

November 5, 2013

Full Text

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.

At the November 5, 2013 special election, the following ballot issue will be voted on.

Ballot Issues:

Citizen-Initiated Measure

Placing a Five-Year Moratorium on the Use of Hydraulic Fracturing Within the City of Fort Collins or Under Its Jurisdiction to Extract Oil, Gas, or Other Hydrocarbons and to Store and Dispose of Its Waste Products

BALLOT LANGUAGE

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.

Weld District C

Total Votes	Total 2	
Peggy Wakeman	2	100.00%
Charles Martin	0	0.00%

Weld District E

Total Votes	Total 1	
Duane Shable	1	100.00%

Aims District C

Total Votes	Total 1	
Louis Beard	1	100.00%
Ray Peterson	0	0.00%

Aims District D

Total Votes	Total 1	
Larry Wood	1	100.00%

Amendment 66 (CONSTITUTIONAL)

Total Votes	Total 97684	
NO/AGAINST	61447	62.90%
YES/FOR	36237	37.10%

Proposition AA (STATUTORY)

Total Votes	Total 96819	
YES/FOR	65710	67.87%
NO/AGAINST	31109	32.13%

Larimer 1A

Total Votes	Total 93780	
YES	71675	76.43%
NO	22105	23.57%

Fort Collins 2A

Total Votes	Total 42015	
FOR	23714	56.44%
AGAINST	18301	43.56%

OPTION 2

ORDINANCE NO. 032, 2013
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS
TO IMPOSE A BAN ON
HYDRAULIC FRACTURING AND CERTAIN
STORAGE OF WASTE WITHIN THE CITY

WHEREAS, in December 2012, the City Council authorized a moratorium preventing any further drilling for oil and gas in the City until July 31, 2013; and

WHEREAS, since that time, citizens have requested that the City Council consider imposing a ban on hydraulic fracturing in the City; and

WHEREAS, the City Council has determined that in order to preserve the health, safety and welfare of the City residents, hydraulic fracturing should be banned within the City, as well as the storage in open pits of solid or liquid wastes and/or flowback created in connection with the hydraulic fracturing process; and

WHEREAS, the City Council has further determined that in order to respect the rights of existing oil and gas operators in the City, the proposed ban on hydraulic fracturing and storage should not apply to any oil or gas wells or pad sites existing within the City as of February 19, 2013, provided that the operators of such wells and/or pad sites enter into satisfactory agreements with the City to regulate their existing and future operations;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 12 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article VIII which reads in its entirety as follows:

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 is prohibited within the City.

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, ~~provided that any such wells or pad sites~~ become the subject of an operator agreement between the operator of the same and the City, ~~which~~ **as long as such** agreement includes strict controls on

methane release and, in the judgment of the City ~~Manager~~**Council**, adequately protects the public health, safety and welfare.

Introduced, considered favorably on first reading, and ordered published this 19th day of February, A.D. 2013, and to be presented for final passage on the 5th day of March, A.D. 2013.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 5th day of March, A.D. 2013.

Mayor

ATTEST:

City Clerk



CITY COUNCIL VOTING RESULTS

March 5, 2013

Councilmembers Present:	Horak, Kottwitz, Manvel, Ohlson, Poppaw, Troxell, Weitkunat
Councilmembers Absent:	Kottwitz arrived at 8:58 p.m.

ITEM	ACTION
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CONSENT AGENDA:

