



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: December 1, 2020

AGENDA TITLE

Second reading and consideration of a motion to order published by title only Ordinance 8435 extending to December 31, 2021, a moratorium imposed by Ordinance 8253 and amended by Ordinance 8392 on the acceptance and processing of applications for drilling permits on City of Boulder open space properties, and for any city permits or use review of new mining industry uses involving oil and gas extraction within the city and on city-owned properties outside of the city, to allow time for the city to develop rules and regulations governing such uses; and setting forth related details.

PRESENTERS

Chris Meschuk, Interim City Manager
Thomas A. Carr, City Attorney
Janet Michels, Senior Assistant City Attorney
Hella Pannewig, Assistant City Attorney
Edward Stafford, Development Review Manager for Public Works
Karl Guiler, Senior Planner – Code Amendment Specialist
Bethany Collins, Real Estate Supervisor, Open Space & Mountain Parks
Carl Castillo, Chief Policy Advisor, City Manager’s Office

EXECUTIVE SUMMARY

The purpose of this item is for the council to consider an extension of the current moratorium related to oil and gas permits for the City of Boulder to Dec. 31, 2021.

In 2013, the City Council instituted a moratorium on accepting or processing applications for oil and gas operations. In the 2013 election, Boulder electors approved the extension of the moratorium until June 3, 2018 with Ordinance 8253. In April 2020, City Council extended the moratorium to Dec. 31, 2020 with Ordinance 8392.

The state and Boulder County are currently updating regulations related to oil and gas drilling that include greater protections for public health and safety as allowed by state legislation. The City of Boulder is also working to develop local regulation on drilling. The city has been waiting for the state and county regulations to be completed before developing local regulations. Due to delays from COVID-19, the state rulemaking has been further delayed and it is not expected to see final adopted county regulations until the end of this year. In addition, COVID-19 has resulted in unexpected reduction in city staffing and unanticipated urgent work in response to the COVID-19 emergency that is ongoing. As a result, the city requires additional time to study and develop regulations that protect the public's health and welfare and an extension of the moratorium from Dec. 31st of this year to Dec. 31st of next year is proposed within the ordinance within **Attachment A**.

City Council passed Ordinance 8435 on first reading on Nov. 17, 2020.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance 8435 extending to December 31, 2021, a moratorium imposed by Ordinance 8253 and amended by Ordinance 8392 on the acceptance and processing of applications for drilling permits on City of Boulder open space properties, and for any city permits or use review of new mining industry uses involving oil and gas extraction within the city and on city-owned properties outside of the city, to allow time for the city to develop rules and regulations governing such uses; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Staff does not anticipate any economic impacts on the business community that could impact city revenues because there are no pending, nor do we anticipate any, applications to conduct the types of activities addressed in the moratorium.
- Environmental – The current moratorium provides temporary protection of environmental and open space resources, and the moratorium would extend those protections for one year while the city develops new rules and regulations.
- Social – Staff does not anticipate any adverse impacts on the needs of diverse communities.

OTHER IMPACTS

- Fiscal – Staff does not anticipate any negative fiscal effects from extending the moratorium.
- Staff time – No additional staff resources will be required.

BOARD AND COMMISSION FEEDBACK

N/A

PUBLIC FEEDBACK

The American Petroleum Institute (API) has submitted a letter opposed to the moratorium extension. The API letter, found in **Attachment E**, expresses concern that the continual extension of the moratorium is viewed as a ban on oil and gas drilling.

BACKGROUND

On June 4, 2013, the City Council adopted as an emergency measure Ordinance 7907 instituting a moratorium until June 3, 2014, on accepting or processing applications for oil and gas explorations permits under City of Boulder regulations. See Ordinance 7907, **Attachment B**. In November 2013, Boulder voters approved Ballot Question 2H, extending the moratorium on new oil and gas exploration until June 3, 2018. On May 15, 2018, the council adopted as an emergency measure Ordinance 8253 extending the moratorium until June 3, 2020. See Ordinance 8253, **Attachment C**.

Boulder County also has a moratorium on the acceptance and processing of new oil and gas development applications and seismic testing in unincorporated Boulder County. This moratorium was due to expire on March 28, 2020, but on March 2nd the Board of County Commissioners extended the moratorium until July 31, 2020, citing the complex nature of writing oil and gas regulations and a desire to provide the public with enough time to review and comment on the draft regulations. This moratorium was extended yet again to Dec. 31, 2020, the same expiration date as the city of Boulder. The city's current expiration date was set on April 21, 2020 when City Council passed Ordinance 8392 extending the moratorium to the end of this year. See Ord. No. 8392, **Attachment D**.

The rationale behind both the city's and the county's current moratoria is to allow time to develop and put in place a revised set of rules and regulations that protect the city's and county's interests and the public's health, safety and welfare consistent with state and federal law.

