

TOWN OF SUPERIOR
ORDINANCE NO. O-4
SERIES 2020

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR AMENDING SECTION 16-6-120 AND ARTICLE 16-34
OF THE SUPERIOR MUNICIPAL CODE, AND ADDING A NEW
ARTICLE 16-37 TO THE SUPERIOR MUNICIPAL CODE, ENTITLED
"OIL AND GAS DEVELOPMENT"

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WHEREAS, though that application was withdrawn, considerable concern has been voiced in the community regarding the impacts of oil and gas activities on the public health, safety and welfare;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, 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, which 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 authority described above grants the Town clear authority to deny any application that is not protective of public health, safety, and welfare, the environment, and wildlife resources,

WHEREAS, air quality within Superior, Boulder County, and the entire Front Range corridor is already poor, and the US Environmental Protection Agency has determined that the region is now in "serious" nonattainment for Ozone;

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 hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, et seq.; C.R.S. § 31-23-301, et seq., (municipal zoning powers); C.R.S. § 24-65.1-101, et seq. (Areas and Activities of State Interest), 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);

WHEREAS, by Ordinance No. O-7, the Board of Trustees previously adopted a 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, which moratorium is set to expire on April 13, 2020 ("Moratorium"); and

WHEREAS, the Board of Trustees desires to terminate the Moratorium upon the effective date of this Ordinance.

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

Section 1. Section 16-6-120 of the Superior Municipal Code is hereby amended as follows:

Sec. 16-6-120. Schedules of uses and requirements.

Schedule of Uses - Industrial Zone Districts (See Note 1)

Use	I-L	I-H
Facilities for research, testing, fabrication, processing, manufacture, repair, cleaning or assembly of:		
Sporting goods	C	P
Electronic components	C	P
Computers	C	P
Steel (no manufacturing)	C	P
Textiles	C	P
Cosmetics	C	P
Musical instruments, toys, novelties	C	P
Artwork, pottery	C	P
Ceramics, glass, metal and plastic products	C	P
Natural or cultured stone products	C	P
Furniture	C	P
Paper products	C	P
Products and materials similar to and compatible with the above	C	C
Bottling plants	P	P
Office for conduct of a business or profession	P	
Communication facilities	P	P
Utilities	P	P
Telecommunications facilities	S	S
Automobile, mobile home or recreational vehicle sales and sale of parts and accessories	P	P
Automobile leasing	P	P
Industrial equipment sales and leasing and the sale of parts and accessories	P	P
Automobile, mobile home or recreation vehicle general service, repair, painting, body work and storage	S	S
Service stations or automobile washing facilities, with retail sales of automotive accessory sales of convenience items not to exceed 2,000 sq. ft. of floor area	P	P
Restaurants, not including drive-through establishments	P	C
Restaurants, including drive-through establishments	C	S
Lumberyards, including sale of building and construction materials	P	P
Nursery stock production and sales	P	P

General storage and warehouses for goods	P	P
Mini-storage warehouse	P	P
Contractors supply yards	P	P
Shops for:		
Cabinetworks and furniture	C	P
Glazing	C	P
Printing and publishing	C	P
Plumbing	C	P
Electrician	C	P
Sheet metal	C	P
Handicraft products	C	P
Upholstery	C	P
General repair	C	P
Welding	C	P
Shops for uses similar to and compatible with the above uses and products	C	C
Retail sales of products directly related to an otherwise permitted use within the I-L and I-H Districts for which the gross floor area related to on-site sales is 25% or less of the gross floor area of the permitted use	P	P
Retail sales of furniture, household appliances and electrical equipment	P	X
Vocational or trade schools	P	X
Bulk dry cleaning and commercial laundries	S	P
Motor freight depots	S	C
Cold storage lockers	P	P
Storage, repair, rental or sales with contract installation for durable goods (by way of example, kitchen appliances, saunas, Jacuzzis, sheet metal products, sheet rock, office equipment, solar energy equipment)	P	P
Manufacture of durable goods	C	P
Public and governmental buildings	P	P
Major utility facilities, including transmission lines and substations	S	P
Child care centers	S	X
Wholesale sales operations	P	P
Outdoor storage	S	S
Recycling facilities	S	P
Parking lots	C	C
Drive-through banks	S	X
Automatic teller machines/mini-banks	C	C

Studios for motion picture or video productions	P	X
Accessory dwelling units for employee housing, limited to housing for individual actively employed by the principal use on a lot and limited to dwelling units contained within or attached to the principal building on a lot	S	X
Catalog sales outlets	P	X
Water and sewer treatment plants	C	P
Any of the above uses, with the exception of lumberyards and mini-storage warehouses, which exceed 35,000 sq. ft. of building or covered storage areas on a single lot	S	C
Salvage yards, junkyards	X	C
Veterinary clinics/hospitals	C	X
Kennels	S	S
Sexually oriented businesses	S	S
<i>Oil and Gas facilities</i>	<i>O</i>	<i>O</i>
Temporary uses (See Note 2)		

P = Permitted use

C = Permitted by conditional review

S = Permitted by special review

O = Permitted by oil and gas permit

X = Prohibited

Notes:

1. All types of uses, P, C and S require an SDP per the design standards of the Town.
2. Temporary uses require a temporary use permit.

