

**Town of Basalt
ORDINANCE NO. 01
(Series of 2009)**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO, EXTENDING A MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND REVIEW OF LAND USE APPLICATIONS SEEKING A DEVELOPMENT APPROVAL FOR PROPERTY LOCATED IN THE TOWN OF BASALT.

WHEREAS, the Town of Basalt (the “Town”) is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”); and

WHEREAS, the Town of Basalt currently regulates land uses within the Town limits in accordance with Chapters 16, 17, and 18 of the Basalt Municipal Code pursuant to its Home Rule Constitutional authority and the Local Government Land Use Control Enabling Act of 1974, as amended, §§29-20-101, *et seq.* C.R.S.; and

WHEREAS, the current rate and character of development activity in the Town of Basalt is having a negative impact upon the peace, health, safety, and the general well-being of the residents of Basalt; and

WHEREAS, land use applications seeking development approvals in various Town Zone Districts may not be consistent with the goals and vision as expressed by the 2007 Basalt Master Plan Update, including the following:

- Facilitating social capital (§ 3.4);
- Preservation of small town character (§§ 4.2 and 4.10); and
- Providing sufficient mitigation of impacts on the availability of affordable housing (§ 4.5).

In addition, the goals of the 2007 Basalt Master Plan Update may be undermined if new development occurs without consideration of the implementation of the following goals:

- Establishing measures to control growth and to promote quality growth (§§ 4.2.1 and 4.2.2);

- Preparing a community-wide Housing Needs Assessment to explore affordable housing strategies and consider amending the Basalt Land Use Code to increase affordable housing mitigation (§§ 4.5.2, 4.5.3, and 4.5.4); and
- Creating a balanced economy of sustainable economic growth (§ 4.11).

WHEREAS, On June 10, 2008, the Town Council enacted Ordinance No. 11, Series of 2008, imposing a nine (9) month moratorium on the acceptance, processing, and review of land use applications seeking a development approval for property located in the Town of Basalt, and declaring an emergency; and

WHEREAS, the Town Council and the Town Planner's Office require an additional period of time in which to review all existing land use regulations as they affect land use development within the Town of Basalt to ensure that all land use development proceeds in a manner consistent with the 2007 Basalt Master Plan Update; and

WHEREAS, the Town Council desires that the Town Planner's Office complete its analysis and assessment of the land use regulations affecting the development of land within the Town of Basalt with particular attention to the above-referenced goals; and

WHEREAS, extending the moratorium on certain residential and mixed use development applications will enable a reasoned discussion of potential amendments to the land use regulations without creating a rush of development applications and the related impacts upon the community; and

WHEREAS, the Town Planner's Office may need additional assistance from third party consultants to complete the task of analyzing the current land use regulations as contemplated herein, the Town Council hereby directs the Town Manager to authorize the expenditure of Town funds to engage one or more consultant to assist the Town Planner's Office; and

WHEREAS, the Town Council has determined that it is necessary to continue the moratorium for the preservation of public peace, health, and safety;

WHEREAS at a public meeting on January 27, 2009, the Town Council approved this Ordinance on first reading and scheduled a public hearing and second reading for this Ordinance for February 10, 2009, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

WHEREAS, at a public hearing and second reading on February 10, 2009, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicants, and members of the public.

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

Section 1. Moratorium on new land use applications within certain zone districts.

The temporary moratorium, imposed by Ordinance No. 11, Series of 2008, on the acceptance processing, or review by the Town Planner's Office, Technical Review Committee, Planning and Zoning Commission, and Town Council of all land use applications for development approval within the Town of Basalt, except as specified in Section 2 below, is hereby extended.

Section 2. Exemptions from Moratorium.

Land use applications exempt from this temporary moratorium shall be as follows:

- Any project which has vested rights pursuant to Article VI of Chapter 17 of the Basalt Municipal Code;
- Any land use application for a project which has received Sketch Plan approval pursuant to Article IV, of Chapter 16 or Article III, of Chapter 17 of the Basalt Municipal Code;
- Any applications for special review approval pursuant to any provision of the Basalt Municipal Code where no more than two (2) residential units are proposed;
- Any applications for uses permitted in the C-1, C-2, C-3, and IN Zone Districts pursuant to Section 16-22 of the Basalt Municipal Code, where no more than two (2) residential units are proposed;
- Any applications for site plan review or site plan exemption pursuant to Article VI of Chapter 16 of the Basalt Municipal Code where no more than two (2) residential units are proposed;

- Any applications for minor subdivisions for the creation of no more than two (2) lots, or minor subdivision approval pursuant to Section 17-4(a) 2, 3, or 4 of Chapter 17 of the Basalt Municipal Code;
- Any applications for flood damage prevention pursuant to Section 16-360 or 16-362, and any applications for environmentally sensitive areas approval pursuant to Section 16-463 or 16-468, where the request is for no more than two lots.
- Any application for annexation pursuant to Article 1, of Chapter 15 of the Basalt Municipal Code;
- Any application requesting approval for a 100% affordable housing project;
- Any application for a temporary use pursuant to Section 16-181 of the Basalt Municipal Code;
- Any application for a building permit where no other land use approval is required; and
- Any application for the development of an essential public facility or any application for rezoning to, or development in, the Public Zone District.

