

GEORGE P. BUSH, COMMISSIONER, TEXAS GENERAL LAND OFFICE	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
CITY OF DENTON, TEXAS,	§	
	§	DENTON COUNTY, TEXAS
Defendant	§	
	§	
and	§	
	§	
DENTON DRILLING AWARENESS GROUP and EARTHWORKS,	§	
	§	
	§	362 ND JUDICIAL DISTRICT
Defendants-Intervenors.	§	

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the State of Texas, by and through the Texas General Land Office (“GLO”), through its Commissioner George P. Bush, and moves for partial summary judgment pursuant to TEX. R. CIV. P. 166a(a) on its causes of action that Ordinance No. 2014-001, adopted by the City of Denton (“Denton”), which purports to prohibit hydraulic fracturing within Denton’s corporate limits (“Fracking Prohibition”), and Ordinance No. 2014-137, as amended by Ordinance Nos. 2014-192, 2014-276, 2015-013, and 2015-107, which purports to prohibit new gas-well drilling in Denton for as long as it is in effect (“Drilling Moratorium”), are preempted by state law, and would respectfully show the Court the following:

I. Background

This case involves GLO leases of state-owned mineral interests within Denton and the Fracking Prohibition (attached as Exhibit A) and Drilling Moratorium (attached as Exhibit B), which, as will be shown below, are preempted by the newly-adopted Section 81.0523 of the

Texas Natural Resources Code, which prohibits municipalities, such as Denton, from banning, limiting or regulating oil and gas operations. GLO, therefore, respectfully requests that this Court grant its partial summary judgment motion and declare the Fracking Prohibition and Drilling Moratorium to be preempted by Section 81.0523 and, therefore, void and unenforceable.

Commissioner Bush and the GLO have the sacred and solemn responsibility to the school children of Texas to manage oil and gas leases for state-owned mineral interests and state-owned lands within Denton, including free royalty lands dedicated to the funding of our public schools, lands owned by the Texas Department of Aging and Disability Services and the Texas Department of Transportation for their state-owned tracts of land (hereinafter “GLO lands”).

The Texas Constitution of 1876 set aside half of Texas’ remaining public lands to establish a Permanent School Fund (“PSF”), to help finance public schools. The Texas Constitution intended for this land to be managed or sold and the proceeds to be deposited into the PSF. Deposits to the PSF would be an inexhaustible source of revenue because only interest income from the fund could be spent and would be apportioned among the state’s public schools for the benefit of all school children of Texas.

Commissioner Bush and the GLO are responsible for managing these lands, including sales, trades, leases and improvements, as well as administration of contracts, mineral royalty rates, and other transactions. These lands generate funds primarily through oil and gas revenues.

Commissioner Bush and the GLO are constitutionally charged with the solemn fiduciary obligation to maximize revenues from leasing public school lands. *See Coastal Oil and Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 34 (Tex. 2008); *Rutherford Oil Corp. v. General Land Office of State of Tex.*, 776 S.W.2d 232, 235 (Tex. App.–Austin 1989, no writ).

The interest earned on the PSF investments is distributed by the State Board of Education

to every school district in Texas on a per-pupil basis and, as such, this action affects every school child in Texas. Since only interest income may be spent, the principal amount of the PSF remains intact and will continue to benefit the public school children of Texas. GLO involvement in the PSF is managed by the School Land Board.

Commissioner Bush and the GLO are also charged by Chapter 32 of the Texas Natural Resources Code with the authority to lease mineral rights owned by the State of Texas.

Within Denton, GLO is the lessor of oil and gas interests and a party to oil and gas leases for the mineral rights for state-owned property, including the PSF with respect to GLO lands. GLO leases state-owned mineral interests within Denton in order to raise money for the State of Texas and Texas school children particularly. GLO currently has leases within Denton.

On May 6, 2014, Denton passed and approved the Drilling Moratorium, which imposed a moratorium on gas-well permitting within Denton. It reads in relevant part as follows:

A moratorium is hereby imposed on the acceptance, receipt, processing or approval of applications for gas well permits within the corporate limits of the City of Denton, any application for specific use permits, or gas well development site plans, of any nature or type, or amendments thereto, including expressly any amendments to prior approval or pending applications for gas well development plats within the corporate limits, and any applications for Fire Code operational permits, pursuant to the Denton Development Code (DDC). . . subject to the exemptions stated in Section 3 of this ordinance. The moratorium shall be in place until midnight September 9, 2014 and may be extended by the City Council thereafter for good cause shown.

City of Denton Ordinance Nos. 2014-192, 2014-276, 2015-013, and 2015-107 subsequently amended and extended the moratorium from September 9, 2014, until August 18, 2015.

On November 4, 2014, Denton voters approved a proposition authorizing enactment of the Fracking Prohibition amending Chapter 16, Licenses, Permits, and Business Regulation of the Code of Ordinances of the City of Denton, Texas, by adding new Article VII, Prohibition of

Hydraulic Fracturing, prohibiting hydraulic fracturing within the corporate limits of the City of Denton, Texas. The Fracking Prohibition defines hydraulic fracturing as the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale or coal formation, that subsequently require high rate, extended flowback to expel fracture and solids during completions. The Fracking Prohibition was adopted as a result of the approval of the proposition.

The Fracking Prohibition purports to make hydraulic fracturing undertaken on GLO lands unlawful and, as a consequence, would cost the PSF and other state entities millions of dollars in lost revenues. If allowed to stand, the Fracking Prohibition against hydraulic fracturing will completely destroy the value of the school kids' minerals in Denton.

In order to protect its interests in the revenues from leasing public school lands for oil and gas operations, including hydraulic fracturing, on November 5, 2014, GLO filed this suit seeking a declaratory judgment that the Fracking Prohibition is preempted by state law.

On May 18, 2015, Governor Greg Abbott signed House Bill 40 ("H.B. 40"), amending the Natural Resources Code, into law, which law became effective immediately. Act of May 4, 2015, 84th Leg., H.B. 40 (codified at Texas Natural Resources Code § 81.0523). Section 81.0523 provides, in pertinent part as follows:

(b) An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by Subsection (c), a municipality or other political subdivision may not enact or enforce an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce an ordinance or other measure that:

- (1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;
- (2) is commercially reasonable;
- (3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and
- (4) is not otherwise preempted by state or federal law.

Id.

Despite the passage of H.B. 40, the Fracking Prohibition and the Drilling remain in effect in Denton. After hours of debate in the City Council on June 2, 2015, Denton chose to take no action in response to H.B. 40.

Contemporaneously with the filing of this Motion, GLO filed its Second Amended Petition, which seeks a declaratory judgment that the Fracking Prohibition and Drilling Moratorium are preempted by Section 81.0523 of the Texas Natural Resources Code.

GLO hereby asks this Court to find that the Fracking Prohibition and Drilling Moratorium are expressly preempted by Section 81.0523 and issue a declaratory judgment.