Schedule of Uses - Agricultural and Open Space Districts

Use	A-UR	OS-R	OS-N
Single-family dwellings	P	X	X
Mobile homes	X	X	X
Farm, ranching and garden accessory buildings for storage and animal husbandry uses	P	X	X
Living quarters for farm operation personnel	P	X	X
Livestock and livestock boarding	P	X	X
Cultivation, storage, sale of crops, vegetables, plants, flowers and nursery stock	P	X	X
Golf courses with clubhouse	X	C	X
Oil and gas drilling accessory equipment and storage tanks facilities	SO	SX	SX
Veterinary clinics/hospitals	X	C	X

Public recreation facilities	X	C	X
Places of worship	X	C	X
Campgrounds	X	C	X
Communications facilities	C	S	X
Telecommunications facilities	S	S	X
Major facilities of a public utility	S	X	X
Temporary uses	P	X	X
Utilities and cable facilities, overhead (existing overhead facilities exempted)	P	S	X
Utilities and cable facilities, underground	P	P	S
Dog parks	X	C	X
Parks	X	P	X
Picnic shelters at trailheads	P	C	X
Picnic shelters not at trailheads	P	C	X
Restroom facilities not at trailheads	P	C	X
Kiosks - information	P	C	S
Playgrounds	X	C	X
Restoration or reclamation of natural habitat greater than ½ acre	P	P	C
Trails, unpaved	P	C	C
Trails, paved	P	C	S
Trailheads without restroom facilities	P	C	S
Trailheads with restroom facilities	P	C	X
Parking, paved or unpaved*	P	C	S*
Fencing	P	C	P
Barbed wire fences	P	X	P
Signage	P	P	P*
Swimming pools	X	C	X
Reservoirs	P	C	X
Athletic fields	P	C	X
Basketball courts	X	C	X
Tennis courts	X	C	X
Flood control improvements	P	P	C
Markers and lights necessary for public or private airports	X	C	X
Pedestrian bridges	P	C	C
Maintenance equipment sheds	P	C	X
Installation of landscaping, not a part of restoration or reclamation	P	C	X
Public roadways, paved or unpaved	P	C	X

Unpaved maintenance roads	P	P	S
Grading and berms, not a part of restoration or reclamation	P	C	X

P = Permitted use

C = Permitted by conditional review

S = Permitted by special review

O = Permitted by oil and gas permit

X = Prohibited

* The number of parking spaces shall be determined by a demand analysis and only those parking standards for parking space size, aisle width and ADA requirements shall apply. Signage shall be approved only as part of a signage program that establishes design consistency within the site/property and consistency with signs at other OS-N and OS-R sites or open space properties in the Town.

Section 2. Section 16-34-10 (b) of the Superior Municipal Code is hereby amended as follows:

Sec. 16-34-10. General.

* * *

(b) The Town may designate areas of state interest from among the following:

- (1) Mineral resource areas;
- (2) Natural hazard areas;
- (3) Areas containing, or having a significant impact upon, historical, natural or archaeological resources of statewide importance; and
- (4) Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community.

(c) The Town may designate activities of state interest including the following:

- (1) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;
- (2) Site selection and development of solid waste disposal sites except those sites specified in C.R.S. § 25-11-203(1), sites designated pursuant to C.R.S. 25-11(3), and hazardous waste disposal sites, as defined in C.R.S. § 25-15-200.3.
- (3) Site selection of airports;
- (4) Site selection of rapid or mass transit terminals, stations and fixed ways;

- (5) Site selection of arterial highways and interchanges and collector highways;
- (6) Site selection and construction of major facilities of a public utility;
- (7) Site selection and development of new communities;
- (8) Efficient utilization of municipal and industrial water projects; ~~and~~
- (9) Conduct of nuclear detonations; *and*
- (10) *Site selection for oil and gas development and for other mineral extraction.*

Section 2. Section 16-34-20 (b) of the Superior Municipal Code is hereby amended by the addition of the following new definition:

Mineral means an inanimate constituent of the earth, in solid, liquid, or gaseous state, which, when extracted from the earth, is usable in its natural form or is capable of conversion into usable form as a metal, a metallic compound, a chemical, an energy source, a raw material for manufacturing, or a construction material, provided that "mineral" does not include surface or groundwater subject to appropriation for domestic, agricultural, or industrial purposes, nor does it include geothermal resources.

Section 3. A new Article 16-37, entitled "Oil and Gas Development", is hereby added to the Superior Municipal Code.

ARTICLE XXXVII – OIL AND GAS DEVELOPMENT

Sec. 16-37-10. Purpose.

The purpose of this Article is to

- (a) Provide for the safety, and preserve the health, safety and welfare of the present and future residents of the Town.
- (b) Pursuant to the land use authority, and the police powers of the Town and to protect public health, safety, welfare, and the environment.

Sec. 16-37-20. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Best Management Practices (BMPs) means technologies and practices listed in the Town's adopted Best Management Practices for oil and gas Facilities, also known as the BMP Document.

COGCC means the Colorado Oil and Gas Conservation Commission.

Drilling and spacing unit has the same meaning as defined in C.R.S. § 34-60-116(2).

Flowlines means those segments of pipe from the wellhead downstream through the production facilities ending at: in the case of gas lines, the gas metering equipment; or in the case of oil lines the oil loading point or LACT unit; or in the case of water lines, the water loading point, the point of discharge to a pit, or the permitted surface water discharge point.

