Boulder County
Land Use Article 12

SPECIAL REVIEW FOR OIL AND GAS OPERATIONS

General Notes on 2017 Version

- Article 12 contains a broad range of land-use topics.
- Phrases using terms like “mitigation” and “to the maximum extent practicable” are sprinkled throughout to protect against lawsuits.
- Permits are not addressed per se, much less the concept of permit denial or a ban.
A Brief History

- Based on a variety of court cases, pre-emption, control by the state in the form of the COGCC, was assumed in 2017.

- A 1985 voter-approved ban on oil and gas drilling in Greeley had been struck by the Colorado Supreme Court in 1992.

- Another ruling in 1992 in La Plata County reaffirmed state pre-emption and limited local regulation.

- In 2016, the Supreme Court ruled against both the 2012 Longmont citizen initiative to ban “fracking” and Ft. Collins’ citizen passed moratorium.

- Various attorneys counseled that local governments could not regulate much beyond the paint color for the fencing at an oil and gas facility.
SB 19-181 and Local Control

- Land use preemption has been removed.

- A local government’s regulations may be more protective or stricter than state requirements.

- A local government can regulate the use of land “on the basis of the impact of the use on the community or surrounding areas.”

- Local governments are specifically allowed to regulate surface impacts of oil and gas “in a reasonable manner” to protect and minimize adverse impacts to public health, safety, and welfare, and the environment.
“Minimize adverse impacts” means, to the extent necessary and reasonable to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimizing and mitigating the extent and severity of those impacts that cannot be avoided.”
Major Topics in Article 12

- Air quality
- Agriculture
- Emergencies/safety
- Financial viability, assurance, indemnification & insurance
- Fines
- Fire hazards
- Flaring
- Flood plains, floodways, wetlands
- Geologic hazards
- Inspections
- Land disturbance (natural resources and habitat)
- Maintenance
- “Nuisance” factors – noise, odors, lighting
- Open space & recreational areas
- Pipelines
- Proximity to other wells
- Public health (minimally addressed)
- Radiation
- Spills and leaks
- Surrounding land uses – setbacks, siting and zoning
- Transportation
- Waste
- Water
- Wildlife
Article 12 Structure

- **12-100** Purpose
- 12-200 Authority
- 12-300 Effective Date; Pre-Existing Uses
- 12-400 Application Procedure
- 12-500 Application Submittal Requirements
- **12-600** Special Review Standards
- **12-700** Conditions of Approval Applicable to All Special Use Approvals
- **12-701** Potential Site Specific Mitigation Measures
- 12-800 Judicial Review
- 12-900 Procedures Following Approval of a Special Review Application
- 12-1000 Enforcement
- 12-1400 Definitions
Current:

**Air quality.** The installation and operation of any oil and gas operations shall, *to the maximum extent practicable*, avoid causing degradation to air quality. *To the maximum extent practicable*, the installation and operation of any oil and gas operation must eliminate, capture, *or minimize* all potentially harmful emissions and dust associated with onsite activities and traffic on access roads must be *minimized*.

A sample stronger version:

**Air quality.** The installation and operation of any oil and gas operations shall not cause degradation to air quality and shall eliminate or capture all potentially harmful emissions and dust associated with onsite activities.
Article 12 Structure

- 12-100 Purpose
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- 12-300 Effective Date; Pre-Existing Uses
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- 12-600 Special Review Standards
- 12-700 Conditions of Approval Applicable to All Special Use Approvals
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On air quality, a regulation could, for example, disallow permitting as long as the county suffers from high ozone or hazardous chemical levels as measured at the Boulder County Reservoir. We should not be subject to additional local pollution.
The county could require net zero emissions. Flaring, where natural gas/methane is intentionally burned or released, could be prohibited.
The county could disallow permitting of oil and gas operations in a floodplain or wetlands.
Will our county’s open space go from nature to industrial?

Oil and gas operations do not belong on open space and could be prohibited there.
There should be a standard set for public health.
Regarding surrounding land issues, there could be siting restrictions, zoning or setbacks from homes, schools, and old wells.
Water: There could be restrictions on the use or transport of water, with heavy, meaningful fines on contamination.

Financial issues: Fines, bonding, liability and a company’s viability need to be addressed.

Wildlife: Consider noise, vibrations, exposure to toxins, and the ability to require setbacks and shutting down operations during breeding seasons.
You can:

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- Submit comments to [oilgascomment@bouldercounty.org](mailto:oilgascomment@bouldercounty.org)