

Re: ***Request for Attorney General Opinion***

Dear Senator (Representative) _____:

New technology, economics, and desire to reduce dependence on foreign sources continue to drive domestic oil and gas production. In Michigan, oil and gas exploration and development is no longer confined to rural areas, but has spread near and to populated suburban, residential communities, as well, sparking conflict, controversy and concern over incompatibility, safety, pollution, noise and other adverse impacts when oil exploration and development activities and facilities are proposed for location nearby. Michigan municipalities have broad local zoning power under the Michigan Zoning Enabling Act (MZEA), MCL 125.3101 et seq, but the Michigan Department of Environmental Quality's (MDEQ) regulatory authority over oil and gas drilling and development activity under Part 615 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.61501 et seq is likewise expansive. The MZEA expressly forbids townships and counties from regulating or controlling the drilling, completion or operation of oil and gas wells. See MCL 125.3205(2). Meanwhile, the MZEA is silent about cities and villages, neither expressly authorizing nor prohibiting their zoning regulation of oil and gas wells. See *Addison Twp v Gout*, 435 Mich 809, 813-815 (1990). But, the 1994 enactment of NREPA, which assigns exclusive regulatory authority to MDEQ over oil and gas drilling, has left uncertainty and differences of opinion over whether city or village zoning control over oil and gas drilling is preempted. See, for example, *Alcona County v Wolverine Environmental Production*, 233 Mich App 238 (1998).

The incursion of oil and gas exploration and development into populated suburban areas is a matter of major concern locally, and will have statewide impact as well. The Mayor, City Council and Planning Commission of the City of Rochester Hills therefore request and urge you to ask for an opinion from the Michigan Attorney General clarifying and explaining what powers does a home rule city have to regulate oil and gas development through local zoning? Specifically, we would like to know:

- May a city restrict oil and gas well drilling to a specific zoning district, such as industrial, or even prohibit oil and gas well drilling entirely?
- May a city require an oil or gas well developer to obtain a local drilling permit or approval in prior or in addition to obtaining an MDEQ drilling permit under NREPA?
- May a city impose local zoning setback and separation-from-residential-buildings requirements greater than those set forth in NREPA, MCL 324.61506b?
- May a city ban hydraulic fracturing ("fracking")?

We seek and will very much appreciate your assistance in submitting these important, pressing questions to the Michigan Attorney General for his opinion. Please feel free to contact me to discuss.