

ORDINANCE NO. 2123

AN ORDINANCE AMENDING CERTAIN SECTIONS OF ARTICLE 17 OF THE
BROOMFIELD MUNICIPAL CODE RELATING TO ZONING

WHEREAS, on November 17, 2017 Broomfield citizens adopted Ballot Question 301 which mandates that the City and County of Broomfield require all oil and gas development permitted within city's boundaries to only occur in a manner that does not adversely impact the health, safety and welfare of Broomfield's residents in their workplaces, homes, schools, and public parks in order to protect the public's health, safety, and welfare and to safeguard the environment and wildlife resources; and

WHEREAS, the City Council adopted Ordinance No. 2067 on July 10, 2018, enacting extensive oil and gas regulations to ensure that oil and gas facilities are designed, modified, commissioned, constructed, equipped, operated, maintained, suspended, and abandoned in a manner that prioritizes the protection of human health, safety, and welfare; and

WHEREAS, on April 16, 2019, the Governor signed [SB 19-181 - Protect Public Welfare Oil and Gas Operations](#) (SB19-181) that grants local governments more authority to regulate surface and nuisance impacts of oil and gas operations; and

WHEREAS, more specifically SB19-181 permits municipalities to regulate the surface impacts of oil and gas operations through its land use and zoning powers in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare and the environment; and

WHEREAS, prior to the adoption of SB19-181, state law preempted municipalities from adopting laws that were in operational conflict with rules for oil and gas development set in either the Oil and Gas Conservation Act or in the regulations of the Colorado Oil and Gas Conservation Commission ("COGCC"). Accordingly the courts had struck down attempts by municipalities to regulate the location and siting of oil and gas wells and also setbacks for oil and gas wells that were more stringent than those established by the COGCC; and

WHEREAS, on May 28, 2019, Council adopted Ordinance No. 2091, imposing a temporary moratorium on processing or approving oil and gas applications to allow new regulations to be drafted, publicly discussed and adopted by Council. The original moratorium

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ended on December 4, 2019, and on December 3, 2019, City Council approved Ordinance No. 2111 extending the moratorium through June 4, 2020; and

WHEREAS, a study by the Colorado Department of Public Health and Environment (“CDPHE”) [“Final Report: Human Health Risk Assessment for Oil & Gas Operations in Colorado”](#) released on October 17, 2019, shows that acute exposures for benzene, toluene, and ethyltoluenes could be above health guideline levels out to 2,000 feet from oil and gas wells during the development phase (drilling, fracking and flowback); and

WHEREAS, the CDPHE report states that the acute effects of the chemicals identified in the study are hematological and neurotoxicity which can cause blurred vision, diminished reflexes, decreased alertness and changes to white and red blood cell populations; and

WHEREAS, Broomfield residents have filed with the city complaints of nosebleeds, headaches, eye, nose, and throat irritation, and respiratory symptoms during the development phase of nearby oil and gas development; and

WHEREAS, upon consideration of the CDPHE study and resident complaints associated with oil and gas development, the city concludes that a 2,000-foot buffer from oil and gas development is reasonable and necessary to protect public health and safety; and

WHEREAS, the city desires to amend its zoning code to limit oil and gas development to zoning districts with appropriate and compatible uses where its surface impacts will not interfere with residential, commercial and other sensitive uses; and

WHEREAS, the city has identified the districts where oil and gas development might be appropriate as a use by special review are the General Industrial, Industrial, Agricultural and General Aviation districts; and

WHEREAS, the City Council acknowledges that the proposed zoning districts and setbacks identified as reasonable and appropriate are specific to the needs of Broomfield and that depending on the facts in other communities a different setback may be needed.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

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Section 1. Section 17-07-030 of Chapter 17-07 OLPF Open Lands and Public Facilities District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-07-030 - Permitted uses; by special review.