II. Summary Judgment Standard

Summary judgment is properly granted where, as here, there is no genuine issue as to any material fact and GLO is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(a); *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014).

III. The Fracking Prohibition Is Preempted By Section 81.0523 of the Texas Natural Resources Code

The Fracking Prohibition is in direct conflict with Section 81.0523 of the Texas Natural Resources Code and is, therefore, preempted by state law and should be declared invalid and unenforceable.

Municipal ordinances in direct conflict with state statutes are expressly preempted and

unenforceable. State preemption analysis begins with Article XI, Section 5 of the Texas Constitution, which mandates that no ordinance “shall contain any provision inconsistent with . . . the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5. However, the mere fact that the legislature has enacted a law addressing a subject does not mean that local regulation of the subject matter is completely preempted. *City of Richardson v. Responsible Dog Owners of Tex.*, 794 S.W.2d 17, 19 (Tex. 1990). If the legislature intends to preempt a subject matter, “it must do so with unmistakable clarity.” *Dallas Merch.’s & Concessionaire’s Ass’n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993); *see also City of Houston v. Bates*, 406 S.W.3d 539, 546 (Tex. 2013). A local government may enact an ordinance covering the same subject as a statutory provision, so long as the ordinance can be harmonized with the statute. *Prescott v. City of Borger*, 158 S.W.2d 578, 581 (Tex. Civ. App.—Amarillo 1942, writ ref’d). When there is no conflict between state law and a local ordinance, the local ordinance is not void. *City of Richardson*, 794 S.W.2d at 19. However, if a political subdivision’s rule is inconsistent with state law on the subject, the political subdivision’s rule fails. *See Royer v. Ritter*, 531 S.W.2d 448, 450 (Tex. Civ. App.—Beaumont 1975, writ ref’d n.r.e.). Local ordinances are preempted and unenforceable to the extent of the conflict with state law. *Dallas Merch.’s*, 852 S.W.2d at 491.

A. The Fracking Prohibition covers the same activity as Section 81.0523, Natural Resource Code.

The first step in an express preemption analysis is to determine whether the ordinances cover the same activity or are *in pari materia*. *RCI Entm’t (San Antonio), Inc. v. City of San Antonio*, 373 S.W.3d 589, 596 (Tex. App.—San Antonio 2012, no pet.); *Cheney v. State*, 755 S.W.2d 123, 127 (Tex. Crim. App. 1988). Statutes *in pari materia* are in conflict if they are irreconcilable so that it is impossible to comply with both. *State v. Jackson*, 370 S.W.2d 797, 800

(Tex. Civ. App.—Houston [1st Dist.] 1963, *aff'd*, 376 S.W.2d 341 (Tex. 1964); *and Cheney v. State*, 755 S.W.2d at 127.

Section 81.0523 prohibits municipalities and other political subdivisions from banning oil and gas activities, and generally prohibits municipalities and other political subdivisions from regulating oil and gas operations, except in certain limited situations, and broadly states:

An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided in Subsection (c), *a municipality* or other political subdivision *may not enact or enforce an ordinance* or other measure, or an amendment or revisions of an ordinance or other measure, *that bans, limits, or otherwise regulates an oil and gas operations* within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

Tex. Nat. Res. Code § 81.0523(b). The statute defines “Oil and gas operation” as “. . . an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion . . .” *Id.* § 81.0523(a)(2).

The Fracking Prohibition also applies to, and bans, “oil and gas operations” as defined in Section 81.0523. The Fracking Prohibition specifically makes it a crime to “engage in hydraulic fracturing within the corporate limits of” Denton. (Exhibit A.) The Fracking Prohibition thus applies to the “hydraulic fracture stimulation” activities included in the definition of “oil and gas operations” in Section 81.0523, with respect to which Section 81.0523 prohibits bans.

B. The Fracking Prohibition cannot be reconciled with Section 81.0523 because Section 81.0523 expressly prohibits the Fracking Prohibition’s ban on oil and gas activities.

Since it is clear that the Fracking Prohibition and Section 81.0523 cover the same activity, the next step in the preemption analysis is whether there is any reasonable construction leaving both the ordinance and Section 81.0523 in effect. *See e.g., City of Houston*, 406 S.W.3d at 546. The plain language of Section 81.0523 states that a municipality may not “ban . . . an oil and gas operation” within its boundaries. Tex. Nat. Res. Code § 81.0523(b). The Fracking

Prohibition bans a specific oil and gas activity, hydraulic fracturing. There is no way to reconcile the Fracking Prohibition, which bans oil and gas activities within Denton, with Section 81.0523, which expressly prevents Denton from banning oil and gas operations within its boundaries.

C. The Fracking Prohibition does not meet Section 81.0523's exception for commercially reasonable aboveground regulations.

Section 81.0523 provides only one exception to its express preemption of local regulation of oil and gas operations, for commercially reasonable regulations of *aboveground* activities related to oil and gas operations that meet this four-part test:

a municipality may enact, amend or enforce an ordinance or other measure that:

- (1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable set back requirements;
- (2) is commercially reasonable;
- (3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and
- (4) is not otherwise preempted by state or federal law.

Tex. Nat. Res. Code § 81.0523(c).

The Fracking Prohibition applies to the “underground injection” of various proppants to extract oil and gas. (Exhibit A.) Accordingly, the Fracking Prohibition cannot apply to “an oil and gas operation that occurs at or above the surface,” required to satisfy the first prong of the test. Nor does the Fracking Prohibition meet the criteria of a “commercially reasonable” ordinance, which is defined as “a condition that would allow a reasonably prudent operation to fully, effectively, and economically exploit, develop, produce . . . oil and gas.” Tex. Nat. Res. Code § 81.0523(a)(1). The Fracking Prohibition fails the second and third parts of the test

because it prohibits oil and gas operations within Denton.

The Fracking Prohibition regulates underground oil and gas operations and is expressly preempted by Section 81.0523. Moreover, while Section 81.0523 includes a four-part test for permissible aboveground regulations, there is no exception to the express preemption rule for subsurface oil and gas operations. Tex. Nat. Res. Code § 81.0523(c). As the Fracking Prohibition bans, and therefore regulates, subsurface operations, it is expressly preempted by Section 81.0523 and no exception applies.

D. The Fracking Prohibition is unenforceable and invalid.

An ordinance of a home rule city, such as Denton, that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *See e.g., Dallas Merch.'s Ass'n*, 852 S.W.2d at 491; *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982). Because the Fracking Prohibition is expressly preempted and cannot satisfy the exceptions in Section 81.0523, it must be declared void and unenforceable.

IV. The Drilling Moratorium Is Preempted By Section 81.0523 of the Texas Natural Resources Code

The Drilling Moratorium is in direct conflict with Section 81.0523 of the Texas Natural Resources Code so long as it is in effect and is, therefore, preempted by state law and should be declared invalid and unenforceable.

As discussed in Section III above, municipal ordinances in direct conflict with state statutes are expressly preempted and unenforceable.