Section 3. Effect on Development Applications.

A. A land use development application shall be defined for the purpose of this ordinance as any land use application required for development of property to be approved, including, but not limited to, applications for rezoning, special review approval; planned unit development approval; site plan review or site plan exemption review; flood damage prevention pursuant to Section 16-360 or 16-362; applications pursuant to Section 16-394, environmentally sensitive areas approval pursuant to Section 16-463 or 16-468; minor subdivision approval pursuant to Section 17-83(b); or major subdivision approval pursuant to Section 17-84(c)(2). All land use applications filed subsequent to the initial application and approval for the same development project that are necessary to obtain a final development approval may proceed pursuant to the review procedures and standards as set forth in the Basalt Municipal Code.

B. Pre-Application Conferences, Pre-Application Conference Summary reports, pre-submittal conferences, or formal or informal discussion with the Town Planner's staff or review Boards shall not constitute a complete application or any other official status. Applications submitted after the effective

date of this ordinance shall comply with the terms of this ordinance and the land use regulations and Building Code, as amended.

Section 4. Appeals Concerning Moratorium.

A. Any property owner who wishes to appeal a determination by the Town Planner that this moratorium applies to his or her property or plans for development on his or her property may appeal to the Town Council following any administrative action by the Town Planner. Any such appeal is limited to a determination of whether Section 2, Exemptions from Moratorium, has been applied properly.

B. Any property owner who wishes to seek relief from this moratorium because of financial hardship may appeal to the Town Council. The Town Council shall determine if administrative relief shall be granted considering the following:

1. A description of the property and structures located thereon.
2. The original purchase price of the property and subsequent investments or improvements in the property made prior to the adoption of this ordinance other than normal operations and maintenance.
3. Any unrecoverable costs made prior to the adoption of this ordinance.
4. A current appraisal of the property considering the effect of this ordinance.
5. A description of the depreciation method applied for income tax purposes, based on generally recognized accounting principles applicable at the time the property was originally acquired by the property owners.
6. The assessed value of the property for income tax purposes.
7. Copies of the property owner's income tax and financial statements for the past five (5) years.
8. Any additional information the property owner may want to submit that may demonstrate financial hardship.

Within thirty (30) days of complete application submission, or as otherwise reasonable, a hearing date and time shall be scheduled to consider written and verbal testimony from the property owner and a representative of the Town. The

Town Council within thirty (30) days of the hearing, issue a written determination as to whether the financial hardship represented by this moratorium upon the property owner is beyond reasonable expectation and representing substantial unrecoverable financial loss and a special circumstance unique to the property owner which is not applicable to other property owners affected by this moratorium such that the property owner's rights are being substantially deprived. The Town Council shall determine any relief to be provided to the property owner, including release of the property from the terms of this ordinance. The determination shall detail the factors considered including but not limited to:

1. The base value of the property – the original purchase price plus investments and improvements (other than normal operations and maintenance).
2. IRS rules related to depreciation.
3. Residual value of the property based on current appraisal assuming the effect of this ordinance.
4. Other factors that may be considered “unrecoverable costs” by the property owner.
5. A financial analysis of the above using a recoupment of investment model.

The action by the Town Council shall be considered the final administrative action on the matter.

Section 5. Effective Date and Duration of Moratorium.

This ordinance shall become effective on the later of 14 days after final publication of the Ordinance or March 10, 2009 and shall terminate on June 10, 2009, unless extended by a duly adopted ordinance by the Town Council.

Section 6. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

Section 7. Existing Litigation.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinance.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON February 10, 2009 by a Vote of 7 to 0 on January 27, 2009.

READ ON SECOND READING AND ADOPTED, BY A VOTE OF 4 to 0 on February 10, 2009.

TOWN OF BASALT, COLORADO

By: _____
Leroy Duroux, Mayor

ATTEST:

Pam Schilling, Town Clerk

Date of first publication: Thursday, February 5, 2009
Date of Second Publication: Thursday, February 19, 2009
Effective Date: March 10, 2009