In 2019 the state of Colorado enacted a set of extensive and comprehensive oil and gas regulatory reforms, Senate Bill 19-181. The Colorado Oil and Gas Conservation Commission (COGCC) is currently preparing, and sequentially sharing with the public for comment, draft regulations that implement SB19-181. On March 25, 2020, COGCC [announced](#) that it is temporarily pausing the formal rulemaking process on its rules due to the inability to conduct face-to-face meetings. The state level effort is anticipated to conclude in Quarter 4 of this year due to delays from the pandemic. More information regarding the rulemaking process is available [here](#).

Boulder County is revising its oil and gas regulations in light of the greater local government authority created by SB19-181. Boulder County Planning Commission recommended approval of new oil and gas regulations on Nov. 10th. Public hearings with the Board of County Commissioners are scheduled for Dec. 1 and Dec. 3, to adopt regulations or direct staff to modify regulations. Hearing dates are reserved for Dec. 10 and Dec. 15 with the Board of County Commissioners, if discussions are continued beyond Dec. 3rd. More information about the County's oil and gas regulatory activities is available [here](#).

ANALYSIS

The proposed ordinance within **Attachment A** would extend the current city moratorium beyond its current expiration date to Dec. 31, 2021. The state and Boulder County are currently updating regulations related to oil and gas drilling that include greater protections for public health and safety as is the city of Boulder. The city has been waiting for the state and county regulations to be completed before fully developing local regulations allowing the city to dovetail its regulations with those of the county, including coordinating with Boulder County regarding how the county regulations could protect city-owned lands; identifying gaps in state regulations that city regulations could fill; and the like.

A moratorium currently exists until Dec. 31, 2020. Due to delays from COVID-19, the county and state rulemaking has been delayed and it is not expected to see final adopted regulations until the end of this year. To enable more time to develop city regulations, an extension of the moratorium from Dec. 31st of this year to Dec. 31st of next year is proposed within the attached Ordinance 8392.

On November 16, 2020, the American Petroleum Institute Colorado sent a letter to council (see **Attachment E**) objecting to the extension of the moratorium, characterizing the moratoria as an effective “ban” on development within the City’s boundaries. Staff believes that because both Boulder County and the State of Colorado are still in the rule-making phase of implementing SB19-181, the City has a reasonable basis to extend its moratorium. The Director of the COGCC has stated that the state does not intend to challenge local moratoria enacted during the state rulemaking process. As well, the COGCC Director has exclusive authority to refuse any permit that he or she flags for additional review. [Objective Criteria](#) that could trigger this review include a proposed well within a municipality; within 1,500 feet of a municipal boundary, platted subdivision or county boundary; within a floodplain or floodway; or where the relevant local government requests additional consultation. Given the breadth of the Director’s discretion and the signal from the Director that the state will not challenge moratoria enacted during the rulemaking process, it seems unlikely Boulder would face a challenge from the State with an extension of the moratorium.

Taking into account the county’s and state’s schedules for regulatory changes and the city’s COVID-19 related staffing reduction, staff recommends extending the city’s moratorium until December 31, 2021. Furthermore, on October 13, 2020, City Council discussed and indicated support of extending the oil and gas moratorium to the end of 2021 to allow appropriate time to develop the regulations.

ATTACHMENTS

Attachment A: Proposed Ordinance 8435

Attachment B: Ordinance 7907 (2013)

Attachment C: Ordinance 8253 (2018)

Attachment D: Ordinance 8392 (2020)

Attachment E: American Petroleum Institute (API) letter dated Nov. 16, 2020

ORDINANCE NO 8435

AN ORDINANCE EXTENDING TO DECEMBER 31, 2021, A MORATORIUM IMPOSED BY ORDINANCE 8253 AND EXTENDED BY ORDINANCE 8392 ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR DRILLING PERMITS ON CITY OF BOULDER OPEN SPACE PROPERTIES AND FOR ANY CITY PERMITS OR USE REVIEW OF NEW MINING INDUSTRY USES INVOLVING OIL AND GAS EXTRACTION IN THE CITY OF BOULDER AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO MAKES THE FOLLOWING FINDINGS OF FACT:

- A. In 2013 city council adopted Ordinance 7907, a moratorium to June 3, 2014, on accepting or processing applications for drilling permits on City of Boulder open space properties and for any city permits or use review of new mining industry uses involving oil and gas extraction within the city.
- B. In the 2013 election, City of Boulder electors overwhelmingly approved the extension of the moratorium until June 3, 2018, following Boulder County’s adoption of new regulations.
- C. City council extended the moratorium in May 2018 with Ordinance 8253, to December 31, 2020 to allow time for staff to develop comprehensive regulations and update its rules regarding oil and gas development within the city and on city open space.
- D. The regulatory landscape changed significantly in 2019 when the State of Colorado enacted extensive and comprehensive oil and gas regulatory reforms with Senate Bill 19-181, which changed the mandate of the Colorado Oil and Gas Conservation Commission (COGCC) from fostering oil and gas development to regulating oil and gas development “in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment and wildlife resources.”
- E. The City of Boulder seeks to protect its environment, open space lands, residents and public health and safety to the maximum extent allowed by law.
- F. The COGCC is currently preparing, and sequentially sharing with the public for comment, draft regulations that implement SB19-181. That effort was expected to continue through mid-2020, but the COVID-19 pandemic delayed the rulemaking process.