Future school facility means a school facility that is not yet constructed, but that the school or school governing body plans to build and use for students and staff within four (4) years of the date of the preapplication conference.

Gathering line means a pipeline and equipment described below that transports gas from a production facility (ordinarily commencing downstream of the final production separator at the inlet flange of the custody transfer meter) to a natural gas processing plant or transmission line or main. The term "gathering line" includes valves, metering equipment, communication equipment cathodic protection facilities, and pig launchers and receivers, but does not include dehydrators, treaters, tanks separators, or compressors located downstream of the final production facilities and upstream of the natural gas processing plants, transmission lines, or main lines.

Oil and gas facility means equipment, buildings, structures, or improvements associated with or required for the operation of a well site, pipeline, or compressor facility, including without limitation well sites, production facilities, production sites, treatment facilities, access roads, well pads, tank batteries, pits, and flowlines.

Oil and gas pipeline means a flowline, gathering line, or transmission line that transports oil and gas off of a Well Site.

Oil and gas well means a hole drilled into the earth for the purpose of exploring for or extracting oil, gas, or other hydrocarbon substances.

Operation(s) means exploration for oil and gas, including the drilling of test bores; the siting; drilling; deepening, completion, recompletion, reworking, or abandonment of an oil and gas well or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage and treatment of oil and gas; any construction, site preparation, or reclamation activities associated with such operations; and any oil and gas facility, oil and gas well site or location,

production site or other facility, site or location upon or within which any of the foregoing are conducted, operated, installed, constructed, generated treated or located.

Operator means the person, whether proprietor, lessee or independent contractor, actually in charge and control of the drilling, maintenance, operation or pumping of a well or lease.

Production site means the surface area immediately surrounding proposed or existing production equipment, or other accessory equipment necessary for oil and gas production activities, including the fenced, walled, or enclosed area of the facility during the production phase, exclusive of transmission and gathering pipelines.

Public water supply well means a well or system of wells that provide water via piping or other constructed conveyances for human consumption to at least fifteen (15) service connections or serves an average of at least twenty-five (25) people for at least sixty (60) days each year.

Seismic operations means all activities associated with acquisition of seismic data, including without limitation surveying, shothole drilling, recording, shothole plugging and reclamation.

Surface use agreement means an agreement or contract between an Operator and the owner of real property addressing property interests or property use in relation to a specific location for a Well, Multi-Well Site, Production Facility, pipeline or any other oil and gas facility.

Well site means a definable area where an operator has disturbed or intends to disturb the land surface to locate an oil and gas well facility, and includes a production site.

Sec. 16-37-30. Applicability.

- (a) No well site shall be constructed in the Town prior to issuance of an oil and gas permit under this Article.
- (b) This Article is supplemental to all other regulations contained in this Code. Where the requirements of any other provision of this Code or the regulations of any state or federal agency are in conflict with this Article, the more restrictive requirements shall be imposed.
- (c) The current BMP Document shall be adopted by resolution of the Board of Trustees and a copy shall be available at Town Hall for inspection and reproduction.

Sec. 16-37-40. Permit required.

(a) New oil and gas facilities.

(1) It is unlawful for any person to drill a new well, construct a new facility or install new accessory equipment or structure within the corporate limits of the Town, unless an oil and gas permit has been obtained pursuant to this Article. A separate oil and gas permit shall be required for each well or production site that has not been previously permitted under this Article.

(2) It is unlawful for any person to operate a well, facility or accessory equipment or structure within the corporate limits of the Town, except in compliance with the terms and conditions of the oil and gas permit.

(3) If more than one well or production site is proposed at the same time, the applicant may submit one application for multiple wells and facilities; however, a separate fee shall be required for each well pad site included in the application. The Town will issue a multiple oil and gas operations permit that notes the name and location of each Well or Production Site.

(4) Any such permit issued pursuant to this Article shall encompass within its authorization the right for the Operator, his or her agent, employee, subcontractor or independent contractor or any other persons to perform that work necessary in the drilling, completion or maintenance operations.

(5) For the purpose of this Article, the installation of tanks, heaters, separators and other accessory equipment shall be construed as extensions to oil and gas wells and shall accordingly be subject to the same applications, review, permit, regulations, and standards. The application for these accessories when intended to be installed at the same time as the oil or gas well may be merged with an application for an oil or gas permit and shall not require an additional permit fee.

(b) Modification of Existing Oil and Gas Facilities. Any proposed change made to an Oil and Gas Facility shall be reviewed by the Planning Department and is subject to one of the following.

(1) Amendment of permit. Each permit is limited to the facilities as shown in the approved permit plans. To the extent the applicant desires, after initial completion of a well, to place additional equipment on a tank battery or wellhead location, which was not shown in the approved plan, the applicant shall, except in a situation where additional temporary equipment is necessary for a period of fourteen (14) days or less, submit a revised site and operating plan to the Town depicting any changes from the approved oil and gas permit. If the staff concludes that the proposed change will not cause additional adverse impacts to public health, safety or welfare or the environment, the amendment can be approved administratively. Upon receipt of the amended site plan and operating plan, the Town shall issue a revised oil and gas permit as provided in this Article. In the event the staff concludes the proposed change would cause an additional

adverse impact to public health, safety, welfare or the environment, the proposed amendment will trigger new notice and require a new oil and gas permitting process.

(2) Plugging and abandonment permit. The plugging and abandoning of a Well Site or pipeline requires a plugging and abandonment permit. The permit will be issued administratively and will not require a public hearing.