6.	Consideration and Approval of the Minutes of the February 5, 2013 Regular Meeting.	Adopted 6-0
7.	Second Reading of Ordinance No. 026, 2013, Appropriating Prior Year Reserves and Unanticipated Revenue in Various City Funds and Authorizing the Transfer of Appropriated Amounts Between Funds for the Art in Public Places Program.	Adopted on Consent 6-0
8.	Items Relating to the North College Improvements Project - Conifer Street to Willox Lane.	
A.	Second Reading of Ordinance No. 027, 2013, Authorizing the Acquisition by Eminent Domain of Certain Lands Necessary to Construct Public Improvements in Connection with the North College Improvements Project – Conifer to Willox.	Adopted on Consent 6-0
B.	Second Reading of Ordinance No. 029, 2013, Authorizing the Conveyance of Parcels of Real Property on North College Avenue to the Colorado Department of Transportation.	Adopted on Consent 6-0
9.	Items Relating to the Removal of Signs.	
A.	Second Reading of Ordinance No. 030, 2013, Making Certain Amendments to Chapter 17, Article III, Section 17-42 of the City Code Regarding Signs in the Right-of-Way.	Adopted on Consent 6-0
B.	Second Reading of Ordinance No. 031, 2013, Amending the Land Use Code Regarding the Removal of Election Signs.	Adopted on Consent 6-0

ITEM		ACTION
20.	First Reading of Ordinance No. 044, 2013, Authorizing the Conveyance to Woodward, Inc. of Two Non-Exclusive Permanent Drainage Easements and a Temporary Construction Easement on City-Owned Property.	Postponed to March 18, 2013
21.	Items Relating to Expanding the Boundaries of the Downtown Development Authority.	
A.	First Reading of Ordinance No. 045, 2013, Expanding the Boundaries of the Fort Collins Downtown Development Authority and Amending the Plan of Development of the Authority to Include Property Presently Known as the Max Flats Properties.	Adopted on Consent 6-0
B.	First Reading of Ordinance No. 049, 2013, Expanding the Boundaries of the Fort Collins Downtown Development Authority and Amending the Plan of Development of the Authority to Include Property Presently Known as the Link-N-Greens Property.	Adopted on Consent 6-0
22.	Resolution 2013-017 Accepting the Proposed Donation of the Downtown Development Authority and Lisa Cameron Art in Action Sculpture.	Adopted on Consent 6-0
23.	Resolution 2013-018 Supporting the Grant Application for a School Play Yard Grant from the State Board of the Great Outdoors Colorado Trust Fund for the Completion of Linton Elementary Playground.	Adopted on Consent 6-0
24.	Resolution 2013-019 Ratifying the Appointment of Jennifer Birks to the Poudre River Public Library District Board of Trustees.	Adopted on Consent 6-0
<i>ITEMS NEEDING INDIVIDUAL CONSIDERATION:</i>		
29.	Second Reading of Ordinance No. 032, 2013, Amending the City Code to Impose a Ban on Oil and Gas Operations and Hydraulic Fracturing and Certain Storage of Waste Within the City (Option 1 or 2).	Adopted Option 2 by a vote of 5-2 (Nays: Kottwitz, Troxell)
30.	Second Reading of Ordinance No. 033, 2013, Making Amendments to the City of Fort Collins Land Use Code Pertaining to Implementation of the Eastside and Westside Neighborhoods Character Study.	Adopted 4-3 (Nays: Kottwitz, Troxell, Weitkunat)
31.	Second Reading of Ordinance No. 023, 2013, Amending the City Code to Prohibit the Disposal of Cardboard in the Community's Waste Stream and to Amend Requirements for Recycling Applicable Solid Waste Collection.	Adopted 5-2 (Nays: Kottwitz, Troxell)
32.	First Reading of Ordinance No. 046, 2013, Amending Chapter 12 of the City Code to Establish a Disposable Bag Fee.	Postponed to March 18, 2013

ORDINANCE NO. 145, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ESTABLISHING A MORATORIUM ON THE ACCEPTANCE OR
PROCESSING OF LAND USE APPLICATIONS, PERMIT APPLICATIONS,
AND OTHER APPLICATIONS SEEKING APPROVAL TO CONDUCT
OIL AND GAS EXTRACTION OR RELATED OPERATIONS
WITHIN THE CITY OF FORT COLLINS

WHEREAS, the City Council recognizes that the oil and gas industry is important to the Fort Collins community, and also recognizes the important of minimizing, through appropriate regulation, the adverse impacts that oil and gas exploration and extraction or any other industry may have on the health, safety, and welfare of the City and its citizens; and

WHEREAS, there has been growing interest in the exploration of oil and gas resources underlying portions of the City, including property owned by the City; and