1 G. Simultaneously Boulder County is revising its oil and gas regulations to address the
2 greater local government authority created by SB19-181. However, the
3 COVID-19 pandemic also delayed Boulder County’s rulemaking. Boulder County
4 expects to conclude its rulemaking by December 2020.

5 H. The COVID-19 pandemic has also resulted in unexpected reductions in city staffing and
6 unanticipated urgent responsive work that is ongoing.

7 I. The City of Boulder and its residents’ interests would best be served by extending the
8 current moratorium through 2021. This extension would allow the City of Boulder to
9 harmonize city regulations with those of Boulder County and the State of Colorado and
10 identify gaps in state and county regulations that City of Boulder regulations could
11 address.

12 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
13 CITY OF BOULDER, COLORADO:

14 Section 1. The city council adopts the findings in this ordinance and incorporates
15 them herein by this reference.

16 Section 2. Commencing immediately upon adoption and continuing until 11:59 p.m. on
17 December 31, 2021, the city manager and city staff shall neither accept nor process any
18 application for a new oil and gas exploration permit under the Oil and Gas Regulations of the
19 City of Boulder, Colorado Open Space Board of Trustees.

20 Section 3. Commencing immediately upon adoption and continuing until 11:59 p.m. on
21 December 31, 2021, the city manager and city staff shall neither accept nor process any
22 application for any city permit that results in oil or gas exploration or for any application for use
23 review under Title 9 of the Boulder Revised Code for new “Mining Industries” uses involving oil
24 and gas extraction or exploration.

25 Section 4. The city council directs the city manager to monitor progress of the COGCC
rulemaking and Boulder County’s land use regulations and to study, develop, evaluate, review
and make recommendations to the city council by November 30, 2021 regarding appropriate

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regulations, ordinances and fees pertaining to oil and gas exploration.

Section 5. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this 17th day of November 2020.

Sam Weaver, Mayor

Attest:

Pamela Davis, Acting City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 1st day December 2020.

Sam Weaver, Mayor

Attest:

Elesha Johnson, City Clerk

ORDINANCE NO. 7907

AN EMERGENCY ORDINANCE IMPOSING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR DRILLING PERMITS ON CITY OF BOULDER OPEN SPACE PROPERTIES AND FOR ANY CITY PERMITS OR USE REVIEW OF NEW MINING INDUSTRY USES INVOLVING OIL AND GAS EXTRACTION IN THE CITY OF BOULDER AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO MAKES THE FOLLOWING FINDINGS OF FACT:

- A. In recent years, oil and gas production in the United States and along the front range of Colorado has increased dramatically through the use of a combination of horizontal drilling and hydraulic fracturing;
- B. Hydraulic fracturing requires injecting millions of gallons of water, sand and chemicals that can be toxic into wells to access and produce oil and gas deposits that previously had been considered inaccessible;
- C. Hydraulic fracturing may have significant damaging effects on the environment and public health, which effects are now under study;
- D. Researchers at The Endocrine Disruption Exchange, a clearinghouse of the chemicals used in natural gas operations, found that more than 75% of the chemicals could affect the skin, eyes, and other sensory organs, and the respiratory and gastrointestinal systems. Approximately 40-50% could affect the brain/nervous system, immune and cardiovascular systems, and the kidneys; 37% could affect the endocrine system; and 25% could cause cancer and mutations. These results indicate that many chemicals used during the fracturing and drilling stages of gas operations may have long-term health effects that are not immediately expressed;
- E. Drilling and fracking processes often result in the release of toxic air pollutants, methane, a powerful greenhouse gas, and other Volatile Organic Compounds (VOCs), which are contributing to an increase in ozone levels in oil and gas-producing areas including the Front Range's status as a non-attainment area for Environmental Protection Agency's ozone standards. A 2011 Colorado Department of Public Health study in Garfield County found significantly higher risks of cancer for residents exposed to VOCs living closer to oil and gas wells, with residents living half a mile or less from wells at greatest risk;
- F. Data available on the Colorado Oil and Gas Conservation Commission (COGCC) website shows that spills happen on a daily basis in Colorado with various impacts;

