

## **SUBJECT**

Items Relating to a Citizen Initiative on the November 5, 2013 Ballot.

- A. Resolution 2013-084 Urging the Registered Electors of the City to Vote in Favor of a Proposed Moratorium on Hydraulic Fracturing and the Storage of its Waste Products Within the City of Fort Collins or under its Jurisdiction at the November 5 Special Election. (Option #1)
- B. Resolution 2013-085 Urging the Registered Electors of the City to Vote Against a Proposed Moratorium on Hydraulic Fracturing and the Storage of its Waste Products Within the City of Fort Collins or under its Jurisdiction at the November 5 Special Election. (Option #2)

## **EXECUTIVE SUMMARY**

The purpose of this item is to encourage voters to vote for or against, depending upon on the option chosen by Council, during the upcoming election.

## **STAFF RECOMMENDATION**

none.

## **BACKGROUND / DISCUSSION**

On August 20, 2013 Council adopted Resolution 2013-072 submitting a citizen-initiated question of whether to place a five-year moratorium on the use of hydraulic fracturing to extract oil, gas and other hydrocarbons and on the storage of the waste products of hydraulic fracturing within the City or on lands under the City's jurisdiction on a November 5, 2013 Special Election Ballot. Staff was directed by Council to prepare two Resolutions for Council consideration related to the election. Resolution 2013-084 (Option #1) is a Resolution urging voters to vote in favor of the moratorium whereas Resolution 2013-085 (Option #2) urges voters to vote against the moratorium.

Current City Code (Section 12-135 and 136) requires any oil and gas operator in the City limits to obtain an operator agreement approved by the City Council in order to use hydraulic fracturing as part of operations and development. The existing Operator Agreement provides increased protection for operations conducted by Prospect Energy or others in the Fort Collins Field and on described undeveloped lands (UDA). Any other oil and gas operator would be required to negotiate a separate agreement in order to utilize hydraulic fracturing to extract oil or gas. Such agreement would need to be approved by the City Council and may contain similar conditions as the Prospect Energy Agreement and/or other conditions unique to the type of operation being considered.

### **Option #1: Reasons to Consider Adoption**

During numerous Council meetings related to Oil and Gas regulations, Council heard from citizens that they are concerned about the potential health risks associated with hydraulic fracturing and oil and gas extraction. Residents have specifically voiced concern over the toxicity of chemicals used in the process of hydraulic fracturing, the release of methane gas into the air or its migration to drinking water and questioned whether it is safe to store waste products under any conditions. Since the Colorado Oil and Gas Act requires oil and gas resources to be extracted in a "manner consistent with protection of public health, safety and welfare, including protection of the environment and wildlife resources", Councilmembers may conclude that supporting the moratorium would be the best way to safeguard city residents and city property.

### **Option #2: Reasons to Consider Adoption**

Previous Council decisions and subsequent actions include: the imposition of a moratorium on any new oil and gas permits (which moratorium has expired); the imposition of a ban prohibiting hydraulic fracturing and the storage of

liquid wastes and/or flowback unless stringent public protections measures were adopted through a Council-approved Operator Agreement; and, the approval of an operator agreement with Prospect Energy that requires more stringent local controls in addition to requirements of the Colorado Oil and Gas Commission, Colorado Department of Public Health and Environment, and Federal guidelines and includes strict controls on the release of methane gas. Based on these actions, Councilmembers may conclude that the adoption of the ballot measure would be inconsistent with the Operator Agreement and the other local measures (City Code 12-135 and 12-136) enacted to protect the health and safety of city residents and property. Further, Council may conclude that such action could result in costly, protracted litigation against the City and establish legal precedents damaging to the interests of other Colorado municipalities. In addition, Natural Areas Department staff has consistently asked to remain outside any local restrictions related to oil and gas extraction since the Department has participated in a collaborative "Energy by Design" process with the State Land Board and other entities (a process endorsed by Council through a Memorandum of Agreement with the State) designed to protect biological, cultural, scenic, and recreational conservation goals while allowing reasonable access to the mineral estate. Staff believes Energy by Design provides the best strategy for protection for areas of land under the City's jurisdiction outside of the City limits. If the ballot measure were approved the result could undo the "Energy by Design" process; may result in more significant negative impacts to Natural Areas; and, potentially subject Natural Areas lands to litigation.

## **ATTACHMENTS**

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1. Powerpoint presentation

## Resolution Options to consider for November 5, 2013 Special Election

### Laurie Kadrich

Director, Community Development & Neighborhood Services

### Dan Weinheimer

Policy and Project Manager

October 1, 2013 Council Meeting

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## Background Summary:

1. Resolution 2013-072 placed a citizen-initiated question into a Special Election.
2. The question to voters is whether to place a 5-year moratorium on the use of hydraulic fracturing within the city or on city-owned lands.
3. Colorado Statutes allow the City Council to pass a Resolution taking a position on the ballot measure.