(c) Seismic operations. Seismic survey operations within the Town limits are permitted with a Conditional Use Permit. The operator will meet, but not be limited to, the minimum requirements listed in the BMP Document.

(d) Oil and gas pipeline permit.

(1) Pipelines related to oil and gas development (that carry gas, oil, or produced water) that are off a Well Site are allowed in all zoning districts through a Conditional Use Permit.

(2) Pipelines that enter Town property or public right-of-way in the Town shall also obtain a public right-of-way permit pursuant to Sec. 11-2-30.

(3) All pipelines related to oil and gas development shall be sited to avoid areas containing existing or proposed residential, commercial, and industrial buildings; places of public assembly; surface water bodies; and designated open space.

(4) Without compromising pipeline integrity and safety, applicant shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize impact.

(5) Setbacks from residential, commercial, or industrial buildings, places of public assembly, the high-water mark of any surface water body and sensitive environmental features will be determined on a case-by-case basis in consideration of the size and type of pipeline proposed and features of the proposed site.

(6) The operator shall conduct leak detection inspections or pressure testing in order to identify flowline leaks or integrity issues.

(e) Terms and conditions.

(1) The term of the oil and gas permit, described in (a) and (b) above, shall be for one (1) year except as otherwise stated herein. Upon issuance of a COGCC permit allowing drilling or operations on the well site that is the subject of the Town's permit, the term of the permit shall automatically be extended (for no more than two years) to become coterminous with the COGCC-issued permit (including individual well permits) unless the Town permit has otherwise expired, lapsed, revoked, forfeited, abandoned, or otherwise terminated.

(2) Notwithstanding any other provision in this Code, the total number of wells approved in the oil and gas permit shall be drilled and completed within three (3) years of permit approval. Failure to do so shall constitute the forfeiture of the authorization and right to drill any undrilled wells. Authority to drill forfeited wells can only be obtained by amending the existing oil and gas permit or issuance of a new oil and gas permit.

(3) If requested by the applicant, the Town Manager may extend the duration of a permit by up to one (1) year if:

- a. The permit has not yet expired;
- b. The permit recipient has proceeded with due diligence and in good faith; and
- c. Conditions have not changed so substantially as to warrant a new application.

(4) The oil and gas permit shall automatically expire with the abandonment and reclamation of the associated well.

(5) The granting of an oil and gas permit shall not relieve the operator or owner of a well, production site, pipeline or gathering line from otherwise complying with all applicable local, state and federal regulations.

(6) Within thirty (30) days after the well is completed and equipped, the applicant shall provide to the Town as-built drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit. These as-built drawings shall be the same as submitted to the COGCC.

(7) The oil and gas permit or change of operations permit required by this Section is in addition to any permit required by this Code or any other governmental agency.

Sec. 16-37-50. Application.

(a) Form. Every application for an oil and gas permit issued pursuant to this Article shall be in writing on a form supplied by the Town, signed by the operator, and shall include the following information:

(1) The operator's name and address and, if the operator is a corporation, the state of incorporation and, if the operator is a partnership, the names and addresses of the general partners;

(2) The name, address, telephone number, fax number and e-mail address of the individual designated by the operator to receive notices;

(3) The aliquot legal description of the property to be used for the oil/gas operation and the assessor's parcel number for the property. Property recorded by plat shall also be identified by subdivision name and block and lot numbers;

(4) The well name(s);

(5) The mineral lessee's name(s) and address;

(6) The name and address of the representative with supervisory authority over the oil and gas operation site activities and a 24-hour emergency phone number;

(7) The name and address of the surface owner or owners; and

(8) The name, address and telephone number of the person or firm designated by the operator to file the oil and gas permit application and prepare the site plan and related exhibits.

(b) Fees and financial assurances. Every applicant shall provide the following fees and financial assurances:

(1) Application Fee. Every application shall include a required fee in the amount set by resolution of the Board of Trustees.

(2) Cost reimbursement agreement. Every applicant shall submit a signed cost reimbursement agreement provided by the Town, but such reimbursement agreement shall only apply to the use by the Town for outside consultants to review the application, if necessary. The application fee and required cost reimbursement agreement must be received by the Town to process the application.

(3) Insurance. Prior to commencement of any work, the operator will provide liability and insurance under the conditions, and in the amounts, necessary to protect against the risks and liabilities associated with the proposed activity.

(4) Financial security. As required by Section 16-34-100, the financial security will be determined based on the specific circumstances of the application but will be a minimum of \$82,500 per well. The minimum financial security amount per well shall be adjusted each year by the increase or decrease in the Consumer Price Index issued by the United States Bureau of Labor Statistics for the Denver - Boulder metropolitan area.

(5) Inspection fees. The operator shall reimburse the Town for all inspection costs reasonably incurred to inspect the well sites to determine compliance with this Article and any permits issued by the Town. Such fees shall include actual costs incurred by the Town, including employee time, employee

supervision, necessary equipment rental, and overhead. Where a well is plugged and abandoned, no fees will be imposed thereafter.

(6) Road improvements and maintenance agreement. The operator shall sign an agreement to pay for ongoing road repair and maintenance costs attributable to its operations. The Town will conduct periodic impact assessments with the operator to determine the extent of any damage accruing to the road caused by the operator's activities. The operator may conduct baseline road condition assessments with a third-party contractor to define existing road conditions. The operator will pay the Town for the cost of the actual repairs for the assessed damage or else arrange and pay the cost of such repairs itself with a contractor acceptable to the Town.