- G. Despite these emerging risks and impacts from hydraulic fracturing and other drilling activities, there has yet been no conclusive and comprehensive study of the environmental and health effects associated with oil and gas exploration using hydraulic fracturing, in part because information about certain aspects and ingredients of this process are not available to the public. To address this lack of data on public health impacts, more than \$16 million worth of studies to analyze drilling and fracking impacts in Colorado are planned for the next few years;
- H. The United States Environmental Protection Agency, (“EPA”) is engaged in a study on the potential impacts of hydraulic fracturing on drinking and ground water which is expected to be concluded by December 2014;
- I. According to a progress report released in December 2012, the EPA is compiling existing data regarding toxicity and potential human health effects associated with the over 1000 chemicals reported to be in fracturing fluids and found in associated return flow and wastewater;
- J. The National Science Foundation has funded a \$12 million, five-year study involving various academic and research institutions, including a study by the University of Colorado which is undertaking a quantitative and qualitative assessment of the health risks, both chemical and non-chemical, associated with water and air exposure related to hydraulic fracturing, to be completed by 2018;
- K. Colorado State University’s Atmospheric Science Department is conducting a three-year study, sponsored by Garfield County and local industry, to quantify emissions of air toxics, ozone precursors, and methane from well drilling, hydraulic fracturing, and flowback from gas well development in the Garfield County region, to be completed in 2016;
- L. The State of Colorado’s Department of Public Health and Environment is embarking on a North Front Range Oil and Gas Emissions Study in 2014 similar in concept to the Garfield Study, to be concluded in 2016 or 2017;
- M. The City of Boulder is part of a unique ecosystem, which has been protected and preserved through careful planning, acquisition of open space and conservation easements, growth management and environmental responsibility.
- N. The City of Boulder’s Open Space and Mountain Parks Department manages over 45,000 acres of open space purchased by public funds for a wide range of important public values;
- O. The City of Boulder’s open space contributes significantly to Boulder’s quality of life and vibrant economy, the welfare of its residents and to the surrounding environment and wildlife;

- P. The water table in the City of Boulder is generally very shallow with frequent interchange to numerous creeks and ditches and therefore any contamination reaching the surface supplies or the ground water supplies affects the water flowing through the creeks and ditches;
- Q. The City of Boulder is part of the Mississippi River watershed which drains most of the continental United States east of the continental divide providing drinking water to millions of people;
- R. Contamination of water in the Boulder area could have long-term and devastating health effects on City residents, as well as wildlife and many other Americans;
- S. The Greater Wattenberg Area, (“GWA”) which encompasses most of Boulder, Weld, Larimer, Adams, Broomfield, and parts of Arapahoe and Douglas counties in Colorado, has been the focus of recent and increasing oil and gas exploration using hydraulic fracturing and horizontal drilling;
- T. City of Boulder open space lands and a portion of the City of Boulder are in the GWA;
- U. The City of Boulder has Oil and Gas Regulations of the City of Boulder, Colorado Open Space Board of Trustees adopted in 1993, which regulate oil and gas exploration on open space lands and which have not been revised in the past 20 years;
- V. There is currently in place a moratorium on new applications for development of oil and gas operations in Boulder County, which expires on June 10, 2013;
- W. The Boulder County moratorium includes City of Boulder open space lands that could be disturbed and exploited for oil and gas exploration;
- X. The Open Space and Mountain Parks Department currently is engaged in a process to update its oil and gas regulations;
- Y. There is substantial legal uncertainty regarding the extent of the power of a Colorado home rule city to regulate or ban oil and gas exploration within its jurisdiction;
- Z. On July 17, 2012, the City of Longmont adopted oil and gas regulations to protect its citizens’ health and safety;
- AA. On July 30, 2012, the Colorado Oil and Gas Conservation Commission (“COGCC”) brought suit against the City of Longmont seeking to invalidate portions of the City of Longmont’s regulations;
- BB. On November 6, 2012, the people of the City of Longmont passed a ballot measure banning hydraulic fracturing in the City of Longmont;

- CC. On December 17, 2012, the Colorado Oil and Gas Association (“COGA”) brought suit against the City of Longmont seeking to invalidate the hydraulic fracturing ban. COGA has also joined the COGCC suit against Longmont;
- DD. The complaints brought by the COGCC and COGA are both pending before the Boulder County District Court;
- EE. The final resolution of these two lawsuits will provide important legal guidance regarding the nature and extent of regulation which may be exerted by a home rule city under its land use authority and to protect the health and safety of its environment and citizens from the dangers associated with hydraulic fracturing using its police powers;
- FF. The City of Boulder seeks to protect its environment, open space lands, residents and public health and safety to the maximum extent allowed by law; and
- GG. To achieve this goal, the City of Boulder must wait until at least the interim results of pending comprehensive health impact studies are completed, and the courts enter a final judgment, including any appeals in the COGCC and COGA lawsuits.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF BOULDER, COLORADO:

Section 1. The City Council adopts the findings in this ordinance and incorporates them herein by this reference.

Section 2. Commencing immediately and continuing until 8 a.m. on June 3, 2014, the city manager and city staff shall neither accept nor process any application for a new oil and gas exploration permit under the Oil and Gas Regulations of the City of Boulder, Colorado Open Space Board of Trustees.

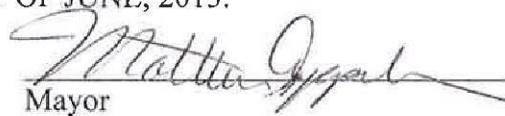
Section 3. Commencing immediately and continuing until 8:00 a.m. on June 3, 2014, the city manager and city staff shall neither accept nor process any application for any city permit that results in oil or gas exploration or for any application for use review under Title 9 of the Boulder Revised Code for new “Mining Industries” uses involving oil and gas extraction or exploration.