A. The Drilling Moratorium covers the same activity as Section 81.0523, Natural Resource Code.

The first step in an express preemption analysis is to determine whether the ordinances cover the same activity or are *in pari materia*. *RCI Entm't (San Antonio), Inc.*, 373 S.W.3d at

596; *Cheney v. State*, 755 S.W.2d at 127.

Section 81.0523 prohibits municipalities and other political subdivisions from banning oil and gas activities, and generally prohibits municipalities and other political subdivisions from regulating oil and gas operations, except in certain limited situations. Tex. Nat. Res. Code § 81.0523(b). The statute defines “Oil and gas operation” as “. . . an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion . . .” *Id.* § 81.0523(a)(2).

The Drilling Moratorium applies to applications for “gas well permits” in Denton, and thus, “oil and gas operations” as defined in Section 81.0523, which Section 81.0523 prohibits a municipality to enact or enforce a measure to ban, limit or otherwise regulate. Certainly, a moratorium on applications for gas well permits would regulate oil and gas operations.

B. The Drilling Moratorium cannot be reconciled with Section 81.0523 because Section 81.0523 expressly prohibits the Drilling Moratorium’s regulation of oil and gas activities.

Since it is clear that the Drilling Moratorium and Section 81.0523 cover the same activity, the next step in the preemption analysis is whether there is any reasonable construction leaving both the ordinance and Section 81.0523 in effect. *See e.g., City of Houston*, 406 S.W.3d at 546. The plain language of Section 81.0523 states that a municipality may not ban, limit or regulate an oil and gas operation within its boundaries. Tex. Nat. Res. Code § 81.0523(b). The Drilling Moratorium places a moratorium on accepting, receiving or processing applications for gas well permits, thus regulating oil and gas activities. There is no way to reconcile the Drilling Moratorium with Section 81.0523, which expressly prevents Denton from regulating oil and gas operations within its boundaries.

C. The Drilling Moratorium does not meet Section 81.0523’s exception for commercially reasonable aboveground regulations.

Section 81.0523 provides only one exception to its express preemption of local regulation of oil and gas operations, for commercially reasonable regulations of *aboveground* activities related to oil and gas operations that meet this four-part test:

a municipality may enact, amend or enforce an ordinance or other measure that:

- (1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable set back requirements;
- (2) is commercially reasonable;
- (3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and
- (4) is not otherwise preempted by state or federal law.

Tex. Nat. Res. Code § 81.0523(c).

The Drilling Moratorium does not meet the narrow exception to state preemption. First, the Drilling Moratorium does not limit its provisions to aboveground gas drilling permits. (Exhibit B.) To the extent that such permits apply to underground activities, the does not apply to “an oil and gas operation that occurs at or above the surface,” required to satisfy the first prong of the test. Further, the Drilling Moratorium does not meet the criteria of a “commercially reasonable” ordinance, which is defined as “a condition that would allow a reasonably prudent operation to fully, effectively, and economically exploit, develop, produce . . . oil and gas.” Tex. Nat. Res. Code § 81.0523(a)(1). Finally, the Drilling Moratorium fails the second and third parts of the test because so long as it is in effect, it effectively prohibits certain oil and gas operations within Denton.

D. The Drilling Moratorium is unenforceable and invalid.

An ordinance of a home rule city, such as Denton, that attempts to regulate a subject

matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *See e.g., Dallas Merch.'s Ass'n*, 852 S.W.2d at 491. Because the Drilling Moratorium is expressly preempted and cannot satisfy the exceptions in Section 81.0523, it must be declared void and unenforceable.

V. Conclusion

With the enactment of Section 81.0523, Natural Resources Code, the Legislature expressly preempted the regulation of underground oil and gas operations by municipalities such as Denton. In light of Section 81.0523, the Fracking Prohibition and Drilling Moratorium are now expressly preempted by state law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Commissioner Bush, on GLO, therefore, requests that this Court grant its motion for partial summary judgment and declare that the Fracking Prohibition and Drilling Moratorium are void and unenforceable under Article XI, Section 5 of the Texas Constitution because they are preempted by Section 81.0523, Natural Resources Code; and that GLO be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEMP SMITH LLP
816 Congress, Suite 1260
Austin, Texas 78701-2443
(512) 320-5466
(512) 320-5431 (FAX)

By: 
K

State Bar No. 18496100
ken.slavin@kempsmith.com

ANDREW S. "DREW" MILLER
State Bar No. 00786857
drew.miller@kempsmith.com
DEBORAH C. TREJO
State Bar No. 24007004
deborah.trejo@kempsmith.com

**Attorneys for Texas General Land
Office**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been sent to the person listed below by operation of the Court's electronic filing system, on this 15th day of June, 2015:

Terry D. Morgan
tmorgan@msstxlaw.com
James W. Morris, Jr.
jmorris@msstxlaw.com
TERRY MORGAN & ASSOCIATES, P.C.
8080 N. Central Expressway, Suite 1300
Dallas, Texas 75206

Jose E. de la Fuente
jdelafuente@lglawfirm.com
LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Anita Burgess
anita.burgess@cityofdenton.com
Jerry Drake
jerry.drake@cityofdenton.com
CITY OF DENTON, TX
215 E. McKinney Street
Denton, TX 76201

Robert F. Brown
rbrown@bhlaw.com
Terrence S. Welch
twelch@bhlaw.com
BROWN & HOFFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081

Deborah Goldberg
dgoldberg@earthjustice.org
EARTHJUSTICE
48 Wall Street, 19th Floor
New York, New York 10005

Daniel Raichel
draichel@nrdc.org
NATURAL RESOURCES DEFENSE COUNCIL
40 West 20th Street, 11th Floor
New York, New York 10011

A handwritten signature in black ink, appearing to read "Daniel Raichel", is written over a horizontal dashed line.

EXHIBIT A

ORDINANCE NO. 2014-137

AN ORDINANCE DECLARING A MORATORIUM UNTIL MIDNIGHT SEPTEMBER 9, 2014, UNLESS EARLIER TERMINATED BY ORDINANCE OF CITY COUNCIL, ON THE RECEIPT, PROCESSING AND APPROVAL OF CERTAIN APPLICATIONS FOR GAS WELL PERMITS WITHIN THE CORPORATE LIMITS OF THE CITY OF DENTON, AND ON APPLICATIONS FOR SPECIFIC USE PERMITS, SITE PLANS, DEVELOPMENT PLANS OF ANY NATURE OR TYPE, INCLUDING APPLICATIONS FOR AMENDMENTS TO APPROVED OR PENDING GAS WELL DEVELOPMENT PLATS, AS THEY RELATE TO GAS WELL DRILLING AND PRODUCTION ACTIVITIES, AND FIRE CODE OPERATIONAL PERMITS SUBJECT TO CERTAIN EXEMPTIONS; PROVIDING A VARIANCE PROCEDURE; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, Texas, is a home rule municipality located in Denton County; and

