

CAUSE NO. 14-08933-431

TEXAS OIL AND GAS ASSOCIATION,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
vs.	§	
	§	
CITY OF DENTON,	§	DENTON COUNTY, TEXAS
	§	
Defendant.	§	
	§	
	§	_____ JUDICIAL DISTRICT
	§	
	§	

**ORIGINAL PETITION**

The Texas Oil and Gas Association (“TXOGA”) files this declaratory action and request for injunctive relief against the City of Denton, on the ground that a recently-passed City of Denton ordinance, which bans hydraulic fracturing and is soon to take effect, is preempted by Texas state law and is therefore unconstitutional.

**I. INTRODUCTION**

This case concerns a significant question of Texas law: whether a City of Denton ordinance that bans hydraulic fracturing is preempted by the Constitution and laws of the State of Texas. The ordinance, approved by voters at the general election of November 4, 2014, exceeds the limited authority of home-rule cities and represents an impermissible intrusion on the exclusive powers granted by the Legislature to state agencies, the Texas Railroad Commission (the “Railroad Commission”) and the Texas Commission on Environmental Quality (the “TCEQ”). TXOGA, therefore, seeks a declaration that the ordinance is invalid and unenforceable.

To achieve its overriding policy objective of the safe, efficient, even-handed, and non-wasteful development of this State’s oil and gas resources, the Texas Legislature vested regulatory power over that development in the Railroad Commission and the TCEQ. Both

agencies are staffed with experts in the field who apply uniform regulatory controls across Texas and thereby avoid the inconsistencies that necessarily result from short-term political interests, funding, and turnover in local government.

By imposing a complete ban on hydraulic fracturing on oil and gas leases within its city limits, the City of Denton undermines this comprehensive state system regulating oil and gas development. The ordinance's complete ban second-guesses and impedes this state regulatory framework. The ban will result in the total inability to develop hydrocarbon interests within the City because wells in Denton produce gas from the Barnett Shale, and the only way to produce such gas in commercial quantities is through the use of hydraulic fracture stimulation of this dense shale formation that would not otherwise economically produce. Because the ordinance is a prohibited assertion by the City of Denton of regulatory power, TXOGA asks the Court to declare the ordinance invalid and unenforceable and permanently enjoin the City of Denton from enforcing the ordinance.

## **II. DISCOVERY CONTROL PLAN**

1. This case raises questions of constitutional law and statutory interpretation that are appropriately determined on summary judgment. Because no material fact questions exist, no discovery or discovery control plan is required. Because the ordinance prevents any member of TXOGA from developing its oil and gas properties indefinitely, TXOGA respectfully requests that the Court issue a docket control order that establishes an expedited briefing schedule for hearing and determining TXOGA's forthcoming motion for summary judgment.

## **III. FACTUAL BACKGROUND**

2. The City of Denton lies on top of the Barnett Shale, a massive reservoir of hydrocarbons that is currently the third largest onshore producing natural gas field in the United

States. The Barnett Shale is estimated to contain the largest producible reserves of any onshore natural gas field in the United States.

3. To date, the Barnett Shale has produced more than 4.8 trillion cubic feet of natural gas, and some operators estimate that there may be more than 40 trillion cubic feet of natural gas remaining to be produced.

4. The production of hydrocarbons within the Barnett Shale, and the U.S. shale reservoirs generally, is made possible through the use of hydraulic fracturing. This technology involves the pressurized injection of water, sand, and other substances into the shale to crack open (or fracture) the rock, freeing the hydrocarbons to travel up the wellbore.

5. The Supreme Court of Texas has recognized that, without the use of hydraulic fracturing, the Barnett Shale is wholly uncommercial, or, in the best of market conditions, only marginally commercial. Put another way, fracturing is “essential to the recovery of oil and gas in many areas,” including the Barnett Shale. *See Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 16 (Tex. 2008).

6. Production from the Barnett Shale has generated over \$10 billion in annual economic activity and more than 100,000 permanent jobs, with corresponding annual tax receipts to state and local government entities substantially exceeding \$1 billion.

7. The Barnett Shale is an integral piece of the U.S. shale energy boom, which has enhanced our nation’s energy security immensely and has led the U.S. to regain its position as the largest producer of hydrocarbons in the world.

8. The people of the City of Denton benefit tremendously from the development of the Barnett Shale. Over the next ten years, the Barnett Shale is expected to result in hundreds of millions of dollars in economic activity for the City and create hundreds of jobs.

