DISTRICT COURT, LARIMER COUNTY, COLORADO

201 La Porte Avenue, Suite 100
Fort Collins, CO 80521
Phone: (970) 494-3500

Plaintiff:

COLORADO OIL AND GAS ASSOCIATION,

v.

Defendant:

CITY OF FORT COLLINS, COLORADO

COURT USE ONLY

Case Number: 2013CV31385

Division/Courtroom: 5B

Attorneys:
SULLIVAN GREEN SEAVY, LLC
Barbara J. B. Green, Atty. Reg. #15022
John T. Sullivan, Atty. Reg. #17069
3223 Arapahoe Avenue, Suite 300
Boulder, Colorado 80303
Telephone Number: (303) 440-9101
Facsimile Number: (303) 443-3914
E-mail: barbara@sullivangreenseavy.com
john@sullivangreenseavy.com

Stephen J. Roy, Atty. Reg. #0893
Fort Collins City Attorney's Office
300 La Porte Avenue
P. O. Box 580
Fort Collins, CO 80522-0580
Telephone Number: (970) 221-6520
Facsimile Number: (970) 221-6327
Email: sroy@fcgov.com

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Defendant City of Fort Collins, Colorado, (the "City") by and through its undersigned attorneys, Stephen J. Roy, City Attorney and Sullivan Green Seavy LLC, submits its Combined Brief in Response to Plaintiff's Motion for Summary Judgment filed on April 18, 2014, and Brief in Support of the City's Cross Motion for Summary Judgment. In support hereof, the City states as follows:

I. INTRODUCTION

Plaintiff Colorado Oil and Gas Association ("Plaintiff" or "COGA") commenced this action on December 3, 2013, about four weeks after the City's voters approved a citizen initiated ordinance to place a moratorium on hydraulic fracturing and storage of its waste products within the City for a period of five years while the City studies the impacts of this process on property values and human health. COGA asserts two claims for relief in its complaint: (1) a claim for declaratory judgment that the City's ordinance is preempted by state law; and, (2) a claim for an injunction against the enforcement of the ordinance. The City filed its Answer on February 3, 2014, denying COGA's claims.

As set forth herein, the City's moratorium is a legitimate exercise of its land use powers. A moratorium is not a ban as COGA asserts. Colorado law recognizes the difference between a moratorium and a ban, and recognizes that a moratorium is an essential land use planning tool for a local government. The City is entitled to the time and opportunity to determine and conduct those studies it needs to formulate, adopt and implement local regulations that are legally available in order to address the understandable concerns its citizens have regarding the adverse effects that hydraulic fracturing and the storage of its waste products will potentially have on property values and human health in Fort Collins. Colorado case law, Colorado statutes

and rules promulgated under such statutes clearly recognize that a home rule city like Fort Collins has the right to regulate land use impacts of oil and gas development within its boundaries, and the time-out provided by the moratorium is not preempted by state law under either an implied preemption or operational conflict analysis.

Therefore, the City requests the Court to deny Plaintiff's motion for summary judgment and grant the City's cross motion for summary judgment filed concurrently with this Brief.

II. STATEMENT OF UNDISPUTED FACTS

Based on the pleadings, affidavits and other documents, the following material facts are undisputed:

1. The City of Fort Collins is a home rule city under Article XX, Section 6 of the Colorado Constitution located in Larimer County, Colorado. *See* Complaint at ¶¶ 6-7; Answer at ¶¶ 6-7.

2. The City adopted its Home Rule Charter in 1954. Article I, Section 4 of Charter provides:

> "The City shall have all the powers granted to municipal corporations and to cities by the Constitution and general laws of this state, together with all the implied powers necessary to carry into execution all the powers granted. The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated or implied, or appropriate to the exercise of such powers, it is intended that the City shall have and may exercise all powers of local self-government which, under the Constitution of this state, it would be competent for this Charter specifically to enumerate." [1]

[1] A copy of the City's Charter is available at www.fcgov.com. Article I, Section 10 of the Charter states: "this Charter and any ordinance passed by the Council may be proved by a copy thereof certified by the City Clerk under the seal of the City and, when printed in a book or pamphlet form purporting to be authorized by the City, the same shall be received as prima facie evidence by courts without further proof." A certified copy of the City's Charter is attached hereto as **Exhibit A.**

3. Article I, Section 5 of the City's Charter states that "the City shall provide for all essential administrative functions and public services, *including but not limited to the following*: (1) fire suppression and prevention; (2) police services; (3) finance and recordkeeping; (4) electric utility services; (5) water supply and wastewater services; (6) street maintenance; (7) storm drainage; (8) *planning and zoning*." (Emphasis added).

4. Article X, Section 1 of the City's Charter states: "The registered electors of the City shall have the power at their option to propose ordinances or resolutions to the [City] Council, and, if the Council fails to adopt a measure so proposed, to adopt or reject such ordinance or resolution at the polls."

5. On August 20, 2013, following certification of a citizen initiated petition by the City Clerk on August 5, the Council of the City of Fort Collins ("Council") adopted Resolution 2013-072. Resolution 2013-072 submitted to the registered electors of the City, at a special municipal election on November 5, 2013, a 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 of Fort Collins or on lands under the City's jurisdiction. A certified copy of Resolution No. 2013-072 is attached hereto as **Exhibit B,** and was also attached as Exhibit 4 to Plaintiff's brief.

6. On November 5, 2013, the registered electors of the city voted to approve this citizen initiated ordinance, which was identified as "Ballot Measure 2A." *See* Complaint at ¶ 11; Answer at ¶ 11. [2]

[2] According to the election results posted on the City's web site, 24,176 electors (56.53%) voted for Ballot Measure 2A, and 18,591 electors (43.47%) voted against Ballot Measure 2A.

7. The City adopted Ballot Measure 2A as an ordinance upon certification of the November 5, 2013 election results pursuant to the City's Charter. *See* Complaint at ¶ 30; Answer at ¶ 30.

8. The stated purpose of this ordinance is "to protect property, property values, public health, safety and welfare by placing a five year moratorium on the use of hydraulic fracturing to extract oil, gas, or other hydrocarbons within the City of Fort Collins in order to study the impacts of the process on the citizens of the City of Fort Collins." *See* **Exhibit B,** p. 2, Section 1.

9. Section 2 of the ordinance enumerates six separate findings with respect to the process of hydraulic fracturing within the City of Fort Collins, including findings regarding: (1) the rights conferred by the Colorado Constitution; (2) the requirements governing extraction of oil and gas resources under the Colorado Oil and Gas Act [sic]; (3) the process known as hydraulic fracturing; (4) the desire of the people of the City of Fort Collins to protect themselves from harms associated with hydraulic fracturing; (5) future health impact assessments regarding the risks posed by hydraulic fracturing; and (6) the best way for the people of Fort Collins to safeguard their rights under the Colorado Constitution and ensure the protection of public health, safety, and welfare, including the protection of the environment and wildlife.

10. Section 3 of the ordinance states as follows:

"Section 3. Moratorium

Therefore, 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 moratorium on hydraulic fracturing and storage of its waste products within the City of Fort Collins or lands under its jurisdiction for a period of 5 years without exemption or exception in order to fully

study the impacts of this process on property values and human health. The moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins."

11. According to its terms, the moratorium went into effect on August 5, 2013, the date the City Clerk certified the measure for the ballot. Thus, the moratorium will expire on August 5, 2018, unless it is lifted before then upon a ballot measure approved by the people of the City of Fort Collins after the City has completed its study of the impacts of the hydraulic fracturing process on property values and human health in the City. *See* **Exhibit B,** p. 2, Sections 3 and 4.

12. Prior to the November 5, 2013 election, the City entered into an Amended Oil and Gas Operator Agreement with Prospect Energy LLC. This Agreement was approved by the City on May 21, 2013, and executed by the parties on May 29, 2013. True and correct copies of the Prospect Agreement and City Resolution No. 2013-036 are attached hereto as **Exhibit C**.

13. As of May 29, 2013, Prospect was "the only operator with active oil and gas operations within the City." Prospect also owns "certain leasehold interests within the City described as the Undeveloped Area (the "UDA")." *See* **Exhibit C**, p. 1, ¶ 2. The geographic areas within the City limits where additional oil and gas development could occur are depicted in the maps attached as Exhibit A and Exhibit B to the Prospect Agreement.[3]

14. Since the moratorium was approved on November 5, 2013, the City has commenced implementation of Ballot Measure 2A. On March 18, 2014, the Council adopted Resolution 2014-025 authorizing the retention of a consultant to recommend to the City the appropriate studies that will help determine the impacts on property values and human health in

[3] The City understands that on or about October 1, 2013, an affiliated entity known as Memorial Production Partners LP acquired certain Prospect holdings located in the Fort Collins Field.

the City that will be caused by the hydraulic fracturing process and its waste products. To accomplish this, the City is finalizing contracts with two consultants to research what relevant studies already exist and analyze whether they address the facts and circumstances present in Fort Collins. One of the consultants will do this with respect to the likely effects on property values and the other consultant will do this with respect to the effects on human health. The consultants' identification and analysis of these existing studies will help the City decide what additional studies are needed and how long it will take to complete these additional studies. *See* **Exhibit D**, Affidavit of Laurie Kadrich, Fort Collins Community Development and Neighborhood Services Director, at ¶¶ 7-9.

15. In preparation for the studies, the City identified a list of regional and national studies of the impacts of hydraulic fracturing that are on-going. *See* **Exhibit D**, Kadrich Affidavit, at ¶ 7.

16. Both before and after the moratorium was approved on November 5, 2013, the City was aware of increased planning and zoning issues arising from the closer proximity of oil and gas operations to residential development and other uses of property within the City limits. Oil and gas development is classified as an industrial use of property under the City's zoning code and, as such, it has the potential to create impacts upon adjacent properties with less intense uses such as residential or recreational uses. To separate residential land uses from some of the nuisance impacts of existing oil and gas operations, Section 3.8.26 of the Fort Collins Land Use Code requires new residential development to establish a buffer yard between occupied buildings and the impact area of any pre-existing oil and gas operation. If residential development is proposed within five hundred (500) feet of an existing oil and gas operation, a fence must be

erected by the developer along the property boundary between the oil and gas operation and the development that restricts public access to the oil and gas operation. Additionally, if any residential development is to be located within one thousand feet of an existing oil and gas operation, then the plat must contain a note that certain lots are in close proximity to an existing oil and gas operation. *See* Fort Collins Land Use Code Section 3.8.26, a copy of which is attached to **Exhibit D**, Kadrich Affidavit, at ¶¶ 10-11.

17. The City has not yet amended its existing subarea plan for the northern and northeastern parts of the City to include those areas of Fort Collins where future oil and gas development is likely to occur in close proximity to residential development. This amendment of the subarea plan will be developed through a public process informed by the outcome of the impact studies required by the moratorium. *See* **Exhibit D**, Kadrich Affidavit, at ¶ 12.

18. In its Complaint, Plaintiff does not allege that it owns any oil and gas mineral interests within the City limits that may be impacted by the moratorium. Similarly, Plaintiff does not identify any member of COGA that does, or allege that any such member has approval for, or plans to use, hydraulic fracturing to stimulate wells within the City limits during the duration of the moratorium.

19. Since the moratorium went into effect, neither Prospect Energy nor the entity that acquired some of Prospect's holdings in the Fort Collins Field has informed the City per the Operator Agreement that it plans to use hydraulic fracturing to stimulate any wells located within the City limits. *See* **Exhibit D**, Kadrich Affidavit, at ¶ 13.

20. The web site of the Colorado Oil and Gas Conservation Commission (the "Commission") confirms that since August 5, 2013, the date the moratorium became effective,

there have been no new or approved applications for permits to drill in the Fort Collins Field, which includes the City of Fort Collins. *See* **Exhibit D**, Kadrich Affidavit, at ¶ 14.

21. The Fort Collins City Plan (February 15, 2011) (also available at www.fcgov.com) expresses the local values of the community in its policies and goals to protect and enhance a healthy lifestyle. For example, the community vision is for "[A] safe, non-threatening city in which to live, work, learn, and play; opportunities to lead active and healthy lifestyles; access to healthy, locally grown or produced food." City of Fort Collins City Plan, p. 102. "Wellness is related to environmental health in that active lifestyles and food production foster interaction with the natural environment. *Id.* The City has a goal to protect "view corridors and public access to the Foothills, continuing to allow recreational opportunities provided that they do not threaten the area's environmental integrity." *Id.* at 94. And regional cooperation is encouraged "to develop cooperative regional solutions for land use, transportation, open space and habitat protection, environmental, economic, fiscal sharing, and other planning challenges." *Id.* at p. 118. *See* **Exhibit D**, Kadrich Affidavit, at ¶ 15.

22. The citizens of Fort Collins have high expectations for careful planning and development of the City. The City is renowned for being one of the best places to live in the United States, and has received local and national recognition and awards for innovation in planning to address issues that threaten the environment, a healthy lifestyle, and the vitality of the community. *See e.g., A Town Envisions the Future on Its Own Terms*, by Kirk Johnson, The New York Times, November 17, 2011. http://www.nytimes.com/2011/11/18/us/fort-collins-colorado-envisions-the-future-on-its-own-terms.html?pagewanted=all&_r=0. The City's many awards for smart growth, innovative planning and land use regulation bear out the quality of the

City's land use efforts. A list of awards is available on the City's website. http://www.fcgov.com/advanceplanning/awards.php. *See* **Exhibit D**, Kadrich Affidavit, at ¶ 16.

III. LEGAL ARGUMENT

A. Standard of Adjudication - Summary Judgment.

C.R.C.P. 56(c) provides that summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The party moving for summary judgment has the initial burden of producing and identifying those portions of the record and affidavits that demonstrate the absence of any genuine issue of material fact. *See Continental Airlines v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). Once the moving party has met its initial burden, the non-moving party must establish that there is a triable issue of material fact. *See id. See also Board of County Commissioners of Gunnison County v. BDS International, LLC*, 159 P.3d 773, 778 (Colo. App. 2006) ("*BDS*"). In assessing a summary judgment motion, the trial court must view all facts in the light most favorable to the non-moving party. The non-moving party is also entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party. *See id.* (citations omitted).

Under C.R.C.P. 56(h), "a party may also move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question."

B. Burden of Proof.

Government regulations and enactments are presumed to be valid, and the party challenging them assumes the burden of proving the asserted invalidity beyond a reasonable doubt. *Sellon v. City of Manitou Springs*, 745 P.2d 229, 232 (Colo. 1987). "A facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the act would be valid. The fact that [the regulations] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render [them] wholly invalid." *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). *See also BDS*, 159 P.3d 778-79 (quoting *California Coastal Commission v. Granite Rock*, 480 U.S. 572, 588-89 (1986) ("*Granite Rock*") ("Within the posture of a facial challenge, identification of a possible set of requirements or conditions not preempted by federal [or state] law is sufficient to rebuff a challenge to [. . .] local regulations.")

Because Plaintiff's preemption challenge under C.R.C.P. 57 is a facial challenge claiming that the City's moratorium is preempted for all purposes, Plaintiff must "establish that no set of circumstances exists under which the moratorium would be valid." *United States v. Salerno*, 481 U.S. at 745. Stated differently, Plaintiff has the burden to prove that state law or regulation would preempt any possible set of conditions that the City could place on its operations. *BDS*, 159. P.3d at 779; *Granite Rock* at 580. Plaintiff cannot meet its burden in this case. Finally, "temporary moratoria consistently *are not subject to the same degree of judicial scrutiny as are permanent regulations*." *Williams v. Central City*, 907 P.2d 701, 706 (Colo. App. 1995) (emphasis added).

C. The City's Temporary Moratorium is Distinct from the Total Ban that *Voss* Found was Preempted.

Plaintiff's argument rests in large part on the assertion that the moratorium is the same as Greeley's total ban that the Colorado Supreme Court found was preempted in *Voss v. Lundvall Bros.*, 830 P.2d 1045 (Colo. 1992) ("*Voss*") and therefore is invalid. This argument overlooks important distinctions between a temporary moratorium and Greeley's permanent ban, and fails to take into account the essential local interests that the moratorium is intended to address. It also ignores what the court expressly and clearly stated in *Voss*. As the United Supreme Court recognized almost 90 years ago, cities have the power through land use controls to keep the "pig in the barnyard" and out of the "parlor." *See Euclid v. Ambler*, 272 U.S. 365, 388 (1926). When these factors are considered, the court should find that the moratorium must be allowed to stand because it is not preempted by the Colorado Oil and Gas Conservation Act (the "Act") or by the Commission's rules and regulations (the "Commission Rules").

1. The purpose of the moratorium.

The moratorium is a citizen-initiated proposal amending the Fort Collins Code to impose a five-year moratorium on hydraulic fracturing and the storage of its waste products. Prior to the moratorium, the City Code banned hydraulic fracturing unless an operator entered into an operator agreement and agreed to certain standards and conditions. *See* Code Sections 12-135 and 12-136, copies of which are attached as **Exhibit E.** Nevertheless, the public was not convinced that hydraulic fracturing could be conducted safely or without affecting property values under the existing approach. Thus, the voters passed the moratorium "in order to fully study the impacts of this process on property values and human health, [which] moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins ..."

Exhibit B, Section 3. The stated purpose of the moratorium is "[t]o protect property, property values, public health, safety and welfare...to study the impacts of the process on the citizens of the City of Fort Collins." *Id.* at Section 1.

In approving the initiative, the citizens made the following relevant findings:

> 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;
>
> 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. . .
>
> 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.[4]

Id. at Section 2.

2. The moratorium is a valid exercise of the City's land use authority.

According to the United States Supreme Court, "[m]oratoria are used widely among land use planners to preserve the status quo while formulating a more permanent development strategy. In fact, the consensus in the planning community appears to be that moratoria, or 'interim development controls' as they are often called, are an essential tool of successful development." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 337-38, (2002) (*"Tahoe-Sierra"*). The adoption of moratoria while studies are being made has become general practice across the country. "Zoning boards, cities, counties and

[4] However, the proposed state law to conduct a wide ranging study of the health and quality of life impacts of oil and gas production along Colorado's Front Range, which included Larimer County, was killed in the state legislature on April 29, 2014. *See* attached **Exhibit F**, Denver Business Journal article.

other agencies use [moratoria] all the time to 'maintain the status quo pending study and governmental decision making.' " *Tahoe-Sierra*, 302 U.S. 316 (quoting lower U.S. District Court opinion, 34 F. Supp. 2d at 1248-49, and *Williams v. Central City*, 907 P.2d 701, 706 (Colo. App. 1995)). The moratorium "counters the incentive of landowners to develop their land quickly to avoid the consequences of an impending land use plan for the jurisdiction." *Droste v. Bd. of County Comm'rs*, 159 P.3d 601, 606 (Colo. 2007) (quoting and citing *Tahoe-Sierra*).

With planning protected by a moratorium, "there is no need for hasty adoption of permanent controls in order to avoid the establishment of nonconforming uses, or to respond in an *ad hoc* fashion to specific problems. Instead, the planning and implementation process may be permitted to run its full and natural course with widespread citizen input and involvement, public debate, and full consideration of all issues and points of view." Garvin & Leitner, *Drafting Interim Development Ordinances: Creating Time to Plan*, 48 Land Use Law & Zoning Digest 3 (June 1996) (quoted in *Tahoe-Sierra*, n.33.)

Colorado courts and courts across the country have upheld the authority of local governments to enact temporary moratoria as implicit in the authority to plan for and regulate the use of land. *Droste*, 159 P.3d 606. *See also Dill v. Bd. of County Comm'rs*, 928 P.2d 809, 814 (Colo. App. 1996) (power to enact moratoria is "implicit in and incidental to a local government's authority to regulate the use of land."); *Williams v. Central City*, 907 P.2d 701, 706 (Colo. App. 1995). "Temporary zoning ordinances imposing moratoriums on development, uses, and the issuance of building permits and adopted for the purpose of conducting studies on future development have been generally upheld in other jurisdictions as an exercise of general zoning power." *Droste v. Bd. of County Comm'rs*, 141 P.3d 852, 855 (Colo. App. 2005) (citing

examples from Minnesota, New Jersey, New York, and Oklahoma). Since Plaintiff does not challenge the authority of the City to enact a moratorium, the court must assume that the moratorium is within the scope of the City's authority to regulate the use of land. *See Department of Transportation v. City of Idaho Springs*, 192 P.3d 490, 495 (Colo. App. 2008).

Fort Collins will use its moratorium authority as a "time out" to conduct studies on the impacts of hydraulic fracturing and waste disposal on public health and property values and to develop a more permanent development strategy addressing those impacts. This time out will also allow "widespread citizen input and involvement, public debate, and full consideration of all issues and points of view" about the results of the studies and the planning and regulatory responses that might be lawfully available to the City. *See Tahoe -Sierra*, 535 U.S. 338 at n.33 (quoting Garvin and Leitner.) Responses are likely to include an area plan for the northeast portion of the City where oil and gas operations and residential development are likely to occur in close proximity to each other. *See also* **Exhibit D,** Kadrich Affidavit, ¶¶ 10-12.

3. The moratorium is temporary and does not prohibit all oil and gas development.

Plaintiff argues that the moratorium is a ban, and therefore *per se* preempted under *Voss*. But the difference between the purpose and scope of the moratorium and Greeley's total ban is so significant that the ruling in *Voss* does not control the outcome of this case. Greeley's citizen initiated ordinance prohibited "[t]he drilling of any well for the purpose of exploration or production of any oil or gas or other hydrocarbons within the corporate limits of the [c]ity." *Voss*, 830 P. 2d at 1062 (quoting Greeley Ordinance No. 89.) The Greeley city council enacted its own ordinance that also created an immediate ban on drilling any oil or gas well within Greeley. *Id.* After these enactments, exploration and production of hydrocarbons were

permanently banned within Greeley. The ban "represented an attempt by the city to render permits" issued by the Commission "null and void." *Lundvall Bros. v. Voss*, 812 P.2d 693, 694 (Colo. App. 1990). The Colorado Supreme Court emphasized that its holding was limited to Greeley's total ban throughout its opinion. It used variations on the phrase "total ban" twenty-four times in the nine -page opinion. Indeed, every time the court framed what issue it was deciding, it clarified that its analysis was constrained to Greeley's total ban. *See Voss,* 830 P.2d at 1062-64 and 1067-69, n.2.

Colorado courts recognize the qualitative difference between a moratorium and a ban. A moratorium is not permanent; it is "a suspension of activity; a temporary ban on the use or production of something." *Deighton v. City of Colorado Springs*, 902 P.2d 426, 428 (Colo. Ct. App. 1994) (citing Webster's Third New International Dictionary). Moratoria are "stop gap" measures, a "useful procedure in local government land use planning" when of a "temporary and reasonable duration." *Deighton*, 902 P.2d 429. "'Stop-gap' regulations are, by their very nature, of limited duration and are designed to maintain the *status quo* pending study and governmental decision making. Every delay is not the same as a total ban." *Tahoe-Sierra,* 535 U.S. at 331-32. "Moratoria which function as interim development controls merely suspend the use to which the property may be put while land use control studies are conducted." *Williams*, 907 P.2d at 706 (internal citations omitted).

Fort Collins' moratorium is not a total or permanent ban on all oil and gas exploration and development. It is a temporary suspension of hydraulic fracturing and waste disposal. Its express purpose is to provide an opportunity to study the local impacts of these activities on public health and property values. The moratorium can be terminated by a vote of the electors.

It is not an attempt by the City to render permits issued by the Commission "null and void." In fact, the Commission has not approved any permits to drill within the Fort Collins' jurisdiction to which the moratorium would apply. Existing wells can continue to produce oil and gas, and exploration and drilling can begin, as long as those operations do not entail hydraulic fracturing while the moratorium is in effect. Because the Fort Collins' enactment is a temporary moratorium, the court *"should be exceedingly reluctant to adopt rulings that would threaten the survival of this crucial planning mechanism."* *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 216 F. 3d 764, 777 (9th Cir. 2000), *aff'd*, 535 U.S. 302 (2002) (emphasis added).

D. The City's Temporary Moratorium is not Impliedly Preempted by the Act or Commission Rules.

As mentioned above, Plaintiff bears a heavy burden to show preemption in the context of a facial challenge to the City's moratorium. At pages 14-17 of its brief, Plaintiff asserts that *Colorado Mining Association* v. *Bd. of County Comm'rs of Summit County,* 199 P.3d 718 (Colo. 2009) ("*Summit County*") reinterprets *Voss* to mean that the total ban on oil and gas development enacted by the citizens of Greeley was impliedly preempted by the Act. As discussed above, however, all the Colorado cases are clear that land use control is a local government matter and that the General Assembly, by adopting the Act, has not impliedly preempted local land use enactments that address oil and gas development.

1. State law and case law confirm that land use control, including the use of a moratorium, is a local government concern.

The General Assembly has repeatedly confirmed that land use policy is a local government function. *Town of Telluride v. San Miguel Valley Corporation,* 185 P. 3d 161, 168

(Colo. 2008). "Legislative attempts to address local land use legislation on a statewide basis largely failed." *Droste,* 159 P.3d at 60. As the Colorado Supreme Court observed in *Voss*, the Land Use Enabling Act was adopted "to clarify and provide a broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions." *Id.*, 830 P. 2d 1064-65 (quoting C.R.S. § 29-20-102 (1)). Cities have express authority to regulate "the use of land on the basis of the impact thereof on the community or surrounding areas[.]" *Id.* The General Assembly also has empowered local governments to impose impact fees on new development to encourage proper growth management. *See* C.R.S. § 29-20-102 (2). Home rule cities like Fort Collins have "unique, constitutionally granted powers" to regulate land use. *City of Colorado Springs v. Securcare*, 10 P.3d 1244, 1253 (Colo. 2000). "Our case law has recognized that the exercise of zoning authority for the purpose of controlling land use within a home-rule city's municipal borders is a matter of local concern." *Voss,* 830 P.2d 1064. *See also National Advertising Co. v. Department of Highways*, 751 P. 2d 632, 635 (Colo. 1988); *City and County of Denver v. State,* 788 P. 2D 764, 767 (Colo. 1990).

When it comes to oil and gas development, "[l]ocal governments have a legally protected interest in enacting and enforcing their land use regulations governing the surface effects of oil and gas operations. " *Bd. of County Comm'rs of La Plata County v. Colorado Oil and Gas Conservation Commission*, 81 P.3d 1119, 1124 (Colo. App. 2003). "There is no question that [a home rule city] has an interest in land-use control within its municipal borders." *Voss* at 1066. Plaintiff's position that the moratorium is impliedly preempted by the Act would nullify the legislature's policy that land use matters be addressed by local governments, deny the City of

Fort Collins its constitutional right to regulate the use of land, and disregard the court's affirmation of local land use authority over oil and gas operations.

2. *Voss* holds that under the Act a local regulation is preempted only where there is an operational conflict.

Plaintiff urges the court to disregard the City's land use authority to address the impacts of oil and gas operations by relying on *Summit County*. But *Summit County* does not apply here because *Summit County* interprets an entirely different statute, Colorado's Mined Land Reclamation Act, while *Voss* examines the Colorado Oil and Gas Conservation Act. This distinction shows that *Summit County's* reference to *Voss* is merely *dicta,* as opposed to a reinterpretation of the case 17 years later, especially since preemption is a matter of statutory interpretation. *Summit County,* 199 P.3d at 723.

The second reason this Court should disregard Plaintiff's argument is because *Voss* speaks for itself when it comes to what kind of preemption analysis applies under the Act. And *Voss* does hold that the proper way for a court to determine whether state law preempts a municipal government regulation of oil and gas development is by applying the doctrine of "operational conflict." As articulated in *Bowen/Edwards v. Board of County Comm'rs of La Plata County*, 830 P.2d 1045, 1059 (Colo. 1992) ("*Bowen/Edwards*"), "preemption by reason of an operational conflict arises if the effectuation of the local interest would materially impede or destroy the state interest." *Bowen/Edwards* also holds that "[a]ny determination that there exists an operational conflict between the [local] regulation and the state statute or regulatory scheme, however, must be resolved on an *ad hoc* basis under a fully developed evidentiary record." *Id.* at 1060.

In particular, *Voss* states that in holding that Greeley's total ban of oil and gas development substantially impedes the state's interest, "we do not mean to imply that Greeley is prohibited from exercising any land use authority over those areas of the city in which oil and gas activities are occurring or contemplated." 830 P.2d 1068. Quoting from *Bowen/Edwards*, an opinion issued the same day as *Voss*, the Supreme Court continues:

> . . . The state's interest in uniform regulation of [certain] matters [in oil and gas development], however, *does not militate in favor of an implied legislative intent to preempt all aspects of a county's statutory authority to regulate land use within its jurisdiction* merely because the land is an actual or potential source of oil and gas development and operations. The state's interest in oil and gas activities is not so patently dominant over a county's interest in land use control, nor are the interests of both the state and the county so irreconcilably in conflict, so as to eliminate by necessary implication any prospect for a harmonious application of both regulatory schemes. *Voss*, 830 P.2d 1068 (quoting *Bowen/Edwards*, 830 P.2d 1058) (emphasis added).

Voss then states:

> "If a home rule city, instead of imposing a total ban on all drilling within the city, enacts land use regulations applicable to various aspects of oil and gas development within the city, and if such regulations do not frustrate and can be harmonized with the development and production of oil and gas consistent with the stated goals of the Oil and Gas Conservation Act, the city's regulations should be given effect. We thus do not conclude [. . .] that there is no room whatever for local land use control over those areas of a home rule city where drilling for oil, gas or hydrocarbon wells is about to take place." 830 P.2d 1069.

Thus, *Voss* clearly states that the City's moratorium is not impliedly preempted by the Act as COGA wants this Court to believe.

3. The Act and Commission Rules confirm that a local regulation is preempted only where there is an operational conflict.

If the *Voss* court's words are not persuasive enough, one need only look to the language of the Act itself and the Commission Rules.

a. The 2007 amendments to the Act do not expressly or impliedly preempt local regulations.

When it amended the Act in 2007, the General Assembly reemphasized that *BDS* and the *Bowen/Edwards* line of cases continued to be the law in the State of Colorado by including express "savings provisions" in the legislation. House Bill 07-1341, concerning the conservation of wildlife habitat in connection with oil and gas development, provides that "[t]he general assembly hereby declares *that nothing in this act shall establish, alter, impair, or negate the authority of local governments to regulate land use related to oil and gas operations.*" 2007 Colo. Sess. Laws (emphasis added). Similarly, House Bill 07-1298, which fosters the development of oil and gas with protection of the environment, wildlife, and public health, adds that *"[n]othing in this section shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.*" (Emphasis added). This language was codified at C.R.S. § 34-60-128 (4). Similar language is contained in C.R.S. § 34-60-127 (4) (c), which was also added as part of the 2007 amendments to the Act.

b. The Commission Rules preserve and recognize local authority.

Following this legislation, the Commission amended its Rules to implement the 2007 amendments to the Act. Rule 201 clarifies that the amended Rules are not intended to preempt local land use authority over oil and gas operations unless there is an *operational conflict* with the Act or the Rules, stating:

> Nothing in these rules shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations, *so long as such local regulation is not in operational conflict with the Act or regulations* promulgated thereunder. Rule 201, 2 CCR 404-1 (emphasis added).

In addition, the rule explaining the relationship between the Commission's Permit-to-Drill and local permits and approvals states: "The Permit-to-Drill shall be binding with respect to any provision of a local governmental permit or land use approval that is in *operational conflict* with the Permit-to-Drill." Rule 303a(2), 2 CCR 404 (emphasis added). The prior version of this rule preempted any conflicting local regulation. However, in the case of *Board of County Comm'rs of La Plata County v. COGCC*, 81 P.3d 1119, 1125 (Colo. App. 2003) ("*La Plata County*"), the Colorado Court of Appeals struck down this prior version of Rule 303a ruling that the words "any conflicting" have a much broader meaning than "operationally conflicting." In doing so, the Court of Appeals explained that the only conflict that preempts a local regulation is an "operational conflict" as described in *Bowen/Edwards* (and *Voss*.) *See Id.*

As recently as the 2012 rulemaking on setbacks, the Commission reaffirmed that "[t]hese Setback Rules are not intended to alter, impair or negate local government authority to regulate matters of local concern, including land use, related to oil and gas operations, or to regulate matters of mixed state and local concern, provided such local regulations are not in *operational conflict* with these rules." *See* attached **Exhibit G,** *Statement of Basis, New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission*, 2 CCR 404-1, Cause No. 1R Docket No. 1211-RM-04 ("*Statement of Basis*"), p. 2 (Emphasis added).