The following uses are permitted by special review in the OLPF district:

- (A) Cultivation, storage, and sale of crops, vegetables, plants, flowers, and nursery stock produced on the premises;
- (B) The grazing of cattle, sheep, goats, or other agricultural livestock, including supplementary feeding, provided that such grazing is not a part of nor conducted in conjunction with, any dairy, feed yard, or livestock sales yard;
- (C) Barbed wire fences;
- (D) Municipal cemeteries; ~~and~~
- ~~(E) Oil wells or gas wells.~~

Section 2. Section 17-08-030 of Chapter 17-08 A-1 Agricultural District of the Broomfield Municipal Code is amended to read as follows:

17-08-030 - Permitted uses; by special review.

The following uses are permitted by special review in the A-1 district:

- (A) Schools, public and private (noncommercial);
- (B) Public and private noncommercial recreation areas and facilities;
- (C) The keeping of livestock for commercial use or at densities greater than permitted in section 17-08-020;
- (D) Airports;
- (E) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield. Substations shall not contain major office, repair, or storage space;
- (F) Child day-care facilities;
- (G) Oil wells or gas wells; **except no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map;** and
- (H) Wireless communications towers.

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Section 3. Section 17-09-030 of Chapter 17-09 RR Rural Residential District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-09-030 - Permitted uses; by special review.

The following uses are permitted by special review in the RR district:

- (A) Schools, public and private (noncommercial);
- (B) Churches and church facilities;
- (C) Public and private noncommercial recreation areas and facilities other than those included as permitted uses;
- (D) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield, except that substations shall not contain major office, repair, or storage space;
- (E) Child day care facilities;
- (F) Cemeteries;
- (G) One-family dwellings on lots smaller than 2.25 acres;
- ~~(H) Oil or gas wells;~~
- ~~(H)~~ **(H)** Private poultry houses containing not more than 400 square feet of ground plan area; and
- ~~(I)~~ **(I)** The grazing, keeping, and supplementary feeding of beefalo, buffalo, deer, elk, and bovine bulls.

Section 4. Section 17-10-030 of Chapter 17-10 E-1 Estate District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-10-030 - Permitted uses; by special review.

The following uses are permitted by special review in the E-1 district:

- (A) Schools, public and private (noncommercial);
- (B) Public and private noncommercial recreation areas and facilities;
- (C) Churches and church facilities;
- (D) Residential planned unit developments (PUD);

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- (E) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield. Substations shall not contain major office, repair, or storage space;
- (F) Municipal buildings;
- (G) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities; **and**
- (H) Child day care facilities; ~~and~~
- (I) ~~Oil wells or gas wells.~~

Section 5. Section 17-12-030 of Chapter 17-12 E-2 Estate District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-12-030 - Permitted uses; by special review.

The following uses are permitted by special review in the E-2 district:

- (A) Churches and church facilities;
- (B) Child day care facility;
- (C) Noncommercial recreational uses;
- (D) Private schools;
- (E) Residential planned unit developments (PUD);
- (F) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield. Substations shall not contain major office, repair, or storage space;
- (G) Municipal buildings;
- (H) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities; ~~and~~
- ~~(I) Oil wells or gas wells.~~

Section 6. Section 17-13-030 of Chapter 17-13-E-3 Estate District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-13-030 - Permitted uses; by special review.

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The following uses are permitted by special review in the E-3 district:

- (A) Churches and church facilities;
- (B) Child day care facility;
- (C) Noncommercial recreational uses;
- (D) Private schools;
- (E) Residential planned unit developments (PUDs);
- (F) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield, and substations shall not contain major office, repair, or storage space;
- (G) Municipal buildings;
- (H) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities;~~and~~
- (I) ~~Oil wells or gas wells.~~

Section 7. Section 17-14-030 of Chapter 17-14 R-1 Low-Density Residential District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-14-030 - Permitted uses; by special review.

The following uses are permitted by special review in the R-1 district:

- (A) Child day care facility;
- (B) Private noncommercial recreational uses;
- (C) Residential planned unit developments (PUD);
- (D) Cemeteries;
- (E) Mobile home parks subject to the provisions of chapter 17-42;
- (F) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield. Substations shall not contain major office, repair, or storage space;
- (G) Municipal buildings;
- (H) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and

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- (3) Related facilities; **and**
- ~~(I) Oil wells or gas wells; and~~
- (J) Preschools.

