

**ORDINANCE NO. 854**

**AN EMERGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, OR APPROVAL OF ANY LAND USE APPLICATIONS, OR ISSUANCE OF ANY SPECIAL USE PERMIT, RELATED TO THE USE OF PROPERTY WITHIN THE CITY FOR OIL AND GAS EXPLORATION, EXTRACTION, AND RELATED ACTIVITIES.**

**WHEREAS**, the Colorado Oil and Gas Conservation Act, C.R.S. § 37-60-101, *et seq.*, declares it is in the public interest to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and natural resources; and

**WHEREAS**, the Colorado Oil and Gas Conservation Act grants the Colorado Oil and Gas Conservation Commission (“COGCC”) authority to adopt statewide rules and regulations concerning the development and production of oil and gas resources and the COGCC has done so; and

**WHEREAS**, the Colorado Oil and Gas Conservation Act provides it is not intended to establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations, and Colorado courts have recognized on several occasions that the Colorado Oil and Gas Conservation Act does not expressly or impliedly preempt all aspects of a local government’s authority to enact local land use regulations applicable to oil and gas development and operational activities within a city, and thus the City’s land use regulations are legal and valid as long as they do not irreconcilably conflict with state law on the basis of operational conflicts that materially impede or destroy the state’s interest; and

**WHEREAS**, the City is located within one of the most actively drilled oil and gas producing formations along the Front Range, the Wattenberg Field, which has been the center of considerable activity relating to the exploration, extraction, and production of oil and gas resources and accessory activities (“oil and gas activities”); and

**WHEREAS**, the City Council recognizes the importance of the oil and gas industry to the community, but believes it is also important to address and, when possible, minimize adverse impacts of any industry on the health, safety, and welfare of the City and its residents through zoning, the exercise of police power, and land use regulations; and

**WHEREAS**, such oil and gas activities are part of a rapidly developing and evolving industry nationwide, across Colorado, and within Weld County, with both substantial advances in technology and significant modifications to the laws governing the industry have occurred during the past several years; and

**WHEREAS**, specifically, technological advances within the oil and gas industry, coupled with market conditions and other factors, have resulted in significant increases in oil and gas activities within and surrounding the City and requests by mineral interest holders and operators for permits for large scale multi-well sites, which contain many more wells per site than in previous applications, have increased; and

**WHEREAS**, the City's current regulations concerning oil and gas activities were last updated in 2006, prior to these various changes in oil and gas production practices and other changing conditions within the industry and the City, and are therefore in need of review and potential amendment in light of current significant concerns over the impacts of continuing oil and gas activities within the City and to conform with current regulatory and best management practices, consistent with COGCC Rules, and updates to reflect current technologies of the oil and gas exploration and extraction industry; and

**WHEREAS**, oil and gas activities may negatively impact the City and its residents in ways that may be inadequately addressed in the City's current zoning and land use regulations, including impacts to the use and integrity of water supplies and water infrastructure, air quality, odor, dust, traffic, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife, aesthetic values, noxious weeds, drainage and erosion control, parks and open space lands, emergency response plans, community resources, and the safety and security of the City's residents; and

**WHEREAS**, the City Council believes it has not only the authority but the responsibility to plan for and regulate the use of land within the City to best protect and promote the health, safety, and welfare of present and future inhabitants and residents of the City, and to guide future growth, development, and distribution of land uses within the City; and

**WHEREAS**, to that end, the City Council has from time to time adopted planning, zoning, police power, and other regulations governing land uses within the City; and

**WHEREAS**, City staff have been analyzing whether the existing zoning, police power, and other land use regulations pertaining to oil and gas activities sufficiently protect the public health, safety, and welfare; and

**WHEREAS**, City staff have undertaken a comprehensive study of the impacts of oil and gas activities, to determine whether existing zoning, police power, and land use regulations pertaining thereto are sufficient to protect the health, safety, and welfare of the City and its residents, or whether additional regulations are necessary to address the impacts; and