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## Resolution Options:

1. Resolution 2013-084
  - Option #1: Urge registered voters to vote in favor of the ballot measure

or

2. Resolution 2013-085:
  - Option #2: Urge registered voters to vote against the ballot measure

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## Resolution 2013-084:

1. Reasons to consider adopting:
  - Citizens expressed concern about the potential health risks associated with hydraulic fracturing measure especially the use of toxic chemicals used in the process, the release of methane gas into the air or its migration to drinking water
  - Council may consider the moratorium to be the best way to safeguard city residents and city property

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## Resolution 2013-085:

### 1. Reasons to consider adopting:

- Council may believe there are already sufficient safeguards in place through adopted local regulations,
- Council has secured a stringent agreement with the only local operator,
- Council has endorsed the Energy by Design process for city-owned lands,
- A five-year moratorium may prompt costly, protracted litigation.

## **OPTION #1**

**RESOLUTION 2013-084  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
URGING THE REGISTERED ELECTORS OF THE CITY TO VOTE IN FAVOR  
OF A PROPOSED MORATORIUM ON HYDRAULIC FRACTURING AND THE  
STORAGE OF ITS WASTE PRODUCTS WITHIN THE CITY OF FORT COLLINS  
OR ON LANDS UNDER ITS JURISDICTION AT THE NOVEMBER 5 SPECIAL ELECTION**

WHEREAS, under Article X, Section 1 of the City Charter, the registered electors of the City have the power to propose a measure to the City Council, and if the City Council fails to adopt a measure so proposed, then to adopt or reject such ordinance or resolution at the polls; and

WHEREAS, an initiative petition to place a five-year moratorium on the use of hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction was submitted to the City (the “Initiated Measure”), and the City Clerk has certified said petition as sufficient for submission of the initiated ordinance to a vote of the people at a special municipal election; and

WHEREAS, the City Clerk presented said petition to the City Council as provided in Article X, Section 5(f)(4) of the City Charter; and

WHEREAS, by Resolution 2013-072, the City Council submitted the Initiated Measure to the registered electors of the City for their consideration at a special election to be held in conjunction with the November 5, 2013 coordinated election; and

WHEREAS, the Colorado Constitution confers on all individuals in the state, including the citizens of Fort Collins, certain inalienable rights, including “the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness”; and

WHEREAS, the Colorado Oil and Gas Act requires oil and gas resources to be extracted in a “manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources; and

WHEREAS, the well stimulation process known as hydraulic fracturing is used to extract deposits of oil, gas, and other hydrocarbons through the underground injection of large quantities of water, gels, acids or gases, sands or other proppants, and chemical additives, many of which are known to be toxic; and

WHEREAS, the people of Fort Collins seek to protect themselves from the harms associated with hydraulic fracturing, including threats to public health and safety, property damage and diminished property values, poor air quality, destruction of landscape, and pollution of drinking and surface water; and

WHEREAS, representatives from the State of Colorado have publicly stated that they will be conducting a health impact assessment to assess the risks posed by hydraulic fracturing and unconventional oil and gas development; and

WHEREAS, the people of Fort Collins have determined that the best way to safeguard our inalienable rights provided under the Colorado Constitution, and to ensure the “protection of public health, safety, and welfare, including protection of the environment and wildlife resources” as provided under the Colorado Oil and Gas Act, is to place a five-year moratorium on hydraulic fracturing and the storage and disposal of its waste products within the City in order to fully study the impacts of this process on property values and human health; and

WHEREAS, Section 1-45-117(1)(b) of the Colorado Revised Statutes authorizes the City Council to pass a resolution taking a position on the Initiated Ballot.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, as follows:

Section 1. That, for the reasons stated above, the City Council believes that it is in the best interests of the City that the proposed citizen-initiated ordinance placing a five-year moratorium on the use of hydraulic fracturing to extract oil, gas and other hydrocarbons and on the storage of the waste products of hydraulic fracturing within the City or on lands under the City’s jurisdiction be approved.

Section 2. That the City Council strongly urges the registered electors of the City to vote in favor of the Initiated Measure.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 1st day of October, A.D. 2013.

