

INTRODUCED BY: _____

AN ORDINANCE AMENDING THORNTON CITY CODE SECTION 38-523 OF THE LOCAL AMENDMENTS TO THE 2010 EDITION OF THE MODEL TRAFFIC CODE FOR COLORADO MUNICIPALITIES PERTAINING TO THE RESPONSIBILITIES OF THE OFFICE OF THE TRAFFIC ENGINEER.

WHEREAS, the City has adopted local amendments to the 2010 Edition of the Model Traffic Code for Colorado Municipalities ("MTC") in Section 38-523 of the Thornton City Code ("Code"); and

WHEREAS, such local amendments created the office of the Traffic Engineer in Section 113 of the MTC and established the duties and responsibilities for the Traffic Engineer in Section 113.5 of the MTC; and

WHEREAS, an oil and gas operator authorized to do business within or who is operating outside the City is required to obtain an Access Road Permit issued by the Traffic Engineer, for the use of public streets and roadways within the City in connection with the oil and gas operation; and

WHEREAS, oil and gas operations are unique in that heavy truck traffic for various phases of the business is a necessary and integral part of the oil and gas operations for the duration of the business. Consequently, the impact on the use of the City's public streets and roadways is disproportionately intense relative to the impact of other businesses using the City's public streets and roadways.

WHEREAS, use of such public streets and roadways by oil and gas operations adversely impacts the useful life of these public streets and roadways, and significantly impacts traffic patterns by the volume of oil and gas facility truck traffic, thereby complicating the City's regulatory efforts to manage impacts to and traffic flow on public streets and roadways; and

WHEREAS, in 2008, Rio Blanco County, Colorado, funded a traffic study addressing the roadway impacts caused by new development, including oil and gas development in the County, and the regulatory mechanisms by which those new developments could be required to pay their fair share of improvements. The study concluded that the increased traffic impacts related to oil and gas operations generated a need for increased capacity of roads, road improvements, and additional road maintenance, and consequently that the imposition of an impact fee on all oil and gas operations to pay for such traffic improvements and maintenance was an appropriate means to recoup government expenses associated with such development; and

WHEREAS, the County of Boulder similarly funded an oil and gas road impact study in 2013 to understand the potential impacts of oil and gas operations and production on the County's roadways and to design a road deterioration safety fee to offset costs associated with the oil and gas truck traffic, and concluded that oil and gas

roadway impact fees were an appropriate means to recoup the expenses incurred by the County associated with the adverse traffic impact created by such development, and thereafter developed a system for imposing and collecting transportation impact fees for all oil and gas facilities operating in the County; and

WHEREAS, the City funded a similar oil and gas road impact fee study, conducted by BBC Consulting and Research presented to the Thornton City Council in July, 2016 and which confirmed that truck traffic associated with oil and gas drilling and production can significantly impact local road systems. The study found, based on historical well drilling activity inventoried by the Colorado Oil and Gas Conservation Commission and current geographical distribution of oil and gas development that, while the City's costs associated with road damage vary based upon the development, an oil and gas road impact fee can be imposed in amounts calculated to isolate the oil and gas damage to City roads and allow the City to recoup associated maintenance or repair costs; and

WHEREAS, Recommendation #37 of the Colorado Oil and Gas Task Force Final Report recognizes that “[t]here is uniform agreement that one of the most serious impacts of oil and gas activity involves the use of large trucks and trailers.” The Task Force Final Report concluded that the issue was serious enough to merit “special attention, study and action” such as the Rio Blanco County and Boulder County impact fee studies; and

WHEREAS, the City is experiencing an increase in oil and gas operations within the City and in the surrounding areas that impact City streets and roadways, and the applicable taxes and other revenue generated from oil and gas operations do not generate sufficient funds to cover the cost to the City, to provide the necessary capital facilities and safety improvements, to accommodate and address the added impacts of oil and gas operations on transportation system management and use of the City's streets and roadways; and

WHEREAS, without a mechanism requiring an oil and gas operation to pay their reasonable, fair, and equitable share of the costs incurred by the City for capital improvements and safety improvements made necessary by the impacts to streets and roadways caused by oil and gas operations in and surrounding the City, such streets and roadways will degrade making transportation inefficient, inconvenient, and less safe; and

WHEREAS, without imposing a fee, City taxpayers will bear the financial costs and suffer the consequences of impacts to public streets and roadways caused by oil and gas operations, through the delay or postponement of current or future capital investments elsewhere in the City's transportation system; and

WHEREAS, oil and gas operators should pay their reasonable, fair, and equitable share of the costs incurred by the City, associated with ensuring the public

roads are kept and maintained in a safe condition given the impacts caused by oil and gas operations; and