Against the combined history of Colorado case law, the General Assembly's 2007 amendments to the Act, the plain language of Commission Rules 201 and 303, and the recent setback rulemaking Statement of Purpose, Plaintiff's claim that the City's moratorium is

"impliedly preempted" under Colorado law is completely without merit.[5] The Colorado Supreme Court, the Colorado General Assembly and the Commission expressly recognize that local governments like Fort Collins continue to have the authority to regulate land use impacts from oil and gas operations because the state has not occupied the entire field. Accordingly, this Court should deny Plaintiff's motion and grant summary judgment in favor of the City on Plaintiff's claims that the moratorium is impliedly preempted by the Act or Commission Rules.

E. The City's Temporary Moratorium is not Preempted Under the Operational Conflicts Doctrine.

1. The temporary moratorium is not even a regulation that is subject to preemption analysis.

Preemption analysis applies when there are overlapping and conflicting regulatory regimes at different level of government to determine which regulations apply. However, a local regulation and a state law may both remain in effect as long as their express or implied conditions do not irreconcilably conflict with one another. *See BDS*, 159 P.3d at 778 (citing *Bowen/Edwards* and discussing three types of preemption). *See also Voss*, 830 P.2d at 1066, 1069.

As pointed out above, "moratoria or 'interim development controls' are an essential tool of successful development, which are used widely among land use planners to preserve the *status quo* while formulating a more permanent development strategy. *Tahoe-Sierra*, 535 U.S. 337-38. Colorado has recognized the broad authority of local governments to use moratoria in furtherance of growth planning, as an essential tool of successful development. *See, e.g., Droste*,

[5] Even though COGA attached copies of some of the Commission Rules to its brief, it fails to acknowledge Commission Rules 201, 303 or the Commission Setback Rules' Statement of Basis because they undermine COGA's implied preemption theory.

159 P.3d at 606. These legal authorities make clear that a temporary moratorium is not a regulation *per se*; rather, it is an essential planning tool to preserve the *status quo* while permanent land use regulations are being formulated.

Here, the purpose of the City's moratorium is "to protect property, property values, public health, safety and welfare by placing a five year moratorium on the use of hydraulic fracturing to extract oil, gas, or other hydrocarbons within the City of Fort Collins in order to study the impacts of the process on the citizens of the City of Fort Collins." *See* **Exhibit B,** p. 2, Section 1. In other words, the City needs to maintain the *status quo* while the City conducts the necessary studies and determines whether and how it should exercise its land use and other police power authority to respond to these impacts from hydraulic fracturing.

In its Statement of Basis and Purpose for the 2012 amendments to the Setback Rules, the Commission states: "These Setback Rules are not intended to address potential human health impacts associated with air emissions related to oil and gas development. The Commission, after consulting with the Colorado Department of Health and Environment ("CDPHE"), believes there are numerous data gaps related to oil and gas development's potential effect on human health and that such data gaps warrant further study." **Exhibit G**, *Statement of Basis,* p. 2. The fact that the proposed state law to conduct a wide ranging study of the health and quality of life impacts of oil and gas production along Colorado's Front Range, including Larimer County, was killed in the state legislature on April 29, 2014, means that some of the gaps will not be studied and eliminates the City's ability to "piggy back" on to this proposed state -funded study for purposes if its moratorium. *See* attached **Exhibit F**, Denver Business Journal article. These facts support the need for additional studies under the City's moratorium.

Moreover, the City's regulatory responses to the studies are open-ended. If and when the City adopts regulations following these studies, it can then be determined whether there is an operational conflict with a provision of the Act or a Commission Rule. The *Bowen/Edwards* operational conflicts test should not be applied to the City's moratorium on summary judgment because the Colorado Supreme Court remanded the case to the trial court and instructed the court to afford Bowen/Edwards "the opportunity to specify *those particular county regulations* which it claims are operationally in conflict with, and thus preempted by, the state statutory or regulatory scheme applicable to oil and gas development within La Plata County." *See Bowen/Edwards*, 830 P.2d at 1060. (emphasis added). *Bowen/Edwards* goes on to state: "If La Plata County denies Bowen/Edwards' preemption claim with respect to any of the challenged regulations, the district court should permit both Bowen/Edwards and the county to develop an adequate evidentiary record on the preemption issue, and at the conclusion of the evidence the court should enter appropriate findings of fact and conclusions of law." *Id.* This process cannot occur with the City's temporary moratorium, the purpose of which is to give the City a "time-out" to conduct the necessary studies and then determine whether it should enact particular regulations for various aspects of oil and gas development relating to hydraulic fracturing.

Voss states "that the exercise of zoning authority for the purpose of controlling land use within a home rule city's municipal borders is a matter of local concern" and "the regulation of land use within a city is a municipal function." *Voss*, 830 P.2d 1064, 1069. *See also* **Exhibit A**, Article I, Section 5, Fort Collins City Charter (planning and zoning are essential functions and services of the City.) *Voss* also states that "[i]f a home rule city, instead of imposing a total ban on all drilling within the city, enacts land use regulations applicable to various aspects of oil and

gas development within the city, and if such regulations do not frustrate and can be harmonized with the development and production of oil and gas consistent with the stated goals of the Oil and Gas Conservation Act, the city's regulations should be given effect." *Id.* at 1068-69. This is precisely what the City of Fort Collins is trying to do in this case.

The moratorium can be harmonized with the goals of the Act. The language of the City ordinance creating the moratorium evidences the intent to harmonize with the goals of the Act by referring to it three different times. *See* attached **Exhibit B**, at p. 2; Exhibit 4 to Plaintiff's Brief at p. 2. The ordinance quotes from the "Colorado Oil and Gas Act" pointing out that the General Assembly declares it to be in the public interest for oil and gas resources to be developed "in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources." *See* attached **Exhibit B**, at p. 2 (Section 2, ¶¶ 2 and 6, and Section 3). *See also* Exhibit 4 to Plaintiff's Brief at p. 2; C.R.S. § 34-60-102(1). As in *Bowen/Edwards*, the language of the City's ordinance shows that the purpose of the moratorium is to "facilitate the development of oil and gas resources within the [City] . . . while mitigating potential land-use conflicts between such development and existing, as well as planned, land uses." *Bowen/Edwards,* 830 P.2d 1059-60. Further, such language "evinces an obvious intent to regulate in a manner that does not hinder the achievement of the state's interest in fostering the efficient development, production, and utilization of oil and gas resources in the state." *Id.*

Finally, the nature of the Fort Collins moratorium does not foreclose harmonious construction of the two enactments because the whole purpose of the moratorium is to conduct studies and determine exactly what kind of regulations can be adopted to avoid operational conflict. The City's power to enact local land use regulations, which *Voss* clearly recognizes, is

meaningless unless the City can call a time out to determine what oil and gas impacts the City can and cannot regulate. *See also* **Exhibit D**, Kadrich Affidavit, at ¶¶ 10-12.

The fact that the moratorium applies to new hydraulic fracturing operations for its limited duration, and that the Act and Commission Rules also allow hydraulic fracturing is not enough to create an operational conflict. As the *BDS* court held, *Bowen/Edwards* and *Town of Frederick v. North American Resources Company*, 60 P.3d 758, 764 (Colo. App. 2002), do not support the conclusion that where a state statute or regulation concerns the same aspect of oil and gas development as a local regulation the local regulation is automatically preempted by operational conflicts preemption. *See BDS*, 159 P.3d at 779 (rejecting operator's argument to the contrary). In other words, operational conflicts preemption is not "same subject matter preemption." *See id.*

2. The City's temporary moratorium is not preempted because it is "technical."

Plaintiff's argument that hydraulic fracturing is "technical" and the moratorium is preempted because it applies to fracking misstates the law. The discussion in *Bowen/Edwards* about technical conditions referred to those kinds of regulations that might hypothetically lead to an operational conflict. It does not establish a *per se* rule. In this regard, *Bowen/Edwards* states:

> "For example the operation effect of the County regulations might be to impose technical conditions on the drilling or pumping of wells under circumstances where no such conditions are imposed under the state statutory or regulatory scheme, or to impose safety regulations or land restoration requirements contrary to those required by state law or regulation. *To the extent that such operational conflicts might exist*, the County regulations must yield to the state interest. Any determination that there exists an operational conflict between the County regulations and the state statute or regulatory scheme, however, must be resolved on an ad hoc basis under a fully-developed evidentiary record." *Bowen/Edwards*, 830 P.2d at 1060.

Thus, the court's own language makes clear that this is a discussion of operational conflict, not implied preemption of local regulations that may affect a technical aspect of oil and gas operations. Such operational conflicts must be resolved based on the facts of the case. As in *Bowen/Edwards*, *BDS* and *Granite Rock*, the plaintiff here is raising a facial challenge because it has no approved permit and there is no factual record. Therefore, it is premature to determine whether a yet-to-be-enacted City regulation might cause an operational conflict.

IV. CONCLUSION

The law inside and outside of Colorado is clear. The City's moratorium is a legitimate exercise of its land use powers. The City is entitled to the time and opportunity to determine and conduct those studies it needs to formulate, adopt and implement local regulations that are legally available to the City to address the understandable concerns its citizens have regarding the adverse effects that hydraulic fracturing and its waste products will potentially have on property values and human health in Fort Collins. This time-out is not preempted by state law under either an implied preemption or operational conflict analysis. Applying a preemption analysis in these circumstances would defeat the whole reason and purpose of a moratorium.

Even if the Court decides that a preemption analysis should be applied, Colorado law is clear that local regulation of oil and gas development is not impliedly preempted by the Act or by the Commission Rules, and regulation of the same subject matter by a state and local government does not equate to operational conflict. *See BDS*, 159 P.3d at 779. Further, there is no operational conflict between Ballot Measure 2A and the Act because they can be harmonized. The moratorium is not interfering with any operational activities of an oil and gas operator within the City. And, it cannot be assumed that, at the end of the moratorium, the City will

exercise its legitimate land use authority by enacting regulations that materially impede the state's interest in this area. Instead, the Court should presume, as the law requires, that Ballot Measure 2A is valid and that the Plaintiff has not met its burden of establishing its invalidity beyond a reasonable doubt.

Also, an operational conflict between a local regulation and the Act or a Commission Rule must be resolved on an *ad hoc* basis under a fully developed evidentiary record. *See id.; Bowen/Edwards,* 830 P.2d 1060. On the bare factual record that Plaintiff has put forth in this case, Plaintiff has not met its burden of proof under Rule 56. Simply attaching copies of certain Commission rules and publications showing that the Commission regulates fracking does not demonstrate the existence of an operational conflict.

This Court should therefore deny Plaintiff's summary judgment motion and enter summary judgment in favor of the City.

Dated this 9th day of May, 2014.

SULLIVAN GREEN SEAVY LLC

By: /s/ Original signature on file
Barbara J. B. Green, No. 15022
John T. Sullivan, No. 17069

CITY OF FORT COLLINS

By: /s/ Original signature on file
Stephen J. Roy, No. 0893, City Attorney

ATTORNEYS FOR DEFENDANT CITY OF FORT COLLINS

CERTIFICATE OF SERVICE

I do hereby certify that on this 9th day of May, a true and correct copy of the foregoing **DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT** was served electronically via ICCES or e-mail, or placed in the U.S. Mail, addressed to the following persons:

Mark J. Mathews (mmathews@bhfs.com)
John V. McDermott (jmcdermottt@bhfs.com)
Wayne F. Forman (wforman@bhfs.com)
Michal D. Hoke (mhoke@bhfs.com)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202-4437

/s/

Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit A

CERTIFICATION

STATE OF COLORADO)
)
COUNTY OF LARIMER) ss
)
CITY OF FORT COLLINS)

I, Wanda Nelson, City Clerk of the City of Fort Collins, Colorado, do hereby certify that the attached is a true and correct copy of the City of Fort Collins Home Rule Charter, and the same remains on file in the office of the City Clerk.

WITNESS my hand and seal of said City of Fort Collins, Colorado, this 9th day of May, 2014.

(SEAL)

CITY OF FORT COLLINS SEAL COLORADO

Wanda Nelson
City Clerk
City of Fort Collins

EXHIBIT A

2013CV31385, Larimer County District Court

HOME RULE CHARTER

OF THE

CITY OF FORT COLLINS

COLORADO

1954

Published by
COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

FORT COLLINS CHARTER

TABLE OF CONTENTS

PREAMBLE

We, the people of Fort Collins, Colorado, under the authority of the Constitution of the State of Colorado, do ordain, establish and adopt this Charter for our municipal government.

ARTICLE I.
FORM OF GOVERNMENT, POWERS, SEAL

Section 1. Name, boundaries.

The citizens of Fort Collins, in the County of Larimer, State of Colorado, within the boundaries of the municipal corporation as now established and heretofore existing under the name of Fort Collins, or as hereafter established in the manner provided by law, shall continue to constitute a body corporate and politic in perpetual succession, under the name of the City of Fort Collins, as a home-rule municipal corporation under Article XX of the Constitution of the State of Colorado. The official seal for the city shall consist of the word "SEAL" surrounded by the words "City of Fort Collins, Colorado."

Section 2. Form of government.

The municipal government provided by this Charter shall be known as the "Council Manager government." Pursuant to its provisions and subject only to the limitations and exceptions imposed by the state Constitution and by this Charter, all powers of the city shall be vested in an elective Council, hereinafter referred to as "the Council." All powers of the City of Fort Collins shall be exercised in the manner prescribed by this Charter or, if the manner be not therein prescribed, then in such manner as may be prescribed by ordinance.

(Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 3. Succession to rights and liabilities.

The municipal corporation, the City of Fort Collins, shall continue to own, possess and hold all the real and personal property heretofore owned, possessed, or held by the city, and shall continue to manage and dispose of all trusts in connection therewith and succeed to all the rights, benefits, and liabilities of the city.

Section 4. Powers of city.

The city shall have all the powers granted to municipal corporations and to cities by the Constitution and general laws of this state, together with all the implied powers necessary to carry into execution all the powers granted. The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated or implied, or appropriate to the exercise of such powers, it is intended that the city shall have and may exercise all powers of local self-government which, under the Constitution of this state, it would be competent for this Charter specifically to enumerate.

ARTICLE II.
CITY COUNCIL

Section 1. Membership; terms.

(a) *Composition of Council.* The Council shall consist of seven (7) members, including a Mayor and Mayor Pro Tem, elected as provided in this Article.

(b) *Method of election.* The Mayor shall be nominated and elected from the city at large. The remaining six (6) members shall be nominated and elected by Districts. The election of District Councilmembers shall alternate between the election of representatives for Council Districts 1, 3 and 5 and the election of representatives for Council Districts 2, 4 and 6.

(c) *Council district boundaries.* The city shall be divided into six (6) contiguous, reasonably compact districts, each of which shall consist of contiguous, undivided general election precincts and, to the extent reasonably possible, an equal number of inhabitants. The districts shall be numbered consecutively in a clockwise fashion beginning with the northeast district, which shall be District 1. The Council shall establish by ordinance the process for adjusting district boundaries and giving notice of any proposed boundary changes, and the manner of protesting such proposed changes.

(d) *Terms.* Except as otherwise provided in Section 18 of this Article and Section 3(d) of Article IX, the term of office of the Mayor shall be two (2) years, and the term of office of all other members of the Council shall be four (4) years each; provided, however, that all such officers shall serve until their successors have been elected and have taken office. The terms of the Mayor and other members of the Council shall begin when they take the oath of office, which shall occur as the first order of business at the first regular or special Council meeting following their election or appointment.

(Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. No. 94, 1972, 1-4-73, approved, election 2-20-73; Ord. No. 197, 1986, § 1, Parts A, B, 12-16-86, approved, election 3-3-87; Ord. No. 154, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 100, 1990, 9-4-90, approved, election 11-6-90; Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 011, 2011, § 1, 2-15-11, approved, election 4-5-11)

Section 2. Qualifications of candidates and members; challenges.

(a) An individual shall be eligible to be a candidate for the office of Councilmember if at the time of the election he or she is a citizen of the United States; is at least twenty-one (21) years of age; has been for one (1) year immediately preceding such election an elector of the city; and, in the case of a District Councilmember, has continuously resided in the District from which he or she is to be elected since the date of accepting any nomination for election under Article VIII, Section 3, of this Charter.

(b) No person who has been convicted of a felony shall be eligible to be a candidate for, or hold, the office of Councilmember.

(c) No person shall be eligible to stand for election to more than one (1) elective office at any single municipal election. During a term of office, no member of the Council shall be an employee of the city or hold any other elective public office. No person shall be elected or appointed to any city office, position or employment for which the compensation was increased or fixed by the Council while such person was a member thereof until after expiration of one (1) year from the date when such person ceased to be a member of the Council.

(d) Any registered elector may file with the City Clerk a written protest challenging the qualifications of any member of the Council. Any such protest shall be resolved by the City Clerk as expeditiously as possible but no more than forty-five (45) days from the date of filing of the protest, pursuant to a procedure established by the Council by ordinance. In order to resolve such protests, the City Clerk shall have the power to subpoena witnesses, administer oaths, and require the production of evidence. No protest shall be filed prior to the date of appointment or the date of issuance of the certificate of election of a Councilmember, whichever is applicable, nor shall any such protest, other than a protest based upon the fact of a felony conviction, be filed more than fifteen (15) days after said date.

(e) The fact that a Councilmember may be determined to have lacked any qualification for the office of Councilmember during all or any portion of his or her term of office shall not affect the validity of any action taken by the Council during such Councilmember's term of office.

(Res. No. 71-12, 2-11-71, approved, election 4-6-71; Ord. No. 5, 1983, approved, election 3-8-83; Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 100, 1990, 9-4-90, approved, election 11-6-90; Ord. No. 20, 1991, § 1, 2-19-91, approved, election 4-2-91; Ord. No. 20, 1993, § 1, 2-16-93, approved, election 4-6-93; Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 3. Compensation of members.

Commencing in 1998, the compensation for all Councilmembers except the Mayor shall be five hundred dollars ($500.) per month and the compensation of the Mayor shall be seven hundred fifty dollars ($750.) per month. These amounts shall be adjusted annually thereafter for inflation in accordance with the Denver/ Boulder Consumer Price Index.

(Ord. No. 12, 1977, 2-15-77, approved, election 4-5-77; Ord. No. 198, 1986, § 1, Part A, 12-16-86, approved, election 3-3-87; Ord. No. 100, 1990, 9-4-90, approved, election 11-6-90; Ord. No. 16, 1997, § 1, 2-4-97, approved, election 4-8-97)

Editor's note—See § 2-575 of the City Code for current salaries of Councilmembers.

Section 4. Organization.

The Mayor shall preside at meetings of the Council and shall be recognized as head of the city government for all ceremonial purposes and by the Governor of the state for purposes of military law. The Mayor shall execute and authenticate legal instruments requiring the signature of the Mayor. The Mayor shall also perform such other duties as may be provided by ordinance which are not inconsistent with the provisions of this Charter.

At the first regular or special meeting after every biennial election, the Council shall elect a Mayor Pro Tem for a two (2) year term from among the members of the Council to act as Mayor during the absence or disability of the Mayor. If a vacancy occurs in the position of Mayor, the Mayor Pro Tem shall become Mayor as provided in Section 18(b) below.

(Ord. No. 11, 1969, 2-27-69, approved, election 4-8-69; Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 100, 1990, 9-4-90, approved, election 11-6-90; Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 5. Powers.

All powers of the city and the determination of all matters of policy shall be vested in the Council except as otherwise provided by this Charter. Without limitation of the foregoing, the Council shall have power to:

(a) appoint and remove the City Manager;

(b) establish, change, consolidate or abolish administrative offices, service areas or agencies by ordinance, upon report and recommendation of the City Manager, so long as the administrative functions and public services established by this Charter are not abolished in any such reorganization. The city shall provide for all essential administrative functions and public services, including, but not limited to the following:

(1) fire suppression and prevention;

(2) police services;

(3) finance and recordkeeping;

(4) electric utility services;

(5) water supply and wastewater services;

(6) street maintenance;

(7) storm drainage;

(8) planning and zoning.

(c) adopt the budget of the city;

(d) authorize the issuance of bonds by ordinance as provided by this Charter;

(e) inquire into and investigate any office, service area, or agency of the city and the official acts of any officer or employee thereof, and to compel by subpoena attendance and testimony of witnesses and production of books and documents;

(f) adopt plats;

(g) adopt and modify the official map of the city;

(h) provide for independent audits of all funds and accounts of the city.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 202, 1986, § 1, Part A, 12-16-86, approved, election 3-3-87; Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 6. Ordinances, resolutions, motions.

The Council shall act by ordinance, resolution, or motion. The ayes and nays shall be recorded on the passage of all ordinances, resolutions, and motions. Every Councilmember present shall vote; if a member fails to vote when present, he or she shall be recorded as voting in the affirmative. All legislative enactments and every act creating, altering, or abolishing any agency or office, fixing compensation, making an appropriation, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance, which shall not be so altered or amended on the final passage as to change the original purpose.

All ordinances, except the annual appropriation ordinance and any ordinance making a general codification of ordinances, shall be confined to one (1) subject which shall be clearly expressed in the title. All ordinances shall be formally introduced at a regular or special Council meeting in written or printed form by any member of the Council and considered on first reading and action taken thereon. No ordinance, except an emergency ordinance, shall be finally passed on the first reading or at the meeting at which it is first introduced. An emergency ordinance may be formally introduced at a special Council meeting and action taken thereon, including final passage at such special meeting. Reading of an ordinance shall consist only of reading the title thereof, provided that copies of the full ordinance proposed shall have been available in the office of the City Clerk at least forty-eight (48) hours prior to the time such ordinance is introduced for each member of the City Council, and for inspection and copying by the general public, and provided further that any member of the City Council may request that an ordinance be read in full at any reading of the same, in which case such ordinance shall be read in full at such reading. Final passage of all ordinances except emergency ordinances shall be at a regular Council meeting. Emergency ordinances shall require for passage the affirmative vote of at least five (5) members of the Council and shall contain a specific statement of the nature of the emergency. No ordinance granting any franchise or special privilege which involves a benefit to any private person or entity shall ever be passed as an emergency ordinance.

The enacting clause of all ordinances passed by the Council shall be as follows: "Be it ordained by the Council of the City of Fort Collins."

(Ord. No. 3, 1961, 2-23-61, approved, election 4-4-61; Ord. No. 94, 1972, 1-4-73, approved, election 2-20-73; Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 203, 1986, § 1, Part A, 12-16-86, approved, election 3-3-87)

Section 7. Ordinances, publication and effective date.

Every proposed ordinance, except an emergency ordinance, shall be published in full at least seven (7) days before its final passage on the city's official internet web site. In addition, each such ordinance shall be published in a newspaper of general circulation in the city by number and title only, together with a statement that the full text is available for public inspection and acquisition in the office of the City Clerk and on the city's internet web site. Both publications shall contain a notice of the date when said proposed ordinance will be presented for final passage. The City Clerk shall, within seven (7) days after final passage of any such ordinance, publish such ordinance in the same method as is required for the first publication. All ordinances, except emergency ordinances, shall take effect on the tenth day following their passage. An emergency ordinance shall take effect upon passage and shall be published as provided above within seven (7) days thereof.

Standard codes and codifications of ordinances of the city may be published by title and reference in whole or in part.

Ordinances shall be signed by the Mayor, attested by the City Clerk and published without further certification.

The Council may enact any ordinance which adopts any code by reference in whole or in part provided that before adoption of such ordinance the Council shall hold a public hearing thereon and notice of the hearing shall be published twice in the newspaper of general circulation, published in the city, one (1) of such publications to be at least eight (8) days preceding the hearing and the other at least fifteen (15) days preceding the hearing. Such notice shall state the time and place of the hearing and shall also state that copies of the code to be adopted are on file with the City Clerk and open to public inspection. The notice shall also contain a description which the Council deems sufficient to give notice to persons interested as to the subject matter of such code and the name and address of the agency by which it has been promulgated. The ordinance adopting any such code shall set forth in full any penalty clause in connection with such code.
(Ord. No. 11, 1967, 2-9-67, approved, election 4-4-67; Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 205, 1984, approved, election 3-5-85; Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 93, 2005, § 1, 9-6-05, approved election 11-1-05)

Section 8. Disposition of ordinances.

A true copy of every ordinance, when adopted, shall be numbered and recorded in a book marked "Ordinance Record," and adoption and publication shall be authenticated by the signatures of the Mayor and the City Clerk, and by the certificate of the publisher, respectively. The ordinances as adopted by the vote of the qualified electors of the city shall be separately numbered and recorded.

Section 9. Ordinance codification.

The Council shall cause the permanent ordinances to be codified. Such codification may be of the entire body of permanent ordinances or of the ordinances on some particular subject and may be re-enacted by the Council or authenticated in such other manner as may be designated by ordinance. No codification ordinance shall be invalid on the grounds that it deals with more than one (1) subject. The first codification shall be completed within five (5) years of the effective date of this Charter and subsequent codifications shall be made thereafter as deemed necessary by the Council, and all permanent ordinances adopted thereafter shall be codified at least once a year.
(Ord. No. 202, 1986, § 1, Part P, 12-16-86, approved, election 3-3-87)

Section 10. Proof of Charter and ordinances.

This Charter and any ordinance passed by the Council may be proved by a copy thereof certified to by the City Clerk under the seal of the city and, when printed in a book or pamphlet form purporting to be authorized by the city, the same shall be received as prima facie evidence by courts without further proof.

Section 11. Meetings, quorum, executive session.

The Council shall hold regular meetings at such time and place as it may prescribe by ordinance and shall prescribe the manner in which special meetings may be called. Notice of any special meeting shall be given to all Councilmembers no less than one (1) day prior to such meeting. All meetings shall be open to the public. A majority of the members of Council shall constitute a quorum sufficient to transact business. A smaller number can adjourn a meeting to a later date and time, and in the absence of all members, the City Clerk may adjourn any meeting for not longer than one (1) week. No other action, except to adjourn, may be taken by the Council in the absence of a quorum, unless the absence of a quorum is due to the filing of conflict of interest disclosure statements by all absent members, in which event at least three (3) remaining members may transact business. By majority vote of those present and voting, the Council may approve any action of the Council except the passage of emergency ordinances and the approval of executive sessions. By two-thirds (2/3) vote of those present and voting, the Council may go into executive session, which shall be closed to the public. Executive sessions may only be held to:

(1) discuss personnel matters; or

(2) consult with attorneys representing the city regarding specific legal questions involving litigation or potential litigation and/or the manner in which particular policies, practices or regulations of the city may be affected by existing or proposed provisions of federal, state or local law; or

(3) consider water and real property acquisitions and sales by the city; or

(4) consider electric utility matters if such matters pertain to issues of competition in the electric utility industry.

(Ord. No. 94, 1972, 1-4-73, approved, election 2-20-73; Ord. No. 12, 1977, 2-15-77, approved, election 4-5-77; Ord. No. 19, 1993, § 1, 2-16-93, approved, election 4-6-93; Ord. No. 14, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 12. City Clerk.

With the approval of the Council, the City Manager shall appoint a City Clerk who shall act as Clerk of the Council and who while so employed shall be a resident of the Fort Collins Urban Growth Area. The City Clerk shall:

(1) give notice of Council meetings;

(2) keep a journal of Council proceedings;

(3) authenticate by his or her signature and permanently record in full all ordinances and resolutions; and

(4) perform other duties required by this Charter or by the City Manager.

(Ord. No. 209, 1984, 1-15-85, approved, election 3-5-85; Ord. No. 13, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 13. Council not to interfere with administrative service.

Except for purposes of inquiry, the Council and its members shall deal with the administrative service of the city solely through the City Manager, and neither the Council nor any member shall give orders to any subordinates of the City Manager either publicly or privately.

Section 14. Licenses, permits.

The Council may provide for licenses and permits, and fees therefor, for regulatory purposes. The Council shall provide an administrative procedure for the hearing and determination of appeals relating to issuance, suspension or revocation of such licenses and permits. The Council itself may hear and decide appeals.

(Ord. No. 202, 1986, § 1, Part Q, 12-16-86, approved, election 3-3-87)

Section 15. Surety bonds.

The Council shall require the City Manager, the Financial Officer, and other employees transacting financial business of the city to furnish bonds with such surety and in such amounts as the Council may determine.

(Ord. No. 202, 1986, § 1, Part I, 12-16-86, approved, election 3-3-87)

Section 16. Contracts with other governmental bodies.

The Council may, by ordinance or resolution, enter into contracts with other governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73)

Section 17. Independent annual audit.

The Council shall provide for an independent audit at least annually by a certified public accountant of all books and accounts of the city, and shall publish a summary thereof once in the manner provided for publication of legal notices within five (5) months after the end of each fiscal year.

(Ord. No. 206, 1984, 1-15-85, approved, election 3-5-85)

Section 18. Vacancies.

(a) A vacancy exists when a Councilmember:

(1) dies, resigns, or moves from the city or the District from which elected or appointed;

(2) assumes another elective office;

(3) fails to attend all regular and special meetings of the Council for sixty (60) consecutive days unless excused by Council resolution;

(4) is judicially declared mentally incompetent;

(5) is convicted of a felony or is declared by the City Clerk, more than sixty (60) days after the date of issuance of the certificate of election of such Councilmember, to have previously been convicted of a felony pursuant to a written protest filed under Section 2 of this article; or

(6) in the case of an appointed member of the Council, is declared by the City Clerk to lack any qualification for the office of Councilmember.

Except for the office of Mayor, any vacancy on the Council shall be filled within forty-five (45) days by appointment of the Council. The person so appointed shall serve until the next regular election, when the electors will select a person to fill the vacancy for the remainder of the term, if any. This selection process shall be subject to the following exception: If the time for filling the vacancy by appointment would fall within forty-five (45) days prior to any regular election, and the remaining unexpired term of the Councilmember to be replaced is more than two (2) years, then the vacancy shall be filled by the newly constituted Council following their election, within forty-five (45) days after their terms of office begin.

Under this exception, the term of office of the Councilmember appointed shall run for the remainder of the replaced Councilmember's term. Any person appointed to fill a Councilmember's vacated position shall have all the qualifications required of regularly elected Councilmembers. In the case of a vacancy representing a member

elected from a District, any person appointed or elected to fill such vacancy shall be from the same District, as such District is constituted at the time of the appointment or election.

(b) The following shall apply to filling vacancies in the office of Mayor:

(1) If the position of Mayor becomes vacant more than forty-five (45) days prior to the next regular election, the Mayor Pro Tem shall become Acting Mayor, and the Council shall elect a new Mayor Pro Tem. Both the Acting Mayor and Mayor Pro Tem shall serve until the next regular election, at which time the office of Mayor shall be filled by the electors for a new term, and the Acting Mayor and Mayor Pro Tem shall resume their duties as Councilmembers for the remainder of their unexpired terms of office, if any. The vacancy on the Council created by the Mayor Pro Tem assuming the office of Mayor shall be filled in accordance with the provisions of Section 18(a) above.

(2) If the position of Mayor becomes vacant within the forty-five (45) days prior to any regular election, the duties of the Mayor shall be immediately assumed by the Mayor Pro Tem, who shall serve as Acting Mayor until said regular election, at which time the office of Mayor shall be filled by the electors for a new term. Pending the election and the commencement of the term of the newly elected Mayor, the Council shall consist of six (6) members, and the Council shall elect an interim Mayor Pro Tem. After the election, the Acting Mayor and Interim Mayor Pro Tem shall resume their duties as Councilmembers for the remainder of their unexpired terms of office, if any.

(3) Nothing herein shall preclude the Mayor Pro Tem or any Councilmember from standing for election to the office of Mayor.

(Ord. No. 201, 1986, § 1, Part L, 12-16-86, approved, election 3-3-87; Ord. No. 154, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 100, 1990, 9-4-90, approved, election 11-6-90; Ord. No. 15, 1997, § 1, 2-4-97, approved, election 4-8-97)

ARTICLE III.
CITY MANAGER

Section 1. Appointment, qualifications.

The Council shall appoint and fix the compensation of a City Manager, who shall be the chief executive officer and head of the administrative branch of the city government. The City Manager shall be appointed on the basis of his or her executive and administrative qualifications, with special reference to actual experience in and knowledge of accepted practice in respect to the duties of the office. Prior to appointment, the City Manager need not be a resident of the city, but during his or her tenure in office the City Manager shall reside within the city.

No member of Council shall be appointed City Manager during the term for which he or she has been elected nor within one (1) year after the expiration of such term.

(Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 13, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 2. Powers, duties.

The City Manager shall be responsible to the Council for the proper administration of all affairs of the city and to that end shall have power and be required to:

(a) appoint and, when necessary for the good of the service, remove all heads of service areas and employees of the city except as otherwise provided by this Charter;

(b) prepare the budget annually and submit it to the Council and be responsible for its administration after adoption;

(c) participate in discussions of the Council in an advisory capacity;

(d) prepare and submit to the Council as of the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding year, and make written or oral reports to the Council when required by it as to any particular matter relating to the affairs of the city within his or her supervision;

(e) keep the Council advised of the financial condition and the future needs of the city, and make recommendations to the Council;

(f) enforce the laws and ordinances of the city;

(g) perform such other duties as may be prescribed by this Charter or required of the City Manager by the Council not inconsistent with this Charter.

(Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 3. Absence of City Manager.

To perform his or her duties during temporary absence or disability, the City Manager may designate a qualified employee of the city by letter filed with the City Clerk. If the City Manager fails to make such designation, the Council may by resolution appoint a qualified employee of the city to perform the duties of the City Manager until he or she returns or his or her disability ceases.

(Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 13, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 4. Removal of City Manager.

The Council shall appoint the City Manager for an indefinite term and may remove a City Manager by majority vote of the Councilmembers. If a City Manager is removed by this method, at least thirty (30) days before such removal takes effect, the Council shall by majority vote of its members adopt a resolution stating the reasons for the removal, which resolution may also provide for interim suspension. Upon such removal or suspension by this method the Council shall cause to be paid to the City Manager any unpaid balance of his or her salary for the current month and the salary for the next calendar month.
(Res. No. 72-30, 4-6-72, approved, election 5-23-72; Ord. No. 12, 1977, 2-15-77, approved, election 4-5-77; Ord. No. 202, 1986, § 1, Part B, 12-16-86, approved, election 3-3-87)

ARTICLE IV.
GENERAL PROVISIONS

Section 1. Appointive boards.

(a) The Council may, by ordinance, establish appointive boards and commissions. The ordinance establishing such boards and commissions shall:

(1) prescribe the powers, duties, and operating procedures of the board and commission;

(2) establish the terms of office of the board or commission members, including initial overlapping terms;

(3) establish the amount of compensation, if any, to be paid to the board or commission members; and

(4) state whether the board or commission shall have alternate members authorized to vote when serving in the absence of regular members.

(b) All board and commission members shall be subject to removal by the Council with or without cause. Any vacancy during the unexpired term of any member shall be filled by the Council for the remainder of the term. Each board and commission shall choose its own officers from among its members. The Council may change any or all of the powers, duties and procedures of any board or commission and may abolish any board or commission which is not required by this Charter or law.
(Ord. No. 202, 1986, § 1, Part C, 12-16-86, approved, election 3-3-87; Ord. No. 18, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 2. Administrative branch.

The administrative branch of the city government shall be composed of the offices, service areas and agencies established by ordinance upon report and recommendation of the City Manager. Administrative functions and duties may be assigned and distributed among offices, service areas or departments thereof, or agencies of the administrative branch by regulations issued by the City Manager. The City Manager shall have power, whenever the interest of the city requires, to assign any employee of one (1) service area to perform duties in another service area.
(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 202, 1986, § 1, Part D, 12-16-86, approved, election 3-3-87; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 3. Residency requirement.

Directors of a city service area or a group of city service areas, deputy city managers, and assistant city managers shall reside within the Fort Collins Urban Growth Area during their tenure in office, but need not reside within the Fort Collins Urban Growth Area prior to their appointment. City department heads may live outside the Urban Growth Area during their tenure in office, but only if their places of residence are within five miles of the city limits, as measured by a straight line connecting the parcel of property upon which the residence is situated to the nearest boundary line of the city. City department heads appointed prior to March 6, 1985, shall not be subject to this residency requirement.
(Ord. No. 209, 1984, 1-15-85, approved, election 3-5-85; Ord. No. 202, 1986, § 1, Part E, 12-16-86, approved, election 3-3-87; Ord. No. 13, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 21, 2001, § 1, 2-20-01, approved, election 4-3-01; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 4. Oath of office.

Before entering upon the duties of the office, each member of Council, the City Manager, the City Attorney, the City Clerk, the Judge of the Municipal Court, and each director of a service area shall take, subscribe before, and file with the City Clerk an oath or affirmation that he or she will support the Constitution of the United States, the Constitution of the State of Colorado, this Charter, and the ordinances of the City of Fort Collins, and that he or she will faithfully perform the duties of the office or position. The City Clerk shall take and subscribe the oath before a notary public.
(Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 5. Records to be public.

All city records shall be available for public inspection, subject only to reasonable restrictions. Upon payment of a reasonable fee, a copy or a certified copy of any city record shall be furnished by the custodian thereof. A certified copy of any city record shall be prima facie evidence of its contents.

Section 6. Ordinances remain in force.

All ordinances, resolutions, rules, or regulations in force in Fort Collins, a municipal corporation, at the time this Charter takes effect shall continue in full force and effect until superseded, amended, or repealed, except that those inconsistent with this Charter are hereby repealed.

Section 7. Publication.

Whenever legal notice or other publication is required by this Charter, or by ordinance, rule, or regulation, such notice shall be published at least once in a local newspaper of general circulation in the city, which is devoted to dissemination of news of a general character, unless a different form of notice is specified in this Charter or in the ordinance, rule, or regulation requiring the notice.
(Ord. No. 19, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 8. Charter amendments.

This Charter may be amended at any time in the manner provided by the laws of the State of Colorado. The Council may prescribe by ordinance, upon recommendation of the City Clerk, a general form of petition for citizen-initiated Charter amendments which shall contain warnings and notices to signers as necessary.
(Ord. No. 199, 1986, § 1, Part D, 12-16-86, approved, election 3-3-87)

Section 9. Conflicts of interest.

(a) *Definitions.* For purposes of construction of this Section 9, the following words and phrases shall have the following meanings:

Business means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity or entity.

Financial interest means any interest equated with money or its equivalent. *Financial interest* shall not include:

(1) the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

(2) the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;

(3) the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;

(4) the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;

(5) the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;

(6) the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;

(7) the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or

(8) the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

Officer or employee means any person holding a position by election, appointment or employment in the service of the city, whether part-time or full-time, including a member of any authority, board, committee or commission of the city, other than an authority that is:

(1) established under the provisions of the Colorado Revised Statutes;

(2) governed by state statutory rules of ethical conduct; and

(3) expressly exempted from the provisions of this Article by ordinance of the Council.

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the

judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. *Personal interest* shall not include:.

(1) the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;

(2) the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or

(3) the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

Public body means the Council or any authority, board, committee, commission, service area, department or office of the city.

Relative means the spouse or minor child of the officer or employee, any person claimed by the officer or employee as a dependent for income tax purposes, or any person residing in and sharing with the officer or employee the expenses of the household.

(b) *Rules of conduct concerning conflicts of interest.*

(1) *Sales to the city.* No officer or employee, or relative of such officer or employee, shall have a financial interest in the sale to the city of any real or personal property, equipment, material, supplies or services, except personal services provided to the city as an officer or employee, if:

a. such officer or employee is a member of the Council;

b. such officer or employee exercises, directly or indirectly, any decision-making authority concerning such sale; or

c. in the case of services, such officer or employee exercises any supervisory authority over the services to be rendered to the city.

(2) *Purchases from the city.* No officer, employee or relative shall, directly or indirectly, purchase any real or personal property from the city, except such property as is offered for sale at an established price, and not by bid or auction, on the same terms and conditions as to all members of the general public.

(3) *Interests in other decisions.* Any officer or employee who has, or whose relative has, a financial or personal interest in any decision of any public body of which he or she is a member or to which he or she makes recommendations, shall, upon discovery thereof, disclose such interest in the official records of the city in the manner prescribed in subsection (4) hereof, and shall refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.

(4) *Disclosure procedure.* If any officer or employee has any financial or personal interest requiring disclosure under subsection (3) of this section, such person shall immediately upon discovery thereof declare such interest by delivering a written statement to the City Clerk, with copies to the City Manager and, if applicable, to the chairperson of the public body of which such person is a member, which statement shall contain the name of the officer or employee, the office or position held with the city by such person, and the nature of the interest. If said officer or employee shall discover such financial or personal interest during the course of a meeting or in such other circumstance as to render it practically impossible to deliver such written statement prior to action upon the matter in question, said officer or employee shall immediately declare such interest by giving oral notice to all present, including a description of the nature of the interest.

(5) *Violations.* Any contract made in violation of this Section shall be voidable by the city. If voided within one (1) year of the date of execution thereof, the party obtaining payment by reason of such contract shall, if required by the city, forthwith return to the city all or any designated portion of the monies received by such individual from the city by reason of said contract, together with interest at the lawful maximum rate for interest on judgments.

(Res. No. 71-12, 2-11-71, approved, election 4-6-71; Ord. No. 155, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 10, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 10. Penalties for violation of Charter.

Any violation of a provision of this Charter shall be deemed a misdemeanor. Any person convicted of such violation may be punished by a fine or imprisonment, or by both such fine and imprisonment, the maximum amount and term of which shall be no less than that established by ordinance for misdemeanor violations of the city Code. Said maximum penalty shall be set by the Council by ordinance. Any officer or employee of the

city convicted of such a violation shall be deprived of his or her office or employment and shall be ineligible to any city office or employment for two (2) years thereafter.
(Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 162, 1988, 12-20-88, approved, election 3-7-89)

Section 11. Construction of words.

Whenever such construction is applicable, words used in this Charter importing singular or plural number may be construed so that one (1) number includes both; words importing masculine gender may be construed to apply to the feminine gender as well; and the word "person" may extend to and include firm and corporation; provided that these rules of construction shall not apply to any part of this Charter containing express provisions excluding such construction or where the subject matter or context is repugnant thereto.
(Ord. No. 19, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 12. Construction of Charter.

In the event any section or part of a section of this Charter shall be declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining sections and parts of sections shall not be affected thereby.

Section 13. Outgoing officers.

All officers of the city whose terms of office terminate shall deliver to their successors all papers, records, and property of every kind in their possession or custody by virtue of their office, and shall account to them or to any authority designated by the Council, for all funds, credits, or property of any kind with which they are properly chargeable as such officials.

Section 14. Eminent domain.

In carrying out the powers and duties imposed upon it by this Charter or by the general statutes, the city shall have power to acquire within or without its corporate limits lands, buildings, and other properties, and any interest in land and air rights over land, and may take the same upon paying just compensation to the owner as provided by law.

Section 15. Improvement districts.

A public work or improvement, the costs of which in whole or in part are to be assessed by the city, may be initiated by the Council on recommendation of the City Manager, or on petition of property owners in such number and in such form as may be prescribed by ordinance. The Council shall by ordinance prescribe the method of making such improvements and the assessments for their cost.
(Ord. No. 202, 1986, § 1, Part S, 12-16-86, approved, election 3-3-87)

Section 16. Limitation of actions.

No person shall be prosecuted, tried, or punished in the city's Municipal Court for any violation of this Charter unless a summons and complaint or penalty assessment notice for the violation is served on such person within one (1) year of the commission of the violation.
(Ord. No. 17, 1997, § 1, 2-4-97, approved, election 4-8-97)

ARTICLE V.
FINANCE ADMINISTRATION

Part I
Budget and Financial Management

Section 1. Fiscal and accounting year.

The fiscal and accounting year shall be the same as the calendar year. "Budget term" shall mean the fiscal year(s) for which any budget is adopted and in which it is to be administered. Council shall set by ordinance the term for which it shall adopt budgets in accordance with this Article.
(Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 2. Budget estimates.

On or before the first Monday in September preceding each budget term, the City Manager shall file with the City Clerk a proposed budget for the ensuing budget term with an explanatory message. The proposed budget shall provide a complete financial plan for each fund of the city and shall include appropriate financial statements for each type of fund showing comparative figures for the last completed fiscal year, comparative figures for the current year, and the City Manager's recommendations for the ensuing budget term.
(Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 3. Public record, hearing.

The City Manager's proposed budget shall be a public record and open to the public for inspection and copy. The Council shall, within ten (10) days after the filing of said proposed budget with the City Clerk, set a time certain for public hearing thereon and cause notice of such public hearing to be given by publication. At the hearing, all persons may appear and comment on any or all items and estimates in the proposed budget. Upon completion of the public hearing the Council may revise the budget estimates.
(Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 4. Adoption of budget and appropriation of funds.

After said public hearing and before the last day of November preceding the budget term, the Council shall

adopt the budget for the ensuing term. The adoption of the budget shall be by ordinance. Before the last day of November of each fiscal year, the Council shall appropriate such sums of money as it deems necessary to defray all expenditures of the city during the ensuing fiscal year. The appropriation of funds shall be accomplished by passage of the annual appropriation ordinance. Such appropriation of funds shall be based upon the budget as approved by the Council but need not be itemized further than by fund with the exception of capital projects and federal or state grants which shall be summarized by individual project or grant.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. No. 10, 1991, § 1(a), 2-19-91, approved, election 4-2-91; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 5. Levy.

The annual appropriation ordinance shall also include the levy in mills, as fixed by the Council, upon each dollar of the assessed valuation of all taxable property within the city, such levy representing the amount of taxes for city purposes necessary to provide, during the ensuing fiscal year, for all properly authorized expenditures to be incurred by the city, including interest and principal of general obligation bonds. The Council shall thereupon cause the total levy to be certified by the City Clerk to the county consistent with applicable state statutes, which shall extend the same upon the tax list of the current year in a separate column entitled "City of Fort Collins Taxes," and shall include said city taxes in his or her general warrant to the County Treasurer for collection. If the Council fails in any year to make said tax levy as above provided, then the rate last fixed shall be the levy fixed for the ensuing fiscal year and the Financial Officer shall so certify.

(Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. No. 202, 1986, § 1, Parts I, X, 12-16-86, approved, election 3-3-87; Ord. No. 10, 1991, § 1(a), 2-19-91, approved, election 4-2-91; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 6. Maximum mill levy.

The mill levy shall not exceed fifteen (15) mills on each dollar of assessed valuation of taxable property within the city for all purposes. Any mill levy in excess of the fifteen (15) mills aforesaid shall be absolutely void as to the excess and it shall be unlawful for the Assessor to extend and for the Treasurer to collect any such excess.

Section 7. Effect of appropriation and levy.

After the commencement of the fiscal year, the annual appropriation ordinance and levy shall be irrepealable and the several amounts stated in the adopted budget and annual appropriation ordinance as proposed expenditures for such fiscal year shall be deemed appropriated for the purposes therein specified.

(Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 8. Appropriations not to exceed revenue; appropriation required for expenditures and obligations.

(a) No appropriation shall be made by the Council which exceeds the revenues, reserves or other funds anticipated or available at the time of the appropriation, except for emergency expenses incurred by reason of a casualty, accident or unforeseen contingency arising after the passage of the annual appropriation ordinance.

(b) It shall be unlawful for any service area, officer or agent of the city to incur or contract any expense or liability or make any expenditure for or on behalf of the city unless an appropriation therefor shall have been made by the Council. Any authorization of an expenditure or incurring of an obligation by any officer or employee of the city in violation of this provision shall be null and void from its inception.

(c) Nothing herein shall apply to or limit the authority conferred by this Article in relation to bonded indebtedness, or to the collection of moneys by special assessments for local improvements; nor shall it be construed to prevent the making of any contract or lease providing for expenditures beyond the end of the fiscal year in which it is made, so long as such contract or lease is made subject to an appropriation of funds sufficient to meet the requirements of Section 8(b) above.

(Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 9. Supplemental appropriations.

The Council, upon recommendation of the City Manager, may make supplemental appropriations by ordinance at any time during the fiscal year; provided, however, that the total amount of such supplemental appropriations, in combination with all previous appropriations for that fiscal year, shall not exceed the then current estimate of actual and anticipated revenues to be received by the city during the fiscal year. This provision shall not prevent the Council from appropriating by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

(Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 10. Transfer of appropriations.

(a) During the fiscal year, the City Manager may transfer any unexpended and unencumbered appropriated amount within the same fund.

(b) During the fiscal year, the Council may, by ordinance, upon the recommendation of the City Manager, transfer any unexpended and unencumbered appropriated amount or portion thereof from one (1) fund or capital project account to another fund or capital project account, provided that:

(1) the purpose for which the transferred funds are to be expended remains unchanged;

(2) the purpose for which the funds were initially appropriated no longer exists; or

(3) the proposed transfer is from a fund or capital project account in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

(Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 11. Lapsed appropriations.

All appropriations unexpended or unencumbered at the end of the fiscal year shall lapse to the applicable general or special fund, except that appropriations for capital projects and federal or state grants shall not lapse until the completion of the capital project or until the expiration of the federal or state grant.

Nothing herein shall limit the ability of the Council to terminate a capital project or a federal or state grant at any time prior to completion of the project or expiration of the grant.

(Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 12. Deposit of public funds.

The cash balance of the city shall be deposited or invested in a manner approved by the Council by ordinance or resolution.

(Ord. No. 6, 1975, 2-18-75, approved, election 4-8-75; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 13. Collection of taxes.

Unless the Council otherwise provides by ordinance or resolution, the County Treasurer shall collect city taxes in the same manner and at the same time as general taxes are collected under the laws of the State of Colorado. In like manner, the Council may provide for collection of special improvement assessments by said Treasurer. All laws of this state for the assessment of property and the levy and collection of general taxes, sale of property for taxes and the redemption of the same shall apply and have the same effect with respect to all taxes for the city as general taxes, except as modified by this Charter. On or before the tenth day of each month or as frequently as the Council may prescribe by ordinance, the County Treasurer shall report and pay to the Financial Officer the amount of tax collections of the city for the preceding month. The estimated costs of tax collections and losses shall be included in the budget.

(Ord. No. 202, 1986, § 1, Part I, 12-16-86, approved, election 3-3-87; Ord. No. 203, 1986, § 1, Part B, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 14. Audit and payments.

No demand for money against the city shall be approved, allowed, audited, or paid unless it is in writing, dated and sufficiently itemized to identify the expenditure, and payment thereof approved by the Financial Officer and the person or service area creating the obligation.

(Ord. No. 202, 1986, § 1, Part I, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 15. Appropriations forbidden.

No appropriation shall be made for any charitable, industrial, educational, or benevolent purposes to any person, corporation, or organization not under the absolute control of the city, nor to any denominational or sectarian institution or association.

Section 16. City not to pledge credit.

The city shall not lend or pledge its credit or faith, directly or indirectly, or in any manner to or in aid of any private person or entity for any amount or any purpose whatever, or become responsible for any debt, contract, or liability thereof.

(Ord. No. 203, 1986, § 1, Part D, 12-16-86, approved, election 3-3-87)

Part II
Municipal Borrowing

Section 18. Forms of borrowing.

The city may borrow money and issue the following securities to evidence such indebtedness:

(1) short-term notes.

(2) general obligation securities.

(3) revenue securities.

(4) refunding securities.

(5) special assessment securities.

(6) tax increment securities.

(7) any other securities not in contravention of this Charter.

(Ord. No. 203, 1986, § 1, Part E, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 19.1. Short-term notes.

The city is hereby authorized to borrow money, by Council action and without an election, in anticipation of the collection of taxes or other revenues and to issue short-term notes to evidence the amount so borrowed. Any such short-term notes payable in whole or part from ad valorem taxes shall be issued after the annual levy of taxes and be payable in full within twelve (12) months from their date, except as otherwise specifically provided in this Charter.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-74)

Section 19.2. General obligation securities.

Except as otherwise provided in this Part II of Article V of this Charter, no securities payable in whole or in part from the proceeds of ad valorem taxes of the city shall be issued until the question of their issuance has, at a special or regular election, been submitted to a vote of the electors of the city and approved by a majority of those voting on the question. The aggregate amount of such securities as are described in this Section, excluding securities which have been refunded and defeased, shall not exceed ten (10) percent of the assessed valuation of the taxable property within the city as shown by the last assessment for city purposes. Securities issued for water purposes may be issued by Council action without an election and shall not be included in the determination of such debt limitation.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 203, 1986, § 1, Part F, 12-16-86, approved, election 3-3-87)

Section 19.3. Revenue securities.

(a) The city, by Council action and without an election, may issue securities made payable solely from revenues derived from the operation of the project or capital improvement acquired with the securities' proceeds, or from other projects or improvements, or from the proceeds of any sales tax, use tax or other excise tax, or solely from any source or sources or any combination thereof other than ad valorem taxes of the city.

(b) The Council may, by ordinance, establish any one or more of the city's water, wastewater, storm drainage or electrical utilities as an enterprise of the city. The Council may also, by ordinance, authorize any such city-owned enterprise, acting by and through the Council, sitting as the board of the enterprise, to issue its own revenue bonds or other obligations (including refunding securities) on behalf of the city, which revenue bonds or other obligations shall be payable solely from the net revenues (including special assessments) derived from the operation of the enterprise. Such revenue bonds or other obligations may be additionally secured by mortgages on or security interests in any real or personal property of the city used in the operation of the enterprise. Such revenue bonds or other obligations shall be issued by ordinance of the board of the enterprise, adopted in the same manner and subject to referendum to the same extent as ordinances of the Council.

The Council shall not appoint any persons other than its own members to serve on the board of the enterprise or delegate to any other person or entity the powers reserved to the board of the enterprise hereunder. Neither shall the Council authorize the board of the enterprise to acquire, construct or install or hold title to or dispose of any city-owned property used in the operation of the enterprise, to impose or adjust rates, fees, tolls or charges for the use of any such property or for any service or commodity furnished by the enterprise, to levy special assessments or to exercise any power reserved to the Council or other city officials by this Charter or otherwise (other than the power to issue revenue bonds and other obligations).

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 18, 1993, § 1, 2-16-93, approved, election 4-6-93)

Section 19.4. Refunding securities.

The Council may authorize without an election issuance of refunding securities for the purpose of refunding and providing for the payment of outstanding securities or other obligations of the city as the same mature, or in advance of maturity by means of an escrow or otherwise. The ordinance authorizing the issuance of such refunding securities may provide that the interest rate or principal amount of the refunding securities be higher or lower than that of the securities being refunded, provided that in the case of general obligation securities the total principal and interest payable on the refunding securities does not exceed that of the securities being refunded. No refunding securities (other than water refunding securities and tax increment refunding securities) issued for the purpose of refunding revenue securities shall be issued without an election if such refunding securities are made payable in whole or part from ad valorem taxes of the city.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 203, 1986, § 1, Part G, 12-16-86, approved, election 3-3-87)

Section 19.5. Special assessment securities.

(a) Securities for any special or local improvement district, secured as provided in this Section, shall not be subject to any debt limitation nor affect the city's debt incurring power, nor shall such securities be required to be authorized at any election.

(b) The city may include property owned by it within any special or local improvement district and provide for the assessment of such property as it would any other property located within the special or local improvement district. The city may without an election elect to pay any such assessment in installments, and any such assessment, regardless of the source of payment thereof, shall not be included within the limitation contained in Section 19.2 of Article V of this Charter.

(c) When all outstanding securities for a special or local improvement district have been fully paid and money remains to the credit of the district, it may be transferred to a surplus and deficiency fund. Whenever there is a deficiency in any special or local improvement district fund to meet the payment of outstanding securities and interest due thereon, the deficiency may be paid out of the surplus and deficiency fund.

(d) Whenever three-fourths (¾) of the securities issued for a special or local improvement district have been paid and cancelled and for any reason the remaining assessments are not paid in time to redeem the final securities for the district, the city shall pay if so provided in the ordinance authorizing issuance of the bonds, the securities when due and levy additional ad valorem taxes necessary therefor and reimburse itself by collecting the unpaid assessments due the district.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 203, 1986, § 1, Part H, 12-16-86, approved, election 3-3-87; Ord. No. 160, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 161, 1988, 12-20-88, approved, election 3-7-89)

Section 19.6. Terms and disposal of securities.

The terms and maximum interest rate of all securities shall be fixed by the ordinance authorizing the borrowing and providing for its payment and all securities shall be sold or exchanged as determined by the Council. If bonds are publicly sold, Council action awarding the sale of securities, and thereby establishing the interest rates and price paid for the securities, may be by resolution.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73)

Section 19.7. Limitation of actions.

No action or proceeding, at law or in equity, to review any elections, acts or proceedings, or to question the validity of or enjoin the issuance or payment of any securities issued in accordance with their terms, or the levy or collection of any assessments, or for any other relief against any acts or proceedings of the city done or had under this Part II of Article V of this Charter, shall be maintained against the city, unless commenced within thirty (30) days after the election or performance of the act or the effective date of the resolution or ordinance complained of, or else be thereafter perpetually barred.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73)

Section 19.8. Tax increment securities.

The city, by Council action and without an election, may issue tax increment securities payable from ad valorem tax revenues derived from the increased valuation for assessment of taxable property within a plan of development or other similar area as defined by applicable state statutes. Such securities shall be issued in accordance with such statutes or any ordinance adopted by the Council not inconsistent with this Charter. Any securities issued pursuant to this Section shall not be included in the determination of the debt limitation contained in Section 19.2 of Article V of this Charter.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 203, 1986, § 1, Part I, 12-16-86, approved, election 3-3-87)

Section 20. No additional limitations.

Section 6 of Part I of Article V of this Charter shall have no application to the payment of securities issued hereunder. Except as provided by this Part II of Article V of this Charter, there shall be no limitations on the authority of the city to incur indebtedness or to issue securities.

(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73)

Part III.
Financial Administration Unit

Section 21. Financial Officer.

The City Manager shall appoint a Financial Officer who shall have special knowledge of municipal accounting, taxation, budget making, and finance. Such Officer shall be the ex-officio City Treasurer and head the administrative unit assigned the financial affairs of the city.

(Ord. No. 202, 1986, § 1, Part G, 12-16-85, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 22. Powers and duties.

The Financial Officer shall have charge of the financial records and general and special funds of the city, and shall collect, receive, and disburse all money belonging to the city, and shall have all other duties required to administer properly the financial affairs of the city; to that end the Financial Officer shall have authority and shall be required to:

(a) maintain a general accounting system for the city government and each of its offices, service areas, and agencies; exercise budgetary control over the same in accordance with the budget and annual appropriation ordinance; prescribe the form of receipts, requisitions, warrants, and other evidence of income and disbursements; audit before payment all bills, invoices, payrolls, and other claims and charges against the city government; and with the advice of the City Attorney, determine the regularity, legality, and correctness of such claims, demands, or charges;

(b) advise the City Manager of the budget requirements of the Financial Administration Unit and furnish estimates and information concerning other service areas, agencies, and boards as requested by the City Manager;

(c) advise service areas of remaining allotments;

(d) disburse funds in a manner which will assure that budget appropriations are not exceeded and that payments are not illegally made;

(e) collect and hold all city funds; invest funds as directed by the Council by resolution or ordinance; be responsible for all trust funds;

(f) serve as custodian of all bonds, documents, and other evidences of indebtedness owned by the city or under its control;

(g) issue all licenses and collect the fees therefor; collect or receive funds of every description belonging to, due to, or accruing to the city, including fines, forfeitures, penalties, taxes, water rentals, sewer fees, and electric revenues;

(h) submit to the Council through the City Manager periodic statements of all accounts and funds, sufficiently itemized in detail to show the exact financial condition of the city at a frequency established by the Council;

(i) examine and approve all purchase contracts, orders, and other documents by which the city incurs financial obligations, having previously ascertained that moneys have been appropriated and allotted and will be available when the obligations become due and payable;

(j) advise the City Manager of any financial irregularity in any service area.

(Ord. No. 202, 1986, § 1, Part G, 12-16-86, approved, election 3-3-85; Ord. No. 203, 1986, § 1, Part J, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 23. Separate utilities accounts.

The accounts of each utility owned and operated by the city shall be maintained in a separate fund and kept separate and distinct from all other accounts of the city. Each utility fund shall be accounted for utilizing the basis of accounting appropriate for an enterprise fund, and shall contain a reasonable allowance for depreciation and obsolescence. All expenses incurred by service areas in rendering services to any utility owned and operated by the city shall be fully paid by such utility on a "cost of service" basis as determined by the City Manager. Each utility shall be fully paid for all services rendered by such utility to other city service areas. If the utility is subject to a payment to the general fund in lieu of taxes and franchise fees, an estimate shall be made of the amount of taxes and franchise fees that would be chargeable against such utility if privately owned, and the amount of such payment, as determined by the Council under Article XII, Section 6 of this Charter, shall be charged against the utility fund.

(Ord. No. 203, 1986, § 1, Part K, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 24. Responsibility for funds.

All money belonging to the city and in the custody of city employees shall be paid daily to the Financial Officer.

(Ord. No. 202, 1986, § 1, Part J, 12-16-86, approved, election 3-3-87)

Section 25. Creation of funds.

The Financial Officer may create such funds as he or she deems appropriate to carry out the provisions of this Part III. The funds of the city shall include a general fund which shall be used to account for all financial resources of the city except those required to be accounted for in another fund.

(Ord. No. 203, 1986, § 1, Part L, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Part IV
Purchasing

Section 26. Powers and duties.

The City Manager or designee shall appoint a Purchasing Agent who shall contract for all supplies, materials, and equipment required or used by all service areas and agencies of the city, including businesses and enterprises operated by the city.

(Ord. No. 202, 1986, § 1, Parts H, W, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 22, 2001, § 2, 2-20-01, approved, election 4-3-01)

Section 27. Competitive bidding.

Before the Purchasing Agent makes any purchase of or contract for supplies, materials, or equipment, he or she shall give ample opportunity for competitive bidding under such rules and regulations, and with such exceptions as the Council may prescribe by ordinance.

(Ord. No. 12, 1967, 2-9-67, approved, election 4-4-67; Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Ord. No. 202, 1986, § 1, Parts W, X, 12-16-86, approved, election 3-3-87;)

Section 28. Emergency purchases.

In case of emergency affecting the public peace, health, or safety, the Council may waive all provisions for competitive bidding and direct the Purchasing Agent to purchase necessary supplies in the open market at not more than commercial prices.

(Ord. No. 202, 1986, § 1, Part W, 12-16-86, approved, election 3-3-87)

Section 29. Contracts for improvements.

All city improvements constructed by an independent contractor shall be executed pursuant to a written contract. Any such improvement, the cost of which exceeds an amount to be determined by ordinance of the Council, shall be insured by a performance bond or other equivalent security and submitted to a competitive bidding process resulting in award to the lowest responsible bidder or a competitive proposal process; provided, however, that the Council may, by ordinance, authorize the Purchasing Agent to exempt improvements from the competitive bidding and competitive proposal processes.

In the event that Council authorizes the city, rather than an independent contractor, to proceed with the construction of an improvement, the services of the city shall be charged as a part of the cost of the improvement.
(Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Ord. No. 202, 1986, § 1, Part W, 12-16-86, approved, election 3-3-87; Ord. No. 12, 1991, § 1, 2-19-91, approved, election 4-2-91; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 30. Contracts for service.

The Council shall establish by ordinance a maximum term for contracts for service which may be executed by the city without Council approval. No contract for service for a longer term shall be made by the city, unless authorized by ordinance, which ordinance shall not be passed as an emergency ordinance.
(Ord. No. 202, 1986, § 1, Part W, 12-16-86, approved, election 3-3-87; Ord. No. 13, 1991 § 1, 2-19-91, approved, election 4-2-91)

Section 31. Contracts effective only when bond funds available.

No contract for the acquisition of property or the construction of improvements or other expenditures which is to be financed by bonds or other obligations shall be effective until the proceeds of the bonds or obligations have been received by the city.

Improvements to be paid for by special assessments shall be excepted from the provisions of this Section.
(Ord. No. 202, 1986, § 1, Parts I, W, 12-16-86, approved, election 3-3-87; Ord. 12, 1997, § 1, 2-4-97, approved, election 4-8-97)

ARTICLE VI.
CITY ATTORNEY

Section 1. Appointment.

The Council shall appoint and fix the compensation of a City Attorney. The City Attorney shall be licensed to practice law in the State of Colorado during his or her tenure in office, but need not be so licensed prior to appointment. The City Attorney shall serve at the pleasure of the Council.

Assistant and/or Deputy City Attorneys may be appointed as determined by the Council and they shall perform duties as assigned by the City Attorney, including attending Council meetings in the place of the City Attorney.
(Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 202, 1986, § 1, Parts V, X, 12-16-86, approved, election 3-3-87; Ord. 13, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 2. Functions.

The City Attorney shall be the legal adviser of the Council and all employees of the city in matters relating to their official powers and duties. He or she shall represent the city in all legal proceedings, draw all ordinances, and prepare all other legal documents, attend all Council meetings and perform all services incident to the position as may be required by this Charter, ordinances, or the Council.
(Ord. No. 202, 1986, § 1, Parts V, X, 12-16-86, approved, election 3-3-87)

Section 3. Special counsel.

The Council may, upon the request of the City Attorney in special cases, employ special counsel if deemed necessary and advisable under the circumstances.
(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

ARTICLE VII.
MUNICIPAL COURT

Section 1. Municipal Court.