Section 8. Section 17-16-030 of Chapter 17-16 R-3 Medium Density Residential District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-16-030 - Permitted uses; by special review.

The following uses are permitted by special review in the R-3 district:

- (A) Child day care facility;
- (B) Noncommercial recreational uses;
- (C) Residential planned unit developments (PUD);
- (D) Mobile home communities subject to the provisions of chapter 17-42;
- (E) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield. Substations shall not contain major office, repair, or storage space;
- (F) Municipal buildings;
- (G) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities; ~~and~~
- ~~(H) Oil wells or gas wells.~~

Section 9. Section 17-18-030 of Chapter 17-18 R-5 High Density Residential District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-18-030 - Permitted uses; by special review.

The following uses are permitted by special review in the R-5 district:

- (A) Noncommercial recreational uses;
- (B) Residential planned unit developments (PUD);
- (C) Colleges and universities;
- (D) Mobile home communities, subject to the provisions of chapter 17-42, B.M.C.;
- (E) Hospitals, nursing homes, and sanitariums;

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- (F) Medical and dental clinics;
- (G) Offices;
- (H) Public utility substations and major transmission lines when said lines primarily serve areas other than Broomfield. Substations shall not contain major office, repair, or storage space;
- (I) Municipal buildings;
- (J) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities;
- (K) Child day care facilities;~~and~~
- (L) ~~Oil wells or gas wells.~~

Section 10. Section 17-20-030 of Chapter 17-20 B-1 Limited Business District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-20-030 - Permitted uses; by special review.

The following uses are permitted by special review in the B-1 district: Special business uses, such as the following, which might involve unusual environmental problems:

- (A) Gas stations;
- (B) Commercial recreational uses, outdoor;
- (C) Restaurants and other eating and drinking places, outdoor, including drive-in restaurants;
- (D) Undertaking establishments;
- (E) Planned unit developments (PUD). Commercial and multifamily residential planned unit developments where there is residential use on second or higher floors with the ground floor being a business use;
- (F) Hotels and motels;
- (G) Membership clubs;
- (H) Hospitals;
- (I) Printing and newspaper offices;
- (J) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities;
- (K) Child day-care facilities;

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- ~~—(L)~~ Oil wells or gas wells;
- ~~(M)~~ **(L)** Tattoo parlors;
- ~~(N)~~ **(M)** Wireless communications towers; and
- ~~(O)~~ **(N)** Flea markets.

Section 11. Section 17-22-030 of Chapter 17-22 B-2 General Business District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

7-22-030 - Permitted uses; by special review.

The following uses are permitted by special review in the B-2 district:

- (A) Multiple-family dwellings when located on second and higher floors when processed as a Planned Unit Development;
- (B) Dairy processing and distribution;
- (C) Laundries and dry cleaning plants;
- (D) Small animal veterinary hospitals;
- (E) Plumbing, electrical, and carpenter shops;
- (F) Truck, trailer, mobile home, and farm equipment sales and services;
- (G) Building supply yards;
- (H) Retail uses requiring limited manufacturing or processing on the premises of items to be sold;
- (I) Commercial Planned Unit Developments;
- (J) Car wash facilities;
- (K) Gas stations;
- (L) Storage of oil, gasoline, and petroleum products, subject to all requirements of the Colorado Industrial Commission and limited to 20,000 gallons maximum storage;
- (M) Public uses as follows:
 - (1) Water facilities, including storage,
 - (2) Wastewater treatment facilities, and
 - (3) Related facilities;
- (N) Child day-care facilities;
- (O) Commercial recreational uses, outdoor;
- ~~(P)~~ Oil wells and gas wells;
- ~~(Q)~~ **(P)** Small animal shelters;
- ~~(R)~~ **(Q)** Used car sales;
- ~~(S)~~ **(R)** Wireless communications towers; and

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~~(T)~~ **(S)** Flea markets.

Section 12. Section 17-24-030 of Chapter 17-28 I-1 Limited Industrial District of the Broomfield Municipal Code is amended by deleting the stricken language to read as follows:

17-24-030 - Permitted uses; by special review.