Section 4. The City Council directs the city manager to monitor progress of public health impact studies and the COGCC and COGA litigation and to study, develop, evaluate, review and make recommendations to the City Council by May 1, 2014 regarding appropriate regulations, ordinances and fees pertaining to oil and gas exploration.

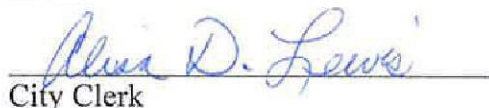
Section 5. The City Council finds that the passage of this ordinance is necessary for the preservation of the public peace, health or property and justify the adoption of this ordinance as an emergency measure. The nature of the urgency for the adoption as an emergency measure is described, in part, by the findings of fact set forth in this ordinance. The City Council further finds that time is required to consider an appropriate response to increased horizontal and directional drilling and hydraulic fracturing. Therefore, the City Council orders that this ordinance shall be effective immediately upon its passage.

Section 6. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ, PASSED AND ADOPTED AS AN EMERGENCY
MEASURE BY TWO-THIRDS OF COUNCILMEMBERS PRESENT, AND ORDERED
PUBLISHED BY TITLE ONLY THIS 4th DAY OF JUNE, 2013.


Mayor

Attest:


City Clerk

ORDINANCE NO 8253

AN EMERGENCY ORDINANCE EXTENDING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR DRILLING PERMITS ON CITY OF BOULDER OPEN SPACE PROPERTIES AND FOR ANY CITY PERMITS OR USE REVIEW OF NEW MINING INDUSTRY USES INVOLVING OIL AND GAS EXTRACTION IN THE CITY OF BOULDER AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO MAKES THE FOLLOWING FINDINGS OF FACT:

- A. In recent years, oil and gas production in the United States and along the front range of Colorado has increased dramatically through the use of a combination of horizontal drilling and hydraulic fracturing;
- B. Hydraulic fracturing requires injecting millions of gallons of water, sand and chemicals that can be toxic into wells to access and produce oil and gas deposits that previously had been considered inaccessible;
- C. Hydraulic fracturing may have significant damaging effects on the environment and public health, which effects are now under study;
- D. Researchers at The Endocrine Disruption Exchange, a clearinghouse of the chemicals used in natural gas operations, found that more than 75% of the chemicals could affect the skin, eyes, and other sensory organs, and the respiratory and gastrointestinal systems. Approximately 40-50% could affect the brain/nervous system, immune and cardiovascular systems, and the kidneys; 37% could affect the endocrine system; and 25% could cause cancer and mutations. These results indicate that many chemicals used during the fracturing and drilling stages of gas operations may have long-term health effects that are not immediately expressed;
- E. Drilling and fracking processes often result in the release of toxic air pollutants, methane, a powerful greenhouse gas, and other Volatile Organic Compounds (VOCs), which are contributing to an increase in ozone levels in oil and gas-producing areas including the Front Range's status as a non-attainment area for Environmental Protection Agency's ozone standards. A 2011 Colorado Department of Public Health study in Garfield County found significantly higher risks of cancer for residents exposed to VOCs living closer to oil and gas wells, with residents living half a mile or less from wells at greatest risk;
- F. Data available on the Colorado Oil and Gas Conservation (COGCC) website shows that spills happen on a daily basis in Colorado with various impacts;

- 1 G. Despite these emerging risks and impacts from hydraulic fracturing and other drilling
2 activities, there has yet been no conclusive and comprehensive study of the
3 environmental and health effects associated with oil and gas exploration using hydraulic
4 fracturing, in part because information about certain aspects and ingredients of this
5 process are not available to the public;
- 6 H. The United States Environmental Protection Agency, studied the potential impacts of
7 hydraulic fracturing on drinking and ground water. The EPA released a report in
8 December 2016. The study concluded that there are data gaps and
9 uncertainties which have limited the study's ability to draw additional conclusions.
10 However, based on this study, hydraulic fracturing can impact – and has impacted –
11 drinking water resources under certain circumstances. The study also states that recent
12 changes have been made in state regulations and practices with the intent of limiting
13 impacts to groundwater and surface water resources from the aboveground disposal of
14 wastewater. The effectiveness of these regulations is not yet known;
- 15 I. The December 2016 EPA study identified over 1,000 chemicals that were reported to
16 have been used in fracking fluids. Between 4 and 28 chemical combinations of that
17 total number were used per well, depending on type of formation, developers'
18 preferences, chemical availability and similar considerations. Because over 1 million
19 gallons of fracking fluid are generally injected per well, thousands of gallons of
20 chemicals can be stored on site and used during fracking operations. Equipment on
21 site is designed to contain fracking fluids, but, the report acknowledges, spills can
22 occur. Changes in groundwater and drinking water quality can occur if spilled fluids
23 reach groundwater or surface water. Spill prevention and response to spills are critical
24 to minimizing impacts. According to EPA's criteria, 173 of the 1,000+ chemicals used
25 in the hydraulic fracturing water cycle had chronic oral toxicity values. One
conclusion of this study is that there are chemicals in the hydraulic fracturing water
cycle which are hazardous to human health and could impact health if sufficient
quantities enter groundwater and drinking water supplies. The study states additional
research is necessary to determine the health effects of the concentration of these
chemicals in groundwater and drinking water;
- J. National Science Foundation funded a \$12 million, five-year study involving various
academic and research institutions, including a study by the University of Colorado to
undertake a quantitative and qualitative assessment of the health risks, both chemical
and non-chemical, associated with water and air exposure related to hydraulic
fracturing, to be completed by September 2018;
- K. The City of Boulder is part of a unique ecosystem, which has been protected and
preserved through careful planning, acquisition of open space and conservation
easements, growth management and environmental responsibility;
- L. The City of Boulder's Open Space and Mountain Parks Department manages over 45,000
acres of open space purchased by public funds for a wide range of important public
values;

