City of Denton Special Election

PROPOSITION REGARDING THE PROHIBITION OF HYDRAULIC FRACTURING

This determines whether an ordinance will be adopted 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.

Ballot Language:

FOR

SHALL AN ORDINANCE BE ENACTED PROHIBITING, WITHIN THE CORPORATE LIMITS OF THE CITY OF DENTON, TEXAS, HYDRAULIC FRACTURING, A WELL STIMULATION PROCESS INVOLVING THE USE OF WATER, SAND AND/OR CHEMICAL ADDITIVES PUMPED UNDER HIGH PRESSURE TO FRACTURE SUBSURFACE NON-POROUS ROCK FORMATIONS SUCH AS SHALE TO IMPROVE THE FLOW OF NATURAL GAS, OIL, OR OTHER HYDROCARBONS INTO THE WELL, WITH SUBSEQUENT HIGH RATE, EXTENDED FLOWBACK TO EXPEL FRACTURE FLUIDS AND SOLIDS

AGAINST
ORDINANCE NO. _____

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 October 24, 2014 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 October 24, 2014, unless earlier terminated by ordinance of City Council.

PASSED AND APPROVED this ______ day of ________________, 2014.

__________________________________
CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: ________________________________

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: ________________________________
ORDINANCE NO. ___________

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 OR SITE PLANS, AND ON APPLICATIONS FOR FIRE CODE OPERATIONAL PERMITS, AS THEY RELATE TO GAS WELL DRILLING AND PRODUCTION ACTIVITIES, SUBJECT TO CERTAIN EXEMPTIONS, BY REVISING EXEMPTIONS AND VARIANCE PROCEDURES; MAKING MINOR CLARIFICATION CHANGES; PROVIDING A CUMULATIVE CLAUSE, PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 6, 2014, the City Council of the City of Denton, Texas adopted Ordinance No. 2014-137 (“Moratorium Ordinance”), which imposed a moratorium of the acceptance, processing and approval of certain applications related to gas well drilling and production activities within the corporate limits of the City of Denton, Texas; and

WHEREAS, the regulations pertaining to gas well drilling and production (“Gas Well Ordinance”) appear in Subchapter 22 of the Denton Development Code (“DDC”); and

WHEREAS, per Section 35.22.1.B. of the DDC, the Gas Well Ordinance was adopted as “an exercise of the City’s zoning powers”; and

WHEREAS, to be consistent with the exercise of its zoning powers, the City Council deems it best to re-adopt the moratorium consistent with the dual public hearing requirement before the Planning and Zoning Commission and the City Council as set forth in Chapter 211 of the Texas Local Government Code and Section 35.3.4 of the DDC; and

WHEREAS, in addition and consistent with the zoning nature of the Gas Well Ordinance, the City Council desires to amend Section 7 of the Gas Well Moratorium to route variance requests to the Zoning Board of Adjustment instead of the City Council; and

WHEREAS, since the Moratorium Ordinance’s adoption, there have been concerns raised in connection with the types of applications that are exempt from the Moratorium Ordinance, as well as one type of application that was not included as an exemption, and thus, the City Council desires to make appropriate changes; and

WHEREAS, on June 11, 2014, the Planning and Zoning Commission held a public hearing as required by Chapter 211 of the Texas Local Government Code and DDC, Section 35.3.4, and upon conclusion of the public hearing it recommended the re-adoption of the Moratorium Ordinance as amended herein; and
WHEREAS, on June 17, 2014, the City Council held a public hearing as required by Chapter 211 of the Texas Local Government Code and DDC, Section 35.3.4, and upon conclusion of the public hearing the City Council finds that re-adoption of the Gas Well Moratorium, as amended herein, is in the best interest of the City and the public; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are hereby adopted as express findings of the City Council and are incorporated herein for all purposes.

SECTION 2. Section 2 of the Gas Well Moratorium is amended by deleting the term “receipt” as it appears in the first line of said section, to read in its entirety as follows:

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. Section 3 of the Gas Well Moratorium is amended by revising the date in subsection b., deleting the “and” in subsection c., re-lettering subsection d. to subsection f., and inserting new subsections d. and e., 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 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. Section 7 of the Gas Well Moratorium Ordinance is amended by replacing “Board of Adjustment” for “City Council” and by replacing “Director of Planning and Development” for “City Secretary”, to read in its entirety as follows:

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:

a. Application of the moratorium will create an undue hardship;

b. The situation creating the undue hardship is neither self-imposed nor generally affecting all or most properties subject to the same regulations;

c. The relief sought will not be harmful to the permitted use of adjacent lawful uses; and
d. 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 5. Except as expressly amended by this ordinance, Ordinance No. 2014-137 shall remain valid and subsisting as originally provided.

SECTION 6. 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 7. 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 8. This Ordinance shall take effect upon its passage.