9. Over that same time period, local taxing authorities are expected to collect millions of dollars in revenue from the Barnett Shale, which will benefit the City and its citizens, by, among other things, funding a range of local government services such as police and fire as well as the Denton Independent School District.

10. The development of the Barnett Shale has had a real and meaningful impact on the economy of the City of Denton and Denton County, and the Texas Railroad Commission has identified Denton County as one of four core production areas within the Barnett Shale.

11. It is against this backdrop that voters of the City of Denton, on Tuesday, November 4, approved an ordinance that criminalizes and completely bans hydraulic fracturing within the corporate city limits. The ordinance, attached hereto as Exhibit A, reads in relevant part as follows:

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

12. The ordinance amends Chapter 16 of the Code of Ordinances of the City of Denton, titled “Licenses, Permits and Business Regulation” to add new Article VII, titled “Prohibition of Hydraulic Fracturing.” The ordinance will be referred to herein as the “Hydraulic Frac Ban.”

13. The Hydraulic Frac Ban makes it unlawful to engage in hydraulic fracturing within the corporate limits of the City of Denton. The Hydraulic Frac Ban is not a land use ordinance or some other facially valid use of the City’s authority. Rather, the Hydraulic

Frac Ban is an outright ban on hydraulic fracturing that criminalizes a standard industry practice safely used onshore in the United States since the 1940s.

14. The ban, which in effect completely prohibits the development of the Barnett Shale within the City of Denton, is unconstitutional. It undermines Texas policy and it invades the province of the agencies tasked with regulating this State's oil and gas resources: the Railroad Commission, which issues permits for drilling within the City of Denton, and the TCEQ, which regulates certain environmental impacts of oil and gas development.

15. The Texas Railroad Commission has jurisdiction over all oil and gas wells in Texas. TEX. NAT. RES. CODE § 81.051(a)(2). The Commission is empowered by the Texas Legislature to adopt all necessary rules for governing and regulating persons owning or engaged in drilling or operating oil or gas wells in Texas. TEX. NAT. RES. CODE § 81.052. It is, in fact, *solely* responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from oil and gas activities. TEX. WATER CODE § 26.131(a).

16. Pursuant to this authority, the Railroad Commission has adopted a comprehensive regulatory scheme, including specific rules for various fields, such as the Newark, East (Barnett Shale) Field Rules, which cover Denton County.

17. This regulatory scheme covers the process of hydraulic fracturing as well. Pursuant to its legislative directive, the Commission requires operators to disclose the total volume of water and each chemical ingredient used in fracturing each well. 16 TEX. ADMIN. CODE § 3.29. In 2013, the Railroad Commission adopted significant amendments to Rule 3.13 related to casing, cementing, drilling, well control, and completion requirements. And merely two weeks ago, the Railroad Commission adopted new rules regarding the disposal of water used in hydraulic fracturing.

18. The TCEQ, similarly, has promulgated regulations related to the effect of hydraulic fracturing, and while the City of Denton has some residual authority to enact and enforce ordinances for the control of pollution, such ordinances may not be inconsistent with state law or the TCEQ's rules or orders, nor may such ordinances make unlawful an act or condition that is approved or authorized under state law or the TCEQ's rules or orders, such as hydraulic fracturing.

19. In the face of the Legislature's grant of authority to these state agencies to promote and regulate oil and gas activity in Texas through a pervasive framework of rules and regulations, the City of Denton's prohibition on all viable production throughout the nearly 100 square miles within the city limits directly frustrates the State's goal.

20. Because any ordinance violates the Texas Constitution if it is inconsistent with state law, and because this ordinance is inconsistent with state law in many respects, it is unconstitutional.

#### **IV. STANDING AND PARTIES**

21. Founded in 1919, the Texas Oil & Gas Association is a statewide trade association with approximately 5,000 members representing every facet of the Texas oil and gas industry including small independents and major producers. TXOGA members account for over 90 percent of all crude oil and natural gas produced in Texas; they operate a vast majority of the State's pipeline mileage and gas processing capacity; and they are responsible for a preponderance of the State's refining capacity. As stated in its bylaws, the purpose of TXOGA is to promote and protect the oil and gas industry in Texas. TXOGA members own and operate wells and/or leases within the corporate limits of the City of Denton.

22. Members of TXOGA have standing to sue the City in their own right. The interests sought to be protected by bringing this lawsuit are germane to the purpose of TXOGA,

which has long been a leading advocate in matters related to the development and regulation of the industry. The claims asserted and relief requested by TXOGA do not require the participation of individual group members in this lawsuit, as TXOGA seeks a declaration that the ordinance is unconstitutional and cannot be enforced, relief that applies to all entities subject to the ordinance.