- 1 M. The City of Boulder’s open space contributes significantly to Boulder’s quality of life
2 and vibrant economy, the welfare of its residents and to the surrounding environment
and wildlife;
- 3 N. The water table in the City of Boulder is generally very shallow with frequent
4 interchange to numerous creeks and ditches and therefore any contamination reaching the
surface supplies, or the ground water supplies affects the water flowing through the
5 creeks and ditches;
- 6 O. The City of Boulder is part of the Mississippi River watershed which drains most of the
7 continental United States east of the continental divide providing drinking water to
millions of people;
- 8 P. Contamination of water in the Boulder area could have long-term and devastating
health effects on City residents, as well as wildlife and many other Americans;
- 9 Q. The Greater Wattenberg Area, (“GWA”) which encompasses most of Boulder, Weld,
10 Larimer, Adams, Broomfield, and parts of Arapahoe and Douglas counties in Colorado,
has been the focus of recent and increasing oil and gas exploration using hydraulic
11 fracturing and horizontal drilling;
- 12 R. City of Boulder open space lands and a portion of the City of Boulder are in the GWA;
- 13 S. The City of Boulder has Oil and Gas Regulations which Colorado Open Space Board of
14 Trustees adopted in 1993. The regulations control oil and gas exploration on open space
lands. The regulations have not been revised in over 20 years;
- 15 T. Boulder County adopted a moratorium on new applications for development of oil and
16 gas operations in Boulder County in February 2012. The moratorium was extended
several times. In February 2017, the Colorado Attorney General sued Boulder County,
17 claiming the moratorium was an unlawful ban of hydraulic fracturing operations. The
County moratorium expired on May 1, 2017. On May 2, 2017, the lawsuit was
18 dismissed. Boulder County adopted new regulations on March 23, 2017, which the
County considers are the strongest set of regulations on oil and gas development in the
19 State of Colorado;
- 20 U. The Boulder County regulations include City of Boulder open space lands that could be
disturbed and exploited for oil and gas exploration;
- 21 V. The Open Space and Mountain Parks Department currently is engaged in a process to
22 update its oil and gas regulations in light of new facts and the new Boulder County
regulations;
- 23 X. There is substantial legal uncertainty regarding the extent of the power of a Colorado
24 home rule city to regulate or ban oil and gas exploration within its jurisdiction.
Since Boulder’s moratorium was approved by the voters, the Colorado Supreme
25 Court has ruled that local governments lack the authority to ban oil and gas
development within their borders. This was decided in City of Longmont v. Colo.

1 Oil & Gas Ass'n, 369 P.3d 573 (Colo. 2016). Longmont voters passed a ban on
 2 fracking and the storage and disposal of fracking waste within city limits. This ban
 3 was ultimately struck down by the Colorado Supreme Court. In *City of Fort Collins*
 4 *v. Colo. Oil & Gas Ass'n*, 369 P.3d 586 (Colo. 2016), the Colorado Supreme Court
 5 ruled that Fort Collins's five-year moratorium on fracking and the storage of
 fracking waste operationally conflicted with state law because it effectively was a
 prohibition on hydraulic fracturing. The Court struck down Longmont's ban and
 Fort Collin's five-year moratorium on the same day;

6 Y. On March 23, 2017, the Colorado Court of Appeals in *Martinez v. Colorado Oil and Gas*
 7 *Conservation Commission*, held that that language in the Oil and Gas Conservation Act
 8 requiring that oil and gas development be conducted "in a manner consistent" with
 9 protection of public health, safety and welfare, including protection of the environment
 10 and wildlife resources does not permit the commission to balance the need for
 11 development with these protections, but instead is a condition the commission must apply
 prior to approving any development. The Commission has appealed this decision to the
 Colorado Supreme Court, which, on January 29, 2018 agreed to hear the appeal. Briefing
 is underway. Oral argument will occur sometime in 2018. The Colorado Supreme
 Court's decision could affect the nature and extent of any city regulation;

12 Z. On April 17, 2017 a pipeline from a well exploded in Firestone, Colorado, killing two
 13 people and injuring two others. The pipeline ran from a well located only 178 feet from
 the home;

14 AA. On November 16, 2017, one person died after a fire broke out during work on an oil and
 gas pipeline near Galeton, Colorado;

