

RESOLUTION 2019-59

Moratorium on Processing Oil and Gas Development Applications

Recitals

A. On April 11, 2017, the Boulder County Board of County Commissioners (“Board”) adopted Resolution 2017-55, which amended the Boulder County Land Use Code (the “Code”) to include Special Review for Oil and Gas Operations.

B. On April 16, 2019, Governor Polis signed in to law S.B.19-181, also known as “Protect Public Welfare Oil and Gas Operations.” The bill prioritizes the protection of public safety, health, welfare, and the environment in regulation of the oil and gas industry by modifying the Oil and Gas Conservation Act, C.R.S. §§ 34-60-101 et seq., the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101 et seq. (“LUCEA”), and other relevant statutes. The bill granted additional authority to local governments to regulate oil and gas development. Specifically, it clarified that local governments have land use authority to minimize adverse impacts to public safety, health, welfare, and the environment and to regulate land use and surface impacts, including the ability to: regulate the siting of oil and gas locations; regulate noise, odor and vibration from oil and gas facilities; inspect oil and gas facilities; impose fines for leaks, spills, and emissions; and impose fees on operators or owners to cover the reasonably foreseeable, direct and indirect costs of permitting and regulating, monitoring and inspection programs, and enforcing local governmental requirements.

C. At a duly noticed public meeting on June 4, 2019, the Board gave authorization for text amendments to the Code in Docket DC-19-0002: Proposed Boulder County Land Use Code Text Amendments related to Article 12 – Special Review for Oil and Gas Operations.

D. At the June 4 public meeting, Land Use Staff requested the Board authorize text amendments to Article 12 of the Land Use Code in light of S.B.19-181.

E. The Board reasonably anticipates that applications for new oil and gas development under Article 12 may be filed in the coming months;

F. Oil and gas operations have the potential for significant and immediate impacts on the health, safety, and welfare of the residents of Boulder County (“the County”) through increased noise, odor, dust, traffic, noxious weeds, and other disturbance. Studies have noted health effects from nearby hydraulic fracturing sites that include shortness of breath, wheezing, heightened risk of premature birth, sleep disturbances, increased stress, and injuries resulting from accidents and spills. Oil and gas development also has the potential to significantly impact the County’s air, water, soil, biological quality, geology, topography, plant ecosystems, wildlife habitat, wetlands, floodplains, water, stormwater and wastewater infrastructure, drainage and erosion control, parks and open space lands, transportation infrastructure, emergency response plans, and other aesthetic values and community resources.

G. LUCEA gives the County broad authority to plan for and regulate the use of land in order to provide for orderly development and a balancing of basic human needs of a changing

population with legitimate environmental concerns, all in a manner consistent with constitutional rights.

H. LUCEA authorizes the County to, among other actions: regulate development and activities in hazardous areas; protect lands from activities that would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species; preserve areas of historical and archaeological importance; and regulate the use of land on the basis of the impact of the development on the community or surrounding areas.

I. The Board believes it has not only the right but the responsibility to plan for and regulate the use of land for the purposes laid out in LUCEA, as well as those purposes specified in other applicable state and federal statutes and common law grants of authority, to best protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County.

J. It is inconsistent with the Board's responsibilities to protect the local environment and population of the County to accept, process and review applications for new oil and gas development in piecemeal fashion while it is developing amendments to applicable portions of the Code based on recent changes in state law.

K. The U.S. Supreme Court and the Colorado Supreme Court recognize that in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments.

L. Under express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal appellate decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to adopt a temporary moratorium in this situation.

NOW, THEREFORE, the Board resolves:

1. Effective immediately, the Boulder County Land Use Director must not accept or process any submissions or hold any conferences under Article 12 of the Land Use Code, including: (a) accepting operator registration submissions; (b) conducting preapplication conferences; and (c) accepting or processing applications for Special Review for Oil and Gas Operations. The Director may process and approve requests for maintenance and repair of existing oil and gas operation under Article 12-900.E.

2. Further, in anticipation of new regulations addressing seismic testing for oil and gas under the authority of S.B. 19-181, no seismic testing operations may be conducted in Boulder County during the duration of the temporary moratorium imposed by this Resolution.

3. This temporary moratorium shall remain in effect until March 28, 2020, unless earlier terminated or extended.

4. The Board directs County staff to continue to review whether existing County regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare, or whether amended regulations will be necessary to implement S.B. 19-181 and to adequately mitigate impacts.