23. Defendant City of Denton is a municipal corporation organized and existing under the laws of the State of Texas. It is, according to the latest U.S. Census Bureau estimates of population, the 3rd largest city within the core area of the Barnett Shale and the 26th largest city in the State of Texas. Service may be made on the City of Denton by delivering a copy of the summons and of the petition to its mayor, clerk, secretary, or treasurer at City Hall, 215 E. McKinney Street, Denton, Texas 76201.

#### **V. JURISDICTION AND VENUE**

24. The Court has jurisdiction over the City of Denton, which has its principal place of business in Denton County, Texas. The Court also has jurisdiction over the subject matter of this lawsuit, because the relief sought is within the jurisdiction of this Court.

25. Venue is proper in Denton County, Texas, because all or a substantial part of the events giving rise to the claims at issue occurred in Denton County, Texas, and Denton County is the county of the City of Denton's domicile and principal office in this state.

#### **VI. BASIS FOR DECLARATORY AND INJUNCTIVE RELIEF—THE HYDRAULIC FRAC BAN IS PREEMPTED BY STATE LAW, RULES, AND REGULATIONS, AND IS UNCONSTITUTIONAL**

##### **A. The Hydraulic Frac Ban is preempted by implication.**

26. The Texas Constitution, Art. XI, Sec. 5, authorizes cities with populations of 5,000 or more (known as "home-rule cities") to enact ordinances, but it further provides that "no ordinance shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State."

27. Thus, under established preemption law, ordinances such as the Hydraulic Frac Ban that are inconsistent with the U.S. or Texas Constitutions or statutes are unconstitutional.

28. An ordinance can be preempted by implication if it undermines or interferes with state policy or is inconsistent with state regulation that is so comprehensive and pervasive that it clearly occupies the field.

**B. The Hydraulic Frac Ban directly conflicts existing Railroad Commission and TCEQ regulations.**

29. The Legislature has vested the Railroad Commission with authority to permit wells for enhanced recovery projects, including hydraulic fracturing, pursuant to 16 T.A.C. § 3.50. The Railroad Commission has granted permits to TXOGA’s members to drill horizontal wells within the Denton city limits.

30. The Hydraulic Frac Ban purports to “regulate certain aspects of business operations that impact the public safety, health, and welfare.” The ordinance also recites various “impacts” and “dangers” that it is intended to regulate, such as the “venting of gas,” “hazardous materials management,” “spill issues,” “environmental impairment matters,” “ground and surface water contamination,” “air pollution,” and “other regulatory issues.” In reality, the Hydraulic Frac Ban does not regulate hydraulic fracturing, it bans it completely.

31. The Railroad Commission and the TCEQ have broad authority to regulate each of the “impacts” and “dangers” listed in the ordinance—and have done so with unmistakable clarity.

32. Additionally, the Railroad Commission regulates the venting of gas,<sup>1</sup> fire prevention and notification,<sup>2</sup> containment systems,<sup>3</sup> hazardous materials,<sup>4</sup> spill cleanup,<sup>5</sup> financial security of operators,<sup>6</sup> and other alleged impacts of fracturing.

33. Further, the Railroad Commission “is *solely* responsible” for regulation to prevent the alleged “danger” of ground and surface water contamination.<sup>7</sup>

34. Moreover, though municipalities can “enact and enforce an ordinance for the control and abatement of air pollution,” the ordinance “may not make unlawful a condition or act approved or authorized under . . . the [TCEQ]’s rules or orders.”<sup>8</sup>

35. The Hydraulic Frac Ban, under the guise of regulating these various alleged “impacts” and “dangers,” is nothing more than a complete ban of hydraulic fracturing, an act that is in direct conflict with existing state regulation.

36. Because an outright ban on hydraulic fracturing directly conflicts with the Railroad Commission’s authority to permit wells within the city limits of Denton, and further conflicts with other regulations issued by the Railroad Commission and the TCEQ regarding hydraulic fracturing and horizontal wells, the Hydraulic Frac Ban is preempted.

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<sup>1</sup> 16 Tex. Admin. Code § 3.32.

<sup>2</sup> See 16 Tex. Admin. Code §§ 3.20, 3.21.

<sup>3</sup> See 16 Tex. Admin. Code §§ 3.8, 3.98; see also *id.* at §§ 5.102, 5.306.

<sup>4</sup> See 16 Tex. Admin. Code § 3.98; see also *id.* at § 3.30 (containing a memorandum of understanding between the Railroad Commission and the TCEQ with regard hazardous and nonhazardous waste, water quality, and injection wells).