WHEREAS, the City Council of the City of Denton is aware of an increased interest in, and concern about, gas exploration and production in the North Central Texas area; and

WHEREAS, the City Council has received from the public a multitude of environmental and land use compatibility concerns regarding the City's ordinances and regulations now applicable to the gas well drilling and production activities, including, but not limited to, health, water quality, air quality, noise, lighting, truck traffic, dust, vibrations and other nuisances; and

WHEREAS, over the course of fifteen months, the City Council conducted such investigations as it deemed necessary to amend City ordinances and regulations relating to gas well drilling and production, resulting in Ordinance No. 2013-014, enacted on January 15, 2013; and

WHEREAS, increased drilling in close proximity to residential and other protected uses after the enactment of Ordinance No. 2013-014 have resulted in negative and deleterious effects on Denton citizens, calling into question whether the various interests could be better balanced by additional review of the City's ordinances and regulations; and

WHEREAS, gas well drilling and production activities are classified as industrial uses under the Denton Development Code; and

WHEREAS, gas well drilling and production activities conducted within city limits are subject to and governed by the City's zoning regulations; and

WHEREAS, the City Council, after due and careful consideration, finds that there remain significant and compelling environmental and land use compatibility concerns associated with the gas well drilling and production activities; and

WHEREAS, the City Council believes that it is reasonable and necessary to again review municipal ordinances and regulations to provide for a fair and equitable system of regulations relating to the Gas well drilling and production activities so as to protect the property interests of mineral estate owners while protecting the rights, opportunities and property interests of surface estate owners and citizens of the City of Denton, Texas; and

WHEREAS, it is important and necessary to preserve the status quo by enacting a moratorium while a review and update of these regulations are being developed and implemented to ensure compatible land uses that do not negatively impact property values or neighborhood character; and

WHEREAS, the City Council finds that certain exemptions from a moratorium for certain categories of gas well permits and Fire Code operational permits are in order; and

WHEREAS, the City Council further finds that it is in the best interest of the City and the public to enact a moratorium to a date certain in order to allow for the review and enactment of regulatory changes to the City's ordinances governing gas well drilling and production activities and the procedures related thereto; and

WHEREAS, the City Council is open to the possibility of terminating the moratorium before the expiration date adopted herein, such as in the event that amendments to the City's ordinances and regulations related to gas well drilling and production activities are enacted before the moratorium's expiration date; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All of the above recitals are hereby found to be true and correct factual and legislative determinations of the City of Denton, Texas and are hereby approved and incorporated by reference as though fully set forth herein.

SECTION 2. A moratorium is hereby imposed on the acceptance, receipt, processing or approval of applications for gas well permits within the corporate limits of the City of Denton, any applications for specific use permits, or gas well development site plans, of any nature or type, or amendments thereto, including expressly any amendments to prior approved or pending applications for gas well development plats within the corporate limits, and any applications for Fire Code operational permits, pursuant to the Denton Development Code (DDC), including but not limited to Chapter 22 thereof, as amended, and the Denton Fire Code, as amended, as they relate to gas well drilling and production activities, or any part thereof, in the City of Denton, subject to the exemptions stated in Section 3 of this ordinance. The moratorium shall be in place until midnight September 9, 2014, and may be extended by the City Council thereafter for good cause shown.

SECTION 3. The following applications are exempt from the moratorium:

- a. Applications for Fire Code operational permits relating to gas well drilling and production activities, which are subject to and consistent with an approved gas

well permit issued pursuant to DDC Chapter 22, as amended by Ordinance Nos. 2013-014 and 2013-304; and

- b. Applications for gas well permits, which are subject to and consistent with a gas well development site plan approved after August 17, 2010; and
- c. Applications that are in sequence with the applications described in subsections (a) or (b); and
- d. Applications for permits relating to the drilling of wells, which do not require hydraulic fracturing, in conjunction with the injection or storage of natural gas as personal property beneath the surface of the earth.

SECTION 4. Acceptance or processing of any other applications by City staff is hereby deemed to be a nullity and shall be grounds for denial of such wrongfully accepted application.

SECTION 5. The City staff is hereby directed to complete those studies and analyses necessary to determine what, if any, regulatory changes to the ordinances of the City of Denton are reasonable and necessary to permit gas well drilling and production activities without disproportionately impacting the interest of adjacent and nearby surface estate owners and citizens within the City. The City staff is directed to review all appropriate environmental, planning materials and development regulations to suggest changes, if appropriate, that would protect the interests of mineral estate owners and nearby and adjacent surface estate owners and citizens while ensuring the highest degree of concern for the preservation of the public health, safety, morals and general welfare. The City staff shall complete their work and make their recommendations to the City Council by September 9, 2014, or if they should determine that this time period is not feasible, report back to the City Council with a proposed calendar by which they will complete their work. The City staff shall solicit such input as they deem necessary and appropriate in preparing their recommendations.

SECTION 6. The purpose of this moratorium is to maintain the status quo within the corporate limits of the City.

SECTION 7. Any gas well operator or mineral owner who believes that the imposition of this moratorium causes a unique and undue hardship upon his or her property or business shall have the right to request a variance and shall submit a written request to the City Council by transmitting same to the City Secretary's office. The request must provide the following information:

- a. A description of the property proposed to be covered by the variance.
- b. An explanation as to why the application of the moratorium to applicant's property will create an undue hardship.
- c. A description of any negative impacts created by the moratorium provision.

The City Secretary's office shall place the request for a variance on the agenda of the City Council for consideration at a public meeting. The applicant shall receive written notice of the date of the proposed hearing on the variance request. The City Council shall conduct a public hearing on the variance request giving any individual who desires to present information or evidence to the City Council on the appropriateness or inappropriateness of the variance the opportunity to appear before the City Council and present such information.

The City Council shall apply the following criteria in determining whether or not to grant the variance:

- (1) Application of the moratorium will create an undue hardship;
- (2) The situation creating the undue hardship is neither self-imposed nor generally affecting all or most properties subject to the same regulations;
- (3) The relief sought will not be harmful to the permitted use of adjacent lawful uses; and
- (4) The granting of the variance shall be in harmony with the purpose of the moratorium.

In granting a variance, the City Council may impose conditions that are consistent with the purpose of this ordinance.

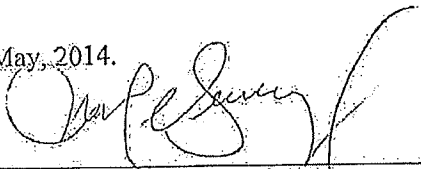
At the conclusion of the hearing, the City Council, by majority vote, may approve a variance to the provisions of this moratorium ordinance or may deny the request for variance.

SECTION 8. This Ordinance shall be cumulative of all provisions of the ordinances of the City of Denton, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the terms of this Ordinance, during its effectiveness, shall prevail over any other conflicting ordinances or provisions thereof.