There shall be a Municipal Court vested with original jurisdiction of all causes arising under the City's Charter and ordinances. The Council shall appoint a Municipal Judge for a two (2) year term and shall fix the compensation of the Municipal Judge. Such compensation shall in no manner be contingent upon the amount of fees, fines or costs imposed or collected. The Municipal Judge shall be licensed to practice law in the State of Colorado during his or her tenure in office, but need not be so licensed prior to appointment. In the absence of the Municipal Judge, the Council shall designate a reputable and qualified attorney to serve as a temporary judge. The Council may remove the Municipal Judge for cause.

Rules of procedure, costs and fees shall be enacted by the Council upon recommendation of the Municipal Judge.
(Ord. No. 202, 1986, § 1, Parts V, X, 12-16-86, approved, election 3-3-87; Ord. No. 5, 1989, 1-17-89, approved, election 3-7-89; Ord. 13, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 2. Penalty for violation.

The Council shall provide for enforcement of its ordinances. The maximum penalty for a violation of the ordinances of the city shall be set by the Council by ordinance.

(Ord. No. 202, 1986, § 1, Parts R, V, W, 12-16-86, approved, election 3-3-87)

ARTICLE VIII. ELECTIONS

Section 1. Applicability of state Constitution.

The Council shall provide by ordinance for the manner of holding city elections. All ordinances regarding elections shall be consistent with the provisions of this Charter and the state Constitution. Any matter regarding elections not covered by the state Constitution, this Charter or ordinance of the Council shall be governed by the laws of the State of Colorado relating to municipal elections.

(Res. No. 71-12, 2-11-71, approved, election 4-6-71; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 2. City elections.

A regular city election shall be held on the first Tuesday after the first Monday in April of odd-numbered years. Special city elections shall be called by ordinance and shall be held in accordance with the provisions of this Charter and any ordinances adopted pursuant thereto. All municipal elections shall be nonpartisan.

(Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. No. 201, 1986, § 1, Part B, § 2, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 154, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 3. Nomination; withdrawal from nomination.

Any person who is qualified at the time of nomination for the office to be filled may be nominated for the elective office by petition. A nominating petition for the office of Mayor shall be signed by not less than twenty-five (25) registered electors. A nominating petition for District Council office shall be signed by not less than twenty-five (25) registered electors residing in that District. A registered elector may sign one (1) petition for each office for which the elector is entitled to vote at the election. If an elector should sign more petitions than entitled, said elector's signature shall be void as to all petitions which the elector signed.

Nominating petitions must be filed with the City Clerk. The Council shall enact an ordinance specifying the time frame for circulation and submittal of nominating petitions and the deadline for withdrawal from candidacy for municipal office. Such time frame shall not be changed within one (1) year immediately prior to the election. No nominating petition shall be accepted unless the candidate completes a verified acceptance of the nomination certifying that he or she is not a candidate, directly or indirectly, of any political party, and that he or she meets the qualifications for office, and will serve if elected.

A person who has been nominated may withdraw from candidacy by filing a written request to do so with the City Clerk before the deadline established by Council ordinance for such withdrawal, and no name so withdrawn shall be placed upon the ballot.

(Ord. No. 12, 1977, 2-15-77, approved, election 4-5-77; Ord. No. 201, 1986, § 1, Part E, § 3, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 4. Petitions.

(a) Form; circulation. The Council shall prescribe by ordinance, upon recommendation of the City Clerk, the form for a nominating petition which shall include such warnings and notices to signers as may be deemed appropriate by the Council, as well as the candidate's verified acceptance of nomination. The signatures on a nominating petition need not all be subscribed on one (1) page, but to each separate section of the petition there shall be attached a signed statement of the circulator thereof, stating the number of signers on that section of the petition, and that each signature thereon was made in the circulator's presence and is the genuine signature of the person whose name it purports to be. When executed, such statement shall be accepted as true until it shall be proved false. If any portion is proved false, that portion of any petition shall be disregarded. Following each signature on the petition of nomination shall be written the printed name and the residence address of the signer, and the date of signing. All nominating papers comprising a petition shall be filed as one (1) instrument.

(b) Sufficiency of petition. The City Clerk shall make a record of the exact date and time at which each nominating petition is filed and shall record the names and mailing addresses of the circulators and the candidate. The City Clerk shall forthwith examine all petitions submitted, and within five (5) days after the filing of a nominating petition, notify the candidate and the circulators, with a statement certifying the results of the examination, specifying the particulars of insufficiency, if any. If a petition is found to be signed by fewer persons than the number certified by the circulator, the signatures shall be accepted unless void on other grounds. If a petition is found to be signed by more persons than the number of signatures certified by the circulator, the last signatures in

excess of the number certified shall be disregarded. Within the regular time for filing petitions, an insufficient petition may be amended and filed again as a new petition, in which case the time of the first filing shall be disregarded in determining the validity of signatures thereon, or a different petition may be filed for the same candidate. The petition for each candidate elected to office shall be preserved by the City Clerk until the expiration of the terms of office for such person.

(c) No person shall receive any compensation whatever for signing a nominating petition.

(Ord. No. 12, 1977, 2-15-77, approved, election 4-5-77; Ord. No. 201, 1986, § 1, Part E, § 4, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved election 3-3-87; Ord. No. 158, 1988, 12-20-88, approved, election, 3-7-89; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 5. Board of Elections.

There is hereby created a Board of Elections consisting of the City Clerk, Chief Deputy City Clerk, and Municipal Judge. The Board shall be responsible for any election duties specified in this Charter and for such additional duties related to the conduct of elections as may be established by the Council by ordinance.

(Ord. No. 201, 1986, § 1, Part H, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 022, 2007, §1, 2-20-07, approved, election 4-3-07)

Section 6. Appearance of names on ballot.

Every ballot shall contain the names of all duly nominated candidates for offices to be voted for at that election, except those who have died or withdrawn. The names shall be arranged in alphabetical order of surname for each office, and shall not contain any title or degree designating the business or profession of the candidate. The candidate's name may be a nickname, but shall not include any punctuation marks setting out the nickname.

(Ord. No. 129, 1999, § 1, 8-17-99, approved, election 11-2-99)

Section 7. Certification of election results.

On the third day after every city election and, after verifying the total number of legal votes cast for each candidate and measure voted upon, the Board of Elections shall complete a certificate declaring the results of the election. The candidate receiving the highest number of votes for a particular office shall be declared elected to that office. In event of a tie, the selection shall be made by the Board of Elections by lot after notice to the candidates affected. In case the candidate elected fails to qualify within sixty (60) days after the date of issuance of the certificate of election, the candidate with the next highest vote shall be elected, and the candidate failing to qualify shall forfeit his or her office whether or not such candidate has taken the oath of office. If there is no other elected successor who qualifies, the office shall be deemed vacant, and shall be filled by appointment by the remaining members of the Council, as provided in Article II, Section 18.

(Ord. No. 197, 1986, § 1, Parts C, M, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 129, 1999, § 2, 8-17-99, approved, election 11-2-99; Ord. No. 022, 2007 §1, 2-20-07, approved, election 4-3-07)

Section 8. Campaign contributions.

The Council shall act by ordinance to establish a limit on the amount that any person or entity may contribute in support of a candidate for Council on the ballot at any city election.

No political party or city employee, directly or indirectly, and no public service corporation, nor any other person, firm or corporation, owning, interested in, or intending to apply for any franchise or contract with the city shall contribute or expend any money or other valuable thing, directly or indirectly, to assist in the election or defeat of any candidate.

(Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Ord. No. 208, 1984, 1-15-85, approved, election 3-5-85; Ord. No. 201, 1986, § 1, Part M, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 129, 1999, § 2, 8-17-99, approved, election 11-2-99)

Section 9. Corrupt practices.

Any person who violates at a city election any state law, provision of this Charter or ordinance of the city shall, upon conviction thereof, be disqualified from holding any city position or employment for two (2) years, or any elective city office for four (4) years.

(Ord. No. 201, 1986, § 1, Parts J, M, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 129, 1999, § 2, 8-17-99, approved, election 11-2-99)

Section 10. Validity of elections.

No city election shall be invalidated if it has been conducted fairly and in substantial conformity with the requirements of this Charter.

(Ord. No. 201, 1986, § 1, Part M, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 129, 1999, § 2, 8-17-99, approved, election 11-2-99)

Section 11. Further regulations.

The Council may, by ordinance, make such further rules and regulations as are consistent with this Charter and the Colorado Constitution in order to carry out the provisions of this Article.

(Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 129, 1999, § 2, 8-17-99, approved, election 11-2-99)

ARTICLE IX. RECALL

Section 1. The recall.

(a) Power. Any elective officer of the city may be recalled from office, through the procedure and in the manner provided herein, by the registered electors entitled to vote for a successor of such incumbent officer. For purposes of this Article, in the case of recall of the Mayor, the words "registered elector" shall be construed to mean persons residing within the city who are registered to vote as of the date they signed the petition for recall. For purposes of this Article, in the case of a proposed recall of District Council representatives, the words "registered elector" shall be construed to mean persons who are registered to vote within the particular affected Council District of the city as of the date they signed the petition for recall of the District Council representative. No recall petition shall be circulated or filed against any officer until the officer has actually held office for at least one (1) year in the officer's current term, nor within six (6) months of the end of such term. The procedure to effect a recall shall be as provided in this Article.

(b) Commencement of proceedings; affidavit. One (1) or more registered electors may commence recall proceedings by filing with the City Clerk an affidavit of not more than two hundred (200) words stating the reasons for the recall of the officer sought to be removed. A separate affidavit shall be filed for each officer sought to be recalled. Within forty-eight (48) hours after the filing of the affidavit, the City Clerk shall mail a copy by certified mail to the affected officer. Within five (5) days after the date of the City Clerk's mailing, the affected officer may file with the City Clerk a sworn statement of not more than three hundred (300) words in defense of the charges. The affidavit and the response are intended for the information of the registered electors, who shall be the sole and exclusive judges of the sufficiency of the ground or grounds assigned for the recall, and said ground or grounds shall not be open to judicial review. Within ten (10) days after the date by which any statement in defense must be filed, a petition for recall of the officer shall be submitted to the City Clerk for approval of the form of the petition in accordance with Section 2(b) of this Article. The petition shall be circulated, signed, verified and filed in the manner provided in Section 2 of this Article. If no petition for recall has been submitted to the City Clerk for approval of its form within the time period specified above, the recall proceedings shall be terminated.

(c) Call of election. A recall election shall be for the dual purposes of voting on the recall of the officer sought to be removed and the election of a successor. Upon the City Clerk's presentation of a petition certified sufficient for recall, the Council shall set a date for the election which shall be held on a Tuesday not less than sixty (60) nor more than ninety (90) days from the date of presentation of the certified petition to Council. However, if any other city election is to occur within ninety (90) days from the presentation of the certified petition to Council, the recall election shall be postponed and consolidated with such other city election. The order setting a date for the recall election shall not become effective until five (5) days from the presentation of the certified petition to Council. If the officer resigns within the five-day period, the vacancy may be filled by appointment. If a vacancy occurs in the affected office after the effective date of the order, the election to fill the vacancy shall nevertheless proceed.

(d) Disqualification for office. No person who has been recalled or has resigned after the City Clerk's presentation to Council of a certified, sufficient petition for recall of such person shall serve the city in any elected or appointed capacity within two (2) years after such removal or resignation.

(Ord. No. 199, 1986, § 1, Part A, § 1, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 157, 1988, 12-10-88, approved, election 3-7-89; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. 128, 1999, § 1, 8-17-99, approved, election 11-2-99)

Section 2. Petitions.

(a) Separate petitions required. A separate petition shall be circulated and filed for each officer sought to be recalled.

(b) Form and content.

(1) Approval of form. No petition shall be circulated until the City Clerk has approved the form for circulation. The City Clerk shall first determine that the petition form contains only the matters required by this Article. The Council shall prescribe by ordinance, upon recommendation of the City Clerk, a general form of petition which shall contain warnings and notices to signers as necessary. The City

Clerk's approval under this Section shall not constitute an approval of the content of the petition, but rather, shall start the running of the time periods provided for circulation and filing of petitions for recall.

(2) Statement of purpose. The petition shall be addressed to Council and shall contain or have attached to each section throughout its circulation a copy of the charges set forth in the affidavit on file with the City Clerk, and if requested by the person sought to be recalled, a copy of the statement in defense.

(3) Signatures. Only registered electors may sign the petitions authorized under this Article. Each signer must sign his or her own signature and each signature shall be followed by the printed name of the signer, the street and number address of his or her residence, and the date of signing. No person shall knowingly sign his or her name more than once for the recall of the same incumbent.

(c) Circulation of petition. The petition may be circulated and signed in sections with each section consisting of one (1) or more sheets securely fastened at the top, provided that each section contains a full and accurate copy of the text of the petition and the names and addresses of the designated representatives for the petition. All sections shall be filed as one (1) instrument. Only persons eighteen (18) years of age or older may circulate the petition for signatures. The circulation of any petition by any medium other than personally by a circulator is prohibited. No person shall receive any compensation whatever for signing a recall petition.

(d) Affidavit of circulator. A circulator shall attach to each section of the petition circulated, an affidavit signed by the circulator under oath before a notary public stating the following:

(1) the circulator's address of residence;

(2) that the circulator is eighteen (18) years of age or older;

(3) that he or she personally circulated the section;

(4) that each signature was affixed in the circulator's presence;

(5) that to the best of the circulator's knowledge and belief each signer was at the time of signing a registered elector of the city;

(6) that to the best of the circulator's knowledge and belief each signature is the genuine signature of the person whose name it purports to be;

(7) that each signer had an opportunity before signing to read the full text of the petition; and

(8) that the circulator has not paid or offered to pay any money or other thing of value to any signer for the purpose of inducing or causing the signer to affix his or her signature to the petition.

A petition verified by the valid affidavits of its circulators in each of its sections shall be prima facie evidence that the signatures thereon are genuine and true.

(e) Number of signatures required.

(1) First recall attempt. The petition must be signed by registered electors equal in number to at least twenty-five (25) percent of the entire vote cast at the last preceding regular city election for all candidates for the office, to which the incumbent sought to be recalled was elected as one of the officers thereof, said entire vote being divided by the number of all officers elected to such office at said election.

(2) Subsequent recall attempts. After one (1) recall petition and election, a recall petition filed against the same officer during the same term for which elected must be signed by registered electors equal in number to at least fifty (50) percent of the entire vote cast at the last preceding regular city election for all candidates for the office to which the incumbent sought to be recalled was elected as one of the officers thereof, said entire vote being divided by the number of all officers elected to such office at said election.

(f) Place of filing, time limits. Petitions for recall shall be filed with the City Clerk within thirty (30) days of the City Clerk's approval of the form for circulation. Each petition shall designate by name and address not less than three (3) nor more than five (5) registered electors who shall represent the signers of the petition in all matters affecting the petition, and shall be endorsed by such persons.

(g) Sufficiency of petition; amendment. Within five (5) working days of the filing of a petition the City Clerk shall ascertain by examination of the petition and the registration books whether the petition is signed by the requisite number of registered electors and contains the required particulars and affidavits. If the petition is insufficient, the City Clerk shall so certify and forthwith notify all of the designated petition representatives in writing, specifying the particulars of insufficiency.

Registered electors desiring to protest the sufficiency of a petition may file a written protest, under oath, in the office of the City Clerk within ten (10) days of the filing of the petition. The protest shall set forth with particularity the grounds of protest and the names and defects in form protested. The reasons assigned for recall may not be protested. Upon the filing of a written protest, the City Clerk shall set a time for hearing such protest, which shall be no more than seven (7) days thereafter. At least five (5) days before the hearing, the City Clerk shall mail a copy of the protest to all of the designated petition representatives together with a notice of the time for hearing. All records and hearings shall be before the City Clerk who shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. All records and hearings shall be public, and all testimony shall be under oath. The hearing shall be summary in nature and concluded within thirty (30) days after the petition was filed. The City Clerk shall decide and certify the results of the hearing within ten (10) days after the hearing is concluded.

In case the petition is deemed insufficient, whether following the initial determination by the City Clerk, or following protest proceedings, it may be withdrawn and amended within fifteen (15) days from the filing of the City Clerk's certificate of insufficiency. The City Clerk shall, within five (5) days after such amendment, examine the amended petition and the registration books and certify the result. If the petition is still insufficient, or if no amendment is made, the City Clerk shall return it to one (1) of the designated petition representatives without prejudice to the filing of a new petition for the same purpose.

When and if a petition or amended petition is deemed sufficient, whether following the initial sufficiency determination by the City Clerk in the absence of a protest, or following protest proceedings, the City Clerk shall so certify and present the certified petition to the Council at the next regularly scheduled meeting. The City Clerk's certificate shall then be a final determination as to the sufficiency of the petition.

(Ord. No. 199, 1986, § 1, Part A, § 2, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 157, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 158, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 88, 2000, § 1, 8-15-00, approved, election 11-7-00)

Section 3. Elections.

(a) Generally. Elections on recall shall be conducted in the same manner as provided generally for regular or special city elections in this Charter. All Charter provisions related to nomination and qualification of candidates shall apply to recall elections.

(b) Nominations on recall. Anyone desiring to become a candidate at the recall election shall do so by nominating petition as required in Article VIII of this Charter. The deadline for filing a nominating petition for a recall election shall be as established by ordinance of the Council. If more than one (1) officer is sought to be recalled, then the nominating petition must specify which incumbent the candidate seeks to succeed. The name of the person against whom the recall petition is filed shall not appear on the ballot as a candidate for the office.

(c) Ballots. There shall be printed on the official ballot, as to every officer whose recall is to be voted on, the statement of grounds and, if requested by the affected officer, the officer's statement in defense followed by the words, "Shall (name of person against whom the recall petition is filed) be recalled from the office of (_____)?" Following such question shall appear the words, "Yes" indicating a vote in favor of the recall and "No" indicating a vote against such recall. On such ballots, under each question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person sought to be recalled. The following instruction shall be effective in counting votes and shall appear on the ballot: No vote cast shall be counted for any candidate for such office, unless the voter also voted for or against the recall of the person sought to be recalled from the office.

(d) Election results. If a majority of those voting on the question of the recall of any incumbent from office votes "No," the incumbent continues in office. If a majority votes "Yes" for the incumbent's removal, the incumbent shall thereupon be deemed removed from his or her office upon the taking of the oath of office by his or her successor. If the officer is recalled, the candidate for succession receiving the highest number of votes at the election shall be declared elected for the remainder of the incumbent's term. The candidate elected shall take office upon taking the oath of office, which shall occur as the first order of business at the next regular or special Council meeting. In case the candidate elected fails to

qualify within sixty (60) days after the issuance of a certificate of election, the candidate with the next highest vote shall be elected, and if there is no other elected successor who qualifies, the office shall be deemed vacant, and shall be filled by appointment by the remaining members of the Council, as provided in Article II, Section 18.

(Ord. No. 199, 1986, § 1, Part A, § 3, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Parts V, W, X, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 4. Further regulations.

The Council may, by ordinance, make such further rules and regulations as are consistent with this Charter and the Colorado Constitution in order to carry out the provisions of this Article.

(Ord. No. 199, 1986, § 1, Part A, § 4, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

ARTICLE X.
INITIATIVE AND REFERENDUM

Section 1. The initiative.

(a) Power. The registered electors of the city shall have the power at their option to propose ordinances or resolutions to the Council, and, if the Council fails to adopt a measure so proposed, to adopt or reject such ordinance or resolution at the polls. The procedure for initiative shall be as provided in this Article.

(b) Commencement of proceedings; notice. One (1) or more registered electors may commence initiative proceedings by filing with the City Clerk a written notice of intent to circulate an initiative petition. The notice commencing proceedings shall contain the full text of the proposed ordinance or resolution and shall state whether a special election is requested. After such notice has been filed, the City Clerk shall approve the petition for circulation in accordance with Section 5(b) of this Article. The petition shall be circulated, signed, verified, and filed in the manner prescribed in Section 5 of this Article.

(c) Number of signatures required. The petition must be signed by registered electors of the city equal in number to at least ten (10) percent of the total ballots cast in the last regular city election, except when a special election is requested by the petitioners, the petition must be signed by registered electors equal in number to at least fifteen (15) percent of the total ballots cast in the last regular city election.

(d) Petition deadlines. The initiative petition shall be filed no more than sixty (60) days after the City Clerk's approval of the form for circulation. Unless a special election is requested, the petition must also be filed at least sixty (60) days prior to the next regular city election. If the petition requests a special election in conjunction with a Larimer County Coordinated or General Election, the City Clerk shall establish a submittal deadline for the petition that will enable the measure to be considered at such election, which deadline shall be consistent with all pertinent provisions of the Colorado Revised Statutes governing the conduct of such elections, and, if applicable, with Article X, Section 20 of the Colorado Constitution, and shall advise the petition representatives in writing as to the submittal deadline.

(e) Action by Council. Upon presentation of an initiative petition certified as sufficient by the City Clerk, the Council shall either (1) adopt the proposed ordinance or resolution without alteration within thirty (30) days, or (2) submit such proposed measure, in the form petitioned for, to the registered electors of the city; provided, however, that if the proposed measure requires voter approval in advance under Article X, Section 20 of the Colorado Constitution, alternative (1) above shall not be available to the Council and the proposed measure shall instead be submitted to a vote of the registered electors. If the initiative petition proposing such a measure requests a special election, the proposed measure shall be submitted to a vote of the registered electors on the first possible date permitted by Article X, Section 20 of the Colorado Constitution. If a special election is not requested, the proposed measure shall be submitted to a vote of the registered electors at the next regular city election. In the case of a proposed measure that does not require voter approval in advance under Article X, Section 20 of the Colorado Constitution, the proposed measure, if not adopted by the Council under alternative (1) above, shall be submitted to a vote of the registered electors at the next regular city election or, if the initiative petition proposing such measure requests a special election, the proposed measure shall be submitted to a vote of the registered electors at a special election to be called by the Council within one hundred twenty (120) days of the presentation of the certified petition to the Council, unless any other regular or special city election is to occur within said period, in which case the proposed measure shall be submitted at such other regular or special city election. All ordinances submitted to the Council by initiative petition and adopted by Council without the vote

of the electors shall be subject to the referendum in the same manner as other ordinances.

(Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 1, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 21, 1993, § 1, 2-16-93, approved, election 4-6-93; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 127, 1999, § 1, 8-17-99, approved, election 11-2-99; Ord. No. 101, 2002, § 1, 8-20-02, approved, election 11-5-02)

Section 2. The referendum.

(a) Power. The registered electors of the city shall have the power at their option to approve or reject at the polls, any ordinance adopted by the Council, except ordinances making the annual property tax levy, making the annual appropriation, calling a special election, or ordering improvements initiated by petition and to be paid for by special assessments.

(b) Commencement of proceedings. One (1) or more registered electors may commence referendum proceedings by filing with the City Clerk within ten (10) days after final passage of the ordinance in question, a notice of protest against the going into effect of the ordinance. The notice shall be brief and need not state any reasons, but shall identify the ordinance or part thereof, or code section it proposes to have repealed. Not later than ten (10) days after the filing of the notice, the proponents shall present to the City Clerk the final form for the referendum petition conforming to the requirements of the Article. If the notice and petition form are timely presented, the City Clerk shall approve the petition form for circulation, in accordance with Section 5(b) of this Article. The petition shall be circulated, signed, verified, and filed in the manner prescribed by Section 5 of this Article.

(c) Number of signatures required. The petition must be signed by registered electors of the city equal in number to at least ten (10) percent of the total ballots cast in the last regular city election.

(d) Petition deadlines. The referendum petition shall be filed within twenty (20) days after the City Clerk's approval of the petition for circulation. If a completed petition is not subsequently filed within the requisite time after the City Clerk's approval of the petition for circulation, the referendum effort is null and void and the petition shall not be circulated further.

(e) Action by Council. The presentation to Council of a petition certified by the City Clerk as sufficient for referendum shall automatically suspend the operation of the ordinance in question pending repeal by Council or final determination by the electors. The Council shall reconsider the ordinance at the next regular or special meeting of the Council following the receipt of the petition by the City Clerk. If the ordinance, or that part sought to be repealed, is not repealed, the Council shall refer the same to a vote of the registered electors at the next regular or special city election scheduled for any other purpose. Alternatively, the Council may call a special election for that specific purpose.

(Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Ord. No. 199, 1986, § 1, Part B, § 2, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 127, 1999, § 1, 8-17-99, approved, election 11-2-99)

Section 3. Council use of initiative and referendum.

The Council may submit any question or proposed ordinance or resolution, or refer any adopted ordinance or resolution, to the vote of the people at a regular or special election in the same manner and with the same force and effect as is provided for citizen initiated and referred measures.

(Ord. No. 6, 1980, 1-16-80, approved, election 2-26-80; Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 3, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 4. Repeal or amendment of initiated measure.

An initiated measure submitted to the registered electors of the city by the Council, with or without a petition therefor, and adopted by electoral vote cannot be repealed or amended except by a subsequent electoral vote. This provision shall not apply to ordinances or resolutions adopted by the City Council and referred to the voters.

(Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 5. Petitions.

(a) Separate petitions required. A separate petition shall be circulated and filed for each measure sought to be initiated or referred to the vote of the electors.

(b) Form and content.

(1) Approval of form for circulation. No petition shall be circulated until the City Clerk has approved the form for circulation. The City Clerk shall first determine that the petition form contains only the matters required by this Article. The Council shall prescribe by ordinance, upon recommendation of the City Clerk, a general form of petition which shall contain warnings and notices to signers as necessary. The City Clerk's approval under this Section shall

not constitute an approval of the content of the petition, but rather, shall start the running of the time periods provided for circulation and filing of petitions.

(2) Petition content. The petition shall be addressed to Council.

a. Initiative. The petition shall contain or have attached to each section throughout its circulation the full text of the proposed ordinance or resolution and shall contain a general statement of purpose fairly and accurately summarizing the proposed ordinance or resolution, indicating that the petition is to be circulated in support of the initiated ordinance or resolution and specifying whether a special election is requested.

b. Referendum. The petition shall contain or have attached to each section throughout its circulation the full text of the ordinance sought to be referred, clearly identifying the protested portions if only a partial repeal is sought. In the case of bond ordinances, the full text of the ordinance need not be set forth but the petition shall contain or have attached to each section throughout its circulation the title and summary of the ordinance in question as prepared by the City Clerk.

(3) Signatures. Only registered electors may sign the petitions authorized under this Article. Each signer must sign his or her own signature and each signature shall be followed by the printed name of the signer, the street and number address of his or her residence, and the date of signing. No person shall knowingly sign an initiative or referendum petition more than once. In the event that the signature of any person appears more than once on a petition authorized under this Article, all such signatures shall be subject to invalidation by the City Clerk.

(c) Circulation of petition. The petition may be circulated and signed in sections with each section consisting of one (1) or more sheets securely fastened at the top, provided that each section contains a full and accurate copy of the text of the petition and the names and addresses of the designated representatives for the petition. All sections shall be filed as one (1) instrument. Only persons eighteen (18) years of age or older may circulate the petition for signatures. The circulation of any petition by any medium other than personally by a circulator is prohibited. No person shall receive any compensation whatever for signing an initiative or referendum petition.

(d) Affidavit of circulator. A circulator shall attach to each section of the petition circulated an affidavit signed by the circulator under oath before a notary public stating the following:

(1) the circulator's address of residence;

(2) that the circulator is eighteen (18) years of age or older;

(3) that he or she personally circulated the section;

(4) that each signature was affixed in the circulator's presence;

(5) that to the best of the circulator's knowledge and belief each signer was at the time of signing a registered elector of the city;

(6) that to the best of the circulator's knowledge and belief each signature is the genuine signature of the person whose name it purports to be;

(7) that each signer had an opportunity before signing to read the full text of the petition; and

(8) that the circulator has not paid or offered to pay any money or other thing of value to any signer for the purpose of inducing or causing the signer to affix his or her signature to the petition.

A petition verified by the valid affidavits of its circulators in each of its sections shall be prima facie evidence that the signatures thereon are genuine and true.

(e) Time limits; petition representatives. Petitions for initiative and referendum shall be filed with the City Clerk within the requisite time limits or they will be deemed null and void. Each petition shall designate by name and address not less than three (3) nor more than five (5) registered electors who shall represent the signers of the petition in all matters affecting the petition.

(f) Sufficiency of petition.

(1) Examination. Within five (5) working days of the filing of a petition the City Clerk shall ascertain by examination of the petition and the registration books whether the petition is signed by the requisite number of registered electors and contains the required particulars and affidavits. If the petition is insufficient, the City Clerk shall so certify and forthwith notify all of the designated petition representatives in writing, specifying the particulars of insufficiency.

(2) Insufficient petition; amendment. In case an initiative petition is deemed insufficient, whether following the initial determination by the City Clerk, or following protest proceedings, it may be withdrawn and amended within fifteen (15) days from the filing of the Clerk's certificate of insufficiency. A referendum petition may be withdrawn and amended but to be considered must be refiled within the twenty-day period after the City Clerk's approval of the petition form for circulation. Within five (5) days after such amendment, the City Clerk shall make like examination of the amended petition and certify the result. If the amended petition is still insufficient, or if no amendment was made before the expiration of the time permitted for amendment, the City Clerk shall return the petition to one (1) of the designated petition representatives. In the case of an initiative petition, the return of the petition is without prejudice to the filing of a new petition for the same purpose. However, a returned referendum petition is null and void and a new petition may not thereafter be filed for referendum of the same ordinance.

(3) Protests. Registered electors desiring to protest the sufficiency of a petition may file a written protest, under oath, in the office of the City Clerk within ten (10) days of the filing of the petition. The protest shall set forth with particularity the grounds of protest and the names and defects in form protested. Upon the filing of a protest, the City Clerk shall set a time for hearing such protest, which shall be no more than seven (7) days thereafter. At least five (5) days prior to the hearing, the City Clerk shall mail a copy of the protest to all of the designated petition representatives together with a notice of the time for hearing. All hearings shall be before the City Clerk who shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. All records and hearings shall be public, and all testimony shall be under oath. The hearing shall be summary in nature and concluded within thirty (30) days after the petition was filed. The City Clerk shall decide and certify the results of the hearing within ten (10) days after the hearing is concluded. A petition for referendum which has been deemed insufficient after protest may not be amended or circulated further.

(4) Certification and presentation to Council. When and if a petition or amended petition is deemed sufficient, whether following the sufficiency determination by the City Clerk in the absence of a protest, or following protest proceedings, the City Clerk shall so certify and present the certified petition to the Council at the next regularly scheduled meeting. The City Clerk's certificate shall then be a final determination as to the sufficiency of the petition.

(Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 4, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 158, 1988, 12-20-88, approved, election 3-7-89; Ord. No. 21, 1993, § 1, 2-16-93, approved, election 4-6-93; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 88, 2000, § 1, 8-15-00, approved, election 11-7-00)

Section 6. Elections.

(a) Generally. Elections on initiative and referendum measures shall be conducted in the same manner as provided generally for regular or special city elections in this Charter.

(b) Ballots. Upon ordering an election on any initiative or referendum measure, the Council shall, after public hearing, adopt by resolution a ballot title and submission clause for each measure. The ballot title shall contain information identifying the measure as a city initiated or citizen initiated measure. The submission clause shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall unambiguously state the principle of the provision sought to be added. The official ballot used when voting upon each proposed or referred measure shall have printed on it the ballot title and submission clause and shall contain the words, "Yes" and "No" in response to a ballot question, or "For the Ordinance" and "Against the Ordinance" or "For the Resolution" and "Against the Resolution."

(c) Publication; notice of election.

(1) Initiative. An initiated measure being considered for adoption by Council shall be published in like manner as other proposed ordinances and resolutions. If the initiated measure is submitted to a vote of the people, the City Clerk shall publish a notice of election in conformity with the laws of the State of Colorado relating to municipal elections, together with the ballot title, submission clause and full text of the proposed ordinance or resolution. The text of a successful initiative measure need not be published in full after the election.

(2) Referendum. If the referred measure is to be submitted to a vote of the people, the City Clerk shall publish a notice of election in conformity with the laws of the State of Colorado relating to municipal elections, together with the ballot title, submission

clause and full text of the referred ordinance. If the ordinance in question is a bond ordinance, the summary from the petition may be published in place of the full text. The full text of an ordinance passed on referendum need not be published after the election.

(d) Election results. If a majority of the registered electors voting on the initiated measure vote in favor, the measure is adopted as an ordinance or resolution of the city upon certification of the election results. If a majority of the registered electors voting on a referred ordinance, vote in favor of the ordinance, the ordinance shall go into effect without further publication upon certification of the election results, or at such later date as may be set forth in the ordinance itself. If the provisions of two (2) or more proposed or referred measures adopted or approved at the same election conflict, the measure receiving the highest affirmative vote shall become effective.

