

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

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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

EXHIBIT 1

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.

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

Karen Weithornat
Mayor

ATTEST:

Wanda Nelson
City Clerk

