

**CITY OF EVANS, COLORADO**

**ORDINANCE NO. 722-20**

**AN ORDINANCE CONCURRENTLY ANNEXING AND ZONING CERTAIN LANDS IN CONNECTION WITH THE MOUNTAINTRAX INTERMODAL LLC PETITION FOR ANNEXATION**

**WHEREAS**, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

**WHEREAS**, MountainTRAX Intermodal LLC, a Delaware limited liability company (“the Petitioner”) filed with the City Clerk a Petition for Annexation dated May 11, 2020 requesting that the property commonly known as 22744 Weld County Road 33 and more particularly described in the attached Exhibit A (“the Property”), be annexed to the City of Evans, Colorado; and

**WHEREAS**, the City Council reviewed the Petition at its meeting on May 19, 2020 and adopted Resolution No. 15-2020 setting the matter for public hearing on July 7, 2020 and July 21, 2020 to determine whether the Property is eligible for annexation and hear from the public; and

**WHEREAS**, the City Council has determined that the Property is eligible for annexation pursuant to C.R.S. Section 31-12-101, et seq.; and

**WHEREAS**, the City of Evans and Weld County have entered into a Cooperative Planning Agreement (CPA). According to the CPA, any proposal for urban development is encouraged to occur in the City of Evans. The proposed use of the Property is considered urban development and according to the CPA, should be annexed and developed within the City of Evans; and

**WHEREAS**, the Property under consideration for concurrent annexation and zoning is designated as future industrial and green industrial on the future land use map found in the City’s 2010 Comprehensive Plan. The proposed zoning complies with the land use forecast provided for in the Comprehensive Plan; and

**WHEREAS**, pursuant to the provisions of the Evans City Code, including Sections 18.06.030 and 18.06.040, the matter was referred to the Planning Commission to obtain a recommendation as to the appropriate zoning of the Property if it is annexed to the City; and

**WHEREAS**, the criteria to be considered by the Planning Commission and the City Council in zoning property, as set forth in Section 18.06.040D of the Evans City Code are:

1. A need exists for the proposed uses,
2. The parcel of ground is indeed the correct site for the proposed development,
3. There has been an error in the assigned zoning or
4. There have been significant changes in the area to warrant a zone change,
5. Adequate circulation exists and traffic movement would not be impeded by the development,
6. Additional municipal service costs will not be incurred which the City is not

- prepared to meet,
7. There are minimal environmental impacts or impacts can be mitigated,
  8. The proposal is consistent with the Evans Comprehensive Plan, maps, goals and polices and
  9. There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land use.

**WHEREAS**, at its meeting on June 23, 2020, the Planning Commission considered the appropriate zoning of the Property; and

**WHEREAS**, based on the criteria set forth above, the materials included in the Application, the matters presented to the Commission by the Petitioner, and the comments of staff and the public, the Commission adopted staff recommendations that the Property be zoned I-3, to allow for all I-3 uses except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts; and

**WHEREAS**, following proper notice, the matter has been presented to the City Council at its regular meeting on July 7, 2020 and will remain open for public comment on July 21, 2020; and

**WHEREAS**, based on the matters presented to it, including the Application, comments from staff and the public, and all applicable criteria and requirements, the City Council concludes that it is in the best interest of the City to annex the Property to the City of Evans; and

**WHEREAS**, based on the recommendation of the Planning Commission, as well as the Application, comments from staff and the public, and applying the criteria set forth above, the City Council concludes that the Property should be zoned I-3 to allow for all I-3 uses except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts.

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

1. The Property described in Exhibit A, attached hereto, and incorporated by reference herein, shall be and hereby is annexed to, incorporated in, and made a part of the City of Evans, Colorado. In support of this determination to annex the Property, City Council incorporates by reference Resolution \_\_\_\_-2020.
2. The annexation of the Property to the City of Evans shall be complete and effective on the effective date of this ordinance, except for purposes of General Property Taxes, and shall be effective as to General Property Taxes on and after the first day of January 2021.
3. The Property shall be zoned I-3 except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts. The zoning map for the City of Evans shall be amended to reflect such zoning.
4. The Annexation Agreement executed by MountainTRAX Intermodal, LLC in connection with the Property described in Exhibit A is hereby approved.