5. The Board intends to hold a public hearing to take testimony on the merits of the temporary moratorium imposed by this Resolution and to determine whether the moratorium should be terminated, extended, or otherwise amended on Tuesday, July 16, 2019, at 4 p.m., in the Board's public hearing room on the third floor of the Boulder County Courthouse, 1325 Pearl Street, Boulder, Colorado. The Board will include in its consideration of the moratorium information or evidence related to seismic testing. Notice of this hearing shall be published in a newspaper of general circulation in Boulder County at least 14 days prior to the hearing date. Should this hearing be rescheduled for any reason, the Board will publish notice of the new time, date, and location of the hearing in a newspaper of general circulation in Boulder County at least 14 days prior to the hearing date. If necessary, at the Board's discretion, this hearing may be continued one or more times.

A motion to this effect was made at the June 28, 2019 public meeting by Commissioner Matt Jones, seconded by Commissioner Deb Gardner, and passed by a 3-0 vote of the Board.

ADOPTED on this 28th day of June, 2019.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:

Elise Jones, Chair

Deb Gardner, Vice Chair

Matt Jones, Commissioner



ATTEST:

Clerk to the Board

Exhibit A

Categories of Exemption from the Moratorium, Process for Requesting an Exemption, and Process for Evaluating Exemption Requests

1. **Types of Work Exempted.** The Temporary Moratorium does not apply to the following:
 - a. Any complete application for oil or gas exploration, development, or production currently being processed by the Land Use Department, which may continue to be processed and reviewed as provided in the Land Use Code.
 - b. Any application for oil or gas exploration, development, or production already approved by the Land Use Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
 - c. Development that possesses either a statutory or common law vested right.
 - d. Minor modifications to existing permits.
 - e. Plugging and abandonment of existing facilities, with the exception that associated rerouting of flowlines, gathering lines, or other pipelines will be subject to section 4-514.E of the Land Use Code, unless the Director waives one or more of the requirements of that section as inapplicable in light of the nature and extent of the proposed work.
 - f. Work on existing oil and gas facilities which the Land Use Director in his sole discretion deems necessary to either (i) repair facilities impacted by acts of God such as, without limitation, the flooding and severe weather events of September 2013, (ii) reconfigure or relocate facilities in a manner that better protects public health, safety, and welfare and the environment, or (iii) perform routine maintenance and repairs. In determining whether work is “routine maintenance or repairs,” the Director may consider whether the work will require other county permits, such as floodplain development permits. For purposes of this Section, “oil and gas facilities” means the site and associated equipment used for the production, transportation, treatment, and/or storage of oil and gas and waste products; or an individual well pad built with one or more wells and operated to produce liquid petroleum and/or natural gas, including associated equipment required for such production; or gathering lines, and ancillary equipment including but not limited to drip stations, vent stations, pigging facilities, chemical injection stations and valve boxes; or any other oil and gas operation which may cause significant degradation. In no case may the Land Use Director approve repairs, reconfiguration, or relocation under this subsection where the work would involve drilling a new well or hydraulic fracturing.

2. **Request for Exemption.** If an oil and gas operator believes certain activity is not subject to the temporary moratorium given the exceptions listed in Section 5 as amended by this Resolution, the operator must submit a request for exemption in writing to the Land Use Director. Unless waived by the Land Use Director for good cause shown, the request must include at a minimum:
 - a. a site plan showing the existing and planned location of the facilities;
 - b. a description of the desired work;
 - c. the reason(s) why the work is not subject to the moratorium including any benefit to public health, safety, and welfare and the environment;
 - d. the time and dates when the work would occur;
 - e. the duration of the work;
 - f. any mitigating measures to reduce impacts to neighbors and other affected parties;
 - g. a list of all parties that will receive notice from the operator prior to commencement of work;
 - h. documentation that the operator can obtain and maintain all other required local, state, or federal permits, including without limitation county Floodplain Development Permits and any permits required by COGCC, CDPHE, and the U.S. Army Corps of Engineers.

3. **Process for Evaluating Exemption Request.** Work eligible for an administrative exemption from the moratorium may only proceed upon written approval of the Land Use Director.
 - a. In evaluating a request for an exemption, the Director will use the Standard DPR Approval Standards in section 12-703 of the Boulder County Land Use Code as well as the pipeline regulations in 4-514.E as a guide. Where two or more of the standards in 12-703 or 4-514.E conflict when applied to the proposed work, the Director shall analyze the applicability and importance of each of the conflicting standards under the specific facts of the application and make a reasonable attempt to balance the conflicting standards in reaching a decision.
 - b. In considering an exemption request, the Director shall notify adjacent property owners. The Director shall not issue the approval for seven days following such notification and shall consider any comments received by the public. To the extent necessary, the Director may refer requests for administrative exemptions from the moratorium to other agencies. In his sole discretion, the Director may waive this notice requirement for good cause shown (for example, necessary and routine maintenance and repairs not likely to affect adjacent property owners).
 - c. Where appropriate given the nature and extent of the proposed work, the Director may impose reasonable conditions of approval to mitigate impacts, using sections 12-703, 12-800, and 4-514.E, as a guide.