(c) Application. Upon having submitted the materials and fee required, an application for an oil and gas permit pursuant to this Section shall be filed with the Planning Department and shall include all requirements of Sections 16-16-40, 16-34-50, 16-34-150, and the following information:

(1) Site plan. The site plan shall be submitted on one or more plats or maps, at a scale not less than one inch to fifty (50) feet, showing the following information:

a. A site plan of the proposed operation showing the location of all improvements and equipment, including the location of the proposed wells and other facilities, and including without limitation pumps, motors, electrical power lines, tanks, flowlines, gathering lines, compressors, separators and storage sheds. All existing tank batteries and transmission and gathering lines within one thousand (1,000) feet of the well site shall also be shown.

b. The location of layout, including, without limitation, the position of the drilling equipment and related facilities and structures, if applicable.

c. The location and description of all existing improvements and structures within 1,000 feet of the well, as well as proof that the new well or production site meets all applicable COGCC and Town setback requirements.

d. Existing utility easements and other rights-of-way of record, if any, within a radius of one thousand (1,000) feet of the proposed well.

e. The location of existing irrigation or drainage ditches within one thousand (1,000) feet of the well site or production site, if any.

f. The applicant's drainage and erosion control plans for the well site or production site, if applicable. The applicant may submit the plan required by COGCC to meet this requirement.

- g. Location of access roads.
- h. Location of existing oil and gas wells as reflected in COGCC records within a one thousand (1,000) foot radius of the proposed location for the well and existing lease boundaries.
- i. The names of abutting subdivisions or the names of owners of abutting, unplatted property within one-thousand (1,000) feet of the proposed of the Well Site or Production Site.
- j. The date the site plan was prepared and any revision numbers to the site plan, when applicable.
- k. The location of existing wildlife and nature areas within one thousand (1,000) feet of the well site or production site, if any.
- l. The location of the well site or production site in relation to existing lease boundaries.
- m. A true north arrow.

(2) Traffic control plan. In compliance with the description in the BMP Document, the operator shall prepare a plan showing public and private roads that traverse or provide access to the proposed operation and a plan showing the estimated number of vehicle trips per day for each type of vehicle, proposed transportation routes to and from the site, and measures to mitigate adverse impacts to traffic patterns and safety caused by the proposed operation.

- a. A vendor selected by the operator from a list of vendors that is pre-approved by the Town shall prepare a traffic control plan and traffic impact analysis as described in Section 16-34-50(g)(7).
- b. The map showing all proposed transportation routes for access to and from the well site shall include those routes used for construction equipment and well drilling, completion and reworking equipment from the well site to the to the corporate limits of the Town.
- c. All transportation routes that access the state highway system shall be required to obtain necessary Colorado Department of Transportation ("CDOT") access permits.

(3) Compliance history. A certified list of all instances within the previous ten (10) years where the COGCC, other state agency, municipality, or county found the operator had not complied with applicable state or local requirements with respect to drilling, operation, or decommissioning of a well. The list shall identify the date of the determination, the entity or agency making the determination, the nature of the non-compliance, and, if applicable, the final

resolution of the issue. If no such instances of non-compliance exist, the operator shall certify to that effect.

(4) Written narrative. The applicant shall refer to the BMP Document and Section 16-34-50 and Section 16-34-150 for additional details on the following submittals and plans:

- a. A title block or heading containing the operator's and surface owner's names and addresses, the well name and the legal description of the Well/Production Site location.
- b. Copies of the approved or submitted COGCC Forms 1A, and 2 or 2A or 10, as applicable. If the applicant has not received approval from COGCC, the Town shall process the application conditioned on proof of an approved COGCC permit.
- c. An operating plan.
- d. A copy of the surface use agreement or acknowledgement, including reception number, that a surface use agreement has been recorded with the applicable County Clerk and Recorder's Office.
- e. A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies, including any exceptions or variances that are required.
- f. Analysis of the commercial feasibility of extracting the mineral resource.
- g. Evidence that the mineral extraction will be of greater economic value than other types of development.
- h. Environmental impact analysis as described in Section 16-34-50(g).
- i. An emergency response plan that is mutually acceptable to the operator and the appropriate fire protection district and the Police Department that includes a list of local telephone numbers of public and private entities and individuals to be notified in the event of an emergency, the location of the well and provisions for access by emergency response entities. The applicant shall provide a commitment to serve ("will serve") letter from the authority having jurisdiction for providing emergency services (fire protection and emergency medical services) for that facility.
- j. A plan for weed control at the well site.
- k. A sanitary facilities plan that complies with COGCC regulations.