**WHEREAS**, local governments throughout Colorado are struggling to address the potential adverse impacts of proliferating oil and gas activities in urban and suburban environments on their residents' health, safety, and welfare, and several local governments have enacted temporary moratoria to allow a period of time to evaluate those impacts in order to assess, determine, and adopt appropriate local regulations; and

**WHEREAS**, the City Council needs time to adequately study the issues, evaluate impacts, and consider appropriate new regulations and amendments to existing regulations; and

**WHEREAS**, the City Council reasonably anticipates that applications for additional oil and gas activities may be filed in the coming months while such activities are undertaken and before the City has had the opportunity to consider and adopt appropriate regulatory changes; and

**WHEREAS**, the City Council finds it is inconsistent with its responsibilities to protect the local environment and residents of the City to continue to process and review applications for oil and gas activities in piecemeal fashion without thoroughly examining the current City regulations to reflect changes in state law, COGCC Rules, and oil and gas production practices; and

**WHEREAS**, if applications requesting approval to conduct oil and gas activities within the City are submitted prior to the City Council having adequate time to review and make necessary revisions to its regulations, the City Council believes that irreparable harm may be done to the public health, safety, and welfare; and

**WHEREAS**, by Ordinance No. 841 adopted on November 27, 2017, the City Council imposed a temporary moratorium until May 31, 2018 on the submission, acceptance, processing, or approval of any special use permit or other land use approval for oil and gas activities in order to study the issues, evaluate impacts, and consider appropriate new regulations and amendments to existing regulations, which temporary moratorium was by Ordinance No. 848 adopted on April 23, 2018 extended to August 29, 2018; and

**WHEREAS**, during the time since the temporary moratorium was adopted, City staff has diligently researched and investigated issues related to the impacts of oil and gas development, has been negotiating operator agreements with oil and gas operators in the City, and is in the process of drafting amendments to the City's existing oil and gas regulations; and

**WHEREAS**, a joint work session between City Council and the Planning Commission was held on April 24, 2018 to provide an update on staff's progress on these issues and another such session is anticipated in September 2018; and

**WHEREAS**, the City Council finds and determines it is of critical importance to the City and its residents that the Planning Commission and City Council complete its examination of the important policy considerations presented by oil and gas activities and that the City's residents, oil and gas operators, and industry stakeholders be given an opportunity to review the draft regulations prior to their adoption; and

**WHEREAS**, in order to protect the public health, safety and general welfare of the inhabitants of the City, the City Council hereby finds and determines that it is necessary and appropriate to extend the temporary moratorium for an additional three months, to October 31, 2018, on the submission, acceptance, processing, or approval of any special use permit or other

land use approval for oil and gas activities, during which time the City shall consider amendments to the City's regulations concerning oil and gas activities; and

**WHEREAS**, the extension of the temporary moratorium set forth herein is reasonable, necessary, and no longer in duration than is needed to allow the City Council and staff to investigate the necessity and ability of the City to regulate the impacts upon the City and its residents by reason of oil and gas activities, and to develop and implement any appropriate regulations needed to protect and preserve the public health, safety, and welfare; and

**WHEREAS**, owners of mineral rights and operators engaged in oil and gas activities will not be unfairly prejudiced by the imposition of the temporary moratorium imposed by this ordinance; and

**WHEREAS**, the U.S. Supreme Court and the Colorado Supreme Court recognize that, in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development and while evaluating the sufficiency of current regulations; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments and, therefore, pursuant to express and implied authority granted by the Colorado Revised Statutes ("C.R.S.") and multiple Colorado and federal appellate decisions upholding temporary moratoria on land use applications while amendments are considered, the City Council has the legal authority to adopt the temporary moratorium set forth herein; and