5. The City Clerk is hereby directed to record this Ordinance with the Weld County Clerk and Recorder.

6. Although the annexation is hereby approved and the Property is hereby annexed to the City, no permits will be issued in connection with this development until all the following conditions have been fulfilled:

- A. The Applicant shall provide all responses to the Conditions of Approval and the Change of Zone maps to the City for recording with the Weld County Clerk and Recorder within 30 days following the final City Council Change of Zone hearing.
- B. A Master Development Plan inclusive of a Subdivision Plan shall be submitted within 45 days from July 21, 2020. The applicant may propose a combined Preliminary Plan and Final Plat.
- C. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of approved Site Plans or Special Use Permits are not allowed.
  1. The storage of the port-a-lets is not an approved use and these need to be removed.
  2. A Site Plan for the existing office located at 22744 Weld County Road 33 shall be submitted with the Master Development Plan within 45 days after the final Change of Zone hearing.
- D. A Development Agreement is required for any on-site or off-site improvements, both private and public. Until the Development Agreement is effective, the Second Amendment to the Annexation Agreement approved through Ordinance 625-15 remains in full effect. However, Section 10 of the Second Amendment to the Annexation Agreement shall be extended for 180 days from July 21, 2020. The Development Agreement required by this Paragraph D must be presented to City Council for consideration at a Public Hearing to occur within 180 days from July 21, 2020. The Development Agreement required by this Paragraph D will address at minimum the following subjects:
  1. Petitioner's obligation to pave Weld County Road 33;
  2. Petitioner's obligation to connect to a potable water supply;
  3. Site Access;
  4. Intended traffic haul route;
  5. Landscaping.
- E. Architectural, Landscaping and Site Design Standards for Industrial development found in Section 18.08.040.G of the Land Use Code, as amended, shall be followed with all future and existing development on site. Architectural review shall occur at the time that an application for a building permit is filed.
- F. The following Development Standards shall be placed as notes on the Change of Zone plat map.
  1. Approval of this plan may create a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended.
  2. The property is Zoned Industrial, I-3 with exceptions. The use of the property for a Junkyard or a Livestock Trailer Washout are prohibited.
  3. Any land use changes not specifically addressed by this ordinance may necessitate an amendment to the land use permit subject to approval by the City.

4. Access to the Property shall be through the property located at 7300 47<sup>th</sup> Avenue. The existing Access Easement recorded at Reception 4129886 will either be abandoned for use by the Property or restricted to emergency access only. This shall be finalized through the Development Agreement.
5. The property owner shall connect to the City's water, non-potable water, and sanitary sewer systems once City facilities become available to serve the property. At the time of connection, the applicant shall abandon any private well and/or septic system and provide evidence to the City each have been abandoned in accordance with the appropriate jurisdiction's guidelines.
6. Building Permits may be required for structures and buildings to bring them into compliance with a commercial structure. Coordination with the City of Evans' Building Department is required.
  - i. Fire Protection District review and approval is required. The applicant shall coordinate all inspections through the Fire Protection District. Petitioner shall adhere to the International Fire Code as adopted in the Evans Municipal Code.
7. All signs require permits. Coordination with the City of Evans Building Department is required.
8. All property owners and tenants of the property shall use quiet back-up alarms on site and in the public right-of-way.
9. Property owners and tenants are prohibited from using Jake Breaks in the public rights-of-way.
10. A Grading Permit issued by the City of Evans is required prior to construction. On-site lighting shall be shielded to not shine onto adjacent properties.

G. Prior to construction:

1. Petitioner shall obtain applicable land use permits.
2. The Applicant shall prepare final construction drawings and provide these to the City Engineer for approval.
3. Grading Permits and Access Permits are required.

6. Severability. 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 thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

7. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 7th DAY OF JULY 2020.

ATTEST:



BY: *Karen Frawley*  
Karen Frawley, City Clerk

CITY OF EVANS, COLORADO  
BY: *Bryan Rudy*  
Bryan Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS 21 DAY OF July, 2020.

ATTEST:



BY: *Karen Frawley*  
Karen Frawley, City Clerk

CITY OF EVANS, COLORADO  
BY: *Bryan Rudy*  
Bryan Rudy, Mayor Pro Tem  
*City Clerk*

EXHIBIT A:

**Legal Description:**

(A) A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:

Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;

Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;

Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;

Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

(B) An easement for ingress and egress on the following described property:

That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:

Beginning at the Northwest corner of the SW 1/4 NW 1/4 of said Section 11, and considering the West line Section 11 to bear North 00°06'47" West and with all other bearings contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the SW 1/4 NW 1/4 of said Section 11, 781.20 feet;

Thence South 30°44'21" East, 25.59 feet;

Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;

Thence North 00°06'47" West along the West line of said Section 11, 22.00 feet to the Point of Beginning, County of Weld, State of Colorado.