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Mayor

ATTEST:

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City Clerk

## OPTION #2

RESOLUTION 2013-085  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
URGING THE REGISTERED ELECTORS OF THE CITY TO VOTE AGAINST  
A PROPOSED MORATORIUM ON HYDRAULIC FRACTURING AND THE  
STORAGE OF ITS WASTE PRODUCTS WITHIN THE CITY OF FORT COLLINS  
OR ON LANDS UNDER ITS JURISDICTION AT THE NOVEMBER 5 SPECIAL ELECTION

WHEREAS, under Article X, Section 1 of the City Charter, the registered electors of the City have the power to propose a measure to the City Council, and if the City Council fails to adopt a measure so proposed, then to adopt or reject such ordinance or resolution at the polls; and

WHEREAS, an initiative petition to place a five-year moratorium on the use of hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction has been submitted to the City (the "Initiated Measure"), and the City Clerk has certified said petition as sufficient for submission of the initiated ordinance to a vote of the people at a special municipal election; and

WHEREAS, the City Clerk has presented said petition to the City Council as provided in Article X, Section 5(f)(4) of the City Charter; and

WHEREAS, by Resolution 2013-072, the City Council submitted the Initiated Measure to the registered electors of the City for their consideration at a special election to be held in conjunction with the November 5, 2013 coordinated election; and

WHEREAS, the geographic areas of the City that are likely to be the subject of oil and gas mining operations are very limited, both because of the geology of the area and because of the state rules and regulations governing such operations; and

WHEREAS, nonetheless, on December 18, 2012, several months prior to the submission of the Initiated Measure to the City Clerk's office, the City Council had adopted Ordinance No. 145, 2012, imposing a temporary moratorium on the acceptance, processing and approval of any land use applications relating to new oil and gas development in the City, which moratorium has expired; and

WHEREAS, the purpose of the temporary moratorium was to allow adequate time for City staff to develop and recommend to the City Council any local regulations that might also be necessary and advisable to protect the health, safety and welfare of City residents; and

WHEREAS, on March 5, 2013, by the adoption of Ordinance No. 32, 2013, the City Council enacted Section 12-135 of the City Code prohibiting the use of hydraulic fracturing in the City, as well as the storage in open pits of solid or liquid wastes and/or flowback and, through the enactment of City Code Section 12-136, exempted from the prohibition any oil or gas wells or pad sites existing within the City as February 19, 2013, that become the subject of an operator agreement between the operator of the same and the City as long as such agreement includes strict controls on the release of methane gas, and, in the judgment of the City Council, adequately



protects the public health, safety and welfare; and

WHEREAS, on May 21, 2013, by Resolution 2013-036, the City Council approved an Oil and Gas Operator Agreement with Prospect Energy, LLC (the "Operator Agreement"), the sole oil and gas operator in the City and, on May 21, 2013, also adopted Ordinance No. 57, 2013, exempting Prospect Energy from the ban imposed under Code Section 12-135; and; and

WHEREAS, the Operator Agreement requires that Prospect Energy utilize 48 "best management practice," many of which exceed the current requirements of the Colorado Oil and Gas Conservation Commission and all of which are designed to protect the citizens of the City; and

WHEREAS, in approving the Operator Agreement, the City Council determined that the Agreement adequately protects the public health, safety and welfare, not only because of the stringent controls contained in the Agreement, but also because, based upon past experience, Prospect Energy's operations are not likely to produce methane gas in significant quantities, and the fracking activities that may be performed by Prospect Energy are not likely to infiltrate fresh water supplies; and

WHEREAS, imposing a new five-year moratorium on Prospect Energy would be inconsistent with the fact that the City and Prospect Energy have entered into the Operator Agreement, and could result in costly, protracted litigation against the City; and

WHEREAS, in addition, significant concerns have been raised by the City Manager with respect to the impact that a five-year moratorium would have on the City's natural areas because the City has participated in a collaborative "Energy by Design" process with the State Land Board and other entities which is designed to protect biological, cultural, scenic and recreational conservation goals for the natural areas, while allowing reasonable access to the mineral estate; and

WHEREAS, the "Energy by Design" process provides the best strategy for protection of areas of land under the City's jurisdiction and outside of the City limits, and if the Initiated Measure is approved, such approval could undo the "Energy by Design" process and result in more significant negative impacts to the natural areas; and

WHEREAS, for the foregoing reasons, the City Council believes that the adoption of the Initiated Measure under these circumstances is unnecessary, is not in the best interests of the City, and could result in litigation that, if not resolved in the City's favor, could not only work to the detriment of the City, but could also establish legal precedents that would be damaging to the interests of other Colorado municipalities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, for the reasons stated above, the City Council believes that it is in the best interests of the City that the Initiated Measure not be approved by the voters and the City Council strongly urges the registered electors of the City to vote against the Initiated Measure.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 1st day of October, A.D. 2013.

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Mayor

ATTEST:

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City Clerk