

ORDINANCE NO. 09-2012

AN ORDINANCE OF THE TOWN OF ERIE, COLORADO IMPOSING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND APPROVAL OF ANY LAND USE APPLICATIONS, INCLUDING SPECIAL REVIEW USE APPLICATIONS AND SITE PLAN APPLICATIONS, RELATED TO MINING AND MINERAL EXTRACTION; DIRECTING THE TOWN TO PURSUE COMPLETION OF AN AGREEMENT WITH OIL AND GAS OPERATORS WITHIN THE TOWN REGARDING A PLAN AND TECHNOLOGIES TO REDUCE AIRBORNE VOLATILE ORGANIC COMPOUNDS RELATED TO MINING AND MINERAL EXTRACTION IN A QUANTIFIABLE AND VERIFIABLE MANNER; DIRECTING THE PROMPT INVESTIGATION OF THE TOWN'S UNIFIED DEVELOPMENT CODE AS IT RELATES TO REGULATION OF MINING AND MINERAL EXTRACTION; DECLARING THE INTENTION OF THE TOWN BOARD OF TRUSTEES TO CONSIDER APPROPRIATE REVISION OF THE UNIFIED DEVELOPMENT CODE AS IT RELATES TO REGULATION OF MINING AND MINERAL EXTRACTION; AND, DECLARING AN EMERGENCY THEREFORE.

WHEREAS, the Board of Trustees of the Town of Erie, Colorado believes it is important to understand, minimize and regulate the impacts of the mining and mineral extraction industry on the health, safety, and welfare of the Town and its citizens, and that such regulation may be achieved through zoning, the exercise of police power, land use regulations, and voluntary agreements; and,

WHEREAS, there has been considerable concern regarding the health aspects, water quality and air quality impacts of extraction of liquid and gaseous hydrocarbon resources and related activities within and surrounding the Town; and,

WHEREAS, the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities presents health, safety, and welfare issues which may be addressed, minimized and regulated by a voluntary agreement entered into by and between the Town and the oil and gas operators carrying on operations within and surrounding the Town, which agreement shall address a plan and technologies to reduce airborne volatile organic compounds related to mining and mineral extraction in a quantifiable and verifiable manner; and,

WHEREAS, the Town is desirous of reaching an agreement with the oil and gas operators carrying on operations within and surrounding the Town in a prompt and timely manner so as to address a plan and technologies to reduce airborne volatile organic compounds related to mining and mineral extraction in a quantifiable and verifiable manner, protect the public health, safety and welfare and allow continued mining and mineral extraction within the Town in a safe manner in conformance with such agreement; and,

WHEREAS, the present regulations of the Town which relate to mining and mineral extraction and related operations and activities in the Town may need to be revised with respect to current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules, and also be brought up to date with the current technologies of the oil and gas exploration and extraction industry, in order to preserve and protect the public health, safety, and welfare of the citizens and key resources of the Town; and,

WHEREAS, the Unified Development Code (“UDC”) as set forth in the Town of Erie Municipal Code (“Code”) sets forth the general purpose of the Town's zoning and land use regulations as follows: "This title has as its general purpose the promotion of the health, safety, and general welfare of the town of Erie;" and,

WHEREAS, current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules, and current technologies of the oil and gas exploration and extraction industry require that the Town’s land use regulations for mining and mineral extraction, oil and gas exploration, and related operations and activities be reviewed to determine whether the existing zoning and land use regulations pertaining to mining and mineral extraction, oil and gas exploration, and related operations and activities are sufficient to protect the public health, safety, and welfare, or whether additional regulations are necessary to protect the public health, safety and welfare; and,

WHEREAS, if land use applications, special use review applications, site review applications, or any other applications requesting approval to conduct mining and mineral extraction, oil and gas exploration, related operations and activities within the Town limits are submitted prior to the Town entering into agreement with the oil and gas operators carrying on operations within and surrounding the Town addressing a plan and technologies to reduce airborne volatile organic compounds related to mining and mineral extraction in a quantifiable and verifiable manner, irreparable harm may be done to the public health, safety, and welfare; and,

WHEREAS, if land use applications, special use review applications, site review applications, or any other applications requesting approval to conduct mining and mineral extraction, oil and gas exploration, related operations and activities within the Town limits are submitted prior to the Town examining the impact of such activities and taking all steps necessary to protect public health, safety, and welfare, irreparable harm may be done to the public health, safety, and welfare; and,

WHEREAS, it is the Board of Trustees’ belief, based upon information provided by the Community Development Department and Town staff, that mining and mineral extraction, oil and gas exploration, or related operations and activities may seek approval to commence such activities on property within the Town limits within the next one hundred eighty (180) days; and,

WHEREAS, in light of the potential imminent request to begin mining and mineral extraction, oil and gas exploration, and related operations and activities within the Town limits prior to the Town’s ability to voluntarily enter into an agreement by and between the Town and the oil and gas operators carrying on operations within and surrounding the Town to address,

minimize and regulate the impacts of the mining and mineral extraction industry on the health, safety, and welfare of the Town and its citizens, and prior to the Town's ability to review and revise the present regulations of the Town which relate to mining and mineral extraction and related operations and activities in the Town as related herein above; and,

WHEREAS, to address this situation, this Board of Trustees finds and determines that a one hundred eighty (180) day moratorium on the acceptance, processing and approval of any land use application, special use review applications, site review applications, or any other application requesting approval to conduct mining and mineral extraction, oil and gas exploration, and related operations and activities within the Town limits is necessary and reasonable for the purpose of allowing the Town to: 1) reach an agreement with the oil and gas operators carrying on operations within and surrounding the Town in a prompt and timely manner so as to both protect the public health, safety and welfare and to allow continued mining and mineral extraction within the Town in a safe and healthy manner, and 2) study the current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules and the current technologies of the oil and gas exploration and extraction industry to determine whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare; and,