WHEREAS, oil and gas exploration, extraction, production, transportation and related operations and activities, including, without limitation, all those oil and gas activities regulated by the Colorado Oil and Gas Conservation Commission (collectively "Oil and Gas Uses") may negatively impact Fort Collins citizens and the use and integrity of local water supplies and water infrastructure, air quality, roads and transportation infrastructure, wastewater infrastructure, land resources, wildlife and aesthetic values; and

WHEREAS, the health and safety issues presented by the exploration for and extraction of liquid and gaseous hydrocarbon resources and related activities may not be adequately addressed in the City's zoning and land use regulations and it is imperative that those regulations be reviewed in light of current regulatory best management practices consistent with the Colorado Oil and Gas Conservation Commission ("Commission") Rules and with industry technologies to determine whether they are sufficient to protect the public health, safety, and welfare, or whether different or additional regulations are necessary to address the impacts of such activities; and

WHEREAS, if land use applications, permit applications, or any other applications for Oil and Gas Uses are approved within the City limits before City staff and the City Council have an opportunity to thoroughly examine the impact of such uses and take all steps necessary to protect the public health, safety, and welfare, irreparable harm may be done to the residents of the City; and

WHEREAS, municipalities throughout Colorado are struggling to address the potential adverse impacts of proliferating Oil and Gas Uses in urban and suburban environments on their citizens' health, safety, and welfare, and several municipalities have enacted moratoria to allow a period of time to evaluate those impacts of Oil and Gas Uses in order to assess and determine the appropriate local regulation of such; and

WHEREAS, although staff has, at the direction of City Council, been diligently researching best practices in this area and has prepared proposed new regulations, additional research and review are necessary in order for the City Manager and City Attorney and their

respective staffs to clarify the extent of the City's legal authority with regard to local regulation of such Oil and Gas Uses and to formulate any recommended amendments to the City Code to deal with those uses in an appropriate manner; and

WHEREAS, the Commission is presently engaged in a rule making proceeding that may result in new regulations being established; and

WHEREAS, in preparing its regulations, the City should consider such new rules as may be promulgated by the Colorado Oil and Gas Conservation Commission; and

WHEREAS, the imposition of a ~~six~~ seven-month moratorium on the submission, acceptance, consideration, and approval of any and all applications for City licenses, permits and other approvals related in any way to Oil and Gas Uses within the City, except on existing well heads, will allow City staff and the City Council the time needed to further investigate the extent of City's authority to regulate such uses, to consider any new regulations adopted by the Commission, and to develop and implement appropriate regulations; and

WHEREAS, ~~six~~ seven months is a reasonable period of time and is no longer than necessary for the City to determine the extent to which Oil and Gas Uses may be locally regulated and to properly investigate, develop, and, if appropriate, adopt and implement any local regulations related to Oil and Gas Uses in Fort Collins in order to protect and preserve the public's health, safety and welfare; and

WHEREAS, existing Oil and Gas Uses in Fort Collins will not be unduly prejudiced by the imposition of such a moratorium, since the ongoing operation of such uses will not be prohibited or terminated by this moratorium; and

WHEREAS, Colorado Revised Statutes Section 31-25-216 provides that the City has "full police power and jurisdiction and full municipal control and full power and authority" to manage, control, and improve and maintain any parks acquired by the City outside of the City's municipal limits; and

WHEREAS, the City's natural areas that are open to the public fall within the purview of Section 31-25-216 C.R.S.; and

WHEREAS, accordingly, the City Council has further determined that this moratorium should apply to all City-owned parks and natural areas outside of the City limits.

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

Section 1. That the preceding recitals contained in this Ordinance are hereby adopted and incorporated by reference as findings of fact of the City Council.

