



July 15, 2014

City of Denton
Attention: Mayor Chris Watts
215 E. McKinney Street
Denton, TX 76201

Re: Proposed Ban on Hydraulic Fracturing

Dear Mayor Watts:

It is my understanding that the City of Denton is considering an ordinance that would prohibit hydraulic fracturing within the City limits. As you know, the Texas General Land Office is charged with the task of managing surface and mineral resources, the revenues of which are constitutionally dedicated to the Permanent School Fund. While we applaud the City's efforts to promote the welfare of its citizens, we must make sure it is done in a manner consistent with existing State laws.

There are State owned minerals within the city limits. Although the proposed ordinance would have no legal impact on the State, I would be remiss if I did not comment on the attempt by the city to place unauthorized prohibitions on development.

The exercise of zoning and the authority of a city to exercise police powers is not a grant of absolute, unfettered power. A legislative grant of police power to a city is not considered a surrender of the legislature's right to regulate the state's own property which may be located within a city. Texas Local Government Code § 211.013(c) makes it clear that municipal zoning *does not apply* to State lands. Further, the Legislature limited the land use regulatory authority of a city to only certain categories. That list of specified uses does not include regulation of a sub-surface mineral estate, regardless of whether that mineral estate is owned by the State or a private party.

It is unclear how the City of Denton is trying to accomplish its goal with the proposed ordinance. It may be viewed as either an unlawful use of zoning, or that the city is trying through some claimed use of "police powers" to enter into an arena reserved for the legislature.

The Legislature made regulation of the oil and gas industry, including the methods and processes used in mineral production, the province of the Texas Commission on Environmental Quality and the Texas Railroad Commission, depending on the issue. In any event, cities are preempted from such regulation. While a city might, if in compliance with the law, have a say in how the surface of land within its corporate limits is used, the Legislature has made the regulation of underground mineral estates and the methods for producing them a matter of State agency regulation.

I can appreciate what the City of Denton is trying to do, but I would not be fulfilling my duties if I failed to express how this proposal appears to be unauthorized and may have greater impacts than were initially intended. Should the ordinance be implemented either by ballot measure or council action, it will be necessary to pursue any available remedy to ensure the right to develop State owned minerals.

I hope that we can resolve this matter, and look forward to discussing this with you. Feel free to contact me if you have any questions, or if you would like to discuss this matter in greater detail.

Sincerely,

Jerry Patterson
Commissioner, Texas General Land Office