WHEREAS, Colorado law recognizes the authority of local governments to impose fees to defray the expenses associated with the provision of governmental services and anticipated future demand for such services; and

WHEREAS, the office of the Traffic Engineer was established to deal with and issue oversized and overweight truck permits for use of City streets and roadways and now the Traffic Engineer's authority needs to be amended to authorize and direct the Traffic Engineer to require and issue access road permits for oil and gas operations within the City and in surrounding areas that uses City streets and roadways and authorize the Traffic Engineer to impose an applicable fee for oversized and overweight truck permits and access road permits; and

WHEREAS, the Traffic Engineer should be authorized to enforce and establish standards for calculation of a fee rationally related to the need for street and roadway improvements and maintenance caused by the use of such City streets and roadways by oil and gas operations, which fee is to be recommended to City Council for adoption. Such fee is intended to timely and properly address related safety concerns, as traffic regulations provide a mechanism for allocating to such oil and gas operations their fair share of the costs of maintaining and improving the streets and roadways within the City that are directly impacted by oil and gas operations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 38-523, Local Amendments to the Model Traffic Code, Section 113 is hereby amended by addition of the words double-underlined and the deletion of the words stricken to read as follows:

Sec. 523-113. Office of the Traffic Engineer.

- (1) The office of the Traffic Engineer is hereby established. The Traffic Engineer shall have the authority to exercise the powers and duties provided in this Code and as may be referred to in the Thornton Municipal Code. Such authority shall specifically include the power to issue all types of permits or authorizations associated with the use of public streets and roadways by any business impacting such public streets and roadways and to establish and impose applicable fees for such use of public streets and roadways pursuant to applicable provisions of this Code and the Thornton Municipal Code.
2. Section 38-523 Local Amendments to the Model Traffic Code, Section 113.5 is hereby amended by enactment of a new subsection 113.5(5) with the present

subsection (5) and the current subsections (6), (7) and (8) renumbered accordingly, to read as follows:

113.5. Duties and Powers of Traffic Engineer or other designated traffic official.

(5) The Traffic Engineer, or designee, shall have the authority to and responsibility for establishing standards and procedures for the issuance of any type of permits and to establish and collect applicable fees, as fees are approved by City Council, related to the use of and impact on the City's public streets and roadways by all types of traffic and including any type of truck traffic in connection with the development, construction, operation, and maintenance of oil and gas facilities, whether such facilities are within the City or are outside the City limits, but intend to use or have used City streets and roadways in connection with the above described oil and gas operations. The Traffic Engineer shall also have the authority and responsibility to establish the process for imposition and collection of any applicable fees associated with the issuance of any permits allowing the use of public streets or roadways.

a. Permit requirements. Any type of oil and gas operation, whether located within the City or located outside the City limits, which intends to use the public streets and roadways within the City in any way and in connection with said oil and gas operation, shall be required to obtain, in addition to any other applicable license or permit of general applicability, an Access Road Permit ("**Permit**") upon application to the Traffic Engineer. The following documents and information shall accompany all Permit applications, which application form shall be established by the Traffic Engineer:

(1) Payment of the applicable Permit fee in an amount as set forth by resolution of the Thornton City Council;

(2) A copy of the complete Colorado Oil and Gas Conservation Commission (herein after "**COGCC**") application, Form 2 or 2A, and any accompanying exhibits.

(3) A copy of the COGCC approvals for the oil and gas operation.

(4) A traffic management plan, for those oil and gas operations located outside the City, that intend to use the City's public streets and roadways, identifying the projected number of all types of vehicles that will be used in connection with the operations and anticipated frequency of use for the various types of vehicles; excluding personal vehicles and personnel passenger trucks of employees and guests and excluding personal passenger trucks.

- (5) Route preferences, which shall be specific as to preferred routes, including estimated time of day for travel and projected volume of traffic for all types of traffic. Such route preferences must be approved for all types of motor vehicles, with the exception of personal vehicles of employees or guests, which are used in the development, construction, operation, and maintenance of the oil and gas development operations.
 - (6) No Permit shall be issued until a complete application is received, completeness to be determined by the Traffic Engineer.
 - (7) No oil and gas operation Development Permit will be approved until a Permit, as required by this Section 113.5, has been issued.
- (b) Fee established: An Access Road Fee (“**Fee**”) is hereby authorized to be imposed and collected by the Traffic Engineer that is intended to recoup roadway expenses that may be incurred by the City and are associated with the operation of oil and gas operation within the City that use public streets and roadways. The Fee shall be imposed and collected by the Traffic Engineer in an amount as set forth by resolution of the Thornton City Council.
- (c) Methodology for determination of applicable Fee: In evaluating the appropriateness of imposing a Fee, the Traffic Engineer shall consider the following factors and methods used for calculating the amount of the Fee:
- (1) The recommendations contained in the Thornton Oil and Gas Impact Fee Study conducted by Felsburg, Holt & Ullevig, and BCC Research & Consulting.
 - (2) Traffic safety management modifications that may be necessary with respect to the routes proposed relative to the operational needs of vehicular traffic as set forth in the applicant’s Permit, to include:
 - (a) City streets or roadways designations relative to the composition of such streets or roadways designated in the route preferences, and the degradation of such streets and roadways requiring enhanced maintenance, and the need to upgrade for multi-modal safety concerns as a result of the proposed routes for vehicular traffic as set forth in the applicant’s Permit; and

