

**CITY OF LAFAYETTE
RESOLUTION NO. 2013-52**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAFAYETTE, COLORADO, OPPOSING BALLOT QUESTION
300 APPEARING ON THE NOVEMBER 5, 2013 MUNICIPAL
ELECTION BALLOT RELATED TO OIL AND GAS
EXTRACTION ACTIVITIES**

WHEREAS, Ballot Question 300 for the November 5, 2013 municipal election proposes the addition of a new chapter to the Lafayette Home Rule Charter. While the proposed charter amendment delineates certain “rights” that are entitled as the “Community Bill of Rights and Obligations,” the primary operative sections of the proposed charter amendment addresses and prohibits the extraction of oil and gas, as well as activities that support oil and gas extraction. The prohibition applies only to corporations or individuals that are aided by corporations; and

WHEREAS, Ballot Question 300 does not merely ban hydraulic fracturing as a means to the extraction of oil and gas, but it broadly prohibits any extraction of oil and gas within the City, and broadly prohibits activity within the City that supports the extraction of oil and gas in locations outside of the City. Ballot Question 300 attempts to effectively amend both the Colorado and United States Constitutions regarding the status of “persons” as that term is used in the Colorado and United States Constitutions, and to legislate modifications to both the Colorado and United States Constitutions as those documents pertain to establish preemption principles; and

WHEREAS, City Council recognizes that the ownership of subsurface minerals, such as oil and gas, are recognized as a valuable property right that is subject to the protection of the Colorado and United States Constitutions; and

WHEREAS, City Council also recognizes that the extraction of oil and gas should, and must, be accomplished in a manner that balances and protects the rights of the citizens, residents, and businesses of the community, including the rights of surface estate owners; and

WHEREAS, City Council has a proven track record of protecting Lafayette citizens from the adverse effects of oil and gas extraction. In response to 1992 Colorado Supreme Court cases that addressed the ability of local governments to regulate oil and gas operations, the City of Lafayette adopted comprehensive regulations in 1994 that were intended to exercise, to the greatest extent possible, the City’s authority in the area given the constraints of the Colorado Supreme Court decisions. Those regulations have been successful in protecting the rights of the citizens of Lafayette inasmuch as there have been no new oil and gas wells established in the City since the adoption of those regulations; and

WHEREAS, City Council has continued to take steps to protect the citizens of Lafayette from the adverse impacts of oil and gas extraction. In the summer of 2013, City Council imposed a three year moratorium on new oil and gas extraction activity within the City in order to assess whether the City’s powers to regulate oil and gas activities have, or will be, expanded because of pending litigation and

statewide legislation, and to further amend the 1994 regulations if the law supports such an amendment; and

WHEREAS, despite the actions of City Council that will protect the citizens of Lafayette from the adverse impacts of oil and gas extraction, the proponents of Ballot Question 300 continue to pursue the proposed amendment to the Lafayette City Charter that, if adopted, will not provide the citizens with any additional realistic protections, as compared to the actions already taken, but will certainly result in significant and ongoing expense to the City; and

WHEREAS, if Ballot Question 300 is approved, the City will be required to spend hundreds of thousands of dollars in legal expenses to defend lawsuits that challenge the authority of the City to adopt such an amendment or claim that the amendment constitutes a “taking.” The City will be at risk for millions of dollars in claims by the owners of oil and gas rights that assert that the amendment constitutes a “taking” of their property for which they are entitled to compensation by the City of Lafayette. Further, in addition to these direct costs that will be incurred by the City if Ballot Question 300 passes, the City will also be detrimentally affected by the loss of businesses that refuse to locate in Lafayette as a result of the uncertainties surrounding the enforcement of the charter amendment proposed by Ballot Question 300. In fact, the City has already experienced such a loss when a significant local Boulder County business that manufactures communications equipment used in oil and gas infrastructure, and that employs Lafayette citizens, decided not to relocate its business to Lafayette because of the uncertainty that surrounded Ballot Question 300; and

WHEREAS, as Ballot Question 300 is nothing more than an effort by its proponents to use the Lafayette Charter as a forum to make political statements that are appropriately addressed at the state level. All of this will be done to the financial detriment of the citizens of Lafayette; and

WHEREAS, because City Council has already taken steps to protect the citizenry from the adverse effects of oil and gas extraction, there is no need to utilize Lafayette’s Charter as a political tool at great expense and financial risk to Lafayette and its citizens to pursue political questions that are more appropriately addressed at the state level, particularly given the resources that are available to the state to address operational aspects of the oil and gas industry; and

WHEREAS, City Council believes that the addition of the new chapter to the Home Rule Charter as proposed by the Ballot Question 300 will not serve the interests of the City, its citizens and businesses, and should be defeated.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado as follows:

City Council hereby declares its opposition to, and urges a “NO” Vote on Ballot Question 300 at the November 5, 2013 municipal election. The proposed charter amendment will only subject the City to expensive litigation, potential financial liability for violation of federal and state constitutional rights and loss of legitimate businesses. Legislation is already in place that adequately protects the City from adverse impacts of oil and gas exploration.

RESOLVED AND PASSED THIS 1ST DAY OF OCTOBER, 2013.

CITY OF LAFAYETTE, COLORADO

ATTEST:

Carolyn D. Cutler, Mayor

Susan Koster, CMC
City Clerk

APPROVED AS TO FORM:

David S. Williamson, City Attorney