(e) Frequency of elections. Any number of proposed ordinances or resolutions or referred ordinances may be submitted at the same election. Not more than one (1) special election on citizen-initiated measures shall be held in any twelve (12) months. This limitation does not apply to the Council which on its own motion may at any time call a special election for the purpose of considering any measure initiated, or adopted and referred, by the Council.

(Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 5, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 7. Further regulations.

The Council may, by ordinance, make such further rules and regulations as are consistent with this Charter and the Colorado Constitution in order to carry out the provisions of this Article.

(Res. No. 83-22, 1-18-83, approved, election 3-8-83; Ord. No. 199, 1986, § 1, Part B, § 6, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 11, 1997, § 1, 2-4-97, approved, election 4-8-97)

ARTICLE XI.
FRANCHISES AND PUBLIC UTILITIES

Section 1. Franchise granted by ordinance.

The Council may grant a franchise relating to any street, alley, or other public place within the city by ordinance, subject to the initiative and referendum powers reserved to the electors of the city. No exclusive franchise shall ever be granted. Every franchise ordinance shall require for its adoption the concurrence of a majority of all the members of the Council.

A franchise may be awarded only after a public hearing on the application or proposal. The applicant for the franchise shall publish a notice of the hearing in a local newspaper of general circulation once a week for three (3) successive weeks immediately prior to the date of the hearing. Such notice shall specify the meeting of the Council at which it is intended to apply for the franchise, the name of the applicant, a general description of the rights and privileges to be applied for, and the time for and terms upon which the franchise is desired. The hearing on the franchise application shall not be held unless a publisher's affidavit of publication proving the applicant's compliance with the notice requirements has been presented to the Council. Publication of the franchise ordinance by the City Clerk shall be in the same manner as for other proposed ordinances.

The procedure for initiative and referendum of an ordinance granting a franchise shall be as otherwise provided in this Charter, except that the signatures required for referendum shall be equal in number to five (5) percent of the registered electors, or ten (10) percent of the total ballots cast in the last regular city election, whichever is less. If the franchise ordinance is referred to the vote of the electors, the grantee of the franchise shall deposit with the city's Financial Officer an amount determined by said Officer to be sufficient to pay for the cost of the election. No franchise election shall be ordered until the grantee deposits such costs.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 204, 1986, § 1, Part A, 12-16-86, approved, election 3-3-87; Ord. No. 19, 1997, § 1, 2-4-97, approved, election 4-8-97)

Section 2. Franchises to specify streets.

All franchises or privileges hereafter granted to railroads or other transportation systems shall plainly specify the particular streets, alleys, avenues, and other public property, or parts thereof, to which they shall apply. All other franchises may be in general terms and may apply to the city generally.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 3. Regulation of public utilities.

The right to regulate the rates, fares, and rentals of public utilities and carriers serving the residents of the city shall always be reserved to the city to be exercised by ordinance. Every person or corporation operating under a franchise or grant from the city shall annually submit to the Council a report verified by the oath of the president, the treasurer, or the general manager thereof. Such reports shall be in the form, contain such detailed information, and cover the period prescribed by the Council.

The Council shall have the power, either through its members or by authorized experts or employees, to examine the books and affairs of any such person, persons, or corporations, and to compel the production of books and other records pertaining to such reports or other matters.
(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 4. Books of record.

The Council shall provide and cause to be kept in the office of the City Clerk an indexed franchise record in which shall be transcribed copies of all franchises granted by the city. Said record shall be a complete history of all franchises granted by the city and shall include a comprehensive and convenient reference to actions, contests, or proceedings at law affecting the same, and copies of all annual and inspection reports and such other information as the Council may require.

Section 5. Term, compensation.

No franchise shall be granted for longer than twenty (20) years. Every grant of a franchise shall fix the amount and manner of payment of the compensation to be paid by the grantee for the use of the same, and no other compensation of any kind shall be exacted for such use during the life of the franchise. This provision shall not exempt the grantee from any lawful taxation upon his or her property, nor from any license, charges, or other impositions levied by the Council, not levied on account of the use granted by the franchise.
(Ord. No. 202, 1986, § 1, Parts V, X, 12-16-86, approved, election 3-3-87; Ord. No. 19, 1997, § 1, 2-4-97, approved, election 4-8-97; Ord. No. 023, 2007, § 1, 2-20-07, approved, election 4-3-07)

Section 6. Option to purchase.

Every grant, extension, or renewal of a public utility franchise or right shall provide that the city may, upon the vote of the electors and the payment therefor of its fair valuation, purchase and take over the property and plant of the grantee in whole or in part. Such valuation shall be made as provided in the grant, but shall not include any value of the franchise or right-of-way through the streets or any earning power of such property.
(Ord. No. 202, 1986, § 1, Parts L, V, 12-16-86, approved, election 3-3-87)

Section 7. Railroad tracks.

The Council, upon some fair apportionment of the cost thereof between the railroad and the city and/or other public authority in interest, may by ordinance require any railroad company to elevate or lower any of its tracks running over, along, or across any street or alley of the city, or to take such other measures for the protection of the public, as in the opinion of the Council the public safety or convenience may require.
(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 8. Street cleaning and paving.

Every grant of any franchise or privilege in, over, under, or along any of the streets or public places in the city for railway purposes, shall be subject to the conditions that the person, firm, or corporation exercising or enjoying the same shall, unless otherwise provided by ordinance, clean, keep in repair, and pave and repave so much of a street or other public place occupied by a railway track as lies between its rails, and between the lines of double track, and for such space outside of said track as may have been acquired by franchise.
(Ord. No. 202, 1986, § 1, Part B, 12-16-86, approved, election 3-3-87)

Section 9. Right of regulation.

The grant of every franchise or privilege shall be subject to the right of the city, whether in terms reserved or not, to make any regulations for the safety, welfare, and accommodation of the public, including among other things the right to require proper and adequate extensions of the service of such grant, the right to require any or all wires, cables, conduits, and other like appliances to be placed underground, and the right to protect the public from danger or inconvenience in the operation of any work or business authorized by the franchise.
(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 10. Revocable permits.

The Council may grant a permit at any time for the use or occupation of any street, alley, or public place. Such permit shall be revocable by the Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit.
(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 204, 1986, § 1, Part C, 12-16-86, approved, election 3-3-87)

Section 11. Franchise renewal.

No franchise shall be renewed before one (1) year prior to its expiration, which renewal shall be subject to all provisions relating to the original grant of a franchise.
(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 12. Leasing of franchises.

No franchise granted by the city shall ever be leased, assigned, or otherwise alienated without the express consent of the city, and no dealing with the lessee or assignee on the part of the city to require the performance of any act or the payment of any compensation by the lessee or assignee shall be deemed to operate as such consent. Any assignment or sale of such franchise without the consent of the city shall, at the option of the Council, operate as a forfeiture to the city of such franchise.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 13. Issuance of stock.

Every ordinance granting any franchise shall prohibit the issuing of any stock on account thereof by any corporation holding or doing business thereunder.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 14. Amendment, renewal, extension or enlargement of franchise.

No amendment, renewal, extension, or enlargement of any franchise, or grant of rights or powers heretofore granted to any corporation, person, or association of persons shall be made except in the manner and subject to all the conditions provided in this Article for the making of original grants and franchises.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 15. Common use of facilities.

The City may by ordinance require any person or corporation holding a franchise from the city for any public utility to allow the use of any of its poles, tracks, wires, conduits, and other related facilities by any other person or corporation to which the city grants a franchise upon the payment of a reasonable rental to the owner therefor. If the person or corporation desiring to use the same cannot agree with the owner regarding said rental and the terms and conditions for such use, within sixty (60) days from offering in writing to do so, the Council after a fair hearing, shall by resolution fix the terms and conditions of such use and compensation to be paid therefor, which award of the Council shall be final and binding on the parties concerned.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 204, 1986, § 1, Part D, 12-16-86, approved, election 3-3-87)

ARTICLE XII.
MUNICIPAL PUBLIC UTILITIES

Section 1. City may acquire utilities.

The Council upon vote of the electors shall have the power within or without the territorial limits of the city to construct, condemn and purchase, acquire, and lease waterworks, gasworks, light plants, power plants, transportation systems, telephone systems, heating plants, and other public utilities local in use and extent, in whole or in part, and everything required therefor, for the use of the city and its inhabitants, and any such systems, plants, works, or ways, or any contracts in relation or in connection therewith which may exist and which the city may desire to acquire or purchase, in whole or in part, the same or any part thereof may be purchased by the city. An election is not required for the purchase of a portion of a utility system which is included in an area being annexed to the city and which is not the subject of an existing city franchise. Such public utilities acquired by the city, except waterworks and transportation systems, shall not be paid for out of general taxes or general obligation bonds, but shall be paid for from revenue derived from the public utility. Equipment necessary for transportation system may be acquired from the funds of the equipment fund of the city.

(Ord. No. 202, 1986, § 1, Parts L, V, 12-16-86, approved, election 3-3-87)

Section 2. Right of entry.

The directors and employees of city-owned utilities shall have authority in the necessary discharge of their duties to enter upon any lands, properties or premises, within or without the city limits, for the examination or survey thereof, or for the purpose of repairing, inspecting, removing, or connecting the service, reading meters, or any other purpose whatever in connection with the water, wastewater, electric, and other utilities.

(Ord. No. 202, 1986, § 1, Parts M, V, 12-16-86, approved, election 3-3-87)

Section 3. Restriction on sale of water and electric property.

The City shall not sell, lease, or in any manner dispose of the city's water or electric utility system as a whole unless and except the proposition for such purpose has first been approved by a vote of the electors. The provisions of this Section shall not apply to the sale, lease or exchange of any part of the water or electric utility systems, which the Council, by ordinance, determines does not

materially impair the viability of the particular utility system as a whole and further determines is for the benefit of the citizens of Fort Collins. The provisions of this Section shall also not apply to the sale of water rights no longer useful to the city nor to the exchange of certain water rights for other water rights which would be more useful to the city.

(Ord. No. 12, 1969, 2-27-69, approved, election 4-8-69; Ord. No. 23, 1981, 2-17-81, approved, election 4-7-81; Ord. No. 202, 1986, § 1, Parts N, V, 12-16-86, approved, election 3-3-87)

Section 4. Control of water.

If at any time the water supply is greater than the immediate needs of the city and its inhabitants, the Council may authorize the City Manager to permit the use of such surplus water by consumers outside the city at such rates as the Council may prescribe; provided that no vested right shall accrue under such permits.

The use of water belonging to the city, or the use of its water system, whether for domestic or industrial use, or for use in connection with a franchise or other privilege granted by the city, shall always be subject to the most comprehensive scrutiny, management, and control by the city, and nothing shall ever be done by a user which shall interfere with the successful operation of the waterworks or tend to interfere with the complete performance of the trust for the people under which such waterworks are held by the city; neither shall such use confer upon any user a right to water superior to the right of any other user.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 5. Utility budgeting.

Budgets for all city-owned public utilities shall be prepared and adopted at the same time and to the same extent as budgets for all other city functions, as specified in Article V of this Charter.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87)

Section 6. Municipal utility rates and finances.

The Council shall by ordinance from time to time fix, establish, maintain, and provide for the collection of such rates, fees, or charges for water and electricity, and for other utility services furnished by the city as will produce revenues sufficient to pay the cost of operation and maintenance of the city's utilities in good repair and working order; to pay into the general fund in lieu of taxes on account of the city-owned utilities such amount as may be established by the Council by ordinance; to pay the principal of and interest on all bonds of the city payable from the revenues of the city's utilities; to provide and maintain an adequate working capital fund for the day-to-day business operations of said utilities; to provide and maintain an adequate fund for the replacement of depreciated and obsolete property and for the extension, improvement, enlargement and betterment of said utilities; to pay the interest on and principal of any general obligation bonds issued by the city to extend or improve said utilities. The provisions hereof shall be subject at all times to the performance by the city of all covenants and agreements made by it in connection with the issuance, sale, or delivery of any bonds of the city payable out of the revenues derived from the operation of its utilities, whether such revenue bonds be heretofore or hereafter issued.

All net operating revenues of the city's utilities shall be held within the respective utility's fund and may be expended only for renewals, replacements, extraordinary repairs, extensions, improvements, enlargements and betterments to such utility, or other specific utility purpose determined by the Council to be beneficial to the ratepayers of said utilities.

(Res. No. 71-12, 2-11-71, approved, election 4-6-71; Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 203, 1986, § 1, Part N, 12-16-86, approved, election 3-3-87; Ord. No. 159, 1988, 12-20-88, approved, election 3-7-89)

Section 7. Reserved.

Editor's note—Section 7, relating to the Water Board, derived from Ord. No. 8, 1967, and Ord. No. 202, 1986, was repealed by Ord. No. 21, 1991, adopted Feb. 19, 1991, approved at an election held Apr. 2, 1991.

ARTICLE XIII.
DEFINITIONS

Certain words and phrases used in this Charter are hereby declared to have the following meanings:

"Agency" means any organizational unit of the city.

"Allotment" means a portion of an appropriation made available for expenditure during a specified period of less than one (1) year.

"Appropriation" means the authorized amount of funds set aside for expenditure during a specified time for a specific purpose.

"City" means the City of Fort Collins, Colorado, a municipal corporation.

"Day" means a calendar day unless otherwise specified.

"Department" means a primary subdivision of a service area headed by a person who, regardless of title, is directly responsible to the director of the service area.

"Elector or taxpayer for a period of time" means that, if a person is required to be an elector or taxpayer for a period of time as a qualification to vote, to be a candidate, or to hold an office, then he or she shall be such during the entire and consecutive number of years next preceding the specified time.

"Emergency" means an existing condition actually arising from unforeseen contingencies which immediately endangers public property, health, peace, or safety.

"Emergency ordinance" means an ordinance immediately necessary, on account of an emergency, to preserve the public property, health, peace, or safety.

"Employees" means all persons in the compensated service of the city except Councilmembers.

"Fort Collins Urban Growth Area" means that geographical area within and adjacent to the City of Fort Collins identified by Intergovernmental Agreement between the City of Fort Collins and Larimer County as that area identified for annexation and urbanization by the City of Fort Collins including the Urban Growth Area as it exists on March 5, 1985, together with any amendments or changes thereto.

"Misdemeanor" means a violation of this Charter or of any city ordinance so designated, and it shall not have the meaning attached to it in the criminal statutes of the State of Colorado.

"Office" means an administrative, legislative, or judicial position in the service of the city.

"Officer" means a member of the City Council.

"Registered elector" or "elector" means a person residing in the city who has registered to vote in city elections in the manner required by law.

"Service area" means a major city administrative unit headed by a director who, regardless of title, is directly responsible to the City Manager.

"Vote of the electors" means a favorable vote by a majority of the electors voting in an election.

(Ord. No. 209, 1984, 1-15-85, approved, election 3-5-85; Ord. No. 199, 1986, § 1, Part C, 12-16-86, approved, election 3-3-87; Ord. No. 201, 1986, § 1, Part N, 12-16-86, approved, election 3-3-87; Ord. No. 202, 1986, § 1, Parts F, R, V, X, 12-16-86, approved, election 3-3-87; Ord. No. 22, 2001, § 1, 2-20-01, approved, election 4-3-01)

ARTICLE XIV.
TRANSITIONAL PROVISIONS

Section 1. Purpose and status of this Article.

The purpose of this Article is to provide an orderly transition from the Commission form of government of the city to the Council-Manager form of government under provisions of this Charter and to prevent the impairment of any contractual relationships between the city and the beneficiaries of any retirement plans of the city in effect on the effective date of this Charter or the owners of any municipal bonds of the city then outstanding. This Article shall constitute a part of the Charter only to the extent and for the time required to accomplish that purpose.

(Ord. No. 202, 1986, § 1, Part V, 12-16-86, approved, election 3-3-87; Ord. No. 203, 1986, § 1, Part O, 12-16-86, approved, election 3-3-87)

Section 2. Transitional period.

The period from the effective date of this Charter to April 12, 1955, shall be known as the transitional period. During the transitional period the former Charter of the City shall remain in effect, except that for the purpose of nominating and electing members of the Council, or filling vacancies thereon, Article VIII of this Charter shall be immediately operative. This Charter shall be fully operative at the close of the transitional period.

(Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87)

Section 3. Retirement plans.

This Charter shall not affect any contractual relationships existing on the effective date of this Charter between the city and any officers or employees by reason of any retirement plans then in effect.

(Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87)

Section 4. Outstanding and authorized bonds.

The provisions of this Charter shall not affect municipal bonds outstanding on the effective date of this Charter. Failure to observe requirements of the former Charter, as amended, governing city elections shall not invalidate any bonds authorized at any election held prior to the effective date of this Charter. Bonds authorized at an election held prior to the effective date of this Charter may be issued in accordance with the provisions of this Charter and when so issued shall be the lawful and binding obligations of the city in accordance with their import.

(Ord. No. 202, 1986, § 1, Parts V, W, 12-16-86, approved, election 3-3-87)

Section 5. Saving clause.

This Charter shall not affect any suit pending in any court on the effective date of its adoption. Nothing in this Charter shall invalidate any existing contracts between the city and individuals, corporations, or public agencies.

(Ord. No. 202, 1986, § 1, Parts U, V, W, 12-16-86, approved, election 3-3-87)

Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit B

CERTIFICATION

STATE OF COLORADO)
)
COUNTY OF LARIMER) ss
)
CITY OF FORT COLLINS)

I, Wanda Nelson, City Clerk of the City of Fort Collins, Colorado, do hereby certify that the attached is a true and correct copy of Resolution 2013-072 of the Council of the City of Fort Collins Submitting to Registered Electors of the City, at a Special Municipal Election on November 5, 2013, a 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 of Fort Collins or Lands Under the City's Jurisdiction, and the same remains on file in the office of the City Clerk.

WITNESS my hand and seal of said City of Fort Collins, Colorado, this 9th day of May, 2014.

(SEAL) CITY OF FORT COLLINS SEAL COLORADO

Wanda Nelson
City Clerk
City of Fort Collins

EXHIBIT B

2013CV31385, Larimer County District Court

RESOLUTION 2013-072
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY, AT A SPECIAL MUNICIPAL ELECTION ON NOVEMBER 5, 2013, A 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 OF FORT COLLINS OR ON LANDS UNDER THE CITY'S JURISDICTION

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 under its jurisdiction has been submitted to the City, 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, under Article X, Section 1(e) of the City Charter, upon presentation of an initiative petition certified as to sufficiency by the City Clerk, the City Council must either adopt the citizen-initiated ordinance without alteration within thirty (30) days or submit said citizen-initiated ordinance in the form petitioned for, to the registered electors of the City; and

WHEREAS, under Article X, Section 6 of the City Charter, upon ordering an election on any initiative or referendum measure, the Council shall, after public hearing, adopt by resolution a ballot title and submission clause for the measure; and

WHEREAS, the ballot title for the measure must identify the measure as either a city initiated or citizen initiated measure; and

WHEREAS the submission clause must be brief, must not conflict with those selected for any petition previously filed for the same election, and must unambiguously state the principle of the provision sought to be added.

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

Section 1. That there is hereby submitted to the registered electors of the City at a special municipal election to be held in conjunction with the Larimer County Coordinated Election on Tuesday, November 5, 2013, the following proposed citizen-initiated ordinance:

PROPOSED CITIZEN-INITIATED ORDINANCE

Fort Collins Public Health, Safety and Wellness Act.

Section 1. Purpose.

To protect property, property values, public health, safety and welfare by placing a five year moratorium on the use of hydraulic fracturing to extract oil, gas, or other hydrocarbons within the City of Fort Collins in order to study the impacts of the process on the citizens of the City of Fort Collins.

Section 2. Findings.

The people of Fort Collins hereby make the following findings with respect to the process of hydraulic fracturing within the City of Fort Collins:

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," Colo. Const. Art. II, Sec. 3;

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," Colo. Rev. Stat. §34-60-102;

The well stimulation process known as hydraulic fracturing is used to extract deposits 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;

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;

Representatives from the State of Colorado have publically stated that they will be conducting a health impact assessment to assess the risks posed by hydraulic fracturing and unconventional oil and gas development.

The people of Fort Collins have determined that the best way to safeguard our inalienable rights provided under the Colorado Constitution, and to and 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 of Fort Collins in order to fully study the impacts of this process on property values and human health.

Section 3. Moratorium

Therefore, 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 moratorium on hydraulic fracturing and the storage of its waste products within the City of Fort Collins or under its jurisdiction for a period of 5 years without exemption or exception in order to fully study the impacts of this process on property values and human health. The moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins.

Section 4. Retroactive Application

In the event this measure is adopted by the voters, its provisions shall apply retroactively as of the date the measure was found to have qualified for placement on the ballot.

Section 2. That the foregoing proposed citizen-initiated ordinance is hereby submitted to the registered electors of the City at said regular municipal election in substantially the following form:

PROPOSED CITIZEN-INITIATED ORDINANCE

An ordinance placing a moratorium on hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction for a period of five years, without exemption or exception, in order to fully study the impacts of this process on property values and human health, which moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins and which shall apply retroactively as of the date this measure was found to have qualified for placement on the ballot.

FOR THE ORDINANCE ____

AGAINST THE ORDINANCE ____

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of August, A.D. 2013.

Karen Weitkunat
Mayor

ATTEST:

Wanda Nelson
City Clerk

CITY OF FORT COLLINS SEAL COLORADO

Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit C

CERTIFICATION

STATE OF COLORADO)
)
COUNTY OF LARIMER) ss
)
CITY OF FORT COLLINS)

I, Wanda Nelson, City Clerk of the City of Fort Collins, Colorado, do hereby certify that the attached is a true and correct copy of Resolution 2013-036 of the Council of the City of Fort Collins Approving an Amended Oil and Gas Operator Agreement Between the City and Prospect Energy, LLC, and the same remains on file in the office of the City Clerk.

WITNESS my hand and seal of said City of Fort Collins, Colorado, this 9th day of May, 2014.

(SEAL)

Wanda Nelson

City Clerk
City of Fort Collins

EXHIBIT C

2013CV31385, Larimer County District Court

RESOLUTION 2013-036
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN AMENDED OIL AND GAS OPERATOR AGREEMENT
BETWEEN THE CITY AND PROSPECT ENERGY, LLC

WHEREAS, Prospect Energy, LLC ("Prospect") is engaged in the business of oil and gas exploration and extraction in the City and operates existing wells in an area known as the "Fort Collins Field," which area is shown on Exhibit "A," attached hereto and incorporated herein by this reference; and

WHEREAS, Prospect has leased certain additional lands in the City for the purpose of expanding its operations, which lands are shown on Exhibit "B", attached hereto and incorporated herein by this reference, and referenced as the Undeveloped Area or "UDA"; and

WHEREAS, on March 19, 2013, the City Council adopted Resolution 2013-024, approving an Oil and Gas Operator Agreement (the "Agreement") between the City and Prospect, which Agreement has been fully executed by both parties; and

WHEREAS, the Agreement governs any new wells spudded by Prospect during the term of the Agreement that are located within the Fort Collins Field or the UDA, as well as any production facilities directly associated with such new wells; and

WHEREAS, the purpose of the Agreement is to authorize Prospect to conduct its operations on such lands, notwithstanding a moratorium that has been imposed by the City on oil and gas operations through the enactment of Ordinance No. 145, 2012, and to utilize hydraulic fracturing during the course of its operations, notwithstanding a ban imposed on such activity through the enactment of Ordinance No. 032, 2013, as long as such operations are conducted in accordance with the terms and conditions of the Agreement; and

WHEREAS, the City Council has determined that the Agreement should be amended to: (1) clarify that Prospect, in the course of its operations, will not re-enter any plugged or abandoned wells within the area of its operation; (2) require that all exploration and drilling activities conducted by Prospect under the Agreement, as of the effective date of the Agreement, comply with the new rules of the COGCC, which will officially take effect on August 1, 2013; (3) require a setback, as described on Exhibit "C" attached hereto and incorporated herein by this reference, ; (4) require insurance coverage in the amount of $10 million per occurrence to cover pollution, cleanup and general liability during drilling through completion of any well, and ongoing general liability coverage in the amount of $5 million; (5) require that certain of the Best Management Practices apply to existing wells within the City limits; and (6) state that the Amended Agreement must be effective on or before June 1, 2013; and

WHEREAS, the City Manager has presented a proposed amended Agreement between the City and Prospect to the City Council for its consideration that makes the foregoing changes (the "Amended Agreement"); and

WHEREAS, the Amended Agreement continues to contain strict controls on methane release and adequately protects the public health, safety and welfare; and

WHEREAS, the City Council has determined that the approval and execution of the Amended Agreement between the City and Prospect is in the best interests of the City.

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

Section 1. That the Amended Agreement, a copy of which is attached hereto as Exhibit "D," is hereby determined by the City Council to include strict controls on methane release and to adequately protect the public health, safety and welfare of the City, and is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to execute the Amended Agreement on substantially the same terms and conditions as shown on Exhibit "D," subject to such minor modifications in form or substance as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purpose of this Ordinance.

Section 3. That the Amended Agreement may only be further amended by the City Council by resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of May A.D. 2013.

Karen Weitkunat
Mayor

ATTEST:

Wanda Nelson
City Clerk

CITY OF FORT COLLINS SEAL COLORADO

AMENDED OIL AND GAS OPERATOR AGREEMENT

THIS OIL AND GAS OPERATOR AGREEMENT ("Agreement") is made and entered into this 29th day of May, 2013 , by and through Prospect Energy, LLC, whose address is 1600 Stout Street, Suite 1710, Denver, CO 80202 (referred to hereinafter as the "Company"), and The City of Fort Collins (referred to hereinafter as the "City") with an address of 300 LaPorte Avenue, Fort Collins, CO 80522, which may be collectively referred to herein as the "Parties", or individually as a "Party".

WHEREAS, the Company and its affiliates, namely, Black Diamond Minerals, LLC ("BDM"), the parent of the Company, engage in the exploration, development, production and marketing of natural gas, oil and natural gas liquids in the Rocky Mountains, including the State of Colorado. The Company currently operates the Fort Collins Field (the "Field") located in Larimer County, with certain portions of the Field located within the City, as depicted in Exhibit A, and, as such, is the only operator with active oil and gas operations within the City. The Company also holds certain leasehold interests within the City described as the Undeveloped Area (the "UDA"), as depicted in Exhibit B.

WHEREAS, the Field was discovered in 1924, and has continually produced oil and associated hydrocarbons to this day. As is common with other older, once remote, oil and gas developments around the state, urban growth and subsequent annexation of certain lands by the City have encroached upon the Field. These annexations, including the Richard's Lake subdivision (developed in the late 1990's) and the Hearthfire subdivision (developed in the mid 2000's), have allowed developers to place residential areas in the vicinity of active oil and gas operations. Some property lines are now within 150 feet of oil wells constructed on then-rural well pads.

WHEREAS, the Field is an oil producing field unitized for waterflood operations from the Muddy Sandstone Formation (which yields the majority of the Field's production), but the Field also produces oil from the Niobrara, Codell, Dakota, and Lyons Formations, all of which may need future development.

WHEREAS, recent engineering and geological analysis indicates that certain parts of the Field may yield substantial incremental resource recovery by expanding the secondary recovery waterflood project by drilling and hydraulic fracturing new wells drilled from lands currently called Waters Edge, Richard's Lake and Hearthfire subdivisions (the "Subdivisions"). The Company is presently studying the UDA to assess whether it would support the development of mineral resources.

WHEREAS, in the Field and UDA, the Company has entered into Surface Use Agreements with the surface owners, dated December 19, 1988, as amended April 19, 2001, and

March 17, 2011, respectively, which expressly govern the locations of wells and associated facilities within the Subdivisions, and other specified terms, including, but not limited to, landscaping and fencing around wells and associated production equipment.

WHEREAS, the City and the Company value a balanced approach to oil and gas development that is protective of public health, safety and welfare, including the environment and wildlife resources. To that end, in order to achieve those goals in a cooperative manner, the City and the Company enter into this Agreement to identify best management practices ("BMPs") for the Company's future drilling operations within the City's boundaries.

WHEREAS, the Field extends beyond the City limits and the Company, as a responsible oil and gas operator, has installed a vapor recovery unit at its existing production facility located just south of Douglas Road (the "Fort Collins Tank Battery") as shown in the Exhibit A attached hereto which lies outside of the City limits. All water, oil and gas produced from any New Well, as defined herein, and located in the Field, will flow into existing or future pipelines to the Fort Collins Tank Battery where gas will be captured and sent to the thermal oxidizer for destruction. Equipment, both at the Fort Collins Tank Battery and within City limits, will capture and destroy at least 98% of any methane and volatile organic compounds (VOC).

WHEREAS, the Colorado Oil and Gas Conservation Act, C.R.S. §34-60-101 *et. seq.* (the "Act"), authorizes the Colorado Oil and Gas Conservation Commission ("COGCC" or "Commission") to adopt statewide rules and regulations, which the Commission has done. Further, the Commission continues to consider changes to the rules and regulations.

WHEREAS, on December 18, 2012, by the adoption of Ordinance 145, 2012, the City Council imposed a temporary moratorium until July 31, 2013 on the acceptance, processing and approval of any land use applications relating to new oil and gas development (the "Moratorium").

WHEREAS, on March 5, 2013, by the adoption of Ordinance No. 032, 2013, the City Council enacted Sec. 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 (the "Ban") and, through the enactment of City Code Sec. 12-136, exempted from the Ban any oil or gas wells or pad sites existing within the City as of 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 methane release and, in the judgment of the City Council, adequately protects the public health, safety and welfare.

WHEREAS, by Resolution 2013-036, the City Council has approved this Oil and Gas Operator Agreement with the Company, and the Parties agree to the terms and conditions contained below.

NOW THEREFORE, in consideration of the covenants and mutual promises set forth in this Agreement, including in the recitals, the Parties agree as follows:

1. Effective Date. When this Agreement is presented to the City Council for its consideration, City staff will also present to the City Council an ordinance exempting all Company operations within the areas described in Exhibits "A" and "B" from the Moratorium and the Ban, which exemption will continue in effect as long as the Company's operations are conducted in accordance with this Agreement. The Effective Date of such ordinance shall be the "Effective Date" of this Agreement. Notwithstanding the foregoing, this Agreement shall be void and of no effect as of June 1, 2013, unless such ordinance has been approved by the City Council and has taken effect on or before said date.

2. The Company's Best Management Practices ("BMPs") within City Limits. The Company shall include the BMPs listed in Appendix A, attached hereto and by reference made a part hereof, on all Applications for Permit-to-Drill, Form 2, and Oil and Gas Location Assessments, Form 2A, submitted to the Commission for a "New Well". For the purposes of this provision, "New Well" shall mean any Company-operated well spudded during the term of this Agreement, and located on either a currently existing well pad or a New Well pad that is located within the City limits, and a "New Well Pad" shall mean any area that is directly disturbed during the drilling and subsequent operation of a New Well, including any production facilities directly associated with such well, and its associated Well Pad, insofar as it covers lands located in the City limits. The BMPs shall apply to all New Wells drilled by the Company while this Agreement is effective. For the purposes of this Agreement, a New Well shall not include the re-entry of a previously plugged and abandoned well; accordingly, the re-entry of a previously plugged and abandoned well is not allowed.

3. City Regulatory Approvals. The Company shall not be required to obtain any project development plan or final plan approval from the City to conduct its oil and gas operations within the City limits, as long as the Company complies with the terms and conditions contained herein, and this Agreement shall control all oil and gas operations conducted by the Company within the City limits. Prior to the submission of a COGCC Form 2 and/or Form 2A to the COGCC, the Company shall meet with the City to review the proposed oil and gas operation to ensure compliance with this Agreement, all applicable state and federal regulations, and any site-specific concerns, which concerns may include overall project impacts and economically and technically feasible mitigation measures or BMPs related to field design and infrastructure construction to minimize potential adverse impacts to public health, safety and welfare. At such

time, if at all, that the City and Larimer County, Colorado (the "County") enter into a written agreement that authorizes the City to regulate the oil and gas operations of the Company within the Growth Management Area, such operations shall thereafter be governed by the terms and conditions of this Agreement and shall be subject to the City's regulatory authority as provided in this Agreement. "Growth Management Area" shall be as described in that certain Intergovernmental Agreement entered into by the City of Fort Collins and Larimer County on June 24,2008, nunc pro func [sic] October 17, 2006.

4. Operations on Existing Facilities. For any Facility owned by the Company and existing prior to the Effective Date and located within the City limits, the Parties hereby agree that the Company may perform routine maintenance operations on said Facility and perform such operations the Company deems prudent and necessary, including, but not limited to, stimulating existing wells through hydraulic fracturing and temporarily storing chemicals on existing well pads for that purpose. The Company agrees to conduct such operations as a prudent operator in accordance with the rules and regulation of the COGCC; however, the Company shall not be subject to the BMP's as attached hereto, except for Appendix A paragraphs 21(j) and 21(k) thereof. "Facility" as used in this provision shall include wells, pipelines, and all equipment necessary and appurtenant to such wells and pipelines.

