

ORDINANCE NO. 21, Series 2013
INTRODUCED BY: SOUCNILOR STACI LUPBERGER

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,
COLORADO, PROVIDING FOR A 36-MONTH MORATORIUM ON THE
SUBMISSION, ACCEPTANCE, AND PROCESSING OF ANY LAND USE
APPLICATIONS, INCLUDING SPECIAL USE REVIEW APPROVAL, AND UPON
THE APPROVAL OF ANY PENDING LAND USE, INCLUDING SPECIAL USE
REVIEW APPLICATIONS, RELATED TO THE USE OF PROPERTY WITHIN THE
CITY FOR EXPLORATION OR EXTRACTION OF OIL AND GASEOUS MATERIALS
OR RELATED ACTIVITIES**

WHEREAS, the Lafayette City Council recognizes the importance of the mining industry to Lafayette community, but believes it important to minimize adverse impacts of any industry on the health, safety and welfare of the City and its citizens through zoning, the exercise of police power, and land use regulations; and

WHEREAS, the City of Lafayette is located on the fringe areas of a geologic formation known as the Wattenberg Field, which has been the center of considerable activity relating to the extraction of oil and gas resources; and

WHEREAS, technical advances within the oil and gas industry, coupled with market conditions, have resulted in significant increases in activities related to exploration and extraction of oil and gas in the Wattenberg Field area; and

WHEREAS, oil and gaseous material exploration, extraction, and related operations and activities, may negatively impact Lafayette's citizens, the use and integrity of water supplies, and water infrastructure, air quality, roads, and transportation infrastructure, wastewater infrastructure, land resources, wildlife and aesthetic values; and

WHEREAS, the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities present potential health, safety and welfare issues, which may be inadequately addressed in the City's zoning and land use regulations; and

WHEREAS, the present regulations of the City of Lafayette that relate to oil and gaseous material exploration, extraction, and related operations and activities in the City need to be evaluated and possibly updated with respect to current regulatory best management practices, consistent with the Oil and Gas Conservation Commission Rules, and also brought up to date with respect to the current technologies of the oil and gaseous material exploration and extraction industry, in order to preserve and protect the public health, safety and welfare of the citizens, and key resources of the City; and

WHEREAS, the health and safety issues presented by the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities have not been adequately explored and it is imperative that those issues be studied by the City, particularly as they relate to the potential

for deleterious health and safety effects that may be caused by hydraulic fracturing, to determine whether existing state and local regulations are sufficient to protect the public health, safety, and welfare, or whether different or additional regulations are necessary to address the impacts of such activities; and

WHEREAS, the City Council anticipates that the Colorado Department of Public Health and Environment will be undertaking a comprehensive study of the impacts of oil and gas exploration and its production on human health that will likely take at least five years to complete, and the State legislature may also be undertaking its own multi-year study of such impacts; and

WHEREAS, the outdated aspect of the City's land use regulations for oil and gaseous material exploration, extraction, and related operations and activities, illustrates the need for a comprehensive study of the impacts of oil and gaseous material exploration, extraction and related operations and activities, to determine whether the existing zoning and land use regulations pertaining thereto are sufficient to protect the public's health, safety and welfare, or whether additional regulations are necessary to address the impacts of oil and gaseous material exploration, extraction and related operations and activities; and

WHEREAS, City Council has directed the City staff to undertake such a study and to recommend amendments to the City's land use regulations, if necessary, pertaining to impacts of oil and gaseous material exploration, extraction, and related operations and activities; and

WHEREAS, local governments throughout Colorado are struggling to address the potential adverse impacts of proliferating Oil and Gas Uses in urban and suburban environments on their citizens' health, safety, and welfare, and several local governments have enacted moratoria to allow a period of time to evaluate those impacts of Oil and Gas Uses in order to assess and determine the appropriate local regulation of such; and

WHEREAS, Boulder County, which has jurisdiction over land use matters in unincorporated areas adjacent to Lafayette, recently extended a six-month moratorium on oil and gas development by an additional 18 months citing many of the same concerns and issues that will impact Lafayette. Boulder County Resolution No. 2013-55, adopted by the Boulder County Board of Commissioners on June 18, 2013, is referenced herein; and

WHEREAS, there remains uncertainty as to legal authority of the extent to which local governments may regulate oil and gas development activities, with judicial guidance on such legal authority likely to be clarified in pending litigation in the Boulder County District Court between the City of Longmont, the State of Colorado, and other interested parties. Lafayette anticipates that such judicial guidance will be forthcoming within 36 months; and