WHEREAS, the Board of Trustees of the Town of Erie, Colorado, wishes to impose such a temporary one hundred eighty (180) day moratorium on the acceptance, processing and approval of any land use application, special use review applications, site review applications, or any other application requesting approval to conduct mining and mineral extraction, oil and gas exploration, and related operations and activities within the Town limits; and,

WHEREAS, the imposition of such a moratorium is required for the immediate preservation of public property, health, welfare, peace, safety, and the financial well being of the Town; and,

WHEREAS, the Board of Trustees has determined that it is in the best interest of the citizens of the Town to impose such a moratorium as set forth herein below.

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. Imposition of Temporary Moratorium on the Acceptance of Land Use Applications Related to Mining and Mineral Extraction. Upon the adoption of this ordinance a moratorium is imposed upon the acceptance, processing, and approval of any and all land use applications, special use review applications, site review applications, or any other application requesting approval to conduct mining and mineral extraction, oil and gas exploration, and related operations and activities within the Town limits. The Town staff and the Town of Erie Planning Commission are directed to refuse to accept for filing, and not to process or review, any such new applications during the moratorium period.

Section 2. Effective Dates of Moratorium. The moratorium imposed by this ordinance shall commence as of the date of the adoption of this ordinance, and shall expire one

hundred eighty (180) days thereafter, at the end of the day on _____, 2012, unless sooner repealed, and the period of effectiveness of this Ordinance is referred to herein as the “Effective Period”.

Section 3. Staff To Pursue Agreements. Before the expiration of the moratorium imposed by this ordinance the Town staff, working with the Town Attorney, shall pursue agreements with the oil and gas operators carrying on operations within and surrounding the Town in a prompt and timely manner so as to address a plan and technologies to reduce airborne volatile organic compounds related to mining and mineral extraction in a quantifiable and verifiable manner, protect the public health, safety and welfare and allow continued mining and mineral extraction within the Town in a safe and healthy manner in conformance with such agreement with such agreement to be completed promptly and with due diligence.

Section 4. Staff To Investigate UDC and Regulations. Before the expiration of the moratorium imposed by this ordinance the Town staff shall study the current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules and the current technologies of the oil and gas exploration and extraction industry to determine whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare. Such investigation shall be completed promptly and with due diligence. If directed to do so by the Board of Trustees, the Town Attorney shall prepare appropriate new regulations for consideration by the Board of Trustees.

Section 5. Police Power Finding. The Board of Trustees hereby finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Erie and the inhabitants thereof.

Section 6. Authority. The Board of Trustees hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); and, (v) Section 31-15-501 (concerning municipal power to regulate businesses).

Section 7. Reason for Emergency. The Board of Trustees of the Town of Erie hereby finds, determines, and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public property, health, welfare, peace or safety. The adoption of this ordinance on an emergency basis is necessary in order to prevent a person from filing land use applications, special use review applications, site review applications, or any other application requesting approval to conduct mining and mineral extraction, oil and gas exploration, and related operations and activities within the Town limits until the Town has had a reasonable opportunity to: 1) reach an agreement with the oil and gas operators carrying on operations within and surrounding the Town in a prompt and timely manner so as to both protect the public health, safety and welfare and to allow continued mining and mineral extraction within the Town in a safe manner, and 2) study the current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules and the current

technologies of the oil and gas exploration and extraction industry to determine whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare. Failure to immediately impose the moratorium provided for in this ordinance will potentially allow a person to submit land use applications, special use review applications, site review applications, or any other application requesting approval to conduct mining and mineral extraction, oil and gas exploration, and related operations and activities within the Town limits, and to possibly acquire certain rights with respect to the processing of such applications before the Town has the reasonable opportunity to: 1) reach an agreement with the oil and gas operators carrying on operations within and surrounding the Town in a prompt and timely manner so as to both protect the public health, safety and welfare and to allow continued mining and mineral extraction within the Town in a safe manner, and 2) study the current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission Rules and the current technologies of the oil and gas exploration and extraction industry to determine whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare, thus defeating the goal of the Board of Trustees to fully protect and preserve the public health, safety, and welfare. The Board of Trustees further determines that the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the Town of Erie.

Section 8. Emergency declared. For the reason stated herein, the Board of Trustees for the Town of Erie, Colorado hereby declares an emergency to exist concerning the subject matter of this Ordinance and its immediate effect is necessary in order to preserve public property, health, welfare, peace, safety, and the financial well being of the Town.

Section 9. Severance Clause. If an 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 Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 10. Immediate Effect. The Board of Trustees of the Town of Erie finds and concludes that this Ordinance is necessary for the immediate preservation of the health, safety, and welfare of the citizens of the Town of Erie to protect the citizens of the Town of Erie and, therefore, this Ordinance shall be effective immediately upon its approval by the Board of Trustees.

Section 11. Repeal. All other ordinances or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 12. Effective Date. The within Emergency Ordinance shall take effect immediately upon adoption.

**INTRODUCED, READ, APPROVED AS AN EMERGENCY ORDINANCE,
ADOPTED, AND ORDER PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF
THE TOWN OF ERIE THIS _____ DAY OF MARCH, 2012.**

PUBLISHED IN FULL ON THE _____ DAY OF MARCH, 2012.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Joseph A. Wilson, Mayor

ATTEST:

By: _____
Nancy J. Parker, CMC, Town Clerk