

RESOLUTION 2016-65

Terminating the Temporary Moratorium First Enacted by Resolution 2012-16, as Extended and Amended by Resolutions 2012-46, 2013-18, 2013-50, 2013-55, 2013-56, 2014-88, and 2015-23; Establishing a New Moratorium on Processing Oil and Gas Development Applications until November 18, 2016

Recitals

A. On May 2, 2016, the Colorado Supreme Court handed down its decision in *City of Fort Collins v. Colorado Oil and Gas Association*, overturning that city's 5-year voter-approved moratorium on fracking and the storage of fracking waste within the city. As a result of the *Fort Collins* decision, the legal status of Boulder County's current moratorium on processing oil and gas development permit applications is uncertain.

B. In addition to the *Fort Collins* decision, since the County last considered its temporary moratorium in a public hearing, a number of statewide efforts ongoing at that time affecting local regulation of oil and gas development have concluded.

- i. To avoid a number of proposed statewide ballot measures in the 2015 fall election which would have clarified and increased local control of oil and gas development, the Governor established a Task Force on State and Local Regulation of Oil and Gas Development. While the Task Force produced a few positive recommendations for changes at the state level, overall the results were disappointing for those who seek greater local control over industrial operations close to homes, schools, and residents, as well as those operations that threaten sensitive environmental and natural resources.
- ii. The Colorado Oil and Gas Conservation Commission ("COGCC") conducted several rulemakings in which the County participated. These rulemakings concerned development in the floodplain, how complaints to COGCC get processed and resolved, operator submission of information on potential oil and gas development for incorporation into local comprehensive plans, and local government collaboration with operators concerning large scale oil and gas facilities. COGCC rejected most of the County's input on critical local concerns about protecting our floodplains from oil and gas operations and mitigating the impacts of large scale facilities.
- iii. In the 2015 and 2016 legislative sessions, the County worked closely with several state legislators and other interested parties to get legislation passed which delegated localities more control over oil and gas development. Ultimately, the legislature failed to clarify local government's land use authority to protect health, safety, welfare, and the environment in a manner sufficient to address each localities' unique land use patterns, economic vitality, and quality of life.
- iv. The rulemaking completed by the Colorado Air Quality Control Commission ("AQCC") on air quality requirements for certain oil and gas operations in early 2014 was a step forward, with new requirements on methane emissions

and leak detection and repair. But the AQCC did not incorporate all of our local government coalition's recommendations into the final rules.

- v. Applying the current statutory and regulatory framework governing oil and gas development in Colorado, state courts have now resolved (or, in the case of Broomfield, will resolve in the immediate future) all outstanding litigation between localities and industry and between localities and the state.

C. Since the County last considered its temporary moratorium, industry technologies and practices have evolved significantly, including in ways of great concern to local residents, schools, and others proximate to oil and gas operations. For example, the average number of wells per pad is increasing dramatically, creating large scale facilities generating land use and environmental impacts on neighbors significantly different in nature and extent than when we last updated our regulations.

D. Consequently, the County's current oil and gas regulations need to be updated to ensure our local regulations do not conflict with new state laws, to better reflect new industry practices, and to best protect public health, safety, welfare, and the environment in Boulder County.

E. Staff anticipates the time needed to analyze necessary amendments to our regulations, as well as develop a plan to administer the new regulations including reviewing appropriate permit and impact fees, is approximately six months in total. This timeframe assumes approximately one month for hiring technical expertise and internal staff meetings; two months for drafting, referral to interested third parties, and public review of those drafts; one month to notice and conduct Planning Commission hearings; one month for BOCC hearings; and one month to train staff to implement the new regulations.

NOW, THEREFORE, the Board resolves:

1. The temporary moratorium first enacted by Resolution 2012-16, as extended and amended by Resolutions 2012-46, 2013-18, 2013-50, 2013-55, 2013-56, 2014-88, and 2015-23 is hereby terminated.

2. A new temporary moratorium is reasonable and necessary to protect the public health, safety, and welfare of the County and prevent irreparable harm. The new moratorium begins on the date of this Resolution and ends at the close of business on November 18, 2016. The purpose of the moratorium is to allow time to formulate and publicly review necessary amendments to current County land use and environmental regulations governing oil and gas development in the unincorporated area.

3. Per section 16-100 of the Land Use Code, staff is directed to analyze existing County regulations governing oil and gas development and whether amending such regulations pursuant to the County's legal authority is necessary to adequately mitigate the associated impacts and hazards to best protect the public health, safety, welfare, and environment. In doing so, without limitation staff is directed to revisit the use of land use and zoning powers and comprehensive planning techniques; evaluate the Expedited and Standard Development Plan Review structure; ensure adequate protection of the floodplain; evaluate the impacts and possible mitigation methods for multi-well pads and similarly intensively developed ancillary facilities; propose all changes necessary to conform County regulations with the most recent state rules from COGCC and AQCC; analyze necessary improvements concerning pipelines; analyze necessary improvements concerning an adequate water supply for drilling, completion, and operations phases; review all fees applicable to oil and

gas development, including permit review fees and impact fees; and make any other conforming changes throughout the Land Use Code.

4. Exhibit A (Categories of Exemption from the Moratorium, Process for Requesting an Exemption, and Process for Evaluating Exemption Requests) is incorporated herein by this reference.

5. Staff shall set and notice a public hearing to occur no later than 45 days from the date of this Resolution for the purpose of deciding whether the new moratorium imposed by this Resolution should be terminated or otherwise amended.

6. Staff is directed to move expeditiously, such that the Board can end the temporary moratorium sooner if appropriate plans and 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.

* * *

A motion to this effect was made at the May 19, 2016 public meeting by Commissioner Gardner, seconded by Commissioner Domenico, and passed by a 3-0 vote of the Board.

ADOPTED on this 19th day of May, 2016.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:



Handwritten signature of Elise Jones in black ink.

Elise Jones, Chair

Handwritten signature of Cindy Domenico in black ink.

Cindy Domenico, Vice Chair

Handwritten signature of Deb Gardner in black ink.

Deb Gardner, Commissioner

ATTEST:

Handwritten signature of the Clerk to the Board in black ink.

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.