

**Initiative #78**  
**Mandatory Setback for Oil and Gas Development**

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2       ♦ require that all new oil and gas facilities be located at least 2,500 feet  
3       from an occupied structure or specified waterways and public facilities.

4 **Summary and Analysis**

5       Amendment ? requires that any new oil and gas development be located at least  
6       2,500 feet from occupied structures and areas of special concern. The measure  
7       defines oil and gas development to include the exploration for and the drilling,  
8       producing, and processing of oil, gas, or related products, as well as the treatment  
9       and disposal of associated waste products. Occupied structures include homes,  
10      schools, hospitals, or any structure intended for human occupancy. Areas of special  
11      concern include public and community drinking water sources, lakes, rivers, perennial  
12      or intermittent streams, creeks, irrigation canals, riparian areas, playgrounds,  
13      permanent sports fields, amphitheaters, public parks, and public open space. Under  
14      Amendment ?, reentry of a well that was previously plugged or abandoned is held to  
15      the same requirement as a new oil and gas development on undisturbed land. If  
16      towns and counties with overlapping boundaries establish different distance  
17      requirements, Amendment ? requires the greater distance be used in overlapping  
18      areas.

19      ***Setback requirements for oil and gas wells.*** The required distance from an oil  
20      and gas facility and a home or other structure is commonly known as a setback  
21      requirement. Current state regulations prohibit oil and gas wells and production  
22      facilities from being located closer than:

- 23      • 500 feet from a home or other occupied building; and  
24      • 1,000 feet from high occupancy buildings such as schools, health care  
25      institutions, correctional facilities, and child care centers, as well as  
26      neighborhoods with at least 22 buildings.

27      The surrounding area affected by the current 500-foot setback requirement includes  
28      about 18 acres. Currently, this setback requirement may be waived in certain  
29      instances by the surface or building owner. Amendment ? increases the setback  
30      requirement to 2,500 feet, which includes about 450 acres. Amendment ? does not  
31      allow a surface land owner or building owner to waive the setback requirement.

32      ***Mineral ownership in Colorado.*** In Colorado, surface land and the underlying  
33      mineral resources may be owned by different parties. When this occurs, surface  
34      owners are legally required to provide mineral owners with reasonable access to their  
35      resources.

1       **Oil and gas extraction technologies and production increases.** To improve  
2 production, oil and gas operators use hydraulic fracturing for most new wells and  
3 extend multiple wells in different directions from some well pads to minimize surface  
4 disturbances and reduce drilling costs. Hydraulic fracturing, or "fracking," involves  
5 injecting a mixture of water, chemicals, and sand into geologic formations containing  
6 oil or natural gas. This process fractures the formation and enhances the flow of oil or  
7 natural gas into the well. Although hydraulic fracturing has been used in Colorado  
8 since the 1940s, the technology has become more prevalent as an efficient means to  
9 access oil and gas in deep rock formations that were previously inaccessible. Wells  
10 are also drilled horizontally to improve their efficiency. Together, these technologies  
11 have led to substantial production increases in Colorado. For example, oil production  
12 more than doubled between 2008 and 2013 and doubled again between 2013 and  
13 2015, with much of the new production occurring near populated areas in northeastern  
14 Colorado. Today, nearly 90 percent of oil production occurs in Weld County.

15       **Oil and gas production in Colorado.** Colorado is currently ranked seventh  
16 among the states in domestic oil production and sixth in natural gas production, and  
17 has over 53,000 active wells. Colorado's oil and gas industry generated about \$X  
18 billion in oil and gas production value in 20XX. According to the U.S. Bureau of Labor  
19 Statistics, the industry accounted for about xx,xxx direct jobs including drilling,  
20 extraction, and product transportation. This represents about x.x percent of total jobs  
21 in the state and about x.x percent of total wages and salaries.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 8, 2016**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

22       **Arguments For**

23       1) Oil and gas development can have significant impacts on nearby residents and  
24 businesses, including increased noise, traffic, light pollution, and odors. Additionally,  
25 this development can raise concerns and uncertainty for nearby residents around air  
26 and water quality and general health impacts. This measure keeps oil and gas  
27 impacts further away from homes, schools, businesses, and other buildings. This  
28 measure also expands protections for important water resources, including public  
29 drinking water sources, irrigation canals, rivers, streams and nearby areas, as well as  
30 recreational resources, including playgrounds and permanent sports fields, public  
31 parks, and public open spaces. Together, these restrictions will help protect  
32 Coloradans from the impact of oil and gas development.

1           2) Production facilities can be an eyesore, and drilling increases traffic and noise.  
2 Some individuals may be reluctant to purchase or rent a home or visit a business  
3 located near such facilities. Expanding the setback requirement for new oil and gas  
4 facilities provides home and business owners greater security in knowing that an oil  
5 and gas facility will not be constructed near them and may make it easier to sell a  
6 property located near oil and gas resources. Keeping oil and gas activity away from  
7 occupied structures will enable property owners to enjoy their property to its full  
8 potential.

9           **Arguments Against**

10           1) Amendment ? effectively bans any new oil and gas activity in most areas of the  
11 state. The vast majority of Colorado's land is located within 2,500 feet of an occupied  
12 structure or area of special concern, and that land will be unavailable for new oil and  
13 gas development even if property owners agree to allow the development. The  
14 measure does not require that mineral owners be compensated if the setback  
15 requirement makes it more costly or impossible to develop their resources, which may  
16 lead to court challenges or require the state to compensate mineral owners. In the  
17 remaining areas where oil and gas activity is still possible, this measure will make it  
18 more difficult and expensive to access mineral resources. This measure will cause a  
19 decrease in oil and gas production, thereby diminishing the benefits the oil and gas  
20 industry provides, including jobs, royalty payments, and tax revenue.

21           2) The current setback requirement was developed through a collaborative  
22 rulemaking process that was guided by scientific and engineering expertise, and  
23 balanced the rights of mineral owners with the concerns of residents, schools, and  
24 businesses. The proposed setback imposes the same requirement for all new oil and  
25 gas development facilities, regardless of the size of the facility. Some oil and gas  
26 facilities are small and may not require such a large setback to protect surface and  
27 business owners. Further, the measure restricts new oil and gas facilities near  
28 existing residential and commercial development, but does not preclude new  
29 residential and commercial development from encroaching on undeveloped oil and  
30 gas resources. Consequently, if residential or commercial development further  
31 expands, the areas of the state that are available for oil and gas development will be  
32 further diminished.

33           **Estimate of Fiscal Impact**

34           *(Please Note: A summary of the fiscal impact will be included in this space in the*  
35 *second draft of the analysis, and an official fiscal note will be prepared and placed on*  
36 *the web when the final blue book is sent to voters.)*