5. Term. This Agreement is effective upon the Effective Date and shall remain in effect for five (5) years from the Effective Date, at which time the Agreement shall be automatically renewed and extended for successive five (5) year terms, unless and until either Party elects to terminate the Agreement at the end of the then current five (5) year term by providing written notice of such intent to the other party at least thirty (30) days before the expiration of said term.

6. Force Majeure. Neither Party will be liable for any delay or failure in performing under this Agreement in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation, or order of any government or governmental body (including any court or tribunal).

7. Authority to Execute Agreement. Each Party represents that the undersigned have the full right and authority to enter into this Agreement and bind the Parties to the terms and conditions contained herein. This Agreement may be amended only by an instrument executed by both Parties hereto.

8. Successors and Assigns. The terms and conditions of this Agreement shall bind and extend to the City and the Company, and the Company's successors and assigns.

9. No Third Party Beneficiaries. Except for the rights of enforcement by the Commission with respect to the BMPs, this Agreement is not intended to, and does not create, any right, benefit, responsibility or obligation that may be enforced by any non-party. Additionally, nothing in the Agreement shall entitle any third party to any claims, rights or remedies of any kind.

10. Notices. All notices and other correspondence related to this Agreement shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission if verification of receipt is obtained, or (iv) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

City: City of Fort Collins
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522
Attn: City Manager
Telephone: 970-416-2253
Fax: 970-224-6107
Email: datteberry@fcgov.com

Company: Prospect Energy, LLC
1600 Stout Street, Suite 1710
Denver, CO 80202
Attn: Scott D. Hall, Manager
Telephone: 303-973-3228, ext. 223
Fax: 303-346-4893
Email: sdhall@bdminerals.com

11. Default; Remedies. If either party believes that the other Party has failed to comply with any provision of this Agreement, or if any other kind of dispute arises under any provision of this Agreement that cannot be resolved by good faith negotiation between the Parties, the Party claiming that a breach of this Agreement has occurred or seeking resolution of any other dispute under this Agreement shall send written notice to the other Party, specifying its position in the matter and invoking the dispute resolution process in this section. Within fifteen (15) days of the date of delivery of such notice, the Parties shall meet to resolve the matter described in the notice. If either Party believes that mediation would be advantageous in connection with such meeting, or if a resolution of the matter cannot be achieved at the meeting, both parties agree to make a reasonable effort to work through and with a mutually acceptable mediator to attempt to resolve the dispute. Notwithstanding the foregoing, if either Party believes that the dispute will

not otherwise be resolved in a sufficiently prompt and effective manner, such Party may, at its discretion, take such legal action and seek such legal or equitable remedies as it determines to be appropriate or necessary to protect and enforce its rights under this Agreement. Such remedies may include, without limitation, an injunction to stop an alleged violation or an order requiring the performance of all acts and things required to be performed hereunder by the other Party.

12. Integration Clause: This Agreement, along with all exhibits and appendices attached hereto encompasses the entire agreement of the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflicts of laws provisions.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by a duly authorized representative on the day and year first written above.

CITY OF FORT COLLINS SEAL COLORADO

THE CITY:

CITY OF FORT COLLINS, COLORADO
A MUNICIPAL CORPORATION

By: _____
Darin Atteberry, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

THE COMPANY:

PROSPECT ENERGY, LLC

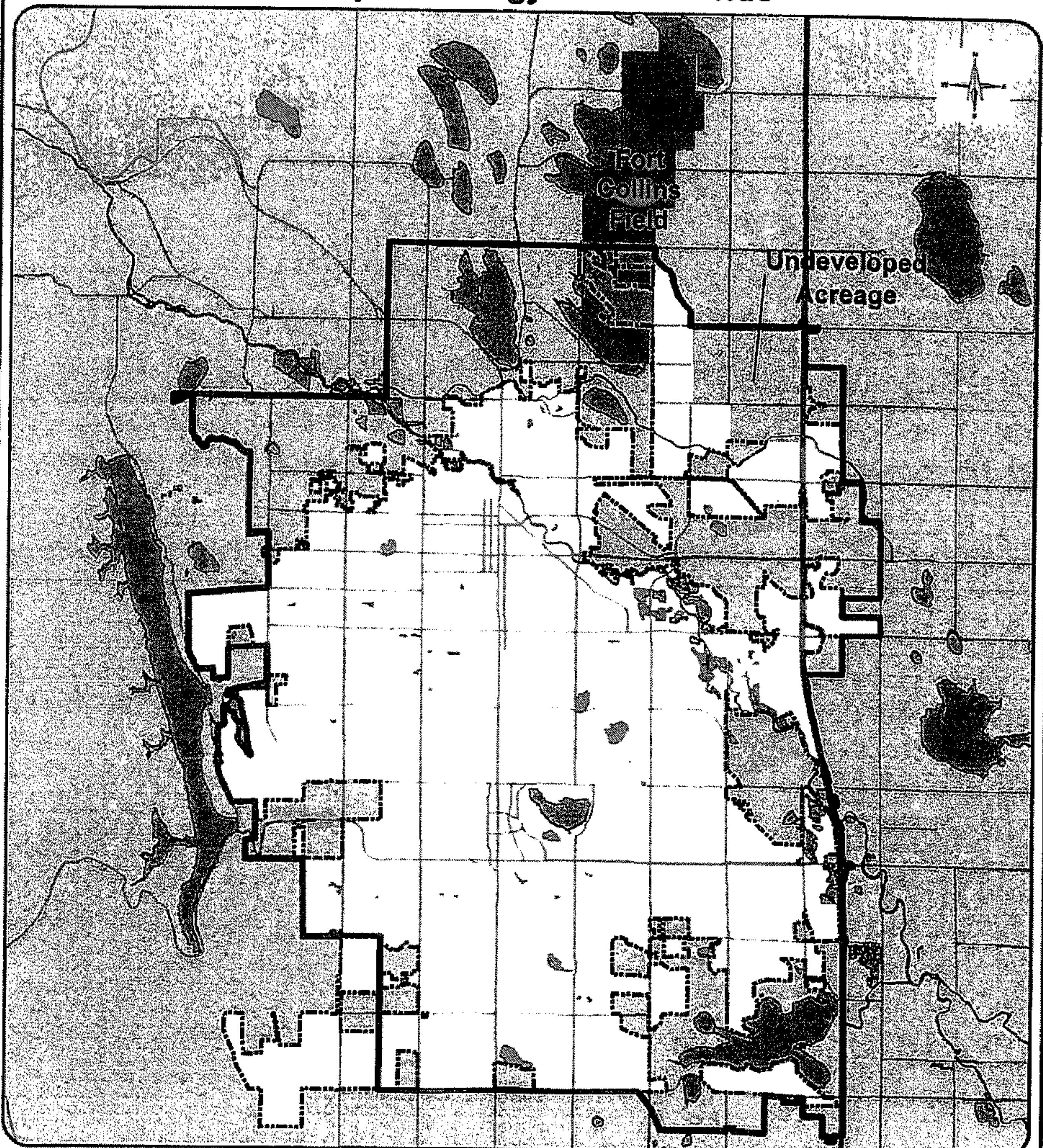
By (signature):

_____ 5/29/13
Scott Hall, CEO

City of Fort Collins

EXHIBIT A

Prospect Energy Oil/Gas Fields



0 1 2 3 4 Miles

Fort Collins Field
Undeveloped Acreage
City of Fort Collins
Growth Management Area

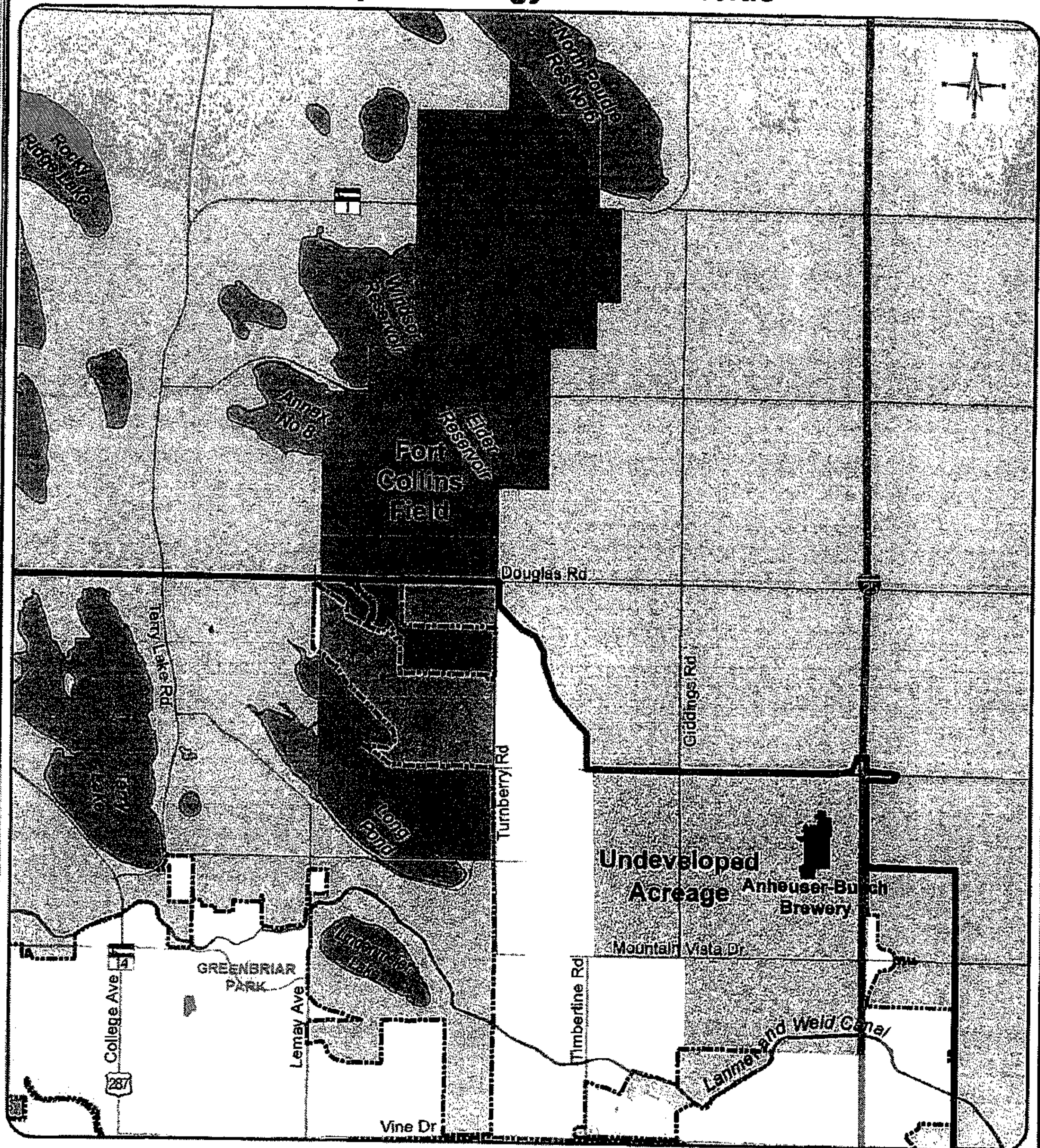
City of Fort Collins

Printed: March 12, 2013

City of Fort Collins

EXHIBIT B

Prospect Energy Oil/Gas Fields



CITY OF FORT COLLINS
GEOGRAPHIC INFORMATION SYSTEM MAP PRODUCTS

These map products and all underlying data are developed for use by the City of Fort Collins for its internal purposes only, and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement of location of any map features thereon. THE CITY OF FORT COLLINS MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OF USE FOR PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA. Any users of these map products, map applications, or data, accepts them AS IS, WITH ALL FAULTS, and assumes all responsibility of the use thereof, and further covenants and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the City's having made this information available. Independent verification of all data contained herein should be obtained by any users of these products, or underlying data. The City disclaims, and shall not be held liable for any and all damage, loss, or liability, whether direct, indirect, or consequential, which arises or may arise from these map products or the use thereof by any person or entity.

- Fort Collins Field
- Undeveloped Acreage
- City Limits
- Growth Management Area

City of Fort Collins

Printed: March 12, 2013

List of Exhibits

Exhibit A - Map of the Fort Collins Field and City boundaries

Exhibit B - Map of the Undeveloped Acreage (UDA) and City Boundaries

Appendix A – List of BMP's

Appendix B – Submittal Requirements

Appendix C - UDA Outline with Setbacks

APPENDIX A

BEST MANAGEMENT PRACTICES FOR LOCATIONS WITHIN THE CITY LIMITS OF FORT COLLINS

Pursuant to the terms of this Agreement, the Company shall include the best management practices listed below on all Applications for Permit-to-Drill, Form 2, and Oil and Gas Location Assessments, Form 2A, (for New Well Pads only), submitted to the Commission for New Wells the Company drills after the Effective Date within the city limits of Fort Collins. Additionally, certain of the paragraphs below shall also apply to existing wells within the City (but not to existing wells within the City's extraterritorial Growth Management Area) but only if express language is included in such paragraphs extending them to existing wells.

1. *Regulations*. The Company shall comply with all applicable state, and federal regulations in addition to the terms of this agreement and the Best Management Practices included below. Any exploration or drilling activity conducted by the Company must comply with the revised rules adopted by the COGCC on January 9, 2013, even though such rules will not officially take effect until August 1, 2013, and as such rules may be amended thereafter. Whichever regulation is most stringent shall apply. The City agrees that it will not impose any fine on the Company for violation of a local regulation if the activity or condition that created the violation is also subject to regulation by the COGCC, so that the violation could result in the imposition of a fine by the COGCC.

2. *Setbacks for New Wells*. It is the intent of the Company to maximize equipment and wellhead setbacks from occupied buildings and residences beyond the setbacks required by the COGCC to the extent feasible and practicable.

   The Parties recognize that a portion of the Field is within the Fort Collins City Limits and as such, development has occurred within the already established Field. The surface owner has obtained permitted plats for residential areas in the vicinity of existing oil and gas activities, including a constructed city park and contemplated building units and public roads within three hundred fifty (350) feet of an existing well. Further, the Parties acknowledge that the Commission rules require a minimum of five hundred (500) feet safety setback for New Well construction from a building unit and one thousand feet (1,000) from a high occupancy building.

   Any New Wells drilled shall conform to the Commission setback rules as established effective August 1, 2013, and as such rules may be amended thereafter. Notwithstanding the previous sentence, Company agrees that the center of the wellhead for a New Well shall not be located closer than 1,000 feet to the western lease line of the UDA acreage covering the NE 1/4 of Section 32, Township 8 North, Range 68 West; nor closer than

1,500 feet to the western lease line of the UDA acreage covering the SE 1/4 of Section 32, Township 8 North, Range 68 West; nor at any location on the UDA acreage located in the NE 1/4 of Section 4, Township 7 North, Range 68 West that is closer than 1,000 feet to a Building Unit (as such term is defined by the Colorado Oil and Gas Conservation Commission to be adopted effectively as of August 1, 2013) only if such Building Unit is located south of the southern UDA lease line located in the NE 1/4 of said Section 4. (See Appendix C for graphic description.) In the Fort Collins Field, New Wells shall be constructed on existing Well Pads, which due to previous setback requirements, and City approval of residential development, do not conform to five hundred (500) feet setbacks, and are given an exemption from the Commission in the Rules now in effect.

The Parties recognize the existence of a Surface Use Agreement (the "SUA") between the Company and the surface owner which expressly governs the locations of wells and associated facilities within the Water's Edge, Richard's Lake and Hearthfire subdivisions (the "Subdivisions"), and that certain terms found in the SUA may affect Commission setbacks and other Commission rules.

3. *Conceptual Review.* No less than thirty (30) days prior to the submission of an Application for a Permit to Drill, the Company agrees to schedule a meeting with the City to review the proposed new well or drilling activity. The goal of this meeting shall be for staff and the applicant to review the proposed oil and gas operation in a manner that ensures compliance with the operator agreement and applicable state and federal regulations. This pre-submittal meeting shall also allow the applicant and staff to explore site-specific concerns, to discuss project impacts and potential mitigation methods including field design and infrastructure construction to minimize impacts, to discuss coordination of field design with other existing or potential development and operators, to identify sampling and monitoring plans for air and water quality, and other elements of the operator agreement as contained in Appendices A and B. Based upon the foregoing, applicants are encouraged to conduct the pre-submittal meeting with the City prior to completing well siting decisions, to the extent reasonably feasible.

4. *Mailed Notice.* The City shall mail notice of the pending Application for a Permit to Drill no more than ten (10) days after the conceptual review meeting has taken place. The Company shall reimburse the City for the costs of the mailing. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the City prior to the mailing of the notices. Notice of the pending application shall include reference to the neighborhood meeting, if applicable, and be made as follows:

— To the surface owners of the parcels of land on which the oil and gas operation is proposed to be located;

— To the surface owners of the parcels of land within five hundred (500) feet of a proposed gathering line;

— To the surface owners of the parcels of land within two thousand six hundred forty (2,640) feet of the parcel on which the oil and gas operation is proposed to be located; and

— To persons registered in writing with the City as representing bona fide neighborhood groups and organizations and homeowners' associations within the area of notification.

5. *Posted Notice.* The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of Section 2.2.6(D) of the City's Land Use Code. Such signs shall be provided by the City and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the City to afford the best notice to the public, which posting shall occur within ten (10) days following the Conceptual Review meeting.

6. *Neighborhood Meetings.* A neighborhood meeting shall be required on any New Well, even on existing Well Pads, that requires an Application for a Permit to Drill. Notice of the neighborhood meeting shall be provided in accordance with Sections 4 and 5 above. The Company shall attend the neighborhood meeting. The City shall be responsible for scheduling and coordinating the neighborhood meeting and shall hold the meeting in the vicinity of the proposed development. A written summary of the neighborhood meeting shall be prepared by the City. The written summary shall be included in the Local Government Designee (LGD) comments provided to the COGCC at the time of the public hearing or permit review to consider the Application for a Permit to Drill.

7. *Notification to the City and the public regarding commencement of operations.* Prior to the commencement of any new drilling operations, the Company shall provide to the City Manager for posting on the website the information outlined in Appendix B regarding commencement of operations, which the Company may revise from time-to-time during operations, with prior approval from the City.

8. *Inspections.* The City shall have the right to inspect the Company's operations and its sites during business hours, upon the giving of twenty-four (24) hour advance written notice to the Company. This paragraph shall also apply to existing wells. City hereby acknowledges that nothing herein shall grant the City authority to assess fees for the inspection of the operations conducted by Company hereunder.

9. *Containment berms.* The Company shall utilize steel-rim berms around tanks and separators at new Well Pads. All berms and containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a fired vessel. Refer to American Petroleum Institute Recommended Practices, API RP - D16.

   a) Containment berms shall be constructed of steel rings, designed and installed to prevent leakage and resist degradation from erosion or routine operation.

   b) Secondary containment for tanks shall be constructed with a synthetic or engineered liner that contains all primary containment vessels and flowlines and is mechanically connected to the steel ring to prevent leakage.

   c) For locations within five hundred (500) feet and upgradient of a surface water body, tertiary containment, such as an earthen berm, is required around production facilities.

10. *Closed Loop Pitless Systems for the Containment and/or Recycling of Drilling and Completion Fluids.* Wells shall be drilled, completed and operated using closed loop pitless systems for containment and/or recycling of all drilling, completion, flowback and produced fluids.

11. *Anchoring.* All equipment at drilling and production sites shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence. All guy line anchors left buried for future use shall be identified by a marker of bright color not less than four (4) feet in height and not greater than one (1) foot east of the guy line anchor. The first sentence of this paragraph shall also apply to existing wells.

12. *Burning.* No open burning shall occur on the site of any oil and gas operation. This paragraph shall also apply to existing wells.

13. *Chains.* Traction chains from heavy equipment shall be removed before entering a City street. This paragraph shall also apply to existing wells.

14. *Chemical disclosure and storage.* The City shall be provided, in table format, the name, Chemical Abstracts Service (CAS) number, volume, storage, containment and disposal method for all drilling and completion chemicals (solids, fluids, and gases) used on the Well Pad. Fracture chemicals shall be uploaded onto the Frac Focus website. The Company shall not permanently store hydraulic fracturing chemicals, flowback from hydraulic fracturing, or produced water in the City limits.

15. *Color.* Facilities shall be painted in a uniform, non-contrasting, non- reflective color, to blend with the surrounding landscape and, with colors that match the land rather than the

sky. The color should be slightly darker than the surrounding landscape. This paragraph shall also apply to existing wells when such wells are repainted for general maintenance purposes.

16. *Cultural and Historical Resource Protection.* If a significant surface or sub-surface archaeological site is discovered during construction, the Company shall be responsible for immediately contacting the City to report the discovery. If any disturbance of the resource occurs, the Company shall be responsible for mitigating the disturbance to the cultural or historical property through a data recovery plan approved by the City.

17. *Discharge valves.* Open-ended discharge valves on all storage tanks, pipelines and other containers shall be secured where the operation site is unattended or is accessible to the general public. Open-ended discharge valves shall be placed within the interior of the tank secondary containment.

18. *Dust suppression.* Dust associated with on-site activities and traffic on access roads shall be minimized throughout construction, drilling and operational activities such that there are no visible dust emissions from access roads or the site to the extent practical given wind conditions. No produced water or other process fluids shall be used for dust suppression. The Company will avoid dust suppression activities within three hundred (300) feet of the ordinary high water mark of any waterbody, unless the dust suppressant is water. Material Safety Data Sheets (MSDS) for any chemical based dust suppressant shall be submitted to the City for approval prior to use. This paragraph shall also apply to existing wells.

19. *Electric equipment.* Electric-powered engines for motors, compressors, and drilling equipment and for pumping systems shall be used in order to mitigate noise and to reduce emissions when feasible. This paragraph shall also apply to existing wells.

20. *Emergency preparedness plan.* The Company is required to develop an emergency preparedness plan for each specific facility site, which shall be in compliance with the International Fire Code. The plan shall be filed with the Poudre Fire Authority and the City of Fort Collins Office of Emergency Management and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). This paragraph shall also apply to existing wells. The emergency preparedness plan shall consist of at least the following information:

    a) Name, address and phone number, including twenty-four (24)-hour emergency numbers for at least two persons responsible for emergency field operations.

    b) An as-built facilities map in a format suitable for input into the City's GIS system depicting the locations and type of above and below ground facilities including

sizes, and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites, for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the City's Office of Emergency Management and the Battalion Chief, and shall only be disclosed in the event of an emergency or to emergency responders. The City shall deny the right of inspection of the as-built facilities maps to the public or for the training of emergency responders pursuant to C.R.S. § 24-72-204.

c) Detailed information addressing each reasonable potential emergency that may be associated with the operation. This may include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. A provision that any spill outside of the containment area, that has the potential to leave the facility or to threaten waters of the state, or as required by the City-approved Emergency Preparedness Plan shall be reported to the local emergency dispatch and the COGCC Director in accordance with COGCC regulations.

d) Detailed information identifying access or evacuation routes, and health care facilities anticipated to be used.

e) A project specific emergency preparedness plan for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas.

f) Detailed information showing that the Company has adequate personnel, supplies, and training to implement the emergency response plan immediately at all times during construction and operations.

g) The Company shall have current Material Safety Data Sheets (MSDS) for all chemicals used or stored on a site. The MSDS sheets shall be provided immediately upon request to City officials, a public safety officer, or a health professional.

h) The plan shall include a provision establishing a process by which the Company engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with the Company.

i) All training associated with the Emergency Preparedness plan shall be coordinated with the City's Office of Emergency Management and Poudre Fire Authority.

j) A provision obligating the Company to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency in accordance with Colorado State Statutes.

21. *Air quality.* The Company must comply with emissions regulations governed by the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division (APCD). Air emissions from wells shall be in compliance with the permit and control provisions of the Colorado Air Quality Control Program, Title 25, Section 7, C.R.S., COGCC Rule 805, and all state and federal regulations for the control of fugitive dust, and control of ozone, ozone precursors, methane, and hazardous air pollutants by the Larimer County Public Health Department, and the CDPHE-APCD. The Company must comply with 40 CFR Subpart OOOO as published on August 16, 2012 (Quad O). Subparagraphs (j) and (k) shall also apply to existing wells.

a) General Duty to Minimize Emissions. The Company shall incorporate in the development plan; operations, procedures, and field design features to the maximum extent feasible that minimize air pollutant emissions including but not limited to:

1) Consolidation of product treatment and storage facilities
2) Centralization of compression facilities
3) Liquids gathering and water delivery systems
4) Telemetric control and monitoring systems
5) Pipeline infrastructure prior to well completion.

b) In the UDA, the Company shall utilize a high-low pressure vessel (HLP) and vapor recovery unit (VRU) for New Wells that are placed on production. The Company may remove the VRU at such time it determines that the VRU system is no longer necessary due to reduced emission recoveries and/or efficiencies, but no earlier than one (1) year after the New Well is placed on production. The Company may opt to capture gas and send through a thermal oxidizer in lieu of a HLP and VRU.

c) Plunger lifts are not typically used in the Fort Collins Field due to insufficient gas. However if there is future use of plunger lifts, emissions shall be controlled from the motor control valve using low bleed pneumatic controllers.

d) There will be no uncontrolled venting of methane. All gas vapors shall be captured to the extent practicable. Vapor capture equipment shall operate at ninety-eight percent (98%) efficiency or better. There are no gas sales lines in the Fort Collins field because the quantity and quality of gas is low and not

marketable. If salable gas were to occur in the UDA, a sales line shall be constructed.

e) Flaring during drilling and completions:
During well completion, the capture and beneficial use of natural gas is preferred over flaring. Minimal flaring may occur in the Fort Collins field, because there is minimal gas in the field. Flaring shall be continuously monitored on-site by the Company, under twenty-four (24) hour watch and is regulated by COGCC Rules 317, 805B(3)B, and 912. No venting of gas may occur, except under COGCC Green Completion Practices (Rule 805 B(3)B), or in very limit cases under Rule 912 with the COGCC Director approval.

f) Flaring during production operations:

1) The flare shall be fired with natural gas and shall be operated with a ninety eight (98) percent or higher VOC destruction efficiency.
2) The flare shall be designed and operated in a manner that shall ensure no visible emissions, pursuant to the provisions of 40 CFR 60.18(f), except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours. Where applicable, flares shall also be in compliance with 5 CCR 1001-9 Regulation 7 Section XVIIB for non-condensate oil.
3) The flare shall be operated with a flame present at all times when emissions may be vented to it, pursuant to the methods specified in 40 CFR 60.18(f).
4) An automatic pilot system shall be used when feasible. Other ignition systems may include the installation and operation of a telemetry alarm system or an on-site visible indicator showing proper function.

g) Leak Detection and Repair (LDAR) – The Company shall develop and maintain a leak detection and component repair program according to EPA Method 21 for equipment used in permanent operations. LDAR shall be performed on newly installed equipment, and then on an annual basis. A Forward-Looking Infrared (FLIR) camera shall be used as the preferred implementation method of EPA Method 21 as available from the state; if unavailable, other methods shall be used in compliance with this method. Upon request from the City, the Company shall implement EPA Method 21 upon additional concerns. At least once per year, the Company shall notify the City prior to FLIR camera use in case the City wishes to observe the method.

h) One Time Baseline Air Quality Monitoring - the Company and the City shall split the cost for a one time Baseline Sampling and Analytical. The work shall be done by a third party consultant agreeable to both parties over a five day sampling period with each location sampled per day. The sampling locations shall be as follows:

1) Upwind of Tank Battery
2) Downwind of Tank Battery
3) City Park
4) One location downtown, such as New Belgium Brewery or Wild Boar Coffee

i) One Time Air Sampling During Well Completion – The Company shall conduct air sampling during well completion. The work shall be done by a third party consultant agreeable to both parties. This shall be done over a five day sampling period with each location sampled per day. The sampling shall be for one well completion in the City (City's choice of which well completion). The sampling locations shall be as follows:

1) Upwind of well
2) Downwind of well

j) Ongoing Air Quality Monitoring - Periodic air monitoring shall be performed for hydrogen sulfide (H2S), a hazardous air pollutant (HAP). The Company shall perform field monitoring using the Jerome 631 XC or equivalent instrument annually, or until such time that odors are not detected past the Fort Collins Tank Battery fence line in City Limits.

k) The City may require the Company to conduct additional air monitoring as needed to respond to emergency events such as spill, process upsets, or accidental releases or in response to odor complaints in City Limits.

1) In response to emergency events that involve the potential release of hazardous air pollutants, the Company may be required to conduct air sampling in accordance with Subsection i. above.

2) In response to odor complaints, the Company may be required to conduct air sampling in accordance with subsection j above or use a photo-ionization detector (PID) to measure detected levels of VOCs that exceed acute health-based exposure thresholds, or other air sampling methodology depending on the nature of the complaint.

l) Air Quality Action Days. The Company shall respond to air quality Action Day advisories posted by the Colorado Department of Public Health and Environment for the Front Range Area by implementing air emission reduction measures committed to in the Air Quality Mitigation Plan. Emission reduction measures shall be implemented for the duration of an air quality Action Day advisory and may include measures such as:

1) Minimize vehicle and engine idling
2) Reduce truck traffic and worker traffic
3) Delay vehicle refueling
4) Suspend or delay use of fossil fuel powered ancillary equipment
5) Postpone construction activities

22. *Green completions.*

a) Gas gathering lines, separators, and sand traps capable of supporting green completions as described in COGCC Rule 805 shall be installed at any location at which commercial quantities of gas are reasonably expected to be produced based on existing adjacent wells within one (1) mile or well in the Fort Collins Field, whichever is greater.

b) Uncontrolled venting is prohibited.

c) Temporary flowback flaring and oxidizing equipment shall include the following:

1) Adequately sized equipment to handle 1.5 times the largest flowback volume of gas experienced in a one (1) mile radius (or well in the Fort Collins Field), whichever is greater;

2) Valves and porting available to divert gas to flaring and oxidizing equipment; and

3) Auxiliary fueled with sufficient supply and heat to combust or oxidize non-combustible gases in order to control odors and hazardous gases. The flowback combustion device shall be equipped with a reliable continuous ignition source over the duration of flowback, except in conditions that may result in a fire hazard or explosion.

4) The Company has a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback and subsequent recovery/operation.

23. *Exhaust.* The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up or in a direction away from the closest existing residences. This paragraph shall also apply to existing wells.

24. *Fencing.* Permanent perimeter fencing shall be installed around production equipment, and shall be secured. The main purpose of the fencing is to deter entrance by unauthorized people. The Company shall use visually interesting fencing, when feasible, but the parties recognize that there is a need for air circulation, and for the field personnel who regularly inspect the facilities to be able to identify visual operational deficiencies when driving by. Landscaping may be used for screening. If a chain link fence is required to achieve safety requirements set by the COGCC, then landscaping and other screening mechanisms shall be required that comply with the City's Land Use Code regulations and the Company's safety requirements.

25. *Flammable material.* All land within twenty five (25) feet of any tank, or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish, and shall conform to Section 315 of the International Fire Code. This paragraph shall also apply to existing wells.

26. *Floodplains.* All oil and gas operations shall comply with Chapter 10 of the City Code.

27. *Water Quality Monitoring Plan.* The Company shall comply with COGCC Rule 609. In summary, this requires pre- and post-drilling testing. The rules require oil and gas operators to sample all "Available Water Sources" (owner has given consent for sampling and testing and has consented to having the sample data obtained made available to the public), with a cap of four (4) water sources, within one-half (1/2) mile radius of a proposed well, multi-well site, or dedicated injection well. Water sources include registered water wells, permitted or adjudicated springs, and certain monitoring wells. The Company agrees to the following requirements above and beyond the COGCC requirements: analyzing for dissolved metals as indicated in the Land Use Code and sampling intervals to be baseline (before drilling), post-drilling at one, three, and six years. Analytical results shall be shared with the COGCC, the City, and the landowner. All spills, for new and existing wells, shall be managed in accordance with COGCC regulations.

28. *Landscaping.* In the Fort Collins Field, existing Well Pads shall be used for any New Wells and all landscaping shall be in compliance with the City of Fort Collins Land Use Code standards and in compliance with the safety requirements of the Company. Existing vegetation shall be minimally impacted. In the UDA, motorized equipment shall be restricted to the Well Pad and access roads to the Well Pads. A Visual Mitigation Plan, along with fencing and landscaping shall be developed for new construction.