<sup>5</sup> 16 Tex. Admin. Code §§ 3.13, 3.91.

<sup>6</sup> 16 Tex. Admin. Code § 3.1 (requiring well service companies who perform hydraulic fracturing to file an organization report and financial security); *id.* at § 3.78 (discussing financial security and requiring well-specific plugging insurance policies).

<sup>7</sup> Tex. Water Code § 26.131(a); see also *id.* at § 26.406.

<sup>8</sup> Tex. Health & Safety Code § 382.113; see also *id.* at § 382.011 (“The commission shall: . . . (2) establish the level of quality to be maintained in the state’s air; and (3) control the quality of the state’s air.”).

**C. Field preemption applies because the Railroad Commission and the TCEQ have been given authority in the field of oil and gas resource development.**

37. The Texas Legislature has given authority to the Railroad Commission and the TCEQ to determine how oil and gas resources in the state are developed.

38. The regulations imposed by the Railroad Commission and the TCEQ occupy the entire field of oil and gas development.

39. While TXOGA recognizes that, pursuant to TEX. NAT. RES. CODE § 92.007, the City of Denton retains the right to *regulate* exploration and development of mineral interests, consistent with its general authority to regulate enterprise within its borders, the Hydraulic Frac Ban is not a regulation of those interests.

40. Rather, the ordinance is an outright prohibition on hydraulic fracturing, which does not fall within a city's power to regulate.

41. Because the Railroad Commission and the TCEQ regulations regarding oil and gas development in the State of Texas occupy the entire field, the Hydraulic Frac Ban is preempted and unconstitutional.

**VII. CAUSES OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

42. TXOGA incorporates and realleges the matters set forth in each of the preceding paragraphs.

43. A justiciable controversy exists between TXOGA and the City of Denton concerning the Hydraulic Frac Ban. TXOGA consists of members whose rights, status, and other legal relations are affected by the ordinance. TXOGA asks the Court to determine questions of construction and validity arising under the statutes identified in this petition and to issue a declaration of rights, status, and other legal relations. TEX. CIV. PRAC. & REM. CODE § 37.004(a).

44. The Texas Constitution prohibits home-rule cities from enacting ordinances that are inconsistent with state statutes. *See* TEX. CONST., art. XI, § 5. The Hydraulic Frac Ban conflicts with regulations of both the Texas Railroad Commission and the TCEQ. A home-rule city may not pass ordinances that make unlawful conditions or acts approved by the Railroad Commission or the TCEQ, as the Hydraulic Frac Ban does.

45. In accordance with the provisions of Chapter 37 of the Texas Civil Practices and Remedies Code, TXOGA respectfully requests that this Court issue a judgment declaring that (a) the Hydraulic Frac Ban is invalidated by operation of the Texas Natural Resources Code, the Texas Water Code, the Texas Health and Safety Code, rules and regulations of the Railroad Commission and TCEQ, and the Texas Constitution; and (b) neither the City of Denton nor its agents may require TXOGA members to comply with the Hydraulic Frac Ban.

46. The requested declaration will resolve the real and substantial controversy over the validity of the ordinance. This declaration is needed to prevent the City of Denton from enforcing any portion of the ordinance, which would subject TXOGA members to unlawful regulation.

47. The grounds on which TXOGA seeks injunctive relief is that it is entitled to the relief demanded in this petition, and all or part of the relief requires the restraint of acts prejudicial to TXOGA. TEX. CIV. PRAC. & REM. CODE § 65.011. Moreover, TXOGA is entitled to a writ of injunction under the principles of equity and the statutes of the State of Texas relating to injunctions. *Id.*

48. TXOGA, through its members, is faced with imminent and irreparable injury unless the Court issues the permanent injunction sought by TXOGA.

49. TXOGA will have no adequate remedy at law. Injunctive relief to stop the enforcement of the Hydraulic Frac Ban is therefore necessary.

50. TXOGA asks the court to issue a permanent injunction enjoining the City of Denton and its agents from enforcing the Hydraulic Frac Ban.

51. The City of Denton does not enjoy sovereign immunity from the conduct described in this petition. Municipalities do not enjoy immunity from suit where their acts are unauthorized or in violation of state law, nor do they enjoy sovereign immunity against suits in which declaratory relief is sought.

52. All conditions precedent to the filing of this suit have been performed or have occurred.

53. TXOGA has retained the undersigned counsel to prosecute this suit on its behalf and have agreed to pay counsel reasonable and necessary attorneys' fees. An award of attorneys' fees to TXOGA would be equitable and just, and TXOGA requests that it be awarded attorneys' fees pursuant to Section 37.009 of the Texas Civil Practices & Remedies Code.

