

ORDINANCE NO. 04, Series 2019  
INTRODUCED BY:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, PROVIDING FOR A 3-MONTH EXTENSION OF THE MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING AND APPROVAL OF ANY LAND USE APPLICATIONS, INCLUDING SPECIAL USE REVIEW APPROVAL, FOR OIL AND GAS OPERATIONS**

WHEREAS, on November 6, 2017, the City Council of the City of Lafayette passed Ordinance No. 43, Series 2017, imposing a 6-month moratorium on the submission, acceptance, processing and approval of any and all land use applications related to the use of property within the City for the exploration or extraction, and related operations and activities, of oil and gaseous materials (the “Moratorium”); and

WHEREAS, by Ordinance No. 15, Series 2018, enacted on May 1, 2018, and Ordinance No. 26, Series 2018, enacted on August 21, 2018, the moratorium was extended until February 20, 2019; and

WHEREAS, since the enactment of Ordinance No. 43, Series 2017, Lafayette has engaged special legal counsel to assist the City’s staff in preparing proposed regulations to address the use of land in Lafayette for the exploration and extraction of oil and gaseous materials; and

WHEREAS, the City of Lafayette, through its staff and special legal counsel, has been directly involved and participated in rule making proceedings before the Colorado Oil and Gas Conservation Commission (“COGCC”) pertaining to certain activities associated with the exploration and extraction of oil and gaseous materials, resulting in certain rules adopted at the state level pertaining to the design, installation, maintenance, testing, tracking and abandoning of flowlines associated with oil and gas activities; and

WHEREAS, the City of Lafayette, through its staff and special legal counsel, continue to directly and actively be involved and participate in rulemaking proceedings before the COGCC pertaining to the other activities associated with the exploration and extraction of oil and gaseous materials, such as setbacks and operational matters that will impact the health and safety of the general public; and

WHEREAS, as a result of the November 2018 statewide general election, the political make-up of the general assembly, as well as the executive branch, was altered and it is anticipated that legislative changes affecting oil and gas extraction regulations at the state level, as well as the authority to regulate on the local level, will be forthcoming in the 2019 legislative session; and

WHEREAS, on January 14, 2019, the Colorado Supreme Court issued an opinion in the case of COGCC v. Martinez, which address the criteria to be considered by the COGCC in its rulemaking capacity. While the opinion did not alter the decision of the COGCC to reject a specific rule, it did indicate that the governing statute was ambiguous. Thus the opinion increase the odds that the General Assembly will address the ambiguity this year; and

WHEREAS, the City staff, along with special legal counsel, and in conjunction with Boulder County's staff, have prepared a proposed an initial draft of comprehensive oil and gas land use regulations for presentation to City Council to consider; and

WHEREAS, the outcome of the COGCC rulemaking proceedings, the Supreme Court decision in COGCC v. Martinez, and the anticipated legislation in the 2019 state General Assembly session will impact the timing and final preparation of Lafayette's proposed new land use regulations pertaining to oil and gas operations; and

WHEREAS, as Lafayette's special legal counsel recently left the private practice of law to join the staff of Governor Polis and it will be necessary to secure new special legal counsel to advise City Council on the proposed regulations; and

WHEREAS, based upon the current schedule, City Council anticipates that it will now be in a position to consider an ordinance enacting revised land use regulations pertaining to oil and gas activities at or near the conclusion of the 2019 state General Assembly session; and

WHEREAS, in the absence of a moratorium, the submission of applications for land use approvals for the exploration and extraction, and related operations and activities, of oil and gaseous materials in the City in anticipation of the enactment of the proposed regulations, will defeat the purpose of the proposed regulations; and

WHEREAS, City Council believes that maintaining the existing moratorium is necessary until such time as Council has had an opportunity to carefully consider, and potentially enact, new land use regulations that are intended to protect the City and its citizens from the negative impacts of oil and gas exploration and extraction; and

WHEREAS, in order to protect and preserve the public's health, safety and welfare, City Council wishes to extend the existing moratorium; and

WHEREAS, an extension of approximately three months is deemed to be the minimum period of time necessary to allow for complete consideration of the proposed regulations by City Council, the public, and the stakeholders; and

WHEREAS, owners and developers of real property in the City will not be unfairly prejudiced by a 3-month extension of the Moratorium.

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

Section 1. The foregoing recitals are incorporated herein and made a part of this ordinance.

Section 2. Ordinance No. 43, Series 2017, as amended by Ordinance No. 15, Series 2018, and Ordinance No. 26, Series 2018, is re-enacted in its entirety as further amended below.

ORDINANCE NO. 04, SERIES 2019  
EXTENSION OF EXISTING MORATORIUM (RE LAND USE APPLICATIONS RELATED TO OIL AND GAS ACTIVITIES)

Section 3. The Moratorium imposed by Ordinance No. 43, Series 2017, and extended by Ordinance No. 15, Series 2018, and Ordinance No. 26, Series 2018, which was to expire on February 20, 2019, shall be extended until May 31, 2019, unless terminated earlier by City Council.

Section 4. During the pendency of the Moratorium, as extended, the City Council shall retain the power to grant special exceptions as provided for in Section 6 of Ordinance 43, Series 2017.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 6. 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 7. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 8. This ordinance shall become effective upon the latter of the 10<sup>th</sup> day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 15th DAY OF JANUARY, 2019.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED  
THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

CITY OF LAFAYETTE, COLORADO

\_\_\_\_\_  
Christine Berg, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Susan Koster, CMC  
City Clerk

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David S. Williamson  
City Attorney