

ORDINANCE 3894
AN EMERGENCY INTERIM ORDINANCE TO ESTABLISH
A STUDY PERIOD AND MORATORIUM FOR A PERIOD UP TO ONE YEAR ON
NEW OR EXPANDED FRAC SAND OPERATIONS AND TRANSPORTATION
FACILITIES PURSUANT TO MINNESOTA STATUTES,
SECTION 462.355, SUBD. 4

Preamble: That on March 5, 2012, the City Council unanimously passed a motion to authorize a study of the impacts and effects of existing, new or expanded frac sand mining, storage, transportation, washing, drying and processing operations and facilities, including rail hubs, within the City of Winona for the purpose of determining the adequacy of existing ordinances and regulations, or if additional or changed City ordinances or regulations are necessary or appropriate, and set a public hearing for March 19 for consideration of an interim ordinance, pursuant to Minnesota Statutes, section 462.355, establishing a moratorium prohibiting the prior identified new or expanded uses, excluding the commercial harbor dock, for a period up to one year in order to conduct the referenced study and amend City ordinances as the City Council deems necessary or appropriate. That Council was to consider adoption of a moratorium ordinance at its next regularly scheduled meeting on March 19, 2012. That Council has decided that any additional proposals for the above identified uses brought forward during the period prior to final adoption of the proposed interim ordinance will be detrimental to the referenced study and may therefore negatively impact the City's ability to consider and modify regulations for such uses for the preservation of the public health, safety and welfare and the City's planning process. That Council has determined that a public hearing is not required before the Council adopts an interim ordinance pursuant to Minn. Stat. § 462.355, subd. 4. To forestall additional proposals for uses identified herein from being brought forward prior to the City adopting the above-referenced moratorium and thereby undermining or negatively impacting the City's study, regulatory and planning processes, immediate consideration and action by the Council is necessary, and an emergency is hereby declared pursuant to Winona City Charter, Section 3.06, to preserve and protect the public peace, health, morals, safety and welfare.

The City of Winona does ordain:

Section 1. Purpose and Intent. The purpose and intent of this Ordinance is to prohibit new or expanded frac sand mining, storage, washing, drying and processing operations, and transportation facilities used to ship sand, including rail hubs, but excluding the commercial harbor dock, within the City of Winona (City). The City Council has recently revised its Zoning Code to require a Conditional Use Permit (CUP) for frac sand processing operations and facilities, including sand washing and

drying facilities, and transportation facilities used to ship sand. However, the City Council has not yet had adequate opportunity to fully research, study and consider the impacts and potential impacts of the newly enacted regulations on frac sand processing operations and facilities within the City as well as related transportation facilities used to ship sand in and out of the City, including rail hubs.

Section 2. Preliminary Findings. The City Council hereby makes the following preliminary findings to serve as the basis for the necessary study to be made during the moratorium period provided in this Ordinance. These preliminary findings serve as the reasons why it is in the public interest for the City to conduct a study and so declare a moratorium by virtue of this Ordinance:

- 1) The current regulations and official controls of the City may not adequately address the negative impact and effects of current, new or expanded frac sand operations and transportation facilities used to ship sand, including rail hubs, and the transportation issues associated therewith in relationship to nearby streets, businesses and neighborhoods.
- 2) Although the City has recently studied the impacts of the existing frac sand operations and transportation facilities within the City in relationship to zoning, the City has not fully researched, analyzed and studied the impacts of such uses in relationship to the comprehensive plan or to determine the adequacy and effectiveness of current and newly adopted regulations in protecting the public health, safety and welfare of the community.
- 3) The public interest and public health safety and welfare requires that the City study, analyze and evaluate the impacts and effects of existing, new or expanded frac sand mining, storage, transportation, washing, drying and processing operations as well as related transportation facilities used to ship sand, including rail hubs, within the City for the purpose of determining the adequacy and effectiveness of existing ordinances and regulations, or if additional or changed City ordinances or regulations, or amendments to the City's comprehensive plan, are necessary or appropriate.
- 4) This moratorium will ensure that any ordinance changes or comprehensive plan amendments will be carefully considered and evaluated and that all the issues, including but not limited to transportation, environmental, fiscal, land use and regulatory, can be fully examined, while protecting the City's

planning process and the public health safety and welfare during the moratorium period.

Section 3. Moratorium Declaration. For the duration stated herein and until the City has completed a study and adopted any ordinances or amendments to its comprehensive plan deemed necessary or appropriate related to the aforementioned purpose, intent and findings of this Ordinance, the City shall not accept, issue or process any applications, permits, or otherwise allow any of the following new or expanded frac sand mining, storage, washing, drying or processing operations, or transportation facilities used to ship sand, including rail hubs, within the City. This moratorium shall not apply to shipping operations at the commercial harbor dock.

Section 4. Study. During the period of this moratorium, City staff will conduct a study; such study to help determine the regulatory controls which may need to be adopted or revised to protect the public's health, safety and welfare related to the aforementioned purpose, intent and findings. In addition, the City staff shall study the comprehensive plan to determine whether an amendment to the comprehensive plan is necessary or appropriate.

Section 5. Duration. Unless otherwise provided in this section, this Ordinance shall expire, without further City Council action, one year from the effective date of this Ordinance following final passage by the City Council, or it may be repealed earlier if the Council determines that the requisite studies have been completed and adopted and that appropriate evaluation and action, including any necessary revisions of the City Code or Comprehensive Plan, have been finalized and adopted by the City Council. The duration of this Ordinance may be extended by adoption of a subsequent

Ordinance for a total time not to exceed the statutory limits in Minn. Stat. 462.355, subdivision 4.

Section 6. Variances. The City Council may grant a variance to this Ordinance if the Council finds after careful review of all the facts that a proposal is compatible with the zoning and official control amendments being considered by the City, that it does not adversely impact the health, safety or welfare of the citizens and that it otherwise meets the requirements of the Winona City Code and state law.

Section 7. Separability. Every section, provision, or part of this Ordinance is declared separable from every other section, provision or part; and if any section, provision, or part thereof or action taken hereunder shall be held invalid, it shall not affect any other section, provision, or part.

Section 8. Effective Date. That this ordinance shall take effect immediately upon its adoption.

Dated this 13th day of March, 2012.

Jerome S. Miller
Mayor

Attested By:

Monica Hennessy Mohan
City Clerk