



Office of the County Attorney

Ben Pearlman, County Attorney • Tel: 303.441.3190 • Fax: 303.441.4794 • ca@bouldercounty.org
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306-0471 • www.bouldercounty.gov

Moratorium Memo

BOULDER COUNTY
BOARD OF COUNTY COMMISSIONERS
PUBLIC HEARING

September 17, 2024, at 2:30 p.m.

All Commissioners' public meetings will be offered in a hybrid format where attendees can join through **Zoom** or **in-person** at the Boulder County Courthouse 3rd Floor, 1325 Pearl Street, Boulder. The Commissioners retain the right to switch all hearings and meetings to in-person only instead of hybrid if technical difficulties arise.

Proposed temporary moratorium on processing new applications for residential development over the median Residential Floor Area within the defined neighborhood in the unincorporated county pending consideration of Boulder County Land Use Code amendments

STAFF: Erica Rogers, Senior Assistant County Attorney

Public testimony will be taken—action requested.

SUMMARY

The County Attorney's Office requests BOCC approval of a temporary moratorium on the processing of new applications for residential development over the median Residential Floor Area within the defined neighborhood in the unincorporated county pending consideration of the Boulder County Land Use Code (the Code) amendments for which Community Planning & Permitting staff have requested authorization. Staff intend the text amendments to address concerns with increasing home sizes in unincorporated Boulder County.

The temporary moratorium will allow time to formulate and publicly review necessary amendments to the Code regarding residential structure size in the unincorporated county while avoiding development which may run counter to the purpose and intent of the proposed amendments. The moratorium is proposed to begin immediately on the date of this hearing and remain in place for six months, or until Code amendments are adopted or the moratorium is extended by further resolution. Per the proposed moratorium, the Community Planning & Permitting Department will not accept building permit applications or applications under Article 4 of the Code after today's date that, if approved, would result

in floor area exceeding the median Residential Floor Area within the defined neighborhood, with certain exceptions.

ACTION REQUESTED

Staff request BOCC approval of a temporary moratorium on processing new applications for residential development over the median Residential Floor Area within the defined neighborhood in the unincorporated county pending consideration of the Boulder County Land Use Code (the Code) amendments.

RESOLUTION 2024-__

A resolution imposing a temporary moratorium on processing new applications for residential development over the median Residential Floor Area within the defined neighborhood in the unincorporated county pending consideration of Boulder County Land Use Code amendments

Recitals

A. The Board of County Commissioners (the “BOCC” or “Board”) adopted the original zoning regulations in Article 4 of the Boulder County Land Use Code (the “Code”) October 18, 1994. On August 8, 2008, the Site Plan Review (SPR) standards were added to the Code, which limit residential floor area to 125% of the median of residential square footage in the defined neighborhood, with certain factors that allow an applicant to overcome the size presumed to be compatible with a defined neighborhood.

B. Due to the significant growth in home size in the county over the past decade, the Community Planning & Permitting Director has determined that the existing SPR regulations regarding residential structure size may not adequately ensure that future development in the unincorporated county area will be consistent with county goals and policies and the Boulder County Comprehensive Plan.

C. In particular, the Director is concerned that the existing regulations do not adequately promote smaller scale homes, protect the local environment and natural resources, and ensure compatibility with the rural and agricultural character of the county.

D. Community Planning & Permitting Department staff have identified a need to better understand and clarify the reasons for the growth of homes in the county and analyze potential options for reducing such growth, which may include future consideration of a countywide residential floor area cap.

E. The Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101 *et seq.*, provides the county with the broad authority to plan for and regulate the use of land 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.

F. Boulder County Community Planning & Permitting staff have begun to analyze whether the existing SPR regulations regarding Residential Floor Area are sufficient to protect and promote the public health, safety, and welfare of Boulder County by appropriately balancing residential development, environmental stewardship, and community character.

G. Staff anticipates the time needed to analyze necessary amendments to the SPR regulations, as well as develop a plan to propose and adopt amended regulations, is approximately six months in total. This timeframe assumes approximately three months for research, community engagement, and internal staff meetings; one month for drafting, referral to interested third parties, and public review of those drafts; one month to notice and conduct Planning Commission hearings; and one month for BOCC hearings.