29. *Lighting.* Except during drilling, completion or other operational activities requiring additional lighting, down-lighting is required, meaning that all bulbs must be fully

shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures. This paragraph shall also apply to existing wells.

30. *Maintenance of machinery.* Routine field maintenance of vehicles or mobile machinery shall not be performed within three hundred (300) feet of any water body. This paragraph shall also apply to existing wells.

31. *Mud Tracking.* The Company shall take all practicable measures to ensure that vehicles do not track mud or debris onto City streets. If mud or debris is nonetheless deposited on City streets, the streets shall be cleaned immediately by the Company using pressured water from a water truck. This shall be done as part of maintenance. If for some reason it cannot be done, or needs to be postponed, the LGD shall be notified of the Company's plan for mud removal. This paragraph shall also apply to existing wells.

32. *Natural Resources* – An Ecological Characterization Study shall be provided if any New Well is within 500 feet of a Natural Habitat or Feature, and if impacting these resources, mitigation plans to ensure no net resource loss per Fort Collins Land Use Code 3.4.1.

33. *Noise mitigation.* Noise mitigation measures shall be constructed along any edge of any oil and gas operation site if such edge is between the oil and gas operation and existing residential development or land which is zoned for future residential development. The noise mitigation measures shall, to the maximum extent feasible, decrease noise from the oil and gas operations to comply with the sound limitation regulations set forth in Commission Rule 802. A noise mitigation study shall be submitted with the application to demonstrate that noise will be decreased to the maximum extent feasible.

34. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

(a) To the maximum extent feasible, all flow lines, gathering lines, and transmission lines shall be sited a minimum of fifty (50) feet away from general residential, commercial, and industrial buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within 150 feet of general residential, commercial, and industrial buildings or the high water mark of any surface water body shall incorporate leak detection, secondary containment, or other mitigation, as appropriate.

(b) To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance.

(c) To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts.

(d) To the maximum extent feasible, operators shall use boring technology when crossing streams, rivers, or irrigation ditches with a pipeline to minimize negative impacts to the channel, bank, and riparian areas.

35. *Recordation of flowlines.* All new flowlines, including transmission and gathering systems, shall have the legal description of the location recorded with the City Clerk and the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any recorded flowlines shall be recorded with the Larimer County Clerk and Recorder's office within thirty (30) days after abandonment.

36. *Recreational Activity Standards.* The installation and operation of any oil and gas operation shall not cause significant degradation to the quality and quantity of recreational activities in the City. Methods to achieve compliance with this standard include, but are not limited to locating operations away from trails and from property used for recreational purposes, or by using existing Well Pads.

37. *Removal of debris.* When an oil and gas operation becomes operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried or burned on-site. This paragraph shall also apply to existing wells.

38. *Removal of equipment.* All equipment used for drilling, re-completion and maintenance of the facility shall be removed from the site within thirty (30) days of completion of the work, unless otherwise agreed to by the surface owner. Permanent storage of equipment on Well Pad sites shall not be allowed. This paragraph shall also apply to existing wells.

39. *Soil Gas Monitoring* – The City, at its discretion, may conduct soil gas monitoring to assess well casing integrity. This shall be typically completed within ninety (90) days of New Well completion. The City shall notify the Company prior to entering the site for soil gas monitoring.

40. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right To Know Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Oil and Pollution Act, the Clean Water Act, the Resource Conservation and Recovery Act and the Spill Control Prevention and Countermeasure plan, as

applicable. If a spill or release impacts or threatens to impact surface water or a water well, the Company shall notify the affected or potentially affected owner immediately following discovery of the release, and the spill or release shall be reported to the City and to the surface water or water well owner within twenty-four (24) hours of becoming aware of the spill or release.

41. *Stormwater control plan.* All oil and gas operations shall comply and conform with the Fort Collins Storm Criteria Manual (FCSCM), including submission of an Erosion Control Report and Plan. This paragraph shall also apply to existing wells.

42. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state. This paragraph shall also apply to existing wells.

43. *Trailers.* A construction trailer or office is permitted as an accessory use during active drilling and well completion only. This paragraph shall also apply to existing wells.

44. *Transportation and circulation.* All applicants for drilling and completion operations (New Wells) shall include in their applications detailed descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste, and all other material to be hauled on the public streets and roads of the City. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, trips per day and any other information required by the Traffic Engineer. Preliminary information is required for this item for the Conceptual Review meeting, in accordance with Appendix B. The Company shall comply with all Transportation and Circulation requirements as contained in the Land Use Code as may be reasonably required by the City's Traffic Engineer.

45. *Wastewater and Waste Management.* In the Fort Collins Field, all fluids shall be contained and there shall be no discharge of fluids, as described in the Closed Loop System and Green Completions section of this Appendix. Waste shall be stored in tanks, transported by tanker trucks, and disposed of at licensed disposal fields. In the UDA, new secondary containment shall be constructed of steel, with sufficient perimeter and height to hold one and one-half (1.5) times the volume of the largest tank and sufficient freeboard to prevent overflow. No potential ignition sources shall be installed inside the secondary containment area unless the containment enclosed a fired vessel. The requirements for secondary containment will meet the Fort Collins Stormwater Criteria Manual. No land treatment of oil impacted or contaminated drill cuttings are permitted. The use of a closed loop drilling system precludes discharge of produced water or flowback to the ground or the use of pits. Produced water or flowback will not be used for dust suppression. A copy of the field's Spill Prevention, Control, and Countermeasure Plan (SPCC) will be given to

the City, which describes spill prevention and mitigation practices. The Company will provide the City documentation of waste disposal and its final disposition. This paragraph shall also apply to existing wells.

46. *Water supply.* The Company shall identify in the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the City shall be documented and this record shall be provided to the City annually or sooner, if requested by the City Manager. The disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water and the final destination for water used in operation. This paragraph shall also apply to existing wells.

47. *Weed control.* The Company shall be responsible for ongoing weed control at oil and gas operations, pipelines, and along access roads during construction and operation, until abandonment and final reclamation is completed per City, Larimer County or other applicable agency regulations. The appropriate weed control methods and species to be controlled shall be determined through review and recommendation by the County Weed Coordinator by reference to the Larimer County Noxious Weed Management Plan and in coordination with the requirements of the surface owner. This paragraph shall also apply to existing wells.

48. The Company shall, with respect to the initial drilling of a New Well through completion, provide liability insurance that covers pollution, cleanup and general liability in the amount of $10,000,000 per occurrence. Following completion, the Company shall provide ongoing pollution, cleanup and general liability coverage in the amount of $1,000,000 per occurrence and $2,000,000 aggregate, and general liability umbrella coverage in the amount of $5,000,000.

APPENDIX B

SUBMITTAL REQUIREMENTS FOR THE COMPANY FOR NEW WELL LOCATIONS WITHIN THE CITY LIMITS OF FORT COLLINS

1. *Conceptual Review Submittal Requirements.* The following documents shall be submitted prior to the Conceptual Review meeting outlined in Appendix A:

   a) A preliminary summary of planned operations, including identified access points and operational timeline for posting to a local community information web-page;

   b) A preliminary site plan for site preparation, mobilization and demobilization;

   c) A preliminary plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad;

   d) A preliminary plan for noise, light and dust mitigation;

   e) A preliminary traffic management plan;

   f) A preliminary Visual Mitigation Plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening in accordance with Appendix A.

   g) A preliminary list of permits that shall be submitted in conjunction with the APD and any exceptions proposed to be requested.

   h) A draft air quality mitigation plan in accordance with Appendix A.

   i) A draft emergency response preparedness plan in accordance with Appendix A.

   j) Preliminary list of chemicals proposed to be disclosed through the "Frac Focus" uploading mechanism and regulated through the COGCC Rule 205.

   k) Proposed sampling locations in accordance with the water quality monitoring plan outlined in Appendix A.

2. *Submittal Requirements Prior to Commencement.* The following documents shall be submitted by the Company prior to the commencement of drilling and completion:

   a) A response letter that outlines how staff comments from the Conceptual Review were addressed during the APD permitting process.

b) A summary of planned operations, including identified access points and operational timeline for posting to a local community information web-page;

c) A site plan for site preparation, mobilization and demobilization;

d) A plan for interim reclamation and revegetation of the well pad and final reclamation of the well pad;

e) A plan for noise, light and dust mitigation, to the extent reasonably feasible;

f) A traffic management plan, if applicable, and a reasonable bond to cover any damage to public infrastructure during active drilling and completion;

g) A Visual Mitigation Plan, including but not limited to, a list of the proposed colors for the operations' equipment, proposed fencing and screening in accordance with Appendix A.

h) Copies of all permits requested, including any exceptions.

i) A final air quality mitigation plan in accordance with Appendix A.

j) A final emergency response preparedness plan in accordance with Appendix A.

k) Updated preliminary Chemical disclosure using the "Frac Focus" uploading mechanism, and Chemical Inventory per COGCC Rule 205.

l) Baseline water quality data collected in accordance with the Water Quality Monitoring Plan.

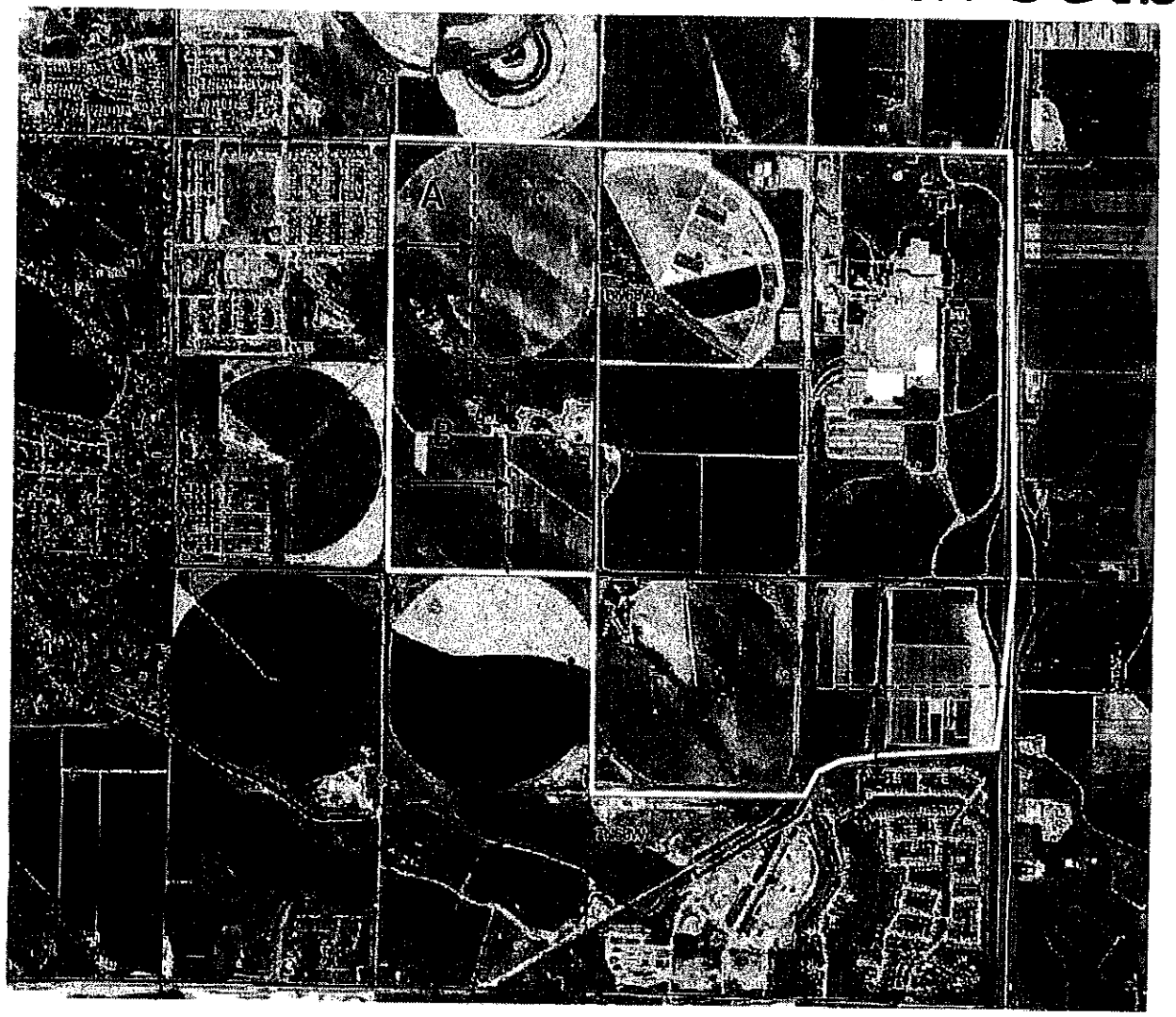
3. *Submittal Requirements Post Well-Completion.* The following documents shall be submitted by the Company after well-completion:

a) Chemical disclosure using the "Frac Focus" uploading mechanism, and Chemical Inventory per COGCC Rule 205.

b) Water quality data collected at 1, 3, and 6 year post-completion intervals, as described in Appendix A.

c) Air quality and other data collected throughout the post-completion phase, as identified in Appendix A.

UDA Outline With Setbacks



A 1,000' setback from lease line

B 1,500' setback from lease line

C 1,000' setback from Building Unit

----- Setback Boundary

Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit D

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521 Phone: (970) 494-3500 **Plaintiff:** **COLORADO OIL AND GAS ASSOCIATION,** v. **Defendant:** **CITY OF FORT COLLINS, COLORADO**	**COURT USE ONLY** Case Number: 2013CV31385 Division/Courtroom: 5B

AFFIDAVIT OF LAURIE KADRICH

I, Laurie Kadrich, being duly sworn, hereby depose and state as follows:

1. I am over the age of 18 years and I have personal knowledge of the statements in this affidavit.

2. I am the Director of Community Development and Neighborhood Services for the City of Fort Collins. I have held this position with the City since February 12, 2012. My job duties as Community Development and Neighborhood Services Director include overseeing all development review activities, including preparation of long-range plans and amendments to the Fort Collins Land Use Code.

3. Article 1, Section 5 of the City Charter lists planning and zoning as one of the eight essential functions and services of the City. It is part of my job to provide these services on behalf of the City.

4. As part of my job duties, I have become familiar with the issue of oil and gas development inside and outside of the City limits. In addition, I am familiar with the location of the wells and other facilities operated by Prospect Energy in Fort Collins Field and the various residential subdivisions in the northern part of the City known as Hearthfire, Water's Edge and Richard's Lake. These residential subdivisions are located near Prospect's oil and gas wells and other facilities. I am also familiar with the area of the City known as the Undeveloped Acreage or "UDA" located in the northeastern part of the City near the Anheuser-Busch brewery. As part of my job duties, I have communicated with a number of people who live in or who own properties in the residential subdivisions near the UDA, as well as other citizens of the City, regarding impacts of oil and gas development and related matters.

5. I have also worked with the City Council and other City employees on issues involving the impacts of oil and gas development within the City.

6. I am aware that on August 20, 2013, the Council adopted Resolution 2013-072, which submitted a 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 at a special municipal election on November 5, 2013. I am also ware that the voters approved this citizen initiated ordinance, known as "Ballot Measure 2A," and the City adopted Ballot Measure 2A as an ordinance of the City.

7. Since the adoption of this ordinance and the approval of the moratorium on November 5, 2013, I have been involved in the process of determining what studies will help the City determine the impacts of hydraulic fracturing and storage of its waste products on property values and human health of the City's citizens, working with City staff's oil and gas project team In this regard, the project team investigated what kinds of studies already exist and whether such studies contain information that focuses on the facts and circumstances present in Fort Collins. As a consequence off this process, the project team identified a list of regional and national studies of the impacts of hydraulic fracturing that are on-going. Attached is a chart describing these studies, and also attached is a chart showing the timeline for these studies.

8. I am also aware of the City's efforts to retain outside consultants to assist the City in studying the impacts of hydraulic fracturing and storage of its waste products upon property and property values within the City. One of these consultants will do this with respect to the impacts on property values and the other consultant will do this with respect to the impacts on human health.

9. On March 18, 2014, the City Council adopted Resolution No. 2014-025 authorizing the retention of a consultant to assist the City in identifying the kinds of studies that should be undertaken or otherwise relied upon by the City to fully study the impacts that hydraulic fracturing and the storage of its waste products may have upon human health and property values in the City. A copy of Resolution No. 2014-025 is attached.

10. I have been aware of increased planning and zoning issues arising from the proximity of oil and gas operations to residential development and other uses of property within the City limits since before the moratorium was approved on November 5, 2013. Oil and gas

development is classified as an industrial use of property under the City's Land Use Code and, as such, it has the potential to create impacts upon adjacent properties with less intense uses such as residential or recreational uses.

11. Currently, the City's Land Use Code requires new residential development to establish a buffer yard between occupied buildings and the impact area of any pre-existing oil and gas operation to separate residential land uses from some of the nuisance impacts of existing oil and gas operations. If residential development is proposed within five hundred (500) feet of an existing oil and gas operation, a fence must be erected by the developer along the property boundary between the oil and gas operation and the development that restricts public access to the oil and gas operation. Additionally, if any residential development is to be located within one thousand feet of an existing oil and gas operation, then the plat must contain a note that certain lots are in close proximity to an existing oil and gas operation. *See* Fort Collins Land Use Code Section 3.28.6, a copy of which is attached. Copies of three maps depicting the residential areas near oil and gas facilities in the Fort Collins Field are also attached to this Affidavit.

12. The City has not yet amended its existing subarea plan for the northern and northeastern parts of the City to include those areas of Fort Collins where future oil and gas development is likely to occur in close proximity to residential development or natural areas. This amendment of the subarea plan will be developed through a public process that is informed by the outcome of the impact studies required by the moratorium.

13 To the best of my knowledge, information and belief, neither Prospect Energy nor the entity that acquired some of Prospect's holdings in the Fort Collins Field have informed the City per the Operator Agreement dated May 29, 2013, that they plan to use hydraulic fracturing

processes to stimulate any wells located within the City limits since the moratorium went into effect. In addition, I am not aware of any mineral interests that are owned by the Colorado Oil and Gas Association that are located in the City limits.

14. On May 9, 2014, I reviewed the information shown on the web site of the Colorado Oil and Gas Conservation Commission and confirmed that since August 5, 2013, the date the moratorium became effective, there have been no new or approved applications for permits to drill in the Fort Collins Field.

15. The Fort Collins City Plan (February 15, 2011) expresses the local values of the community in its policies and goals to protect and enhance a healthy lifestyle. For example, the community vision is for "[A] safe, non-threatening city in which to live, work, learn, and play; opportunities to lead active and healthy lifestyles; access to healthy, locally grown or produced food." *Fort Collins City Plan*, p. 102. "Wellness is related to environmental health in that active lifestyles and food production foster interaction with the natural environment. *Id.* The City has a goal to protect "view corridors and public access to the Foothills, continuing to allow recreational opportunities provided that they do not threaten the area's environmental integrity." *Id.* at 94. And regional cooperation is encouraged "to develop cooperative regional solutions for land use, transportation, open space and habitat protection, environmental, economic, fiscal sharing, and other planning challenges." *Id.* at p.118.

16. Based on my experience as Community Development and Neighborhood Services Director, the citizens of Fort Collins have high expectations for careful planning and development of the City. The City has been recognized for being one of the best places to live in the United States, and has received local and national recognition and awards for innovation in

planning to address issues that threaten the environment, healthy lifestyle, and vitality of the community. *See e.g., A Town Envisions the Future on Its Own Terms*, by Kirk Johnson, The New York Times, November 17, 2011. http://www.nytimes.com/2011/11/18/us/fort-collins-colorado-envisions-the-future-on-its-own-terms.html?pagewanted=all&_r=0. The City has received many awards for smart growth, innovative planning and land use regulation. A list of awards is available on the City's website. http://www.fcgov.com/advanceplanning/awards.php.

FURTHER AFFIANT SAYETH NOT.

Laurie Kadrich

The foregoing Affidavit was subscribed and sworn to before me this 9th day of May, 2014, by Laurie Kadrich, Director of Community Development and Neighborhood Services for the City of Fort Collins.

Witness my hand and official seal.

My commission expires: 7/7/15

CARY CARRICATO ALTON NOTARY PUBLIC STATE OF COLORADO

Notary Public

Address: 300 LaPorte Avenue
Fort Collins, CO

ATTACHMENT A

Ongoing Studies Related to Oil and Gas Development that Could Potentially Yield Relevant Results for Northern Colorado

Name of Study	Short Name	Sponsor / Principal Investigator	Funding	Air Quality	Surface Water	Ground water	Waste Storage	Health Impacts	Property Values	Property Damage	Land Disturbance	Seismic effects	Notes
Routes to Sustainability for Natural Gas Development and Water and Air Resources in the Rocky Mountain Region	NSF	NSF / CU Boulder (and others)	$12 million for multiple studies over 5 years	X	X	X	X	X	X				Includes multiple projects by 27+ investigators. Some projects have been initiated, some being designed, some waiting on data from initial projects. Will include health impacts assessment for some media over next several years.
North Front Range Emissions and Dispersion Study	CSU	CDPHE / CSU	$1.3 million for study over 3 years	X									Study includes air emissions measurements and modeling. Seeking additional funding for health impacts assessment after data is collected.
EPA's Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources	EPA	EPA / industry, academia, state agencies	$5+ million over 3 years		X	X	X						A comprehensive study with 18 research projects that will yield more than 30 peer reviewed papers on impacts to drinking water by hydraulic fracturing focusing on 5 aspects of the hydrologic cycle. It also includes 5 case studies of drinking water contamination.
Front Range Air Pollution and Photochemistry Experiment	FRAPPE	CDPHE / NCAR, NOAA, NASA, CSU, CU	$2 million	X									Air emissions study including aircraft and ground instrumentation to better characterize ozone formation in the Front Range.
Boulder County Air Quality Monitoring Study	Boulder	Boulder County	$100,000	X									Air monitoring at 5 sites throughout Boulder county near oil and gas development. Results may be used in future health impact analysis.
16 Methane Emissions Studies for oil and gas operations	EDF	EDF / multiple universities including CSU-Engines Lab	several million $	X									Part 1 results were released Sept. 2013. Part 4 being completed by CSU Engines Lab to be completed in June 2014.
Federal Multiagency Collaboration on Unconventional Oil and Gas	FED	EPA, DOE, DOI	N/A	X	X	X		X	X			X	Agencies will develop a research plan to address the highest priority research questions associated with safely and prudently developing unconventional shale gas and tight oil reserves.
Proposed Front Range Air Quality Research Study on Oil & Gas Development	CforSE	CforSE (Neshama Abraham) / Detlev Helmig - INSTAAR	N/A	X									Proposed study in Greeley sponsored by citizen group. Not funded.

CDPHE = Colorado Dept. of Public Health and Environment
CforSE = Community for Sustainable Energy
CSU = Colorado State University
CU Boulder - University of Colorado - Boulder
DOE = Department of Energy
DOI = Department of Interior
EDF = Environmental Defense Fund
EPA = Environmental Protection Agency
INSTAAR = CU Boulder, Institute for Arctic and Alpine Research
NASA = National Aeronautics and Space Administration
NCAR = National Center for Atmospheric Research
NOAA = National Oceanic and Atmospheric Administration
NSF = National Science Foundation

ATTACHMENT B

Timeline for Ongoing Studies Related to Oil and Gas Development that Could Potentially Yield Relevant Results for Northern Colorado

Study	Task	2013				2014				2015				2016				2017				2018			
NSF	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								
CSU	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								
EPA	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								
FRAPPE	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								
Boulder	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								
EDF	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								
FED	Funding Procurement																								
	Study Design																								
	Data Collection																								
	Results																								
	Health Impacts Analysis																								

RESOLUTION 2014-025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE RETENTION OF A CONSULTANT TO RECOMMEND APPROPRIATE STUDIES THAT WILL HELP THE CITY DETERMINE THE IMPACTS THAT HYDRAULIC FRACTURING AND THE STORAGE OF ITS WASTE PRODUCTS MAY HAVE ON PROPERTY VALUES AND HUMAN HEALTH IN THE CITY OF FORT COLLINS AND ON LANDS UNDER ITS JURISDICTION

WHEREAS, on November 5 2013, the registered electors of the City approved, at a special election of the City, a measure that imposed a five-year moratorium on hydraulic fracturing and the storage of its wastes products in the City and on lands under the jurisdiction of the City ("Ballot Measure 2A"); and

WHEREAS, the purpose of the moratorium is to allow sufficient time for the City to fully study the impacts that this process may have on human health and property values; and

WHEREAS, City staff has investigated the kinds of studies that may be suitable for the City to conduct or utilize in carrying out the purposes of the moratorium, and has identified a number of upcoming regional oil and gas studies that may yield pertinent data; and

WHEREAS, staff has recommended that, in view of the large number of such studies that warrant consideration, it would be advisable for the City to retain an outside consultant with expertise in this area to: (1) help evaluate relevant studies; (2) identify gaps in the data that will result from the those studies in terms of their relevance to Fort Collins' local land use patterns, hydrogeology, and existing and potential local oil and gas exploration and production methods; and (3) recommend ways to fill those gaps; and

WHEREAS, sufficient funds have been appropriated and are available for this purpose; and

WHEREAS, the City Attorney has recommended that, because Ballot Measure 2A is currently the subject of litigation, and because the consultant's services and reports could become relevant to such litigation, the consultant's services should be considered as "litigation services" within the meaning of the City's procurement policies and Article V, Division 1 of Chapter 8 of the City Code, and that the City Attorney and outside counsel for the City should ultimately decide which consultant should be selected, after conferring with the City Manager, affected members of City staff, and the citizen groups who have sought to intervene in the above referenced litigation; and

WHEREAS, the City Council concurs with the foregoing recommendations.

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

Section 1. That the City Attorney is hereby authorized and directed to retain the services of a qualified consultant to assist the City in identifying the kinds of studies that should be undertaken or otherwise relied upon by the City in order to fully study the impacts that hydraulic fracturing and the storage of its waste products may have on human health and property values in the City and on lands under its jurisdiction.

Section 2. At such time as City staff has developed a recommendation as to which studies the City should undertake, participate in or otherwise utilize in order to carry out its responsibilities under Ballot Measure 2A, the City Manager and City Attorney are further directed to present that recommendation to the City Council, together with staff's reasoning in support of the recommendation and an estimate of the anticipated cost to the City and an appropriate funding source for paying those costs.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 18th day of March, A.D. 2014.

Karen Weitkunat
Mayor

ATTEST:

Wanda Neppo
City Clerk

CITY OF FORT COLLINS SEAL COLORADO

3.8.25 Permitted Uses: Abandonment Period/Reconstruction of Permitted Uses

(A) If, after June 25, 1999 (the effective date of the ordinance adopting this Section), active operations are not carried on in a permitted use during a period of twelve (12) consecutive months, the building, other structure or tract of land where such permitted use previously existed shall thereafter be re-occupied and used only after the building or other structure, as well as the tract of land upon which such building or other structure is located, have, to the extent reasonably feasible, been brought into compliance with the applicable general development standards contained in Article 3 and the applicable district standards contained in Article 4 of this Code. This requirement shall not apply to any permitted use conducted in a building that was less than ten (10) years old at the time that active operations ceased. Intent to resume active operations shall not affect the foregoing.

(B) A building or structure containing a permitted use which has been damaged by fire or other accidental cause or natural catastrophe may be reconstructed to its previous condition provided that such work is started within six (6) months of the date of the occurrence of such damage. In the event such work is started later than six (6) months from the date of the occurrence, then the building or structure may be reconstructed, provided that, to the extent reasonably feasible, such reconstruction complies with the applicable standards of Article 3 and Article 4 of this Code.

(Ord. No. 99, 1999 §16, 6/15/99; Ord. No. 173, 2003 §19, 12/16/03)

3.8.26 Residential Buffering

(A) ***Applicability.*** These standards apply only to applications for residential development.

(B) ***Purpose.*** The purpose of this Section is to provide standards to separate residential land uses from existing industrial uses, in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor or danger from fires or explosions.

(C) ***Buffer standards.*** Buffer yards shall be located on the outer perimeter of a lot or parcel and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.

(1) Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access

drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.

(2) There are four (4) types of buffer yards which are established according to land use intensity as described in Chart 1 below. Buffer yard distances are established in Chart 2 below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.

(3) The buffer yard requirements shall not apply to temporary or seasonal uses or to properties which are separated by a major collector street, arterial street, or highway.

(4) *Additional Standards Applicable to Buffer Yard D.* The following requirements shall also apply to development located in Buffer Yard D:

(a) *Measured.* For purposes of Buffer Yard D standards, the buffer yard shall be measured as the distance from the outer edge of an existing oil and gas operation site to the nearest wall or corner of any occupied building proposed in the residential development. The term *existing oil and gas operation site* shall include the impact area of any well that has received all required permits prior to submission of the residential development plan, even if drilling has yet to occur on the site. Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above.

(b) *Disclosure.* If any residential development is proposed to be located within one thousand (1,000) feet of an existing oil and gas operation, then at such time as the property to be developed is platted or replatted, the plat shall show the one-thousand-foot radius from such well and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an existing oil and gas operation.

(c) *Fencing.* If any residential development is proposed to be located within five hundred (500) feet of an existing oil and gas operation, and if an existing fence does not surround the oil and gas operation, a fence must be erected by the developer along the property boundary between the oil and gas operation and the development that restricts public access to the oil and gas operation.

Chart 1
Land Use Intensity Categories

Land Use	*Intensity Category*	*Buffer Yard*
Airports/airstrips	Very High	C
Composting facilities	High	B
Dry cleaning plants	Very High	C
Feedlots	Very High	C
Heavy industrial uses	Very High	C
Light industrial uses	High	B
Junkyards	High	B
Outdoor storage facilities	High	B
Recreation vehicle, boat, truck storage	Medium	A
Recycling facilities	High	B
Agricultural research laboratories	High	B
Resource extraction	Very High	C
Oil and gas operations, including plugged and abandoned wells	Very High	D
Transportation terminals (truck, container storage)	High	B
Warehouse & distribution facilities	High	B
Workshops and custom small industry	Medium	A

Chart 2
Buffer Yard Types

*Type – Base Standard (plants per 100 linear feet along affected property line)**	*Option Width*	*Plant Multiplier***	*Option: Add 6' Wall*	*Option: Add 3' Berm or 6' Fence*
Buffer Yard A:	**15 feet**	**1.00**	.65	.80
	20 feet	.90		
3 Shade Trees	25 feet	.80		
2 Ornamental Trees or Type 2 Shrubs****	30 feet	.70		
3 Evergreen Trees	35 feet	.60		
15 Shrubs (33% Type 1, 67% Type 2)	40 feet	.50		
Buffer Yard B:	15 feet	1.25	.75	.85
	20 feet	**1.00**		
	25 feet	.90		
4 Shade Trees	30 feet	.80		
4 Ornamental Trees or Type 2 Shrubs****	35 feet	.70		
3 Evergreen Trees	40 feet	.60		
25 Shrubs (Type 2)	45 feet	.50		

Chart 2
Buffer Yard Types (Cont'd)

*Type – Base Standard (plants per 100 linear feet along affected property line)**	*Option Width*	*Plant Multiplier***	*Option: Add 6' Wall*	*Option: Add 3' Berm or 6' Fence*
Buffer Yard C:	20 feet	1.25		
	25 feet	**1.00**		
	30 feet	.90		
5 Shade Trees	35 feet	.80	.75	.85
6 Ornamental Trees or Type 2 Shrubs ***	40 feet	.70		
4 Evergreen Trees	45 feet	.60		
30 Shrubs (Type 2)	50 feet	.50		
Buffer Yard D:	350 feet	1.25		
	375 feet	**1.00**		
	400 feet	.90		
6 Shade Trees	425 feet	.80	.75	.85
7 Ornamental Trees or Type 2 Shrubs***	450 feet	.70		
5 Evergreen Trees	475 feet	.60		
35 Shrubs (Type 2)	500 feet	.50		

* "Base standard" for each type of buffer yard is that width which has a plant multiplier.