WHEREAS, if land use applications, permit applications, and other applications requesting approval to conduct oil and gaseous material exploration, extraction, and related operations and a

ctivities, within the City are submitted, or acted upon, prior to the City examining the impact of such activities, and taking all steps to protect the public's health, safety and welfare, irreparable harm may be done to the public's health, safety and welfare; and

WHEREAS, the imposition of a 36-month moratorium on the submission, acceptance, processing and approval of all land use applications, including special use review approval pursuant to Chapter 26 of the Lafayette Code of Ordinances, relating to the use of real property for exploration and extraction of oil and gaseous materials and related activities is reasonable and necessary, will allow staff and the Council to investigate the necessity and ability of the City to regulate the secondary impacts upon the City and its citizens by reason of oil and gas extraction exploration and operations, and to develop and implement any appropriate regulations deemed necessary by Council; and

WHEREAS, City Council has determined that a 36-month moratorium is a reasonable period of time and is no longer than necessary for the City to gather additional information regarding the health and safety impacts of oil and gas exploration and production activities, including hydraulic fracturing, and to determine the extent to which Oil and Gas Uses may be locally regulated, and to properly investigate, develop, and, if appropriate, adopt and implement any local regulations related to Oil and Gas Uses in Lafayette in order to protect and preserve the public's health, safety and welfare; and

WHEREAS, owners of mineral rights will not be unfairly prejudiced by the imposition of the short, temporary moratorium imposed by this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:

Section 1. The preceding recitals contained in the ordinance are hereby adopted and incorporated by referenced and findings of fact by the City Council.

Section 2. A moratorium is imposed upon the submission, acceptance, processing, and approval by the City of Lafayette of all land use applications, including all special use review application approvals pursuant to Chapter 26 of the Lafayette Code of Ordinances, and including pending applications and applications to expand the scope of existing special use review approvals related to the use of real property within the City for the exploration or extraction, and related operations and activities, of oil and gaseous materials. The City staff is directed to refuse to accept for filing, and not to process or review or approve, any such new or pending applications during the moratorium period.

Section 3. The moratorium imposed by this ordinance shall commence as of the date of the effective date of this ordinance, and shall expire on August 20, 2016, unless sooner repealed.

Section 4. The moratorium herein provided for shall not impact the lawful use of property for existing oil and gaseous material exploration or extraction operations, so long as such operations are confined to the limits, provisions, and conditions of their respective existing City approvals.

Section 5. Before the expiration of the moratorium imposed by this ordinance, the City staff, working with the City Attorney, shall review the City's current regulations pertaining to the exploration and extraction, and related operations and activities, of oil and gaseous materials. Such review shall be completed promptly and with due diligence. If directed to do so by the Council, the City Attorney and City staff shall prepare appropriate new, or amended, regulations with respect to such use for consideration by the City Council.

Section 6. City Council shall have the power to grant a special exception to the prohibition in Section 2 of this ordinance and to order acceptance and the processing of land use applications if the following conditions are met to the sole satisfaction of the Council:

A. A written application for the special exception must be submitted, indicating the purpose of the building permit, or site development application sought to be obtained, and stating with particularity the circumstances of the undue, substantial hardship which the applicant will suffer if the special exception is not granted.

B. Within 60 days, the City Council shall hold a public hearing on the application. Notice shall be given at least 10 days in advance of the public hearing. The owner of the property and applicant, or agent, shall be notified by mail. Notice of such hearing shall be posted on the property and shall be published in a newspaper with general circulation within the City of Lafayette at least 10 days prior to the public hearing.

C. The City Council may grant the special exception if it finds all of the following:

- i. The acceptance and processing of an application for the permit or processing of the application is necessary to prevent undue, substantial hardship upon the applicant; and
- ii. That the acceptance and processing of such application will not adversely affect the public interest or the purposes and reasons of and for this moratorium; and
- iii. That the acceptance and processing of such application will be in accordance with all of the ordinances and regulations.

Section 7. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 8. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 9. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 10. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 11. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 6TH DAY OF AUGUST, 2013.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 20TH DAY OF AUGUST 2013.

CITY OF LAFAYETTE, COLORADO

Carolyn D. Cutler, Mayor

ATTEST:

APPROVED AS TO FORM:

Susan Koster, CMC
City Clerk

David S. Williamson, City
Attorney