SECTION 9. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

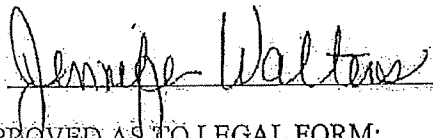
SECTION 10. This Ordinance shall take effect upon its passage and shall remain in effect until midnight September 9, 2014, unless earlier terminated by ordinance of City Council.

PASSED AND APPROVED this 6th day of May, 2014.




MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

ORDINANCE NO. 2014-192

AN ORDINANCE AMENDING ORDINANCE NO. 2014-137, WHICH ESTABLISHED A MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF CERTAIN APPLICATIONS FOR GAS WELL PERMITS WITHIN THE CORPORATE LIMITS OF THE CITY OF DENTON, AND ON APPLICATIONS FOR SPECIFIC USE PERMITS, SITE PLANS, DEVELOPMENT PLANS OF ANY NATURE OR TYPE, INCLUDING APPLICATIONS FOR AMENDMENTS TO APPROVED OR PENDING GAS WELL DEVELOPMENT PLATS, AND ON APPLICATIONS FOR FIRE CODE OPERATIONAL PERMITS, AS THEY RELATE TO GAS WELL DRILLING AND PRODUCTION ACTIVITIES, SUBJECT TO CERTAIN EXEMPTIONS; PROVIDING A VARIANCE PROCEDURE; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, Texas, is a home rule municipality located in Denton County; and

WHEREAS, the City Council of the City of Denton is aware of an increased interest in, and concern about, gas exploration and production in the North Central Texas area; and

WHEREAS, the City Council has received from the public a multitude of environmental and land use compatibility concerns regarding the City's ordinances and regulations now applicable to the gas well drilling and production activities, including, but not limited to, health, water quality, air quality, noise, lighting, truck traffic, dust, vibrations and other nuisances; and

WHEREAS, over the course of fifteen months, the City Council conducted such investigations as it deemed necessary to amend City ordinances and regulations relating to gas well drilling and production, resulting in Ordinance No. 2013-014, enacted on January 15, 2013; and

WHEREAS, increased drilling in close proximity to residential and other protected uses after the enactment of Ordinance No. 2013-014 have resulted in negative and deleterious effects on Denton citizens, calling into question whether the various interests could be better balanced by additional review of the City's ordinances and regulations; and

WHEREAS, gas well drilling and production activities are classified as industrial uses under the Denton Development Code; and

WHEREAS, gas well drilling and production activities conducted within city limits are subject to and governed by the City's zoning regulations; and

WHEREAS, the City Council, after due and careful consideration, finds that there remain significant and compelling environmental and land use compatibility concerns associated with the gas well drilling and production activities; and

WHEREAS, the City Council believes that it is reasonable and necessary to again review municipal ordinances and regulations to provide for a fair and equitable system of regulations relating to the Gas well drilling and production activities so as to protect the property interests of mineral estate owners while protecting the rights, opportunities and property interests of surface estate owners and citizens of the City of Denton, Texas; and

WHEREAS, it is important and necessary to preserve the status quo by enacting a moratorium while a review and update of these regulations are being developed and implemented to ensure compatible land uses that do not negatively impact property values or neighborhood character; and

WHEREAS, the City Council finds that certain exemptions from a moratorium for certain categories of gas well permits and Fire Code operational permits are in order; and

WHEREAS, the City Council further finds that it is in the best interest of the City and the public to enact a moratorium to a date certain in order to allow for the review and enactment of regulatory changes to the City's ordinances governing gas well drilling and production activities and the procedures related thereto; and

WHEREAS, the City Council is open to the possibility of terminating the moratorium before the expiration date adopted herein, such as in the event that amendments to the City's ordinances and regulations related to gas well drilling and production activities are enacted before the moratorium's expiration date; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All of the above recitals are hereby found to be true and correct factual and legislative determinations of the City of Denton, Texas and are hereby approved and incorporated by reference as though fully set forth herein.

SECTION 2. A moratorium is hereby imposed on the acceptance, processing or approval of applications for gas well permits within the corporate limits of the City of Denton, any applications for specific use permits, or gas well development site plans, of any nature or type, or amendments thereto, including expressly any amendments to prior approved or pending applications for gas well development plats within the corporate limits, and any applications for Fire Code operational permits, pursuant to the Denton Development Code (DDC), including but not limited to Chapter 22 thereof, as amended, and the Denton Fire Code, as amended, as they relate to gas well drilling and production activities, or any part thereof, in the City of Denton, subject to the exemptions stated in Section 3 of this ordinance. The moratorium shall be in place until midnight September 9, 2014, and may be extended by the City Council thereafter for good cause shown.

SECTION 3. The following applications are exempt from the moratorium:

- a. Applications for Fire Code operational permits relating to gas well drilling and production activities, which are subject to and consistent with an approved gas well

permit issued pursuant to DDC Chapter 22, as amended by Ordinance Nos. 2013-014 and 2013-304; and

- b. Applications for gas well permits, which are subject to and consistent with a gas well development site plan approved after January 15, 2013; and
- c. Applications that are in sequence with the applications described in subsections (a) or (b);
- d. Applications for Fire Code operational permits as they relate to annual inspections of those gas wells currently in production;
- e. Applications to vacate all, or a portion of, land areas within gas well development plats approved before August 17, 2010; and
- f. Applications for permits relating to the drilling of wells, which do not require hydraulic fracturing, in conjunction with the injection or storage of natural gas as personal property beneath the surface of the earth.

SECTION 4. Acceptance or processing of any other applications by City staff is hereby deemed to be a nullity and shall be grounds for denial of such wrongfully accepted application.

SECTION 5. The City staff is hereby directed to complete those studies and analyses necessary to determine what, if any, regulatory changes to the ordinances of the City of Denton are reasonable and necessary to permit gas well drilling and production activities without disproportionately impacting the interest of adjacent and nearby surface estate owners and citizens within the City. The City staff is directed to review all appropriate environmental, planning materials and development regulations to suggest changes, if appropriate, that would protect the interests of mineral estate owners and nearby and adjacent surface estate owners and citizens while ensuring the highest degree of concern for the preservation of the public health, safety, morals and general welfare. The City staff shall complete their work and make their recommendations to the City Council by September 9, 2014, or if they should determine that this time period is not feasible, report back to the City Council with a proposed calendar by which they will complete their work. The City staff shall solicit such input as they deem necessary and appropriate in preparing their recommendations.

SECTION 6. The purpose of this moratorium is to maintain the status quo within the corporate limits of the City.

SECTION 7. Any gas well operator or mineral owner who believes that the imposition of this moratorium causes a unique and undue hardship upon his or her property or business shall have the right to request a variance and shall submit a written request to the Board of Adjustment by transmitting same to the Director of Planning and Development ("Director"). The request must provide the following information:

- a. A description of the property proposed to be covered by the variance.

- b. An explanation as to why the application of the moratorium to applicant's property will create an undue hardship.
- c. A description of any negative impacts created by the moratorium provision.