15 BB. On May 8, 2017, a worker was injured when fumes from a storage tank ignited in
 16 Greeley, Colorado;

17 CC. On October 12, 2017, a truck driver was injured in Brighton, Colorado after a fire broke
 18 out at an oil and gas facility;

19 DD. On November 7, 2017 a fire broke out after hydrocarbons spilled at an oil and gas facility
 in Weld County, Colorado. There were no reported injuries;

20 EE. On September 12, 2017, a 300-barrell tank exploded in Garfield County, Colorado,
 21 blowing the tank 150 yards away. There were no reported injuries;

22 FF. On December 22, 2017, a fire and explosion at an oil well site near Windsor in Weld
 23 County. Firefighters responding to the site reported challenges in fighting the fire
 24 because they did not know what chemicals or other substances were burning, and because
 the site is in a field without its own water source, forcing crews to divert water from
 Windsor's municipal water system;

25 GG. The City of Boulder seeks to protect its environment, open space lands, residents and
 public health and safety to the maximum extent allowed by law; and

1 HH. To achieve this goal, the City of Boulder must develop land use regulations to
2 comply with state law and protect the people of Boulder. It will take at least
3 two years for city staff to develop comprehensive regulations and update rules
4 regarding open space.

5 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
6 CITY OF BOULDER, COLORADO:

7 Section 1. The City Council adopts the findings in this ordinance and incorporates
8 them herein by this reference.

9 Section 2. Commencing immediately and continuing until 8 a.m. on June 3, 2020, the city
10 manager and city staff shall neither accept nor process any application for a new oil and gas
11 exploration permit under the Oil and Gas Regulations of the City of Boulder, Colorado Open
12 Space Board of Trustees.

13 Section 3. Commencing immediately and continuing until 8:00 a.m. on June 3, 2020, the
14 city manager and city staff shall neither accept nor process any application for any city permit
15 that results in oil or gas exploration or for any application for use review under Title 9 of the
16 Boulder Revised Code for new "Mining Industries" uses involving oil and gas extraction or
17 exploration.

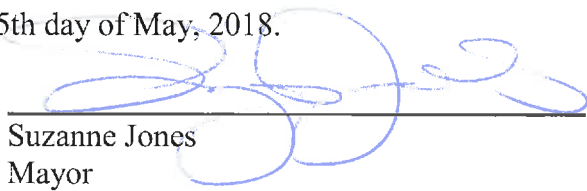
18 Section 4. The City Council directs the city manager to monitor progress of public health
19 impact studies and the COGCC and COGA litigation and to study, develop, evaluate, review and
20 make recommendations to the City Council by May 1, 2020 regarding appropriate regulations,
21 ordinances and fees pertaining to oil and gas exploration.

22 Section 5. The City Council finds that the passage of this ordinance is necessary for the
23 preservation of the public peace, health or property and justify the adoption of this ordinance as
24 an emergency measure. The nature of the urgency for the adoption as an emergency measure is
25

1 described, in part, by the findings of fact set forth in this ordinance. The City Council further
2 finds that time is required to consider an appropriate response to increased horizontal and
3 directional drilling and hydraulic fracturing. Therefore, the City Council orders that this
4 ordinance shall be effective immediately upon its passage.
5

6 Section 6. The city council deems it appropriate that this ordinance be published by title
7 only and orders that copies of this ordinance be made available in the office of the city clerk for
8 public inspection and acquisition.

9 INTRODUCED, READ ON FIRST READING, PASSED, ADOPTED AS AN
10 EMERGENCY MEASURE BY TWO-THIRDS COUNCILMEMBERS PRESENT, AND
11 ORDERED PUBLISHED BY TITLE ONLY this 15th day of May, 2018.

12 
13 _____
14 Suzanne Jones
15 Mayor

16 Attest:

17 
18 _____
19 Lynnette Beck
20 City Clerk
21
22
23
24
25

ORDINANCE 8392

AN ORDINANCE EXTENDING TO DECEMBER 31, 2020, A MORATORIUM IMPOSED BY ORDINANCE 8253 ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR DRILLING PERMITS ON CITY OF BOULDER OPEN SPACE PROPERTIES AND FOR ANY CITY PERMITS OR USE REVIEW OF NEW MINING INDUSTRY USES INVOLVING OIL AND GAS EXTRACTION IN THE CITY OF BOULDER AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO MAKES THE FOLLOWING FINDINGS OF FACT:

- A. In 2013 city council adopted Ordinance 7907, a moratorium to June 3, 2014, on accepting or processing applications for drilling permits on City of Boulder open space properties and for any city permits or use review of new mining industry uses involving oil and gas extraction within the city.
- B. In the 2013 election, City of Boulder electors overwhelmingly approved the extension of the moratorium until June 3, 2018.
- C. City council extended the moratorium in May 2018 with Ordinance 8253, and the date set for expiration of the moratorium is June 3, 2020.
- D. In 2019 the State of Colorado enacted extensive and comprehensive oil and gas regulatory reforms with Senate Bill 19-181, which changed the mandate of the Colorado Oil and Gas Conservation Commission (COGCC) from fostering oil and gas development to regulating oil and gas development “in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment and wildlife resources.”
- E. The City of Boulder seeks to protect its environment, open space lands, residents and public health and safety to the maximum extent allowed by law.
- F. The COGCC is currently preparing, and sequentially sharing with the public for comment, draft regulations that implement SB19-181. That effort will continue through at least mid-2020.
- G. Simultaneously Boulder County is revising its oil and gas regulations to address the greater local government authority created by SB19-181. However, in response to the

1 COVID-19 pandemic, the public meetings currently scheduled for review of Boulder
2 County’s proposed oil and gas regulations by the Boulder County Planning Commission
3 and Board of County Commissioners have been canceled. New dates for the hearing have
4 not been scheduled.