- l. Verification of ownership of the mineral interest.
- m. A nuisance prevention plan to manage noise, light and odor to prevent nuisance. Noise and odors shall be kept at or below the levels that would constitute a nuisance. The plan shall include a baseline noise study as well as noise modeling of equipment proposed for the site for drilling and completions.
- n. An electrification plan identifying all sources of electricity that will be brought to or used at the well site during all phases, including drilling, completion and production.
- o. An air quality mitigation plan which includes baseline air quality testing and a modeling assessment of air quality impacts and a plan and schedule to maintain air quality, including a plan to minimize VOC emissions in compliance with the BMPs.
- p. A waste management plan that identifies the projected waste from the site and plans for disposal of such waste.
- q. A hazardous materials management plan that identifies all hazardous materials that will be brought on site, how they will be transported and used, and measures to prevent any release of those materials.
- r. A water quality monitoring plan that describes the steps it will take to provide water quality monitoring to demonstrate no water quality degradation of surface or ground water.
- s. A spill prevention, control, and countermeasure Plan that describes spill prevention and mitigation practices.
- t. A stormwater pollution prevention and erosion control plan to minimize impacts to surface waters from erosion, sediment, and other sources of non-point pollution. The stormwater control plan required by COGCC Rule 1002(f) may be provided to establish compliance with this provision.
- u. An interim reclamation plan, including a written description of the species, character and density of existing vegetation on the Well Site, a summary of the potential impacts to vegetation as a result of the proposed oil and gas operations, and proposed replanting and mitigation to address these impacts. The plan shall include any COGCC required interim reclamation procedures and shall include the means by which vegetation will be watered and maintained.
- v. A dust mitigation plan to minimize visible dust emissions from roadways or from completion operations.

- w. A wetlands protection plan, if applicable, demonstrating the oil and gas operations shall, to the maximum extent practicable, avoid causing degradation to wetlands within the Town.
- x. A floodplain permit, if any operations are in the floodplain. Oil and gas facilities are prohibited in the floodway.
- y. A visual mitigation plan that will consider fencing materials, berming, and use of existing vegetation and natural contours to the maximum extent practicable, including photographic simulations.
- z. A landscaping plan that shall be coordinated with the Town and the surface owner and, depending on access to water, may be staged to accommodate surface development. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. An irrigation plan may be required where buffering is accomplished with vegetation.
- aa. A site security plan for each well site, which shall be reviewed by the operator on a yearly basis and updated as necessary.
- bb. Request for waiver of location requirements in Section 16-37-130.

Sec. 16-37-60. New oil and gas operations.

Oil and gas operations are activities of statewide interest and therefore shall also comply with Chapter 16-34. If the terms of this Section conflict with other standards of this Code, this Section shall control.

(a) Step 1: Pre-application conference. The applicant shall attend a pre-application conference with the Town. The purpose of the meeting is to discuss the permit submittal requirements and review process, and the list of BMPs that may be required to reduce or eliminate impacts to public health, safety, welfare or the environment. The Town may also require an alternative location analysis that shall be completed prior to submittal of the permit application.

(1) The applicant shall prepare and submit a preliminary site analysis to the Town for review at the pre-application conference, which shall include the following information:

- a. All drilling and spacing units proposed by the applicant within one thousand five hundred (1,500) feet of the Town's boundaries;
- b. The proposed site for the oil and gas location and all features defined below, completely contained within, or within ¼ mile of all drilling and spacing units proposed by the applicant;

- c. Any existing residential, platted residential, or property currently entitled for residential use, not including properties zoned agricultural over 5 acres in size;
- d. Properties designated for future residential in the Comprehensive Plan, including mixed use;
- e. Any facility classified as a high occupancy building unit as defined by the COGCC;
- f. Any public or private recreation facilities;
- g. Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar place of public assembly;
- h. Public or private parks, not including trails;
- i. Senior living or assisted living facilities;
- j. Areas within the 100-year floodplain;
- k. The centerline of all USGS perennial and intermittent streams;
- l. Reservoirs and public water supply wells;
- m. Wetlands; and
- n. Sensitive wildlife areas.

(2) If required by staff, the applicant will be required to submit an alternative location analysis. The applicant shall analyze all potential sites that can reasonably access the mineral resources within the proposed drilling and spacing unit. The following information shall be provided for each site:

- a. General narrative description of the site;
- b. Why the particular site is proposed;
- c. A summary of the off-site impacts that may be associated with that particular site; and
- d. Proposed truck traffic routes, pipeline routes, and access roads for each site.
- e. Pursuant to Section 16-34-50(g)(8), comparison of the sites based on projected impacts to land use; water resources; wildlife; air quality; significant environmentally sensitive factors; visual aesthetics and nuisance factors; and transportation.

(3) Staff will review all proposed locations to determine if there is a suitable location that would adequately protect public health, safety, welfare, and the environment. Each proposed location shall be evaluated against the following criteria to determine if it is a suitable location:

- a. Whether the location would comply with Section 16-37-130;
- b. Whether mineral extraction is technically possible and reasonable from the location;
- c. The proposed facility will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future;
- d. A proposed site's conformance with the Town's adopted Comprehensive Plan, and any other applicable adopted plans;
- e. The ability to utilize pipelines and consolidate facilities with other planned drilling and spacing units proposed within the Town's boundaries;
- f. Landowner's willingness to accommodate a surface use location. Previous execution of a surface use agreement between any landowner and operator shall not automatically deem a proposed site as the preferred alternative; and
- g. Impact on nearby environmental resources such as water bodies.

(4) If a suitable location is identified, staff will recommend that the operator proceed with an oil and gas permit application. If a suitable location is not identified or is unavailable, staff will recommend that the operator evaluate other locations or may recommend denial if an oil and gas permit application is submitted.

(b) Step 2: Submittal. After the pre-application conference and the submittal of an alternative location analysis (if necessary) the applicant may submit an oil and gas permit application. The application shall comply with Section 16-37-50.