The Director shall place the request for a variance on the agenda of the Board of Adjustment for consideration at a public meeting. The applicant shall receive written notice of the date of the proposed hearing on the variance request. The Board of Adjustment shall conduct a public hearing on the variance request giving any individual who desires to present information or evidence to the Board of Adjustment on the appropriateness or inappropriateness of the variance the opportunity to appear before the Board of Adjustment and present such information.

The Board of Adjustment shall apply the following criteria in determining whether or not to grant the variance:

- (1) Application of the moratorium will create an undue hardship;
- (2) The situation creating the undue hardship is neither self-imposed nor generally affecting all or most properties subject to the same regulations;
- (3) The relief sought will not be harmful to the permitted use of adjacent lawful uses; and
- (4) The granting of the variance shall be in harmony with the purpose of the moratorium.

In granting a variance, the Board of Adjustment may impose conditions that are consistent with the purpose of this ordinance.

At the conclusion of the hearing, the Board of Adjustment, by majority vote, may approve a variance to the provisions of this moratorium ordinance or may deny the request for variance.

SECTION 8. This Ordinance shall be cumulative of all provisions of the ordinances of the City of Denton, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the terms of this Ordinance, during its effectiveness, shall prevail over any other conflicting ordinances or provisions thereof.

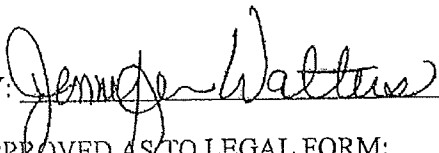
SECTION 9. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 10. This Ordinance shall take effect upon its passage and shall remain in effect until midnight September 9, 2014, unless earlier terminated by ordinance of City Council.

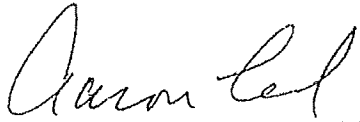
PASSED AND APPROVED this 17th day of June, 2014.


CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

ORDINANCE NO. 2014-276

AN ORDINANCE AMENDING ORDINANCE NO. 2014-137, AS AMENDED BY ORDINANCE NO. 2014-192, TO EXTEND FOR AN ADDITIONAL 45 DAYS, OR SUCH OTHER REASONABLE DATE, THE MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF CERTAIN APPLICATIONS FOR GAS WELL PERMITS WITHIN THE CORPORATE LIMITS OF THE CITY OF DENTON, TEXAS, AND ON APPLICATIONS FOR SPECIFIC USE PERMITS, SITE PLANS, DEVELOPMENT PLANS OF ANY NATURE OR TYPE, INCLUDING APPLICATIONS FOR AMENDMENTS TO APPROVED OR PENDING GAS WELL DEVELOPMENT PLATS, AND ON APPLICATIONS FOR FIRE CODE OPERATIONAL PERMITS, AS THEY RELATE TO GAS WELL DRILLING AND PRODUCTION ACTIVITIES, SUBJECT TO CERTAIN EXEMPTIONS; CLARIFYING THE EXEMPTIONS TO THE MORATORIUM; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton, Texas adopted Ordinance No. 2014-137 (the "Moratorium Ordinance") on May 6, 2014, the terms of which are incorporated by reference, which Moratorium Ordinance imposed until midnight of September 9, 2014, unless earlier terminated by the City Council, a moratorium on the receipt, processing and approval of certain applications seeking authorization for gas well drilling and production activities, as prescribed therein, within the corporate limits of the City of Denton, Texas; and

WHEREAS, the City Council amended the Moratorium Ordinance on June 17, 2014 by adopting Ordinance No. 2014-192, to clarify certain exemptions contained in the Moratorium Ordinance, specifically by revising existing exemptions and by adding additional exemptions; and

WHEREAS, the Moratorium Ordinance was adopted to address significant and compelling environmental and land use compatibility concerns associated with gas well drilling activities occurring in close proximity to residential and other protected uses that have resulted in negative and deleterious effects on Denton citizens; and

WHEREAS, as set forth in the Moratorium Ordinance, the City is reviewing its municipal ordinances and regulations to provide for a fair and equitable system of regulations relating to gas well drilling and production activities so as to protect the property interests of mineral estate owners while protecting the rights, opportunities and property interests of surface estate owners and citizens of the City of Denton, Texas; and

WHEREAS, the City anticipates that a draft of an ordinance enacting additional regulations relating to gas well drilling and production activities and the procedures related thereto will be forthcoming in the immediate future, however additional time beyond September 9, 2014 is necessary to complete a draft of an ordinance and to present it before the Planning and Zoning Commission and the City Council; and

WHEREAS, in addition to extending the Moratorium Ordinance, the exemptions listed in Section 3 of the Moratorium Ordinance need clarification to address ambiguities concerning the text of certain exemptions; and

WHEREAS, the Planning & Zoning Commission held a public hearing on August 27, 2014, and upon conclusion of said hearing, the Planning & Zoning Commission recommended that the Moratorium Ordinance be extended beyond September 9, 2014 and that the Moratorium Ordinance's exemptions be further clarified by amendment; and

WHEREAS, the City Council held a public hearing on September 9, 2014, and upon conclusion of said hearing, the City Council finds and has determined that additional time is required to allow for public review of the draft regulations before the Planning and Zoning Commission and the City Council; and

WHEREAS, the City Council further finds that it is in the best interest of the City and the public to extend the moratorium to a date certain in order to allow for the completion of regulatory changes to the City's ordinances governing gas well drilling and production activities and the procedures related thereto; and

WHEREAS, the City Council additionally finds and has determined that it is in the best interests of the City to clarify the exemption provisions and to resolve any ambiguities presented in the Moratorium Ordinance regarding such exemptions by amending same; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All of the above recitals are hereby found to be true and correct factual and legislative determinations of the City of Denton, Texas and are hereby approved and incorporated by reference as though fully set forth herein.

SECTION 2. Section 3 of Ordinance No. 2014-192, which ordinance amended Ordinance No. 2014-137, is hereby amended to read in its entirety as follows:

SECTION 3. The following applications are exempt from the moratorium:

- a. Applications for Fire Code operational permits relating to gas well drilling and production activities, which are subject to and consistent with an approved gas well permit issued pursuant to DDC Subchapter 22, as amended by Ordinance Nos. 2013-014 and 2013-304;
- b. Applications for gas well permits, which are subject to and consistent with a gas well development site plan approved pursuant to DDC Subchapter 22, as amended by Ordinance Nos. 2013-014 and 2013-304; and
- c. Applications that are in sequence with the applications described in subsections (a) or (b);

- d. Applications for Fire Code operational permits as they relate to annual inspections, or the burning of gases via open flame, of those gas wells currently in production;
- e. Applications to vacate all, or a portion of, land areas within gas well development plats approved pursuant to the gas well drilling and production regulations in effect prior to the adoption of Ordinance Nos. 2010-181 and 2010-196; or
- f. Applications for permits relating to the drilling of wells, which do not require hydraulic fracturing, in conjunction with the injection or storage of natural gas as personal property beneath the surface of the earth.