The following uses are permitted by special review in the I-1 district:

(A) Office and commercial uses, limited to the following:

- (1) Animal hospitals, day-cares or kennels with at least 200 feet from any residential-zoned property;
- (2) Other commercial, business, and services not listed as a permitted use; and
- (3) Gasoline sales.

(B) Institutional, public and service uses, limited to the following:

- (1) Helipads;
- (2) Public and private utilities and facilities with outdoor storage and operations; and
- (3) Wireless communications towers and facilities, subject to chapter 17-35, B.M.C.

(C) Light industrial uses, limited to the following:

- ~~(1) Oil wells or gas wells, subject to chapter 17-45, B.M.C.;~~
- ~~(2)~~ **(1)** Outdoor storage of equipment, vehicles, and materials exceeding the lot percent limitations defined in paragraph 17-24-020(C)(5), and enclosed and screened by a fence or wall as defined in section 17-32-140, B.M.C.;
- ~~(3)~~ **(2)** Retail sales, service, rental, repair, and manufacture of vehicles and machinery; and
- ~~(4)~~ **(3)** Workshops and developments with more than five live-work units.

Section 13. Section 17-26-030 of Chapter 17-26 I-2 General Industrial District of the Broomfield Municipal Code is amended to read as follows:

17-26-030 - Permitted uses; by special review.

The following uses are permitted by special review in the I-2 district:

(A) Commercial uses, limited to the following:

- (1) Other commercial, business, manufacturing, processing, storage, and other service uses not listed as a permitted use.

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(B) Institutional, public, and service uses, limited to the following:

- (1) Day-care facilities;
- (2) Helipads;
- (3) Wireless communication towers and facilities, subject to chapter 17-35, B.M.C.

(C) Industrial uses, limited to the following:

- (1) Cement, concrete, lime, or gypsum manufacturing;
- (2) Manufacturing, assembly, packaging, processing, storage, and distribution of raw vegetable and animal products;
- (3) Manufacturing or storage of hazardous materials, including, but not limited to, gasoline, flammable liquids, gases, and industrial waste products;
- (4) Oil wells or gas wells, subject to chapter 17-54, B.M.C.; **except no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map;**
- (5) Outdoor storage of equipment, vehicles and materials used in conjunction with the principal use and exceeding the lot percent limitations defined in paragraph 17-26-020(C)(2), and enclosed and screened by a fence or wall as defined in section 17-32-140;
- (6) Recycling center with any outdoor operations for the collection, separation, and temporary storage of reusable materials prior to shipment or delivery for further processing and reuse. Operations must be enclosed and screened by a fence or wall as defined in section 17-32-140;
- (7) Temporary outdoor storage of rubbish, refuse, waste, junk vehicles, except vegetable and animal by-products, and only in conjunction with an approved plan for the screening and recycling or removal of these materials;
- (8) Workshops and developments with more than five live-work units;
- (9) Any other use consistent with the intent of this district, and not specifically permitted by right or by special review in any other zone district.

Section 14. Section 17-26.05-030 of Chapter 17-26.05 I-3 Industrial District of the Broomfield Municipal Code is amended to read as follows:

17-26.05-030 - Permitted uses; by special review.

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The following uses are permitted by special review in the I-3 district:

(A) Offices and commercial uses, limited to the following:

- (1) Other commercial, business, manufacturing, storage, and other service uses not listed as a permitted use.

(B) Institutional, public, and service uses, limited to the following:

- (1) Helipads; and
- (2) Wireless communications towers and facilities, subject to chapter 17-35, B.M.C.

(C) Industrial uses, limited to the following:

- (1) Cement, concrete, lime, or gypsum manufacturing;
- (2) Chemical plants;
- (3) Fertilizer manufacturing;
- (4) Manufacture, assembly, packaging, processing, storage, and distribution of raw vegetable and animal products;
- (5) Manufacturing or storage of hazardous materials, including, but not limited to, gasoline, flammable liquids, and gases, industrial waste products;
- (6) Oil wells or gas wells, subject to chapter 17-54, B.M.C.; **except no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map;**
- (7) Recycling center for the collection, separation, and temporary storage of reusable materials prior to shipment or delivery for further processing and reuse. Operations must be enclosed and screened by a fence or wall as defined in section 17-32-140, B.M.C.;
- (8) Temporary outdoor storage of rubbish, refuse, waste, junk vehicles, except vegetable and animal by-products, and only in conjunction with an approved plan for the screening and recycling or removal of these materials;
- (9) Any other use consistent with the intent of the district, and not specifically permitted by right or by special review in any zone district.