#### **VIII. PRAYER FOR RELIEF**

TXOGA prays that the City of Denton be cited to appear and answer, and that upon further hearings by this Court and upon final trial, TXOGA have judgment against the City of Denton as follows:

1. A declaration that (a) the Hydraulic Frac Ban is invalidated by operation of the Texas Natural Resources Code, the Texas Water Code, the Texas Health and Safety Code, rules and regulations of the Railroad Commission and the TCEQ, and the Texas Constitution; and (b) neither the City of Denton nor its agents may require TXOGA members to comply with the Hydraulic Frac Ban;
2. An injunction prohibiting the City of Denton and its agents from enforcing the Hydraulic Frac Ban;
3. Reasonable and necessary attorneys' fees;
4. Costs of suit; and
5. Such other and further relief to which TXOGA may be justly entitled.

Respectfully submitted,

**BAKER BOTTS L.L.P.**

By: /s/ Bill Kroger

Thomas R. Phillips  
State Bar No. 00000102  
Evan Young  
State Bar No. 24058192  
1500 San Jacinto Center  
98 San Jacinto Blvd., Suite 1500  
Austin, Texas 78701  
512.322.2565  
512.322.8363 (Fax)  
tom.phillips@bakerbotts.com  
evan.young@bakerbotts.com

Bill Kroger  
Texas Bar No. 11729900  
Jason Newman  
Texas Bar No. 24048689  
One Shell Plaza  
910 Louisiana Street  
Houston, Texas 77002  
713.229.4055  
713.2292855 (Fax)  
bill.kroger@bakerbotts.com  
jason.newman@bakerbotts.com

**ATTORNEYS FOR TXOGA**

# EXHIBIT A

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ORDERING AN ELECTION TO BE HELD IN THE CITY OF DENTON, TEXAS, ON NOVEMBER 4, 2014, FOR THE PURPOSE OF DETERMINING WHETHER TO ADOPT 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, on May 7, 2014, members of a Committee of Petitioners submitted an initiative petition regarding the banning of hydraulic fracturing in the City of Denton to the City Secretary; and

WHEREAS, in accordance with the City Charter, said initiative petition had attached a copy of the Ordinance the petitioners desired to initiate; and

WHEREAS, The City Secretary determined the petition to be sufficient and further certified it to be in compliance with the City Charter at the City Council meeting of June 3, 2014; and

WHEREAS, the City Council of the City of Denton considered the proffered initiative ordinance at its meeting of today's date; and

WHEREAS, the City Council determined that the matter would be best resolved by the voters of the City of Denton; and

WHEREAS, applicable state law requires this election to be held on the next uniform election date, November 4, 2014; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The preamble clauses above are incorporated into this Ordinance as though set forth in full.

SECTION 2. A municipal election is ordered to be held in the City of Denton, Texas on Tuesday, November 4, 2014, such date being a uniform election date as defined in Tex. Elec. Code §41.001, as amended (the "Code"), for the purpose of determining whether to adopt 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. Said Ordinance is set forth in full in Exhibit "A" to this Ordinance and incorporated herein.

SECTION 3. The form of the ballot shall be substantially as follows:

PROPOSITION REGARDING THE PROHIBITION  
OF HYDRAULIC FRACTURING

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?

FOR THE ORDINANCE \_\_\_\_\_

AGAINST THE ORDINANCE \_\_\_\_\_

SECTION 4. The election and early voting shall be conducted at the time and in the manner specified in and in accordance with an agreement between the Election Administrator of Denton County and the City of Denton.

SECTION 5. The manner of holding such election and all questions pertaining thereto shall be governed by the election laws of the State of Texas.

SECTION 6. Should any provision of this Ordinance be held finally invalid by a Court of Law, such provision shall be severed from the remaining provisions of this Ordinance and the remaining provisions shall continue in full force and effect.

SECTION 7. The City Council has found and determined that the meeting at which this Ordinance is considered is open to the public, and that notice thereof was given in accordance with provisions of the Texas open meetings law, Tex. Gov't. Code ch. 551, as amended, and that a quorum of the City Council was present.

SECTION 8. This Ordinance shall become effective immediately upon its passage and approval.

PRESENTED, PASSED AND APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 at a regular meeting of the City Council of the City of Denton, Texas, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at the regular meeting of the City Council of the City of Denton, Texas.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: Anita Burgess

# Exhibit A

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 5, 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 rezone 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.