC 17.5)

Traffic Management:

- **COGCC Requirement:** COGCC Rule 303.c(6) defers to local governments for transportation planning. Transportation is not regulated by the COGCC.
- **Boulder County:** Requires transportation planning and for operator to pay for “Required improvements to existing transportation system infrastructure to support the proposed oil and gas facilities or operations, as designed and performed by the County”
- **Commerce City:** Extensive transportation and or traffic management requirements including identifying transportation routes and standards for new access road development and transportation fees of up to \$21,172 per well to be paid by operator.
- **Larimer County:** requires evaluation of routing alternatives and transportation infrastructure improvements proposed for the proposed O&GF to mitigate projected transportation impacts and demonstrate compliance with County road standards. Requires payment of Capital Transportation Impact fee. (LUC Section 17.3.J; 17.6)

Liquid Pipeline Requirements:

- **COGCC Requirement:** No state requirements for pipelines for oil or produced water.
- **Boulder County:** Requires all fluids (produced water and oil) to be piped.
- **Commerce City:** Requires oil to be piped but not produced water.
- **Larimer County:** Produced water shall be recycled or reused or shall be transported by pipeline unless easements are not available. No pipeline requirement for transporting oil. (LUC Section 17.3.L)

Dust Mitigation:

- **COGCC Requirement:** COGCC Rule 304.c(5); 427 requires preparation of an extensive dust mitigation plan including evaluation of cumulative effects of dust.
- **Boulder County:** Requires a Dust Suppression Plan.
- **Commerce City:** Requires a dust mitigation plan and that dust be controlled to minimize dust is from roadways or operations. A list of BMPs to control dust are required.
- **Larimer County:** Requires a Fugitive Dust Control Plan to prevent or mitigate fugitive dust generated by the construction and operations of the proposed O&G and shall demonstrate compliance with and implementation of standards in Sections 17.3.I and 8.11. (LUC Section 17.3.I.)

Visual Mitigation / Landscaping:

- **COGCC Requirement:** COGCC Rule 424 contains extensive lighting standards. Rule 425 limited to painting of equipment to match surrounding landscape.
- **Boulder County:** Requires a Landscaping and Screening Plan, a Lighting Plan and Photometric Study.
- **Commerce City:** Requires and Visual Mitigation Plan, site-specific Landscaping Plan, and a Lighting Plan.
- **Larimer County:** Required to follow the aesthetic rules of COGCC and the Larimer County Land Use Code for landscaping, fencing and lighting set forth in Section 8. (LUC Section 8.5, 8.15, 8.16, 17.3.M)

Wildlife Protection:

- **COGCC Requirement:** COGCC 1200 rules series contains extensive wildlife protection requirements.
- **Boulder County:** Requires operator to provide a map of critical wildlife habitat and wildlife migration corridors or routes as identified by the Boulder County Comprehensive Plan and the presence of: species listed in the Boulder County Wildlife; An independent expert's report (i) identifying the presence and population numbers of: species listed in the Boulder County Wildlife Species of Concern listing; Tier 1 and Tier 2 species as identified by CPW; and federally-designated threatened or endangered species, (ii) identifying the anticipated impacts of the proposed oil and gas facilities and operations on wildlife and wildlife habitat, and (iii) recommending measures for avoiding or minimizing such impacts within one mile of proposed location.
- **Commerce City:** Requires Wildlife Mitigation Plan when within ½ mile of sensitive wildlife habitat.
- **Larimer County:** Has extensive wildlife requirements, including required consultation with CPW, in General Development Standards (LUC Section 8.4)

Emergency Response:

- **COGCC Requirement:** COGCC Rule 304.c(8) requires an emergency response plan. COGCC Rule 602.j requires emergency response plan has been coordinated with, reviewed by, and approved by the local emergency response agency, and updated as necessary.

- **Boulder County:** Requires both an Emergency Response Plan as well as an Emergency Preparedness Plan.
- **Commerce City:** Requires detailed emergency response plans including plans for notification and evacuation if necessary as well as a risk management plan. Emergency Response Plan to be written through consultation with emergency response agencies and to include a Resource Mobilization/Cache Plan to ensure emergency responders have available the equipment necessary to respond to any emergency identified in the emergency response plan, which shall provide that the equipment be stationed in locations as to be readily available for any emergency for any oil and gas facility covered by the plan.
- **Larimer County:** Operator must provide the County with an Emergency Response Plan. (LUC 17.3.G.)

Enforcement:

- **COGCC Requirement:** Rules 523-525. The COGCC has more than 40 inspectors, enforcement officers, and environmental specialists. Penalties may be as high as \$15,000 / day.
- **Boulder County:** “The Director has discretion to assess a civil penalty between \$300 and \$15,000 per violation per day, depending on the nature and severity of the violation, statutory authority, and application of the additional factors...” The county currently has one full time inspector.
- **Commerce City:** For the fourth violation, the city may assess up the maximum fine for a municipality - \$3,084 and may suspend or revoke the oil and gas permit. The city currently has no active oil and gas wells and no inspectors.
- **Larimer County:** “The County reserves the right to inspect the property for compliance.” Enforcement may include denying or revoking permits or initiating legal action. (LUC 17.5; 21.0)

Financial Assurance:

- **COGCC Requirement:** COGCC 700 Series Rules. State requires 60,000 blanket bond for <100 wells and \$100,000 for > 100 wells. Inactive wells are required to post \$20,000 / well. Rulemaking on this topic is expected in July, 2021.
- **Boulder County:** requires operators provide adequate financial assurances to guarantee performance of all conditions of approval until final reclamation obligations are completed. The type and amount of financial assurances provided will be determined by the County.
- **Commerce City:** requires financial assurance of \$90,000 / well in the form of a surety bond or irrevocable standby letter of credit, or approved combination of the two. Amount will automatically increase with rate of inflation.
- **Larimer County:** requires applicant to meet state financial assurance requirements, “and any additional requirements the County deems necessary to protect the public health, safety, and welfare.” (LUC Section 17.3.V)

Reverse Setbacks:

- **COGCC Requirement:** COGCC regulates the oil and gas industry. Setbacks of new homes to existing wells is local government jurisdiction.
- **Boulder County:** requires pre-existing facilities to register with the County but does not require a building setback from those facilities.
- **Commerce City:** Commerce City enacted a 1,000-foot setback of new homes from existing working pad surfaces.
- **Larimer County:** Does not have a reverse setback.