(c) Step 3: Staff review for completeness. Within a reasonable period of time, not to exceed fourteen (14) days, Town staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and resubmit the required number of copies of the amended application to the Town. This is not a substantive review of the application submitted.

(d) Step 4: Referral agencies notified. Upon receipt of a completed application, the Town shall forward the application to the appropriate referral

agencies. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name. At a minimum, the application shall be referred to Boulder County, Jefferson County, Broomfield County, the applicable law enforcement agency, the appropriate Fire District, COGCC, and all agencies listed in Section 16-34-60. Referral agencies shall be provided thirty (30) days to respond with any comments. After such period, the Town may proceed on the application whether or not the Town has received comments from the notified referral agencies.

(e) Step 5: Staff review and comments. Town staff shall review the application for compliance with this Section and all other applicable federal, state and Town regulations and standards. A summary of this review, including referral comments, and proposed conditions of approval, shall be sent to the applicant.

(f) Step 6: Applicant response. The applicant shall address all of the Town's comments and any referral agency comments, and then submit the following:

(1) Written correspondence explaining how all of the comments have been addressed; and

(2) Revised maps and other documents, as necessary.

(g) Step 7: Final staff review and report to Planning Commission.

(1) Town staff will complete a final review of the resubmitted materials and then prepare a report to the Planning Commission explaining how the application is or is not consistent with the review criteria and applicable Town ordinances, regulations and standards.

(2) Conditions of approval. Staff may propose a list of conditions of approval, including requiring the use of BMPs, to reduce or eliminate impacts to public health, safety, welfare, or the environment. The BMP Document will be available at Town Hall for inspection and reproduction. In proposing conditions of approval from such BMPs or other sources, the staff shall consider the following factors, among other considerations:

a. Site-specific factors of the proposed new oil and gas location;

b. The extent the BMPs can be used to prevent significant degradation of the health, safety, and welfare of Town and area residents;

c. The extent to which conditions of approval will promote the use of existing facilities and reduction of new surface disturbance;

d. The extent to which legally accessible and technologically feasible alternative sites exist for the proposed new oil and gas location; and

e. The extent to which the proposed oil and gas location is within land used for residential, industrial, commercial, agricultural, or other purposes.

(h) Step 8: Review by the Planning Commission.

(1) Criteria. At a public hearing, the Planning Commission shall review the application for the oil and gas permit for compliance with the following criteria:

- a. All application requirements of Section 16-37-40 are met.
- b. The application complies with the location restrictions provided in Section 16-37-130 unless a waiver is obtained.
- c. The application substantially complies with the provisions and practices in the BMP Document.
- d. The proposed facility will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, or public improvements;
- e. The proposed use is in conformance with this Code, the Comprehensive Plan or other local planning documents;
- f. The proposed use will not significantly degrade the environment or public health, safety and welfare; and
- g. All approval criteria in Section 16-34-80 for an activity of statewide concern are met.

(2) Location waiver. A waiver of the zoning and location requirements in Section 16-37-130 may be granted only under the following conditions:

- a. The location satisfies the other criteria in this Section;
- b. Extraordinary hardships or practical difficulties result from strict compliance with the zoning and location restrictions; and
- c. Protection of public health, safety, and welfare are served to a greater extent by a waiver to strict adherence to the location requirements in Section 16-37-130.

(3) Planning Commission recommendation. The Planning Commission may recommend that the Board of Trustees approve, deny, or conditionally approve the application. Conditions of approval may include any conditions necessary to improve or modify the site plan; any conditions necessary

to ensure that any negative impacts of the proposed oil and gas operation are eliminated or mitigated; or may impose conditions related to the surface use.

(i) Step 9: Review by Board of Trustees.

(1) At a public hearing, the Board of Trustees shall consider the recommendation of the Planning Commission and evidence presented in the application and at the public hearing to determine if the application is in compliance with the criteria for review and any recommendations of the Staff, if applicable.

(2) Following the conclusion of the public hearing, the Board of Trustees shall, by written resolution, render its decision to approve, deny or conditionally approve the application, or it may take the matter under advisement until an announced date certain, not to exceed thirty (30) days from the date of the hearing, at which time it shall render its decision by written resolution.

(3) For the purposes of judicial review, the Board of Trustees' final action or decision on an application shall be deemed to have been made as of the date upon which the Board of Trustees adopts the written resolution, which shall constitute the final decision of the Board of Trustees.

(j) Notice. Notice shall be provided by publication, mailing and posting as set forth in Section 16-2-60.

Sec. 16-37-70. Oil and gas permit order.

Prior to commencement of operations for which an oil and gas permit has been issued, an oil and gas permit order shall be obtained from the Town. The Town shall issue the oil and gas permit order within a reasonable time upon receipt of the following:

(1) A copy of the resolution of the Board of Trustees approving an oil and gas permit;

(2) Proof of compliance with any conditions placed in the resolution of the Board of Trustees approving an oil and gas permit;

(3) A copy of the approved site plan;

(4) A copy of any other necessary permits, such as building permits and grading permits, if applicable;

(5) Copies of any necessary state or federal permits issued for the operation if not previously submitted; and

(6) Copies of all COGCC permits.

Sec. 16-37-80. Transfer of operator or new operator.