** "Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

*** Shrub types: Type 1: 4' – 8' High Type 2: Over 8' High

(Ord. No. 173, 2003 §20, 12/16/03; Ord. No. 108, 2013 §§1—4, 8/20/13)

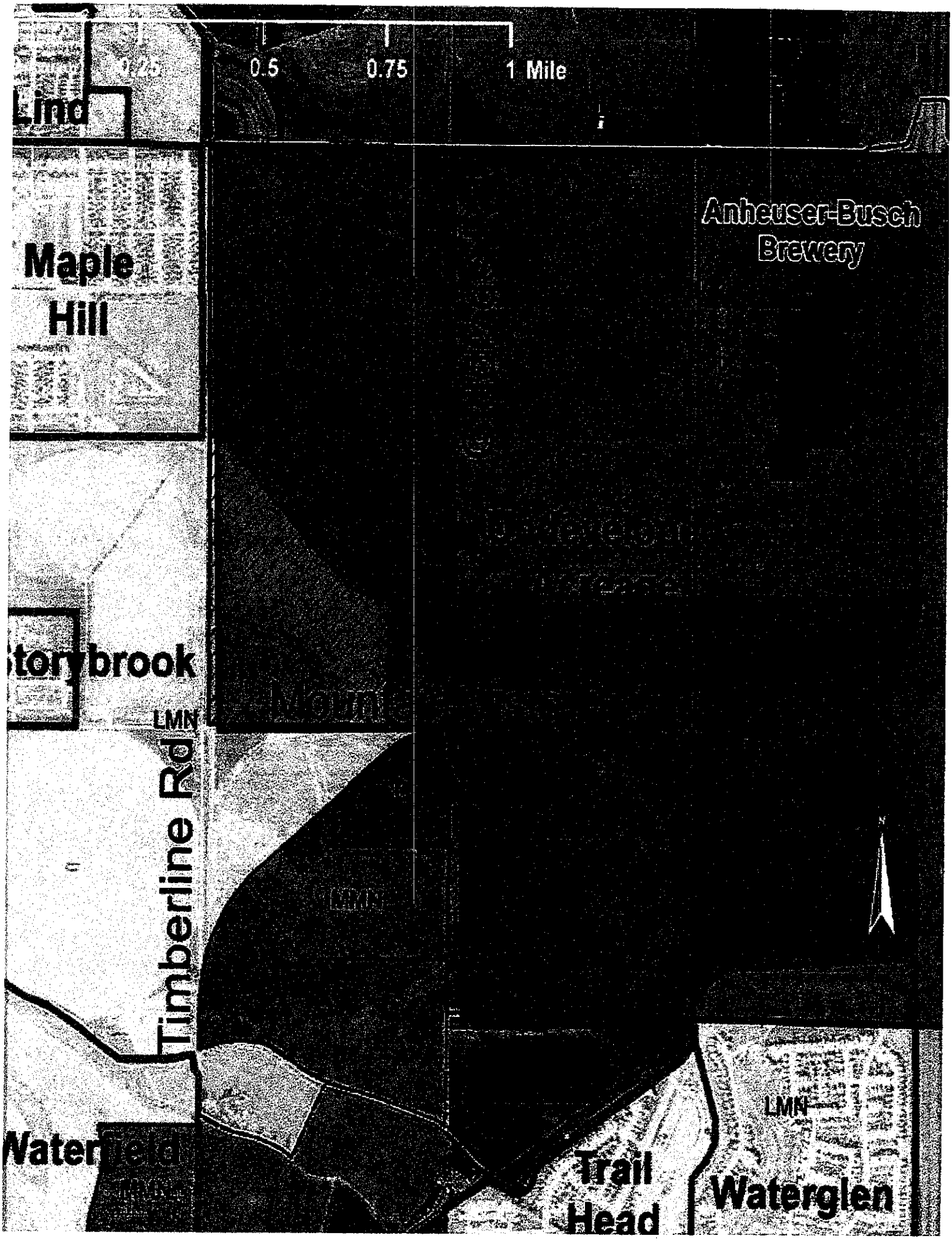
3.8.27 Performance Standards for Small Scale Reception Center in the U-E, Urban Estate District

(A) ***Lot Size.*** Minimum lot size shall be seven (7) acres.

(B) ***Building Size.*** The total floor area of any new building shall not exceed seven thousand five hundred (7,500) square feet and the total aggregate floor area of new and existing buildings shall not exceed fifteen thousand (15,000) square feet.

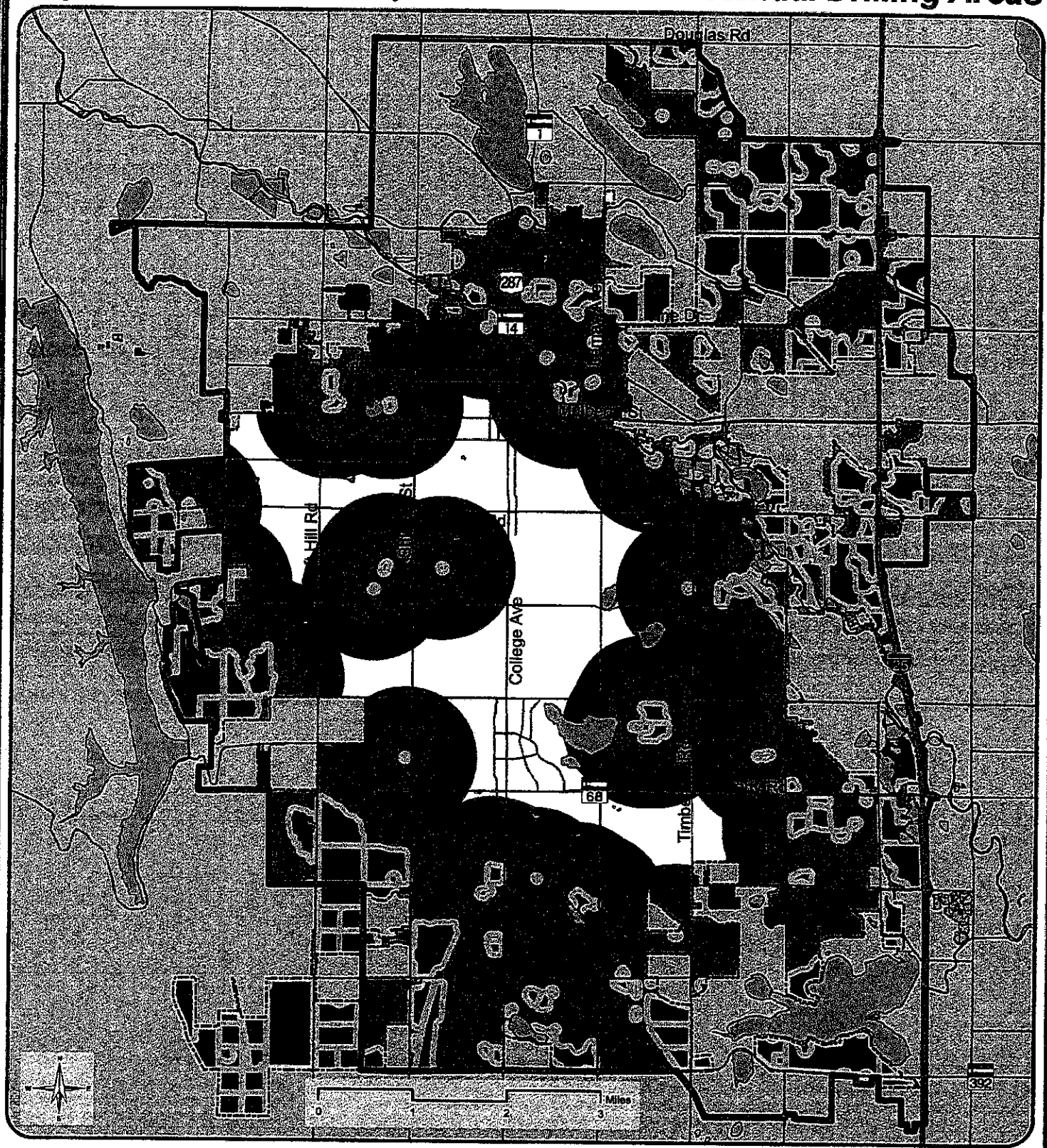
(C) ***Building Location and Separation From Residential Areas.*** All buildings shall be located a minimum of three hundred (300) feet from the nearest dwelling on any abutting property, except that in cases where there are no dwellings on such abutting property, all buildings shall be located a minimum of two hundred fifty (250) feet from the nearest property line of such abutting property.

(D) ***Outdoor Spaces, Location and Separation From Residential Areas.*** All outdoor spaces such as lawns, plazas, gazebos and/or terraces used for social gatherings or ceremonies associated with the reception center shall be located within one hundred (100) feet of the primary building and shall be located a


0.5
0.75
1 Mile
Anheuser-Busch Brewery
Maple Hill
LMN
Timberline Rd
Trail Head
Waterglen

City of Fort Collins

Population within 500 ft, 1/2 and 1 mile of Potential Drilling Areas



Population Bands near Potential Drilling Areas

- Within 1 mile: 109,000
- Within 1/2 mile: 53,000
- Within 500 ft: 3,300
- Areas Open to Drilling Based Upon COGCC Rules

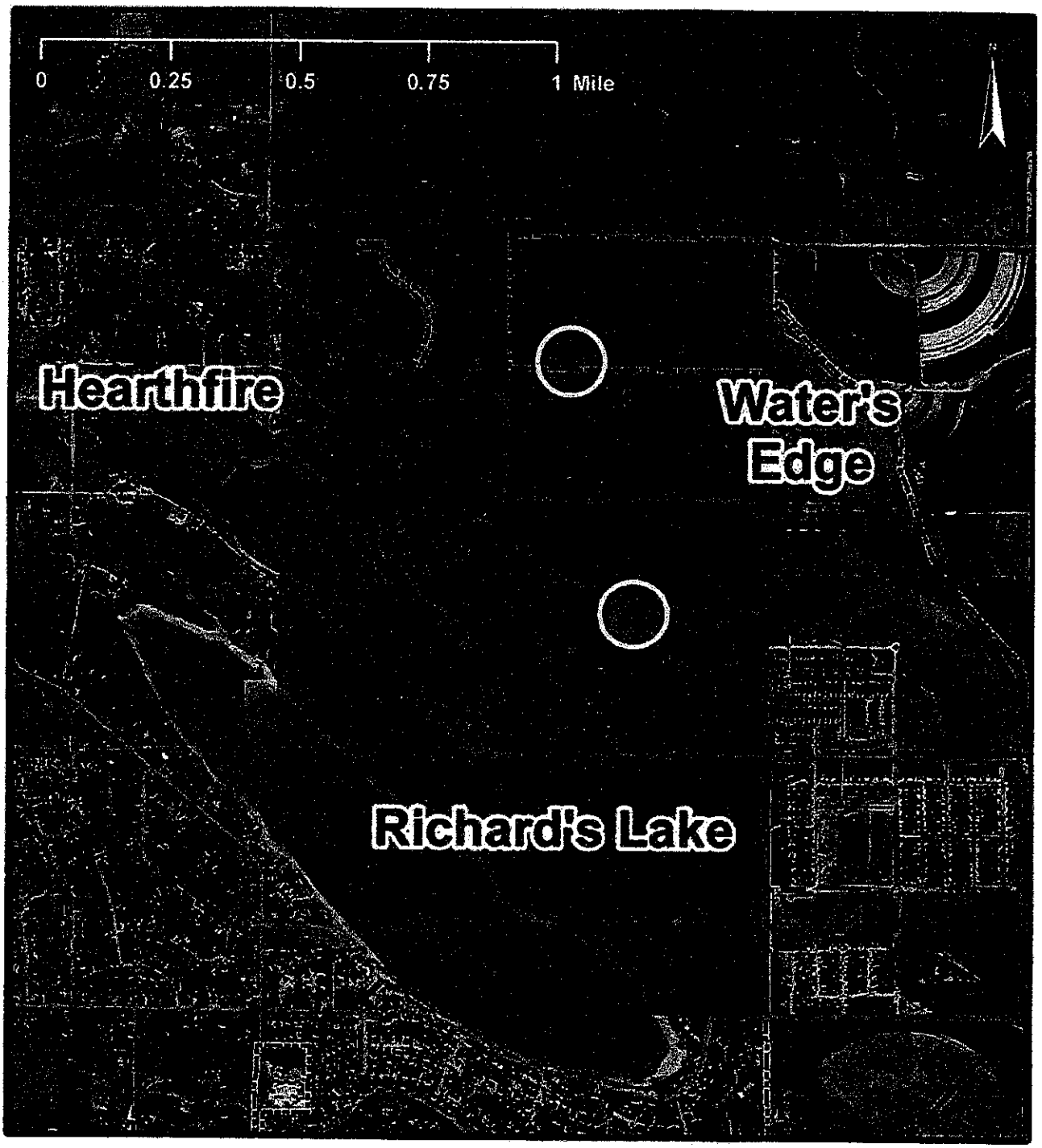
Total Population based upon 2010 Census: 144,100

City of Fort Collins

Printed: April 29, 2013

Attachment #6

Potential Areas for Additional Wells



Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit E

CERTIFICATION

STATE OF COLORADO)
)
COUNTY OF LARIMER) ss
)
CITY OF FORT COLLINS)

I, Wanda Nelson, City Clerk of the City of Fort Collins, Colorado, do hereby certify that the attached is a true and correct copy of Section 12-135 and 12-136 of the Fort Collins Municipal Code, and the same remains on file in the office of the City Clerk.

WITNESS my hand and seal of said City of Fort Collins, Colorado, this 9th day of May, 2014.

(SEAL)

Wanda Nelson

City Clerk
City of Fort Collins

EXHIBIT E

2013CV31385, Larimer County District Court

(f) Payment of any administrative fee established by the City Manager for the purpose of recovering the costs of administering and enforcing the requirements of this Section shall be required as a condition of issuance of any building permit, excluding any building permit where it can be shown that no areas within the project limits will be disturbed by construction activities and planted with vegetation.

(Ord. No. 84, 2003, § 2, 6-3-03; Ord. No. 080, 2011, § 1, 9-6-11)

Cross-reference—Soil Amendments, 3.8.21, Fort Collins Land Use Code.

Secs. 12-133—12-134. Reserved.

ARTICLE VIII. HYDRAULIC FRACTURING *

Sec. 12-135. Hydraulic fracturing/open pit storage prohibited.

The use of hydraulic fracturing to extract oil, gas or other hydrocarbons, and the storage in open pits of solid or liquid wastes and/or flowback created in connection with the hydraulic fracturing process, are prohibited within the City.

(Ord. No. 032, 2013, 3-5-13)

Sec. 12-136. Exemptions.

The prohibitions contained in § 12-135 shall not apply to any oil or gas wells or pad sites existing within the City on 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 methane release and, in the judgment of the City Council, adequately protects the public health, safety and welfare.

(Ord. No. 032, 2013, 3-5-13)

* **Editor's note:** Citizen-initiated Ordinance No. 001, 2013, that was approved by the registered electors of the City on November 5, 2013, imposes a five-year moratorium on the use of hydraulic fracturing within the City or on lands under its jurisdiction to extract oil, gas or other hydrocarbons and to store and dispose of its waste products.

Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit F

From the Denver Business Journal
:http://www.bizjournals.com/denver/blog/earth_to_power/2014/04/bill-to-study-health-impacts-of-oil-and-gas-dies.html

Apr 29, 2014, 5:56pm MDT Updated: Apr 29, 2014, 6:22pm MDT

Bill to study health impacts of oil and gas dies in Colorado Legislature

Ed Sealover and Cathy Proctor
Denver Business Journal

A proposed law to launch a wide-ranging study of the health and quality-of-life impacts of oil and gas production along Colorado's Front Range is dead.

The Senate Appropriations Committee on Tuesday voted 5-2 to kill House Bill 1297, with Democratic Sens. Mary Hodge of Brighton and Pat Steadman of Denver joining with Republicans in sending it to its demise.

HB 1297 was sponsored by Rep. Joann Ginal, D- Fort Collins. It would have directed the **Colorado Department of Public Health and Environment** to conduct the study by Jan. 1, 2017.

The study would have focused on Adams, Arapahoe Boulder, Broomfield, Larimer and Weld counties and cost nearly $600,000.

Oil and gas operations in Colorado have grown controversial as drilling rigs have moved closer to communities north of Denver in the last few years.

The **Colorado Oil & Gas Association**, an industry trade group, opposed the bill for several reasons, including worries that the study group would have a political bent, said spokesman Doug Flanders.

Also, he said. "this study is a duplicative effort with the many studies that have already been conducted, as well as the three studies currently underway by [the **University of Colorado]** and [Colorado State University] that the state has invested resources in."

Hodge, who voted against the bill, said afterward that she felt the state health department could do the study within its current budget if it felt the study needed to be done.

Sen. Kent Lambert, R-Colorado Springs, added: "I don't think we need another extraneous study."

Other Democrats, however, expressed disappointment. It's the second year legislation calling for studies of oil and gas drilling on Coloradans' health died.

HB 1297 died on the same day the Senate unanimously approved Steadman's Senate Bill 155, which allots $10 million for a grant program to study the scientific use of marijuana as a medical treatment.

"They're both issues. I think we should be studying both," said House Speaker Mark Ferrandino, D-Denver.

Sen. Jessie Ulibarri, D-Commerce City, emphasized that Adams County commissioners, who are seeing a bump in oil and gas activity, were very supportive of the study bill.

"I'm sorry. I think that would have been a good start to take a look at the actual health issues," added House Majority Leader Dickey Lee Hullinghorst, D-Gunbarrel. "I'm disappointed but I can't say I'm totally surprised."

Ed Sealover covers government, health care, tourism, airlines and hospitality for the Denver Business Journal and writes for the "Capitol Business" blog. Phone: 303-803-9229.

Cathy Proctor covers energy, the environment, transportation and construction for the Denver Business Journal and edits the weekly "Energy Inc." newsletter. Phone: 303-803-9233. Subscribe to the Energy Inc. newsletter

Colorado Oil and Gas Association v. City of Fort Collins
Case No. 2013 CV31385

DEFENDANT CITY OF FORT COLLINS' COMBINED BRIEF IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CITY'S CROSS MOTION FOR SUMMARY JUDGMENT

Exhibit G

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. 1R Docket No. 1211-RM-04
Setbacks

This statement sets forth the basis, specific statutory authority, and purpose for new Rules and amendments to the Rules and Regulations and Rules of Practice and Procedure of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 ("Rules," or "Commission Rules") promulgated by the Colorado Oil and Gas Conservation Commission ("Commission") on February 11, 2013 concerning location requirements for Oil and Gas Facilities, mitigation and notice requirements, and related matters. The new and amended Rules resulting from this rule making are referred to collectively herein as the "Setback Rules."

Overview of Purpose and Intent

These Setback Rules are promulgated to protect the safety and welfare of the general public from environmental and nuisance impacts resulting from oil and gas development in Colorado, including spills, odors, noise, dust, and lighting.

The Commission considered a diverse array of stakeholder comments, positions, and alternative proposed rules regarding setback distances, mitigation measures, and notice and communication requirements through the stakeholder process and during the formal rule making hearing. Local governments, the regulated community, environmental and citizen interest groups, homebuilders, and agricultural and farming interests were among the stakeholder groups that participated in both the stakeholder process and as Parties to the rule making. The Setback Rules ultimately adopted by the Commission strike an appropriate balance between the stakeholders' competing positions, and between mineral estate and surface estate owners' rights. The Setback Rules provide strong protective measures, including notice and communication requirements, without imposing undue costs or restrictions on oil and gas exploration and production activities in the state.

The Setback Rules are intended to require Operators to eliminate, minimize, or mitigate the impacts of oil and gas operations conducted in Designated Setback Locations by utilizing technically feasible and economically practicable protective measures. Requiring oil and gas operations to be located a greater distance away from occupied buildings is one type of protective measure. However, increasing the minimum setback distance has implications for, and can adversely affect, mineral owners' property rights, existing and planned surface uses, contractual rights and obligations, and technical and economic considerations. Mindful of these potential implications, the Commission opted to increase the existing setback distances of

350 feet in High Density Areas and 150 feet elsewhere to a uniform 500 feet statewide, and to impose technically advanced best management practices and protective measures to eliminate, minimize or mitigate potential nuisances and other adverse impacts for all Oil and Gas Locations within 1,000 feet of occupied buildings. In addition, Oil and Gas Locations may not be located within 1,000 feet of specified "High Occupancy Buildings," including schools, day care centers, hospitals, nursing homes, and correctional facilities, without Commission approval following a public hearing, and such approval will be contingent on extensive mitigation measures.

The Commission also has adopted Rules that will enhance notice to and communication with Building Unit owners within 1,000 feet of oil and gas operations, and will increase opportunities for local government representatives, including Local Governmental Designees ("LGDs"), to review and comment on new Oil and Gas Locations proposed within their jurisdictions. As development expands into more urbanized areas, engaging nearby residents is increasingly important. It has been Commission Staff's experience that communicating with persons who live or work near drilling operations before those operations begin is an effective means of addressing concerns about what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential nuisances and adverse impacts. The Commission believes these Rules establish a regulatory framework that protects communities and the environment surrounding oil and gas activities while preserving reasonable access to the mineral estate throughout the state.

These Setback Rules are not intended to alter, impair, or negate local governmental authority to regulate matters of local concern, including land use, related to oil and gas operations, or to regulate matters of mixed local and state concern provided such local regulations are not in operational conflict with these Rules.

These Setback Rules do not govern surface development that occurs subsequent to the initiation of oil and gas operations at a location. These Rules do not preclude occupied building units from being constructed within 500 feet of an Oil and Gas Location pursuant to a Surface Use Agreement or Site Specific Development Plan.

These Setback Rules are not intended to address potential human health impacts associated with air emissions related to oil and gas development. The Commission, after consulting with the Colorado Department of Health and Environment ("CDPHE"), believes that there are numerous data gaps related to oil and gas development's potential effect on human health and that such data gaps warrant further study.

In adopting the new and amended Rules, the Commission relied upon the entire administrative record for this rule making proceeding, which formally began on October 1, 2012 and informally

began in February 2012. This record includes the Commission Staff's proposed Rules, revisions thereto and numerous recommended modifications and alternatives; public comment, written testimony, and exhibits; and hours of public and party hearings. In formulating its proposed Rules, Commission Staff benefitted greatly from significant data and information gathered during a setback stakeholder process that occurred approximately monthly from February 2012 through October 2012. During this stakeholder process, the Commission Staff received significant information from diverse stakeholders, including concerned citizens, environmental and conservation groups, home builders, agricultural groups, local governments, the regulated industry and the CDHPE.

Statutory Authority

The Commission has the general authority to make and enforce these Setback Rules under § 34-60-105(1), C.R.S., which provides: "The commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of this article, and has the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of this article." The Commission' specific authority to promulgate each of the new and amended Rules at issue in this rule making is set forth below.

Effective Date

The new and amended Setback Rules adopted by the Commission on February 11, 2013 shall become effective on August 1, 2013.

Identification of New and Amended Rules

New or amended Rules were adopted in the 100 Series (Definitions), 300 Series (Drilling, Development, Production, and Abandonment), 600 Series (Safety Regulations), and 800 Series (Aesthetic and Noise Control Regulations) of the Commission's Rules.

Amendments and Additions to Rules by Series

The Setback Rules include those that correct any typographical and grammatical errors. The general authority for adoption of these Setback Rules is set out in the Statutory Authority section above and is generally applicable to all amendments and new Rules. The amendments also include revisions to reconcile the renumbering of various Rules and to make uniform the use of new or amended terms of art. Such clarifying, or non-substantive revisions, have been made with respect to Rules 216, 317, 317B, 503, 906, 1102, 1202, 1204, and 1205.

100-Series Definitions

The revised 100-Series Rules contain many definitions that occur throughout the Rules and throughout the Oil and Gas Conservation Act, § 34-60-101, C.R.S., that have been moved to, or included in, this Series to improve the usefulness and readability of the Series. The following Rules have been added or substantively amended:

BUFFER ZONE SETBACK

Basis: The statutory basis for this amendment is § 34-60-106(11)(a)(II), C.R.S., which provides: The Commission shall "[p]romulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations."

Purpose: The purpose of this amendment is to impose heightened mitigation, notice, and communication requirements on Operators where a Well or Production Facility is proposed to be located within 1,000' of a Building Unit.

DESIGNATED SETBACK LOCATION

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to create a term of art for all proposed Oil and Gas Locations located within, or proposed to be located in, any Buffer Zone Setback, an Exception Zone, within 1,000' of a High Occupancy Building Unit, or within 350' of a Designated Outside Activity Area.

DESIGNATED OUTSIDE ACTIVITY AREA

Basis: § 34-60-106(11)(a)(II), C.R.S. and § 34-60-106(10), C.R.S., which provides: The commission shall "promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well."

Purpose: This definition has been revised to conform to other changes arising out of this Setback Rulemaking. The Commission has also revised this Rule to reject the Colorado Court of Appeals' interpretation of the existing Rule articulated in its decision captioned *Chase Sutak v. Colo. Oil and Gas Conservation Comm'n and Magpie Operating Inc.,* No. 11CA1249 (June 7, 2012). By revising this Rule, the Commission intends to confer substantial discretion in the Commission to determine whether a Designated Outside Activity Area exists under the totality of the circumstances and consistent with statutory purposes. The amended Rule also provides local governments express authority to file applications designating outdoor venues or recreation areas within their jurisdictions as Designated Outside Activity Areas.

EXCEPTION ZONE LOCATION

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to prohibit any Well or Oil and Gas Location proposed to be located within 500' of a Building Unit unless, among other requirements, protective measures are put in place that are sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

HIGH OCCUPANCY BUILDING UNIT

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this definition is to identify those buildings which are designed for and occupied by large numbers of people and, on that basis, warrant heightened standards and practices under specific Commission Rules.

BUILDING UNIT

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this definition is to identify those buildings which are designed for human occupancy and, on that basis, warrant heightened standards and practices under specific Commission Rules.

SURFACE OWNER

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The Setback Rules contemplate that Operators and Surface Owners may enter into a Surface Use Agreement, require Operators to consult with Surface Owners, and, among other things, provide for notice of operations to Surface Owners. This definition incorporates the definition of Surface Owner by reference provided by § 34-60-103(10.5), C.R.S.

SURFACE USE AGREEMENT

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to define Surface Use Agreement as a term of art as used throughout the Rules.

URBAN MITIGATION ZONE

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: The purpose of this amendment is to impose heightened mitigation, notice, and communication requirements on Operators where a Well or Oil and Gas Location is proposed to be located within an area containing at least 22 Building Units in a 1,000' radius of the well, or in an area containing at least 11 Building Units in a 1,000' semi-circle of the Well, or within an area containing one High Occupancy Building within 1,000' feet of the Well.

300-SERIES

The following Rules were amended:

RULE 303 (REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: Substantial additions and revisions have been made to Rule 303, some of a technical nature and some merely to clarify the application of the Rule or delete extraneous language. Director approval is now required for all Form 2A, Oil and Gas Location Assessment, applications. This change conforms the Rule to Commission Staff's long-standing practice, as all Form 2As are reviewed and processed in the same manner.

Other revisions to Rule 303 include Rule 303.b.(3)D., which requires that all improvements be identified and included on a scaled drawing. Additionally, if a proposed Oil and Gas Location is within 1,000 feet of a Building Unit, operators must submit additional information with their application materials (Rule 303.b.(3)(J)). Such heightened informational requirements will enable the Commission to quickly determine whether a pending application triggers additional analysis and safeguards under the new and amended Rules.

RULE 305 (NOTICE, COMMENT, APPROVAL)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: Substantial additions and revisions have been made to Rule 305. Under the existing Rules, LGDs and the public have 20 days to comment on pending applications. Depending on the proposed location, the CDPHE and Colorado Division of Parks and Wildlife may also comment on a pending application. Under the Setback Rules this comment period, upon the written request of the LGD, shall be extended to 40 days for proposed facilities located within an Exception Zone, i.e., a facility proposed to be located 500 feet or less from a Building Unit.

Rule 305 was substantially revised to include notice to Building Unit owners as well as surface owners. Once Commission Staff have determined a Form 2A Oil and Gas Location Assessment ("OGLA") is complete, the applicant must provide certain information, via an "OGLA Notice," to the surface owners within 500 feet, as previously required, and to all owners of Building Units within the Exception Zone. Lastly, operators must provide a Buffer Zone Notice to owners of Building Units within the Buffer Zone, i.e., 1,000 feet of the proposed location.

The OGLA Notice and Buffer Zone Notice will alert surface and Building Unit owners that they will have an opportunity to meet with the operator to discuss their concerns about proposed oil and gas operations, including what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential impacts of the operations, including odors, noise, dust, and lights.

The Commission believes these changes enhance the transparency of the permitting process by extending individualized notice to adjacent landowners in the Buffer Zone and will result in permitting decisions that are better informed and more protective of public health, safety, and welfare.

RULE 306 (CONSULTATION)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: New Rule 306.e requires operators to meet upon request with Building Unit owners within the Exception Zone (500 feet) and to specifically confer regarding the details of the proposed operation, such as duration of the operation and reclamation standards, as well as any related mitigation measures. New Rule 306.e. also requires operators to meet upon request with Building Unit owners within the Buffer Zone (1,000 feet). The Commission Staff believes providing more information to potentially affected individuals about the nature and extent of proposed operations will reduce anxiety and lead to a better understanding of potential impacts and measures that will be implemented to minimize those impacts. Numerous, non-substantive revisions were made to Rule 306.

600-SERIES

The following Rules were amended or renumbered:
RULE 602 (GENERAL)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: A clarifying revision has been made to Rule 602.d. to indicate that previously plugged and abandoned wells are not considered "existing wells".

RULE 603 (STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, AND DRILLING, AND WELL SERVICING OPERATIONS)

Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: Substantial additions and revisions were made to Rule 603. Under the Setback Rules, the statewide minimum setback to buildings, roads and major above ground utilities is changed from the greater of 150 feet or 1.5 times the height of the derrick, to 200 feet. This change eliminates confusing language in favor of a single, defined distance. Setbacks from Building Units, i.e., structures intended for human occupancy, and Designated Outside Activity Areas are subject to Rule 604, which defines certain "Designated Zones," and requires heightened mitigation measures be applied to Oil and Gas Facilities within the Designated Zones. Conforming changes were made to existing Rules 603.b. though 603.e.(1)-(17).

RULE 604 (LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING AND WELL SERVICING OPERATIONS IN DESIGNATED ZONES)

Basis: Basis: § 34-60-106(1)(f), § 34-60-106(11)(a)(II) and § 34-60-106(14), C.R.S.

Purpose: The primary substantive changes arising out of this rule making are reflected in Rule 604.a., which defines specific Designated Zones, and Rule 604.c., which defines various rights and obligations associated with each designation. The Designated Zones include an "Exception Zone," a "Buffer Zone," a "High Occupancy Building Unit Zone," and a "Designated Outside Activity Area Zone." Oil and Gas Facilities proposed to be located within one of these Zones are subject to heightened mitigation measures intended to eliminate, minimize, or mitigate impacts resulting from oil and gas development in Colorado, including odors, noise, dust, and lighting impacts, affecting Building Unit owners or occupants, as well as the general public. The Commission determined heightened mitigation measures are necessary to protect the public welfare when new Oil and Gas Facilities are located within the Designated Zones.

Mitigation measures include requiring noise, dust and light abatement, limiting pits to fresh water only, closed loop drilling, and berm and liner requirements. Additionally, safety measures previously required for high density areas under existing Rule 603.e.(1)-(17) have been relocated to Rule 604 and may now be required in all Designated Zones.

The Commission may approve new Oil and Gas Locations within the Exception Zone pursuant to a Comprehensive Drilling Plan (CDP) under Rule 216. The Commission determined CDPs offer substantial potential benefits related to planning for infrastructure and surface uses associated with multi-well horizontal drilling programs, and for coordinating planning between local governments, and COGCC.

RULE 605 (OIL AND GAS FACILITIES)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Amended Rule 605 was previously numbered Rule 604 and has been reorganized for easier readability

800-SERIES

The following Rules were amended:

RULE 802 (NOISE ABATEMENT)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Minor modifications to Rule 802 were made to denote that the Director, and not the Commission, in consultation with the applicable LGD, if any, shall assess the type of land use surrounding the oil and gas location and shall assign the appropriate designation to reflect the applicable noise limitations.

RULE 803 (LIGHTING)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Lighting abatement requirements under Rule 803 were extended from 700 feet to 1,000 feet in order to further reduce nuisance lighting affecting nearby public roads and Building Units.

RULE 804 (VISUAL IMPACT MITIGATION)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Minor editing has been made to modify Rule 804 deleting an obsolete regulatory deadline arising out of the Commission's comprehensive 2008 rule making.

RULE 805 (ODORS AND DUST)

Basis: § 34-60-106(11)(a)(II), C.R.S.

Purpose: Rule 805.b.(2) was changed to require statewide controls on fugitive emissions from production equipment and operations. This requirement previously applied only to three Western Slope counties. Additionally, the setback requirement was modified to meet the Designated Zone setbacks provided in Rule 604.a. Minor modifications were made to Rule 805 to add clarity to the requirements.

Rule 805.c., Fugitive Dust, was modified to include the control of silica dust during hydraulic fracturing operations.