**WHEREAS**, the City Council finds and declares it has the power and authority to adopt this ordinance pursuant to C.R.S. § 29-20-101, *et seq.* (the Local Government Land Use Control Enabling Act), C.R.S. § 31-23-301, *et seq.* (concerning municipal zoning powers), C.R.S. § 31-15-103 (concerning municipal police powers), C.R.S. § 31-15-401 (concerning municipal police powers), C.R.S. § 31-15-501 (concerning municipal authority to regulate businesses), C.R.S. § 31-15-601 (concerning municipal building regulations), Article XX of the Colorado Constitution (concerning municipal home rule), and the City of Dacono Home Rule Charter, all in a manner consistent with constitutional rights; and

**WHEREAS**, an emergency exists because the City Council finds and determines that, in light of the foregoing recitals and findings, circumstances warrant the immediate enactment of this ordinance and extension of the temporary moratorium as set forth herein in order to protect the public health, safety, and welfare, and to avoid development that, during the City's planning and land use regulation amendment process, may contravene the City's efforts and put the public at risk, and it is of critical importance to the City and its residents that such regulations be applied to all applications for oil and gas activities within the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:**

**Section 1.** The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

**Section 2.** Upon the effective date of this ordinance, and until October 31, 2018, no application for approval of a special use permit or other land use approval for oil and gas activities shall be accepted, reviewed, processed, approved or otherwise acted upon, unless otherwise provided in this ordinance.

**Section 3.** The restrictions contained in this ordinance shall not be construed to affect any applications for a special use permit or other land use approval for oil and gas activities for which complete applications were filed prior to the effective date of Ordinance No. 841 or for oil and gas wells the drilling of which are authorized by an operator agreement approved by the City Council.

**Section 4.** Any person who submitted a complete application for a special use permit or other land use approval for oil and gas activities prior to the effective date of Ordinance No. 841, and who believes that application of the temporary moratorium to such application would be legally invalid, may file with the City Council a request for an exemption from the moratorium. The request shall be in writing and fully set forth the reasons why the exemption should be granted. The City Council may grant the exemption if it finds that application of the moratorium would be legally invalid under the facts presented.

**Section 5.** The provisions of this ordinance are temporary in nature and may be repealed by subsequent legislative enactment. The temporary moratorium established by this ordinance shall terminate as of October 31, 2018 unless sooner repealed.

**Section 6.** 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 City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 7.** The repeal or modification of any provision of any prior ordinance by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

**Section 8.** All other ordinances or portions thereof inconsistent or conflicting with this ordinance, or any portion hereof, are hereby repealed to the extent of such inconsistency or conflict.

**INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AND POSTED BY TITLE this 13<sup>th</sup> day of August, 2018.**

**PUBLIC HEARING AND SECOND READING WILL BE THE 27<sup>th</sup> day of August, 2018, AT 6:00 P.M. AT DAcono CITY HALL, 512 CHERRY STREET, DAcono, CO.**

**READ, ADOPTED ON SECOND READING AS AN EMERGENCY BY AT LEAST FIVE AFFIRMATIVE VOTES, WITH SECOND READING AMENDMENTS TO BE PUBLISHED IN FULL AND THE ORDINANCE AS ADOPTED POSTED IN FULL THIS 27<sup>th</sup> day of August, 2018.**

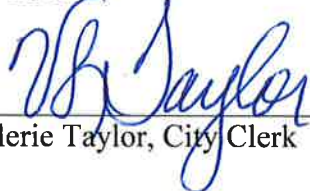
CITY OF DAcono, COLORADO



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Joe Baker, Mayor

ATTEST:



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Valerie Taylor, City Clerk

Summary of Ordinance No. 854, **“AN EMERGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING, OR APPROVAL OF ANY LAND USE APPLICATIONS, OR ISSUANCE OF ANY SPECIAL USE PERMIT, RELATED TO THE USE OF PROPERTY WITHIN THE CITY FOR OIL AND GAS EXPLORATION, EXTRACTION, AND RELATED ACTIVITIES”**: Extends the temporary moratorium until October 31, 2018 on land use applications for oil and gas activities within the City.