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ORDINANCE NO. 7915

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE QUESTION OF EXTENDING ORDINANCE NO. 7907, THE MORATORIUM ON ACCEPTING AND PROCESSING APPLICATIONS FOR DRILLING PERMITS ON CITY OF BOULDER OPEN SPACE PROPERTIES AND ON 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.

WHEREAS the City Council finds that:

- A. On June 4, 2013, the City Council adopted Ordinance No. 7907 an emergency ordinance imposing a moratorium until June 3, 2014, on 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;
- B. Ordinance No. 7907, recited numerous unresolved scientific and legal issues regarding the effects of oil and gas exploration, including directional or horizontal drilling and hydraulic fracturing, on public peace, health and property and the legal authority of a home rule city, such as Boulder, to protect the health and safety of its environment and citizens from dangers associated with those processes using its land use and police powers;
- C. Several important scientific studies, including a study by the University of Colorado, are currently underway regarding the public health and safety effects of oil and gas exploration;
- D. It may require 3 to 5 years before completion of those studies provides sufficient analysis of the public health and safety effects of oil and gas exploration;
- E. It may also require 3 to 5 years to resolve pending litigation involving the legal authority of Colorado home rule cities to regulate oil and gas exploration; and
- F. It is both useful and compelling to have a vote of the people on such matters of new and controversial public policy, having the potential to affect the public peace, health and property.

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

3 Section 1. A general municipal coordinated election will be held in the City of  
4 Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2013,  
5 between the hours of 7 a.m. and 7 p.m.  
6

7 Section 2. At that election, there shall be submitted to the electors of the City of  
8 Boulder entitled by law to vote the question of extending the oil and gas exploration  
9 moratorium of Ordinance No. 7907 as stated below.  
10

11 Section 3. The official ballot shall contain the following ballot title, which shall  
12 also be the designation and submission clause for the question:

13 Ballot Question NO. 2H

14 **Oil and Gas Exploration Moratorium Extension**

15 Shall Ordinance No. 7907 be amended to extend the current  
16 moratorium on new oil and gas exploration until June 3,  
17 2018 and to set legal standards and the council voting  
18 requirements for lifting the moratorium amended pursuant to  
19 Ordinance No. 7915?

20 FOR THE MEASURE \_\_\_\_\_ AGAINST THE MEASURE \_\_\_\_\_

21 Section 4. If a majority of all the votes cast at the election on the question  
22 submitted shall be for the question, the question shall be deemed to have passed and shall  
23 be effective upon passage, and sections 2 and 3 of Ordinance 7907 shall be amended to  
24 read as follows:

25 Section 2. Commencing immediately and continuing until 8 a.m. on June 3,-2014  
26 2018, the city manager and city staff shall neither accept nor process any  
27 application for a new oil and gas exploration permit under the Oil and Gas  
28 Regulations of the City of Boulder, Colorado Open Space Board of Trustees

1 unless the City Council, after June 3, 2016, by a two-thirds majority vote of the  
2 council members present, finds, by ordinance, that credible scientific studies of  
3 the public health and safety effects of oil and gas exploration and development, or  
4 settled legal authority support or require earlier acceptance and processing of such  
5 applications.

6  
7 Section 3. Commencing immediately and continuing until 8 a.m. on June 3, 2014  
8 2018, the city manager and city staff shall neither accept nor process any  
9 application for any city permit that results in oil or gas exploration or for any  
10 application for use review under Title 9 of the Boulder Revised Code for new  
11 “Mining Industries” uses involving oil and gas extraction or exploration unless  
12 the City Council, after June 3, 2016, by a two-thirds majority vote of the council  
13 members present, finds, by ordinance, that credible scientific studies of the public  
14 health and safety effects of oil and gas exploration and development, or settled  
15 legal authority support or require earlier acceptance and processing of such  
16 applications.

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19 Section 5. The election shall be conducted under the provisions of the Colorado  
20 Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981 and  
21 this ordinance, and all contrary provisions of the statutes of the State of Colorado are  
22 hereby superseded.

23  
24 Section 6. The officers of the City are authorized to take all action necessary or  
25 appropriate to effectuate the provisions of this ordinance and to contract with the county  
26 clerk to conduct the election for the City.  
27  
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**CITY OF BOULDER BALLOT QUESTION 2H**  
**[Oil and Gas Exploration Moratorium Extension]**  
FOR THE MEASURE  
AGAINST THE MEASURE

	Votes	Percent
	21,140	77.65%
	6,084	22.35%
Total Votes:	27,224	

## ORDINANCE NO. \_\_\_\_\_

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 large volumes of water, sand and chemicals into wells to access and produce oil and gas deposits that previously had been considered inaccessible;
- C. Hydraulic fracturing may have significant effects on the environment and public health although 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;
- D. 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;
- E. 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;
- F. The National Science Foundation has funded a \$12 million 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 2018;
- G. The City of Boulder is part of a unique ecosystem, which has been protected and preserved through careful planning, growth management and environmental responsibility;

- H. The City of Boulder's Open Space and Mountain Parks Department manages over 45,000 acres of open space;
- I. The City of Boulder's open space contributes significantly to the welfare of its residents and to the surrounding environment and wildlife;
- J. 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;
- K. 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;
- L. 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;
- M. 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;
- N. City of Boulder open space lands and a portion of the City of Boulder are in the GWA;
- O. 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;
- P. 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;
- Q. The Boulder County moratorium includes City of Boulder open space lands that could be disturbed and exploited for oil and gas exploration;
- R. The Open Space and Mountain Parks Department currently is engaged in a process to update its oil and gas regulations;
- S. 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;
- T. On July 17, 2012, the City of Longmont adopted oil and gas regulations to protect its citizens' health and safety;
- U. 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;

- V. On November 6, 2012, the people of the City of Longmont passed a ballot measure banning hydraulic fracturing in the City of Longmont;
- W. 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;
- X. The complaints brought by the COGCC and COGA are both pending before the Boulder County District Court;
- Y. The final resolution of these two lawsuits will provide necessary 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;
- Z. The City of Boulder seeks to protect its environment and residents to the maximum extent allowed by law; and
- AA. To achieve this goal, the City of Boulder must wait until 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 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:

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City Clerk