Section 15. Section 17-26.1-030 of Chapter 17-26.1 A-1 District of the Broomfield Municipal Code is amended to read as follows:

17-26.1-030 - Permitted uses; special review.

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The following uses are permitted by special review in the A-1 District:

- (A) Christmas tree lots;
- (B) Churches, places of worship;
- (C) Class instruction in residence;
- (D) Fire station;
- (E) Oil well drilling and production; **except no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map;** and
- (F) Riding stable or riding academy.

Section 16. Section 17-27-040 of Chapter 17-27 GA General Aviation District of the Broomfield Municipal Code is amended to read as follows:

17-27-040 - Permitted uses; by special review.

The following uses are permitted by special review in the GA district:

- (A) Oil wells; **except no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map;**
- (B) Gas wells; **except no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map;** and
- (C) Wireless communications towers.

Section 17. Section 17-28-020 of Chapter 17-28 PUD Planned Unit Development District of the Broomfield Municipal Code is amended to read as follows:

17-28-020 - Permitted uses; by right.

Until and unless a final plan for property in a PUD district has been approved by city council under the provisions of chapter 17-38, the uses permitted by right in any PUD district shall be the uses permitted by right in an A-1 district, **except that oil and gas development shall be permitted by special review.**

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Section 18. Chapter 17-28 PUD Planned Unit Development District of the Broomfield Municipal Code is amended by adding a new section 17-28-060 Prohibited uses as follows:

17-28-060 Prohibited uses.

Oil and gas development shall be a prohibited use within any PUD District; except for such use may be approved as a use by special review in PUD districts without an approved PUD plan or designated as I-PUD on the zoning map provided that no oil wells or gas wells shall be allowed on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map.

Section 19. Section 17-06-050 of Chapter 17-06 Districts and Maps of the Broomfield Municipal Code is amended to read as follows:

17-06-050 - Zoning newly annexed land.

(C) Should any newly annexed land not be included within a zoning district and shown on the zoning district map within such ninety-day period as provided in subsection (A) of this section, the uses permitted on such newly annexed land shall be those uses permitted by the county in which such newly annexed land was located as of the effective date of the ordinance annexing such land to the city, **except that oil and gas development shall be prohibited in residential, commercial and limited industrial districts and on any property that is designated as public or private open lands or open space or a public or private park as shown on the city's parks and open space land map.** Those uses permitted by the county shall continue until such time as the newly annexed land is included in a zoning district and shown on the zoning district map by the city. The uses permitted by such county and applied to newly annexed land shall be subject to the requirements and provisions of titles 12, 13, 14, 15 and 16 of the Broomfield Municipal Code.

Section 20. Subsection (D) of Section 17-54-070 of Chapter 17-54 Oil & Gas Land Use Regulations of the Broomfield Municipal Code is replaced in its entirety and amended to read as follows:

Section 17-54-070 - Use by special review criteria.

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(D) No Oil and Gas Location containing an Oil or Gas Well, as such terms are defined in Section 17-54-020 B.M.C., shall be located any closer than 2000 feet from *the nearest parcel lot line for any of the following uses: a residential lot, athletic field, amphitheater, auditorium, child care facility, correctional facility, dwelling unit, event center, hospital, life care institution, nursing home or nursing facility, or the lot of any athletic field, child care facility, recreational facility, school or school facility, or undeveloped residential lot.*

Section 21. This ordinance shall be effective seven days after publication following final passage.

INTRODUCED AND APPROVED after first reading on February 25, 2020, and ordered published in full.

INTRODUCED A SECOND TIME and approved on May 12, 2020, and further ordered published in full.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



Mayor


ATTEST:



City and County Clerk



APPROVED AS TO FORM:



City and County Attorney

First Publication: March 5, 2020

Second Publication: May 17, 2020

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