The operator shall notify the Town, in writing, of any sale, assignment, transfer, conveyance or exchange by said operator of a well's property and equipment within ten (10) days after such sale, assignment, transfer, conveyance or exchange. The notice shall provide a map indicating the location of the properties and equipment involved in the transaction. Any change in tenancy, ownership, or management shall require modification to the approved permit. Such modification will be approved so long as the new operator complies with the following:

- (1) The new operator shall certify that it will comply with all aspects of the existing oil and gas permit.
- (2) The new operator demonstrates adequate insurance and posts financial assurances required of the previous operator.
- (3) The location is in compliance with all applicable local and state regulations and permits.

Sec. 16-37-90. Inspections.

In recognition of the potential impacts associated with oil and gas facilities, all wells and accessory equipment and structures may be examined by the inspectors of the Town at reasonable times to determine compliance with applicable provisions of this Code, the International Fire Code, the International Building Code, and all other applicable standards.

- (a) The Town reserves the right in its discretion to make spot inspections or to inspect without notice in the event of an issue potentially involving an immediate risk to public health, safety, welfare, the environment, or wildlife, or damage to the property of another.
- (b) For the purpose of implementing and enforcing the provisions of this Section, the inspector and other authorized personnel have the right to enter upon private property.
- (c) The Town may use the information collected on the inspections to enforce the requirements of this Section.
- (d) The Town may also report this information to appropriate state and federal officials, including without limitation information regarding alleged violations of state and federal rules.
- (e) Upon request, operator shall make available to Town all records required to be maintained by these regulations or to show compliance with these regulations, and the rules and regulations promulgated by the COGCC and the Colorado Department of Public Health and Environment (CDPHE), including

permits, Air Pollutant Emission Notices (APENs) and other documents required to be maintained by the COGCC, CDPHE and these regulations.

Sec. 16-37-100. Building permits.

In addition to the other requirements of this Article, building permits shall be obtained for all above ground structures.

Sec. 16-37-120. Access roads.

(a) All private roads used to provide access to the tank batteries or the well site shall be improved and maintained according to the following standards so long as such standards are consistent with the surface owner's requests or the terms of a private surface use agreement with the surface owner, and does not damage adjacent properties. Access roads to facilities and well sites shall conform to the following minimum standards:

(b) All access roads shall comply with the Town's standards and specifications. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick, compacted to a minimum density of ninety-five percent (95%) of the maximum density as determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, aggregate base course as specified for aggregate base course materials in CDOT's Standard Specifications for Road and Bridge Construction, latest edition. A geotechnical report and pavement design will be submitted to the Town for approval.

(c) All access roads shall be graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Town.

(d) All access roadways shall be maintained so as to provide a passable roadway free of ruts and dust at all times.

(e) All access roadways shall be improved as a hard surface (concrete or asphalt) for the first one hundred (100) feet of distance from the nearest public roadway.

(f) If an access road intersects with a pedestrian trail or walk, the operator shall pave the access road as a hard surface (concrete or asphalt) a distance of one hundred (100) feet either side of the trail or walk, unless the trail or walk is not already a hard surface, in which case, operator shall meet the current standards of the trail or walk. If necessary, operator shall replace the trail or walk to address the weight load requirements of the vehicles accessing the well and production sites.

(g) Temporary access roads associated with the operations will be reclaimed and reseeded to the original state within sixty (60) days after discontinued use of the temporary access roads. An exception to temporary access road construction standards and specifications may be made upon agreement of the Parties where circumstances warrant a departure given future development needs,

Sec. 16-37-130. Location restrictions.

(a) Well sites shall only be located in the following zone districts: Agricultural Urban Reserve (A-UR), Heavy Industrial (I-H), and Light Industrial (I-L).

(b) Well sites shall be located at least one thousand five hundred (1,500) feet from the property line of any existing or platted residences, schools, future school facilities, hospitals, medical clinics, senior living or assisted living facilities, or state licensed daycare centers.

(c) Well sites shall be located at least one thousand (1,000) feet from the following:

(1) Public parks, public hiking trails and public outdoor recreation areas;

(2) Public water supply wells; and

(3) Surface water bodies including rivers, streams, and reservoirs.

(d) Well sites shall comply with all applicable federal, state and local laws and regulations when located in a floodway or a floodplain. All equipment in a floodplain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by a berm with a top elevation at least one (1) foot above the level of a 100-year flood.

Sec. 16-37-140. Violation and penalty.

(a) Violations.

(1) It is unlawful to construct, install or cause to be constructed or installed any oil and gas well or production site in the Town unless approval of an oil and gas permit has been granted by the Board of Trustees.

(2) It is unlawful to fail to obtain an oil and gas permit or change of operations permit where one is required pursuant to this Section.

(3) It is unlawful to provide false, misleading, deceptive or inaccurate information in an application for a permit.

(b) Penalties. Any person convicted of a violation of this Article shall be punished as described in Article 1-3 of this Code. In addition, if any property or structure is or proposed to be used, erected, constructed, reconstructed, maintained or altered in violation of this Article or the oil and gas permit, the Town may seek appropriate relief, including without limitation injunctive relief.

(c) Recovery of fees. Should the Town prevail in any action for a violation of this Article, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover all of its costs and attorney fees.

Section 4. Repeal of Moratorium. Ordinance No. O-7 Series 2019 is hereby repealed in its entirety.

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.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 13th day of April, 2020.



Clint Folsom, Mayor

ATTEST:



Phyllis L. Hardin, Town Clerk-Treasurer

