

**CITY OF LAFAYETTE  
RESOLUTION NO. 2013-51**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LAFAYETTE, COLORADO, OPPOSING BALLOT ISSUE 301  
APPEARING ON THE NOVEMBER 5, 2013 MUNICIPAL  
ELECTION BALLOT RELATED TO THE IMPOSITION AND  
LEVY OF A UTILITY OCCUPATION TAX**

WHEREAS, Ballot Issue 301 for the November 5, 2013 municipal election proposes an amendment to the Lafayette Home Rule Charter that would impose, and authorize the City to levy and collect, a Utility Occupation Tax upon utility companies that use City's rights of way to deliver electric and gas services if those utility companies do not pay a franchise fee or license fee. The rate of the tax is \$720,000 annually per utility company; and

WHEREAS, the Public Service Company of Colorado ("Xcel") is currently the only utility company to which the proposed Utility Occupation Tax might apply. In recent years, Xcel paid to the City of Lafayette approximately \$720,000 in annual franchise fees. Xcel may not be required to pay a franchise fee in future years, depending on whether the voters approve a new or extended franchise for Xcel; and

WHEREAS, the Utility Occupation Tax proposed by Ballot Issue 301 will *not* replace franchise fee revenues should Xcel no longer pay a franchise fee or license fee to the City. Revenues generated by the franchise fee are paid into the City's general fund and used to pay for general municipal amenities and services, such as police and fire protection, parks and recreation, public art, snow plowing, street maintenance, and the like. Because the revenues generated by the Utility Occupation Tax proposed by Ballot Issue 301 may only be used for "energy-related projects and purposes," the proposed tax will not replace existing funding for general city services that was made available by the franchise fee. The Utility Occupation Tax, as proposed, will effectively divert funds from general municipal services to "energy-related projects"; and

WHEREAS, in recent years, the City of Lafayette has distinguished itself as a leader with respect to programs that promote energy savings and renewable energy. For example, the City has installed photovoltaic systems to serve City Hall, the police station, the recreation center and the wastewater plant. More recently, the City was awarded a solar awards grant to construct a 1 megawatt solar garden through an Xcel program, which will provide a source of renewable energy to not only the City, but to citizens who participate in the solar garden. In 2012, Lafayette residents received approximately \$280,000 in energy efficiency rebates; and

WHEREAS, given the City's history of being a leader in development of "green" energy, a Charter amendment that would effectively require a diversion of general revenues from existing, traditional city amenities and services, such as police and fire protection, library and recreation services, to energy related projects is unnecessary, and unwise; and

WHEREAS, the Utility Occupation Tax is being proposed as an amendment to the City's Home Rule Charter. City Council recognizes that any increase in taxes should, and must, be approved by the electorate; however because of the permanency associated with Charter provisions, City Council believes that tax measures, such as a utility occupation tax, are more appropriately dealt with by legislation that may be modified in the future as circumstances change without requiring further amendment to the Charter.

WHEREAS, there appears to be no urgency to replace revenues that may be lost to the City should the Xcel franchise not be extended in the November 2013 election. The City has negotiated a conditional license agreement that would extend the fees paid to the City by Xcel through 2014. Thus, the 2014 election would be an appropriate mechanism to explore true replacement revenues should the franchise/license agreement with Xcel ultimately terminate; and

WHEREAS, the City Council believes that the imposition and levy of a new tax with specific limitations of the revenues collected by the tax, as proposed by Ballot Issue 301, will not serve the best interests of the City, its residents and businesses.

**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 for, Ballot Issue 301 at the November 5, 2013 municipal election, which ballot issue would amend the City's home rule charter to require the imposition and levy of a utility occupation tax with the revenues of the tax allowed to be expended only upon "energy-related projects" at the expense of existing City services and amenities.

RESOLVED AND PASSED THIS 1<sup>ST</sup> DAY OF OCTOBER, 2013.

**CITY OF LAFAYETTE, COLORADO**

**ATTEST:**

\_\_\_\_\_  
Carolyn D. Cutler, Mayor

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Susan Koster, CMC  
City Clerk

**APPROVED AS TO FORM:**

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David S. Williamson, City Attorney