J. On September 17, 2024, the Board held a duly noticed public hearing to consider the temporary moratorium (the “Public Hearing”). As further reflected in the official record of the Public Hearing, the Board considered documents and testimony presented by Community Planning & Permitting Department staff. _____ members of the public spoke at the Public Hearing.

K. Based on the Public Hearing, the Board finds that circumstances warrant the immediate enactment of a temporary moratorium on processing new applications or permits for proposed development on a property exceeding the median Residential Floor Area within the defined neighborhood. This moratorium will remain in place during the county’s planning and land use regulation amendment process to protect and promote the public health, safety, and welfare, and to avoid development which may contravene the results and purpose of this study and process. Wildfire rebuilds are exempt from this moratorium because they do not implicate the concerns regarding new residential growth.

Therefore, the Board resolves

1. A temporary moratorium on processing applications or permits for proposed development that will exceed the median Residential Floor Area within the defined neighborhood¹ in the unincorporated county is reasonable and necessary to protect the public health, safety, and welfare of the county. For purposes of this Resolution, all existing and proposed square footage will be counted toward the median, with no exceptions permitted. This moratorium begins immediately on the date of this Resolution and ends at the close of business on March 17, 2025, unless extended by further resolution. The purpose of the moratorium is to allow time to formulate and publicly review necessary amendments to current county land use regulations regarding residential structure size in the unincorporated county. The Community Planning & Permitting Department is directed not to accept, after the effective date of this Resolution, building permit applications or applications under Article 4 of the Code that, if approved, would result in floor area exceeding the median Residential Floor Area within the defined neighborhood, except as specified in paragraph 4 below. Building permit applications may be approved if there is an effective Site Plan Review having approved the proposed Residential Floor Area. If the median Residential Floor Area of a defined neighborhood is below 2,500

¹ As defined in Article 4-806.A.1.c. of the Code.

square feet, this temporary moratorium only applies to proposed development exceeding 2,500 square feet.

2. Community Planning and Permitting staff are directed to continue analyzing whether the existing county SPR regulations pertaining to residential structure size in the unincorporated county are sufficient to protect the public health, safety, and welfare of Boulder County, and whether amended regulations and potentially other measures limiting Residential Floor Area will be necessary to promote smaller scale homes, protect the local environment and natural resources, and ensure compatibility with the rural and agricultural character of the county. Staff is directed to move expeditiously, such that the Board can end the temporary moratorium sooner if appropriate regulations are in place. Any change in the duration or other terms of the temporary moratorium shall occur at a duly noticed public hearing of the Board.

3. The Board reaffirms that any development conducted without all necessary county approvals may be in violation of the Code or other applicable county regulations.

4. This temporary moratorium does not apply to the following:

- a. Any complete application for development accepted and currently being processed by the Community Planning & Permitting Department, which may continue to be processed and reviewed as provided in the Boulder County Land Use Code.
- b. Any application for development already approved by the Community Planning & Permitting Department prior to the effective date of this Resolution where such approval is validly maintained thereafter.
- c. Development which possesses either a statutory or common law vested right.
- d. Modifications to existing approvals, provided the resulting total residential floor area does not exceed the median Residential Floor Area for the defined neighborhood, as defined in Article 4-806 of the Code.
- e. Applications submitted to restore homes that were damaged or destroyed by causes outside the control of the property owner as set forth in Articles 4-802.B.3 and 19 of the Code.

5. If a property owner believes certain activity is not subject to the temporary moratorium given the exceptions listed in Section 4 of this Resolution, the owner must submit a request for exemption in writing to the Community Planning & Permitting

Director. Work eligible for an administrative exemption from the moratorium may only proceed upon written approval of the Community Planning & Permitting Director.

[Signature Page to Follow]

DRAFT

A motion to approve the foregoing Resolution imposing a temporary moratorium was made by Commissioner Ashley Stolzmann, seconded by Commissioner Marta Loachamin, and passed by a X-X vote.

ADOPTED as a final decision of the Board on this _____ day of _____ 2024.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Ashley Stolzmann, Chair

Marta Loachamin, Vice Chair

Claire Levy, Commissioner

ATTEST:

Clerk to the Board