Section 2. That the City Council further hereby finds as follows:

a. That the submittal of land use applications, permit applications, or applications requesting approval to conduct oil and gas exploration, extraction, and related operations and activities within the City limits may be imminent, and that the City's existing regulations in this area do not adequately take into consideration current industry technologies so as to properly mitigate the impacts of these types of activities, to protect and preserve the public health, safety, and welfare.

b. That a ~~six~~ seven-month moratorium on the acceptance or processing of any land use application, permit applications, or any other application requesting approval to conduct oil and gas exploration, extraction, and related operations and activities within the City limits, is necessary and reasonable for the purpose of studying the impacts of these types of uses and new rules expected to be promulgated by the Colorado Oil and Gas Conservation Commission, and determining whether additional land use and zoning regulations are necessary to protect and preserve the public health, safety, and welfare.

Section 3. That, to address this situation, there is hereby imposed, as of midnight December 28, 2012, a moratorium on the acceptance or processing of any land use application, permit application, or any other application requesting approval to conduct an Oil and Gas Use within the City limits and within any City-owned parks or natural areas outside of the City limits that are open to the public; provided, however, that this moratorium shall not apply to applications to conduct maintenance operations on oil and gas wells existing in the City as of December 4, 2012. This moratorium shall terminate as of midnight ~~June 30~~ July 31, 2013, or on such earlier date as may be established by the City Council by ordinance upon the receipt by the City Council of a recommendation from City staff and legislative action taken thereon by the City Council, whichever shall first occur.

Section 4. That this Ordinance shall control over any conflicting ordinance of the City, but only to the extent of the conflict.

Section 5. That if any section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affecting the validity or constitutionality of and shall be severable from the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts may be declared unconstitutional or invalid.

Introduced, considered favorably on first reading, and ordered published this 4th day of December, A.D. 2012, and to be presented for final passage on the 18th day of December, A.D. 2012.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of December, A.D. 2012.

Mayor

ATTEST:

City Clerk

ITEM		ACTION
14.	Items Relating to the 2012 Streets and Stormwater Site Development Initiatives.	
A.	First Reading of Ordinance No. 151, 2012, Adopting an Update to Appendix C of the Larimer County Urban Area Street Standards Pertaining to "Streetscape Standards" for the City of Fort Collins.	Adopted on Consent 7-0
B.	First Reading of Ordinance No. 152, 2012, Amending Chapter 26 of the City Code and the Fort Collins Stormwater Criteria Manual to Incorporate Provisions Implementing Low Impact Development Principles.	Adopted on Consent 7-0
15.	Resolution 2012-118 Approving Fee Agreements Between the City and Certain Property Owners in the Community Activity Center Adjacent to the Interchange at the Interstate 25 and State Highway 392.	Adopted on Consent 7-0
16.	Resolution 2012-119 Adopting an Updated City Investment Policy.	Adopted on Consent 7-0
17.	Resolution 2012-120 Making Appointments to Various Boards, Commissions, and Authorities of the City of Fort Collins.	Adopted on Consent 7-0
18.	Resolution 2012-121 Excusing the Absence of Councilmember Aislinn Kottwitz From Attendance at Meetings of the City Council During the Period From November 8, 2012 Through January 15, 2013.	Removed from consideration

ITEMS NEEDING INDIVIDUAL CONSIDERATION:

23.	Second Reading of Ordinance No. 149, 2012, Amending Division 2 of the Land Use Code to Allow for the Processing of Applications for the Development of Property Not Yet under the Full Ownership and Control of the Applicant or Developer.	Adopted 5-1 (Nays: Ohlson; Weitkunat recused)
24.	Second Reading of Ordinance No. 145, 2012, Establishing a Moratorium on the Acceptance or Processing of Land Use Applications, Permit Applications, and Other Applications Seeking Approval to Conduct Oil and Gas Extraction or Related Operations Within the City of Fort Collins.	Adopted 6-0*
25.	First Reading of Ordinance No. 153, 2012, Designating the Whitcomb Street Historic District as a Fort Collins Landmark District, Pursuant to Chapter 14 of the City Code.	Adopted 5-1* (Nays: Troxell)
26.	First Reading of Ordinance No. 154, 2012, Amending Article IV of Chapter 15 of the City Code relating to Door-to-Door Solicitation.	Adopted 5-1* (Nays: Troxell)

*Kottwitz left the meeting at 7:15 p.m.