5 H. The City of Boulder and its residents’ interests would best be served by extending the
6 current moratorium through 2020. This extension would allow the City of Boulder to
7 harmonize city regulations with those of Boulder County and the State of Colorado and
8 identify gaps in state and county regulations that City of Boulder regulations could
9 address.

10 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
11 CITY OF BOULDER, COLORADO:

12 Section 1. The city council adopts the findings in this ordinance and incorporates
13 them herein by this reference.

14 Section 2. Commencing immediately upon adoption and continuing until 12:59 p.m. on
15 December 31, 2020, the city manager and city staff shall neither accept nor process any
16 application for a new oil and gas exploration permit under the Oil and Gas Regulations of the
17 City of Boulder, Colorado Open Space Board of Trustees.

18 Section 3. Commencing immediately upon adoption and continuing until 12:59 p.m. on
19 December 31, 2020, the city manager and city staff shall neither accept nor process any
20 application for any city permit that results in oil or gas exploration or for any application for use
21 review under Title 9 of the Boulder Revised Code for new “Mining Industries” uses involving oil
22 and gas extraction or exploration.

23 Section 4. The city council directs the city manager to monitor progress of the COGCC
24 rulemaking and Boulder County’s land use regulations and to study, develop, evaluate, review
25 and make recommendations to the city council by November 30, 2020 regarding appropriate
regulations, ordinances and fees pertaining to oil and gas exploration.



Chris McGowne
Associate Director
API Colorado
720-878-7688
McGowneC@api.org

November 16, 2020

Boulder City Council
1777 Broadway
Boulder, CO 80302

VIA EMAIL

SUBJECT: Ordinance No. 8435

The American Petroleum Institute Colorado (API) is a division of the American Petroleum Institute, which represents all facets of the natural gas and oil industry. Our more than 600 members produce, process, and distribute most of the nation's energy. In our first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability. API Colorado is committed to ensuring a strong, viable industry capable of meeting the energy needs of the state in a safe and environmentally responsible manner. API appreciates the opportunity to comment on Ordinance No. 8435.

As noted in the ordinance, the City of Boulder has a long history of attempting to ban oil and gas development. In 2013, the City Council instituted a moratorium on accepting or processing applications for oil and gas operations. In the 2013 election, Boulder electors approved the extension of the moratorium until June 3, 2018 with Ordinance 8253. In April 2020, City Council extended the moratorium to Dec. 31, 2020 with Ordinance 8392. This new extension would add yet another full year, under Dec. 31, 2021.

API would like to strongly urge the City to reconsider its position on extending its moratorium. API believes that impermissibly chaining together a series of moratoria that are limited in duration is indeed a ban on development within the City's boundaries. As the moratorium will now extend well past 8 years, the moratorium renders the state's statutory and regulatory scheme superfluous. The moratorium materially impedes the effectuation of the state's interest by prohibiting any future efficient and responsible development of oil and gas resources within Boulder.



Chris McGowne
Associate Director
API Colorado
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Further, changes to state law enacted by the Colorado legislature did not alter the City's authority to impose a moratorium of any duration. While local governments have statutory authority to regulate oil and gas development in a reasonable manner, to the extent necessary and reasonable to protect public health, safety, and the environment, this does not include authority to completely prohibit certain activity. Local authority is further defined in SB19-181 with reference to minimizing and mitigating potential impacts of development, not outlawing them completely. Moreover, many environmental statutes, such as the federal Clean Air Act and Colorado's Water Quality Control Act, use terms like "protection," but no court has seriously entertained an argument that they completely prohibit air emissions or discharges to state waters. Because SB19-181 has not changed state law regarding local moratoria, it cannot be the basis for further extending an already unlawful moratorium.

API would like to point out that Colorado's oil and gas operators have continued to negotiate in good faith with state regulators and impacted local communities in order find real solutions to complex issues, and the result of those good faith efforts are evident throughout Colorado.

As the Council considers this extension, we strongly urge you to reject this proposal. While it is certainly the case that City's authority to regulate operations has expanded due to recent legislative developments, API would like to note that the authority granted under SB19-181 does not extend to indefinite moratoriums on development.

If you have any questions, please do not hesitate to contact me at (720) 878-7688, or mcgownec@api.org.

Sincerely,

Chris McGowne
Associate Director
Colorado Petroleum Council