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

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _______________________________
ORDINANCE NO. __________

AN ORDINANCE DECLARING A 120-DAY MORATORIUM ON THE ACCEPTANCE OR PROCESSING OF CERTAIN APPLICATIONS FOR PERMITS TO AUTHORIZE OIL AND GAS EXPLORATION AND PRODUCTION ACTIVITIES AND OTHER MINERAL EXPLORATION AND PRODUCTION ACTIVITIES (COLLECTIVELY, “MINERAL ACTIVITIES”) WITHIN THE CORPORATE LIMITS OF THE CITY OF DENTON, TEXAS; DIRECTING THE CITY STAFF TO COMPLETE A COMPREHENSIVE REVIEW OF THE CITY’S ORDINANCE GOVERNING THE MINERAL ACTIVITIES AND PROCEDURES RELATED THERETO AND TO PROPOSE REVISIONS THERETO; PROVIDING FOR A METHOD OF REPEAL OF THIS MORATORIUM; PROVIDING A PROCEDURE FOR A VARIANCE FROM THIS MORATORIUM; 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 oil and gas exploration and production in the North Central Texas area; and

WHEREAS, the City Council has conducted such investigations as it deemed necessary to determine the state of regulations now applicable to the Mineral Activities under the current ordinances and regulations of the City of Denton; and

WHEREAS, the City Council, after due and careful consideration, has determined that the current regulations may not be adequate to address environmental and land use compatibility issues created by the Mineral Activities; and

WHEREAS, the City Council believes that it is reasonable and necessary to update municipal ordinances and regulations to provide for a fair and equitable system of regulations relating to the Mineral 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 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 status quo is preserved as to new and currently filed applications for specific use permits, site plans, development plans or plats of any nature that relate to Mineral Activities, as well as to new applications for oil and gas well permits that would authorize Mineral Activities, since the conditions under which they may be reviewed and approved and under which their operations may be conducted are being studied; and
WHEREAS, the staff of the City of Denton, working with a Gas Well Drilling Task Force, has undertaken those studies or analyses necessary to prepare the appropriate recommendations for Council action; and

WHEREAS, the City staff and the Gas Well Drilling Task Force are also reviewing and considering the studies and report of the Denton Stakeholder Drilling Advisory Group; and

WHEREAS, the City Council of the City of Denton recognizes that there may be individuals or businesses who may suffer an undue hardship created by the moratorium and may have a legitimate reason to seek a variance from the requirements of this moratorium based upon the unique needs of their project; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. A moratorium is hereby imposed on the receipt, processing and approval of applications for oil and gas well permits that would authorize Mineral Activities within the corporate limits of the City of Denton, and any applications for specific use permits, site plans, development plans and plats of any nature or type, pursuant to the Denton Development Code as they relate to Mineral Activities, or any part thereof, in the City of Denton. Excepted from this moratorium are applications for oil and gas well permits that would authorize Mineral Activities if such permits are filed pursuant to specific use permits, site plans, development plans or plats of any nature or type that were approved by the City prior to the effective date of this moratorium. The moratorium shall be in place for one hundred twenty (120) days following the adoption of this Ordinance and may thereafter be extended by the City Council for good cause shown.

SECTION 2. The moratorium established herein shall apply to applications now in process for all oil and gas wells and developments that do not have a specific use permit, site plan, development plan or other plat approval, under the terms of the City’s existing ordinances related to the Mineral Activities. Applications for oil and gas well permits for Mineral Activities filed before the effective date of this moratorium are not affected by the moratorium and shall be processed pursuant to the Denton Development Code.

SECTION 3. The City staff are 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 the Mineral Activities without disproportionately impacting the interest of surface estate owners and citizens within the City. The City staff are directed to review all appropriate environmental, planning materials and development regulations to suggest changes, if appropriate, that would protect the interest of both mineral estate owners and surface estate owners 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 within one hundred twenty (120) days following the adoption of this Ordinance; or if they should determine that this time period is not feasible, report back to the City Council with a proposed calendar in which they will complete their work. The City staff shall solicit such input as they deem necessary and appropriate from all affected and interested parties in preparing their recommendations.
SECTION 4. The purpose of this moratorium is to maintain the status quo within the corporate limits of the City.

SECTION 5. Any property 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. At least two weeks before the hearing, the City Secretary’s office shall publish notice advising the general public of the time and place of the hearing on City’s Internet website and on “EngageDenton.com.” The City staff shall not be required to provide written notice of the variance request to any other individual or entity, except as may be required by the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. On the date that the item is set for hearing, 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. 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 6. 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 7. 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 8. This moratorium shall remain in full force and effect upon its passage and for a
period not to exceed 120 days, unless terminated prior to that time by action of the City Council.

PASSED AND APPROVED this the ______ day of __________________, 2012.

MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: ________________________________

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: ________________________________