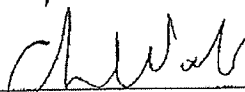
SECTION 3. The moratorium established by Ordinance No. 2014-137, as amended by 2014-192, is hereby further extended until midnight of January 20, 2015 under the terms as herein amended, unless earlier terminated by ordinance of the City Council implementing amendments to the City's ordinances governing gas well drilling and production activities and the procedures related thereto.

SECTION 4. This Ordinance shall be cumulative of all provisions of the ordinances of the City of Denton, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the terms of this Ordinance, during its effectiveness, shall prevail over any other conflicting ordinances or provisions thereof.

SECTION 5. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6. This Ordinance shall take effect upon its passage and shall remain in effect until midnight January 20, 2015, unless earlier terminated by ordinance of City Council.

PASSED AND APPROVED this 9th day of September, 2014.



CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: Jennifer Walters

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: Anita Burgess

ORDINANCE NO. 2015-013

AN ORDINANCE AMENDING ORDINANCE NO. 2014-137, AS AMENDED BY ORDINANCE NOS. 2014-192 AND 2014-276, TO EXTEND FOR AN ADDITIONAL NINETY-ONE (91) DAYS, OR SUCH OTHER REASONABLE DATE, THE MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF CERTAIN APPLICATIONS FOR GAS WELL PERMITS WITHIN THE CORPORATE LIMITS OF THE CITY OF DENTON, TEXAS, AND ON APPLICATIONS FOR SPECIFIC USE PERMITS, SITE PLANS, DEVELOPMENT PLANS OF ANY NATURE OR TYPE, INCLUDING APPLICATIONS FOR AMENDMENTS TO APPROVED OR PENDING GAS WELL DEVELOPMENT PLATS, AND ON APPLICATIONS FOR FIRE CODE OPERATIONAL PERMITS, AS THEY RELATE TO GAS WELL DRILLING AND PRODUCTION ACTIVITIES, SUBJECT TO CERTAIN EXEMPTIONS; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton, Texas adopted Ordinance No. 2014-137 (the "Moratorium Ordinance") on May 6, 2014, the terms of which are incorporated by reference, which Moratorium Ordinance imposed until midnight of September 9, 2014, unless earlier terminated by the City Council, a moratorium on the receipt, processing and approval of certain applications seeking authorization for gas well drilling and production activities, as prescribed therein, within the corporate limits of the City of Denton, Texas; and

WHEREAS, the Moratorium Ordinance was adopted to address significant and compelling environmental and land use compatibility concerns associated with gas well drilling activities occurring in close proximity to residential and other protected uses that have resulted in negative and deleterious effects on Denton citizens; and

WHEREAS, as set forth in the Moratorium Ordinance, the City is reviewing its municipal ordinances and regulations to provide for a fair and equitable system of regulations relating to gas well drilling and production activities so as to protect the property interests of mineral estate owners while protecting the rights, opportunities and property interests of surface estate owners and citizens of the City of Denton, Texas; and

WHEREAS, the City Council amended the Moratorium Ordinance on June 17, 2014 by adopting Ordinance No. 2014-192, the terms of which are incorporated by reference, to clarify certain exemptions contained in the Moratorium Ordinance, specifically by revising existing exemptions and by adding additional exemptions; and

WHEREAS, the City Council amended the Moratorium Ordinance on September 9, 2014 by adopting Ordinance No. 2014-276, the terms of which are incorporated by reference, to extend the moratorium until January 20, 2015, so as to allow additional time for a draft ordinance enacting additional regulations related to gas well drilling and production activities and the procedures related thereto to be completed by City Staff and to be presented before the Planning and Zoning Commission and the City Council; and

WHEREAS, the City Staff has completed a draft set of regulations covering gas well drilling and production activities and presented them at a Town Hall Meeting on Monday, December 15, 2014, as well as before the City Council and Planning and Zoning Commission at a Joint Public Hearing on Tuesday, December 16, 2014; and

WHEREAS, many members of the public and members supportive of the natural gas industry attended both meetings and made comments and asked questions regarding the proposed draft set of regulations; and

WHEREAS, many individuals requested that the Moratorium Ordinance be extended beyond January 20, 2015, and in fact, one member of the natural gas industry requested an extension of at least ninety-one (91) days, so as to allow a more thorough review of the proposed changes; and

WHEREAS, in accordance with State law, a Joint Public Hearing between the City Council and the Planning and Zoning Commission was held on Tuesday, January 6, 2015, so as to consider whether to extend the Moratorium Ordinance; and

WHEREAS, at the joint public hearing members of the public and natural gas industry spoke in support of the proposed 91-day extension to the Moratorium Ordinance, so as to allow further review of, and to make possible suggestions to, the draft set of regulations covering gas well drilling and production activities that were released to the public on December 12, 2014; and

WHEREAS, upon conclusion of said Joint Public Hearing, the Planning & Zoning Commission recommended that the Moratorium Ordinance be extended until March 24, 2015; and

WHEREAS, the City Council concurs with the Planning and Zoning Commission's recommendation to extend the Moratorium Ordinance, however the City Council finds it is in the best interest of the City and the public to extend the moratorium for an additional ninety-one (91) days instead of the Planning and Zoning Commission's proposed end date of March 24, 2015, so as to allow for public review of the draft regulations; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All of the above recitals are hereby found to be true and correct factual and legislative determinations of the City of Denton, Texas and are hereby approved and incorporated by reference as though fully set forth herein.

SECTION 2. The moratorium established by Ordinance No. 2014-137, as amended by Ordinance Nos. 2014-192 and 2014 276, is hereby further extended until midnight of April 21, 2015, under the terms as herein amended, unless earlier terminated by ordinance of the City

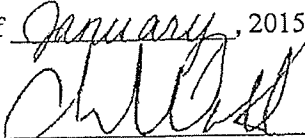
Council implementing amendments to the City's ordinances governing gas well drilling and production activities and the procedures related thereto.

SECTION 3. This Ordinance shall be cumulative of all provisions of the ordinances of the City of Denton, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the terms of this Ordinance, during its effectiveness, shall prevail over any other conflicting ordinances or provisions thereof.

SECTION 4. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.


SECTION 5. This Ordinance shall take effect upon its passage and shall remain in effect until midnight April 21, 2015, unless earlier terminated by ordinance of City Council.

PASSED AND APPROVED this 16th day of January, 2015.



CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

EXHIBIT B

INITIATIVE ORDINANCE NO. 2014-01

CITY OF DENTON, TEXAS
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS, AMENDING CHAPTER 16, "LICENSES, PERMITS AND BUSINESS REGULATION," OF THE CODE OF ORDINANCES OF THE CITY OF DENTON, TEXAS, BY ADDING A NEW ARTICLE VII, "PROHIBITION OF HYDRAULIC FRACTURING," GENERALLY PROVIDING THAT HYDRAULIC FRACTURING OPERATIONS ARE PROHIBITED IN THE CITY OF DENTON; MAKING FINDINGS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, as a Texas home-rule municipality pursuant to Article II, Section 6, of the Texas Constitution, the City of Denton, Texas ("City"), may enact regulations not inconsistent with the general laws of the State of Texas in the interest of the health, safety and welfare of the citizens of the City; and

WHEREAS, natural gas drilling and production operations in general involve or otherwise impact the City's environment, infrastructure and related public health, welfare and safety matters, including but not limited to noise issues, road repair issues due to use of heavy equipment, site security and signage issues, issues related to operating hours, venting of gas, fire suppression issues, lighting issues, containment systems, hazardous materials management, spill issues, operator insurance issues, environmental impairment matters and other regulatory issues; and

WHEREAS, there is an abundance of reports, studies, information and data about the effects of natural gas drilling on public health, welfare and safety; some of which reports, studies, information and data are contradictory, and due to such, many of the City's residents have undertaken extensive study to determine what, if any, effects natural gas drilling may have on the public health, welfare and safety of Denton and its residents; and

WHEREAS, the well stimulation process known as hydraulic fracturing is used to extract oil, gas, and other hydrocarbons through the underground injection of water, gels, acids or gases, sands or other proppants along with chemical additives, many of which chemicals are known to be toxic; and

WHEREAS, during hydraulic fracturing, chemicals and waste fluid pumped into such wells may be introduced into and could contaminate drinking water aquifers; and

WHEREAS, it is the purpose of this Ordinance to protect the public health, safety and welfare, the environment, and property values by prohibiting hydraulic fracturing within the City of Denton, Texas; and

WHEREAS, this Ordinance is enacted pursuant to the right of the residents of the City of Denton to govern their own community, specifically with regard to the well stimulation process known as hydraulic fracturing, as referenced in this Ordinance; and

WHEREAS, the citizens of Denton are seeking to protect themselves from the dangers associated with hydraulic fracturing, including ground and surface water contamination, air pollution, property devaluation, and other threats to the public safety, health, and welfare; and

WHEREAS, more than ten years of experience has proved that meaningful limitations concerning hydraulic fracturing, along with other land use provisions, are ineffective for a variety of reasons, including both legal and regulatory; and

WHEREAS, the citizens of Denton recognize that their shared values of environmental and economic sustainability and a commitment to renewable forms of energy cannot be achieved if these goals are routinely thwarted by oil and natural gas producers and corporations; and

WHEREAS, it is neither the intent nor the purpose of this Ordinance to regulate property and/or otherwise engage in land use regulation authorized by Chapter 211 of the Texas Local Government Code, as amended; rather, it is the intent of this Ordinance to regulate certain aspects of business operations that impact the public safety, health, and welfare; and

WHEREAS, the citizens of Denton believe that the protection of the City's residents, neighborhoods, community integrity, and the natural environment is an appropriate purpose for the adoption of this Ordinance and as such, the City is legally authorized to adopt this Ordinance pursuant to its police powers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS, THAT:

SECTION 1

The matters and facts recited in the preamble to this Ordinance are hereby found and determined to be true and correct and incorporated herein by reference as if fully set forth herein.

SECTION 2

From and after the effective date of this Ordinance, Chapter 16, "Licenses, Permits and Business Regulation," of the Code of Ordinances of the City of Denton, Texas, is hereby amended by adding a new Article VII, "Prohibition of Hydraulic Fracturing," to read as follows:

***ARTICLE VII PROHIBITION OF HYDRAULIC FRACTURING**

Sec. 14.200. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fluid means any material or substance which flows or moves whether in semi-solid, liquid, sludge, gas, or any other form or state.

Gas means all natural gas, whether hydrocarbon or non-hydrocarbon, including hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casinghead gas, and all other fluid hydrocarbons not defined as oil.

Hydraulic fracturing means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale or coal formations, that subsequently require high rate, extended flowback to expel fracture fluids and solids during completions.

Oil means crude petroleum, oil, and all hydrocarbons, regardless of specific gravity, that are in the liquid phase in the reservoir and are produced at the wellhead in liquid form.

Oil and gas means both oil and gas, or either oil or gas, as the context may require to give effect to the purposes of this article.

Person means any person, firm, association of persons, company, corporation, or their agents, servants, or employees.

Sec. 14.201 Prohibition of Hydraulic Fracturing.

It shall be unlawful for any person to engage in hydraulic fracturing within the corporate limits of the City.

Sec. 14.202 Penalty.

The violation of or noncompliance with this article by any person, firm, association of persons, company, corporation, or their agents, servants, or employees shall be punishable as a misdemeanor and upon conviction, such person, firm, association, company, corporation or their agents, servants or employees shall be fined a sum not less than one dollar (\$1.00) but shall not exceed two thousand dollars (\$2,000.00), and each day any violation or noncompliance continues shall constitute a separate and distinct offense.

SECTION 3

All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Denton, Texas, are hereby repealed to the extent that said ordinances, resolutions, or parts thereof, are in conflict herewith.

SECTION 4

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished pursuant to the provisions contained in Section 14.202 of the Code of Ordinances of the City of Denton, Texas, as amended.

SECTION 6

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law, and it is so ordained.

I, the undersigned City Secretary of the City of Denton, Texas, do hereby certify that the above initiative ordinance is an official ordinance of the City of Denton pursuant to an initiative petition, election and canvassing of results.

Jennifer Walters
Jennifer Walters
City Secretary

Dated 11/18/2014

CAUSE NO. 15-02058-362

GEORGE P. BUSH, COMMISSIONER, TEXAS GENERAL LAND OFFICE	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
CITY OF DENTON, TEXAS,	§	
	§	DENTON COUNTY, TEXAS
Defendant	§	
	§	
and	§	
	§	
DENTON DRILLING AWARENESS GROUP and EARTHWORKS,	§	
	§	362 ND JUDICIAL DISTRICT
Defendants-Intervenors.	§	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Court having considered the Motion for Partial Summary Judgment (the "Motion") filed by Plaintiff State of Texas, by and through the Texas General Land Office ("GLO"), through its Commissioner George P. Bush, all responses and replies, the evidence submitted, the pleadings and other documents on file, and the arguments of counsel, is of the opinion that the Motion should be, and hereby is GRANTED.

It is therefore ADJUDGED, ORDERED, and DECREED that Ordinance No. 2014-001 (the "Fracking Prohibition") and Ordinance No. 2014-137, as amended by Ordinance Nos. 2014-192, 2014-276, 2015-013, and 2015-107 (the "Drilling Moratorium"), are void and unenforceable under Article XI, Section 5 of the Texas Constitution, as they are both preempted by Section 81.0523 of the Texas Natural Resources Code.

SIGNED this ____ day of _____, 2015.

JUDGE PRESIDING