

**TOWN OF SUPERIOR
ORDINANCE NO. 0-7
SERIES 2019**

**AN EMERGENCY ORDINANCE OF THE BOARD OF TRUSTEES OF THE
TOWN OF SUPERIOR EXTENDING THE TEMPORARY MORATORIUM ON
THE ACCEPTANCE, PROCESSING, AND APPROVAL OF LAND USE
APPLICATIONS RELATED TO OIL AND GAS EXPLORATION,
EXTRACTION, AND RELATED OPERATIONS**

WHEREAS, in October 2018, the Town received notification from the Colorado Oil and Gas Conservation Commission (the "COGCC") concerning an application to authorize and install an oil and gas extraction facility within Town limits;

WHEREAS, though that application was withdrawn, considerable concern has been voiced in the community regarding the impacts of oil and gas activities on the public health, safety and welfare;

WHEREAS, oil and gas exploration, extraction, and related activities present health and safety issues that may be addressed, minimized or otherwise regulated by the exercise of police power through municipal land use authority;

WHEREAS, currently, the Superior Municipal Code (the "Code") does not adequately address the health, safety and other potential impacts of oil and gas activities in the Town;

WHEREAS, pursuant to Code § 16-1-10(a), the purpose of the Town's land use code is to "ensure the orderly, efficient and integrated development of the Town in a way that promotes the public health, safety and general welfare, and that is compatible and protective of the natural environment";

WHEREAS, On April 16, 2019, Governor Polis signed into law S.B.19-181, also known as "Protect Public Welfare Oil and Gas Operations," which prioritizes the protection of public safety, health, welfare, and the environment in regulation of the oil and gas industry by modifying the Oil and Gas Conservation Act, C.R.S. §§ 34-60-101, et seq., the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101, et seq., and other relevant statutes. The bill granted additional authority to local governments to regulate oil and gas development, and specifically clarified that local governments have land use authority to minimize adverse impacts to public safety, health, welfare, and the environment and to regulate land use and surface impacts, including the ability to: regulate the siting

of oil and gas locations; regulate noise, odor and vibration from oil and gas facilities; inspect oil and gas facilities; impose fines for leaks, spills, and emissions; and impose fees on operators or owners to cover the reasonably foreseeable, direct and indirect costs of permitting and regulating, monitoring and inspection programs, and enforcing local governmental requirements;

WHEREAS, the COGCC recently announced its intention to conduct rulemaking to implement S.B. 19-181 in order to: 1) establish how COGCC permitting interacts with local government permitting of proposed oil and gas development, 2) establish a "technical review board" that will give oil and gas technical advice to local governments, and 3) develop criteria for how to conduct an "alternative location analysis" to identify locations that are farther away from homes, water supplies, and other sensitive areas;

WHEREAS, the Board of Trustees wishes to utilize its enhanced regulatory authority pertaining to oil and gas activities in order to protect the public health, safety and welfare of the residents of the Town;

WHEREAS, the Board of Trustees need time to study and better understand the extent of its oil and gas authority and how its efforts could complement the new COGCC rules that are expected to be adopted in December;

WHEREAS, the acceptance, processing or approval of land use applications, or any other application or request providing for the establishment or operation of oil and gas facilities prior to the completion of the study of the new authority or the conclusion of the COGCC rulemaking, poses a current and immediate threat to the public health, safety and welfare, and a temporary moratorium on the issuance of such permits, licenses and entitlements is necessary;

WHEREAS, the Board of Trustees hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; Part 3 of Article 23 of Title 31 (municipal zoning powers); C.R.S. § 31-15-103 (municipal police powers); C.R.S. § 31-15-401(municipal police powers); and C.R.S. § 31-15-501 (municipal power to regulate businesses); and C.R.S. § 34-60-106 (oil and gas operators must receive local government approval for drilling permit); and C.R.S. § 34-60-131 (local government power to exceed state oil and gas regulations); and

WHEREAS, for the protection of the public health, safety and general welfare, the Board of Trustees desires to adopt this moratorium to maintain the *status quo* and to provide time for the COGCC to adopt its new regulations, for the Town Manager, Town Attorney and staff to study applicable law and regulations, a permitting procedure, the appropriate zoning and land use regulation for such uses, and to recommend adoption of regulatory standards and conditions to be imposed on such operations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SUPERIOR, COLORADO, THAT:

Section 1. Extension of Temporary Moratorium. The Board of Trustees hereby extends the temporary moratorium on the acceptance, processing, and approval of any and all land use applications and any other requests for approval to conduct oil and gas exploration, extraction or development within the Town limits (the "Moratorium").

Section 2. Definition. For purposes of this Ordinance, "oil and gas exploration, extraction, or development" shall mean and include the use of any equipment, facilities, or infrastructure designed or intended to assist in locating or developing oil and gas resources.

Section 3. Term. The Moratorium imposed by this Ordinance shall continue through April 13, 2020, unless sooner repealed. The provisions of this Ordinance are temporary in nature and are intended to be removed in totality or replaced by subsequent legislative enactment. This Ordinance may be extended by action of the Board of Trustees if the Board of Trustees finds that such an extension is necessary for the preparation and implementation of legislative enactments, and that such extension is in the best interest of the public health, safety and welfare.

Section 4. Emergency. The Board of Trustees hereby finds, determines, and declares that an emergency exists and that this Ordinance is necessary for the immediate preservation of the public health, safety and welfare, because the Town must have a reasonable opportunity to: (1) study new regulatory authority granted to local governments pursuant to S.B. 19-181; (2) study the regulatory practices of other municipalities concerning oil and gas activities; (3) allow for the development and state regulations that will directly affect how local governments interact with the COGCC; and (4) study the current Code and investigate and propose any appropriate and necessary

revisions to provide comprehensive regulations and permitting schemes concerning oil and gas activities.

Section 5. Severability. 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 Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 6. Safety. This Ordinance is deemed necessary for the protection of the public health, safety and welfare.

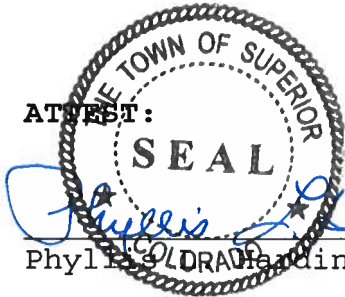
Section 7. Effective Date. Pursuant to C.R.S. § 31-16-104, this Ordinance shall take effect immediately upon adoption.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 8th day of July, 2019.



Clint Folsom, Mayor

ATTEST:



Phyllis Oldradin, Town Clerk-Treasurer