- (b) The anticipated volume of all categories of traffic both initially and as build out for such traffic necessitated by the oil and gas operation as more particularly described in the applicant's Permit; and
- (c) Types of vehicles, including specifically the identification of the number of single axle and multi-axle vehicles used for all aspects of the oil and gas operation, and use of any of the vehicles as particularly identified in the applicant's Permit.

(3) The Fee to be imposed is based on the following method:

(a) A one time Fee shall be imposed as follows:

- i. For each and every type of well located within the site of an oil and gas operation, that is using or proposes to use the City's streets and roadways, a per operating well Fee will be imposed; for any capped well the Fee will be imposed when and if the capped well becomes operational; and
- ii. For each well pad located within the site of an oil and gas operation, that is using or proposes to use the City's streets and roadways, a per well pad Fee will be imposed; and
- iii. The amount of the Fee will be set forth by Resolution of the Thornton City Council.

(4) The Fee imposed may be based on an alternative method as follows:

(a) The Fee imposed for each oil and gas operation may be calculated using an Equivalent Single Axle Load ("**ESAL**") method as follows:

- i. An oil and gas operator may perform a traffic study to provide evidence quantifying the number of ESAL's the oil and gas operation is expected to generate relative to the designated routes approved by the Access Road Permit over the entire affected distances traveled.
- ii. The City Traffic Engineer must approve the results of the independent traffic study and the calculations for an ESAL type Fee amount proposed, based on a 12

foot average traffic lane, and thereby allow the calculated amount for the ESAL based Fee.

- iii. The oil and gas operation may also agree to use the City's calculated ESAL fee based upon the study conducted by BCC Research and Consulting, which established a weighted average Fee amount per each ESAL lane-mile for a 12 foot average traffic lane alternative.
- iv. The amount of the City's ESAL Fee for an oil and gas operation ESAL Fee will be set forth by resolution of the Thornton City Council.

(5) It shall be unlawful to allow or permit a vehicle, subject to a Fee imposed by this Section 113.5, of any type associated with oil and gas operations to use the public street or roadway within the City without first obtaining a Road Access Permit and remitting to the City all applicable Fees.

3. Section 38-523 Local Amendments to the Model Traffic Code, Section 510 is hereby amended by amendments to Subsections 510(8) and (9)(b) by addition of the words double-underlined and the deletion of the words stricken to read as follows:

(8) This local authority may require an oversized and/or overweight vehicle permit ("Permit") fee, in addition to, but not to exceed, the amounts required in Section 42-4-510(11), C.R.S., as provided by ordinance or resolution; and, in the case of a Permit under Section 42-4-510(11)(a)(IV), C.R.S., the amount of the fee shall not exceed the actual cost of the extraordinary action.

(9) (a) Any person holding a Permit issued pursuant to this section or any person operating a vehicle pursuant to such Permit who violates any provision of this section, any ordinance or resolution of this local government, or any standards or rules or regulations promulgated pursuant to Section 42-4-510, C.R.S., by the Colorado Department of Transportation except the provisions of Section 42-4-510(2)(b)(IV), C.R.S., commits a traffic offense.

(b) This local authority with regard to any issued Permit may, refuse to issue any Permit authorized by this section if the holder of the Permit has been found to have violated the provisions of this section, any ordinance or resolution of this local government, or any standards or rules or regulations promulgated pursuant to this section.

4. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
6. The repeal or amendment of any provision of the Code 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 and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as 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.
7. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on _____, 2016.

PASSED AND ADOPTED on second and final reading on _____, 2016.

CITY OF THORNTON, COLORADO

Heidi K. Williams, Mayor

ATTEST:

Nancy A. Vincent, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

Gary G. Jacobson, Interim City Attorney

PUBLICATION:

Posted in six (6) public places after first and second readings.

Published in the Northglenn-Thornton Sentinel after first reading on _____, 2016, and after second and final reading on _____, 2016.