May 19, 2026

Dear Representative Hickland,

Thank you for your letter to the Temple City Council regarding the May 7th Council discussion on data centers, municipal authority, annexation, zoning, and moratoriums.

Because your letter directly challenged several statements made during the public meeting, I believe it is important to clarify both what was actually presented and the practical realities cities face under current Texas law.

The City's Home Rule Authority and Local Control

You begin your letter by stating that home-rule cities possess broad authority unless expressly prohibited by state law.

That is true in a general constitutional sense. However, it is also true that the Legislature has, over time, substantially narrowed local authority in a number of areas directly relevant to projects like these. The practical issue discussed during the Council meeting was not whether home-rule authority exists in theory, but how much meaningful authority cities actually retain after decades of statutory limitations, preemption laws, annexation reforms, vesting protections, and restrictions on municipal regulation.

While many of those policy decisions predate your service in the Legislature, I would also note that your voting record during your first legislative session included support for legislation that has further limited or complicated local government tools in this area, particularly regarding moratorium authority through HB 2559.

If the Legislature believes cities should have greater ability to slow, study, regulate, or address projects of this nature, we welcome your leadership in securing additional local tools rather than continued limitations on municipal authority.

Limitations on City's Annexation Authority

One of the most significant limitations discussed during the presentation, but wholly unaddressed in your letter, was annexation authority. Historically, cities had broader authority to annex growing areas in order to extend municipal regulations, infrastructure standards, utility requirements, and zoning protections to developing land. The Legislature changed that framework by eliminating most involuntary annexation authority for cities. As a result, cities like Temple generally cannot annex property without owner consent.

That issue is highly relevant here because the projects being discussed are located in the county unless voluntarily annexed into the City. Another relevant and highly important point is the fact that the State has given Counties essentially no authority to protect surrounding communities from development impacts.

Without annexation:

- The City generally does not have zoning authority;
- The City cannot impose many local operational requirements;
- The City cannot apply planned development standards;
- The City cannot impose many local noise or traffic mitigation standards; and
- The City does not receive the same local tax and utility-related revenue benefits to offset infrastructure and service impacts.

Your letter does not address annexation despite the fact it was a central part of the presentation and is one of the most important practical limitations on municipal authority.

City Moratorium Authority

Your letter then focuses heavily on cities' moratorium authority.

Again, I want to be very clear about what was — and was not — said during the Council meeting.

The point made during the meeting was *not* that moratoriums are prohibited under Texas law, but rather that imposing a moratorium has become significantly slower, more difficult, and less effective as a municipal tool under current state law, particularly after the Legislature's adoption of HB 2559 — legislation you voted in favor of.

Your letter describes HB 2559 primarily as adding "procedural transparency requirements." Respectfully, that understates the practical effect of the legislation.

Before HB 2559, cities were able to implement temporary moratorium protections while evaluating infrastructure concerns, preparing studies, conducting hearings, and considering whether additional regulations were necessary. That temporary authority was important because it allowed cities to pause development while relevant concerns were evaluated. HB 2559 removed a city's temporary moratorium authority and replaced it with a significantly longer and more burdensome process before protections can take effect.

Under HB 2559:

- Cities must complete extensive notice procedures;
- Cities must hold multiple public hearings;
- Mandatory waiting periods must occur between hearings;
- Detailed written findings supported by evidence must be prepared;
- A supermajority approval is required; and
- The temporary moratorium authority that previously allowed cities to pause development activity during the review process was eliminated.

Those changes were not simply "transparency" measures. They materially reduced the effectiveness of moratoriums as a practical planning tool.

Most importantly, HB 2559 did not suspend vesting rights while cities work through this expanded process.

That is critical. Vesting continues while the City navigates the lengthy moratorium process now required under state law.

Vesting occurs when an application for a permit is submitted. Since the City can no longer suspend the acceptance of permit applications, approvals, and other authorizations, as was allowed through a temporary moratorium under prior law, a development project has vested rights upon that first permit submission. As a practical matter, before the City even begins the moratorium process, projects already underway have vested rights (since they have likely already submitted a permit application), which entirely eliminates the usefulness of the moratorium as applied to those projects. Additionally, the extended public hearing and moratorium process provides a significant period of time for additional projects to file an initial permit application, and therefore become vested, before a moratorium could take place.

The point made during the Council presentation was *not* that moratoriums are illegal; the point was that because of the lengthy state mandated process and continued vesting rights of developments during this process, implementing a moratorium at this point would have limited, if any, practical effect on projects already moving through development review.

Electricity and Moratoriums

Your letter also challenges the City Manager's statement regarding the application of moratoriums to electricity-related concerns.

Again, the point was not whether a statute *specifically prohibits* consideration of electricity related concerns during a moratorium. Rather, a moratorium does not create or grant *new* regulatory authority to a city but only allows city to temporarily pause development while studying and adopting regulations in areas where the city already possesses lawful authority.

The City is already using the authority it has.

The City has already addressed:

- Water use, water quality, and enforceable water limitations through utility agreements;
- Noise control requirements through zoning and planned development standards;
- Traffic control requirements through zoning and planned development standards;
- Land use compatibility through zoning and planned development standards; and
- Infrastructure obligations through planned development standards and utility agreement requirements.

A moratorium would not suddenly give the City authority to regulate ERCOT, electric generation policy, statewide transmission planning, or broader state electric market issues.

If the concern is statewide electric policy or grid reliability, those are primarily matters of state authority. A city cannot meaningfully solve ERCOT reliability concerns through a local zoning ordinance adopted during a moratorium period.

Land Use Regulation

Your letter also discusses lawful land uses, zoning, and business regulations.

As you stated in your letter, "cities cannot outright prohibit lawful businesses from operating within their jurisdiction." The City Manager's comments during the council meeting were consistent with this statement and with longstanding land use principles: *Cities generally cannot completely prohibit otherwise lawful land uses city-wide absent specific statutory authority.*

The relevant question then becomes where such uses should be located.

Regarding the current concerns, the projects are located in or near Temple's Synergy industrial area, where existing industrial and utility uses are located, including power generation facilities, industrial operations, and landfill uses.

Because Texas law requires cities to allow lawful land uses *somewhere* within their boundaries, then an established industrial area like Synergy, is precisely the type of location appropriate for an intensive industrial-scale development.

Since outright denial of a specific business use is not an option, the City has used the tools it has to regulate these developments - through annexation, zoning, planned development conditions, utility agreements, noise standards, traffic controls and buffering requirements.

The State's Role

Your letter also suggests the City overstated limitations created by state law and references the Texas Regulatory Consistency Act.

To be clear, the presentation did not claim that the Regulatory Consistency Act specifically prohibited regulation of data centers. The discussion instead focused on the broader reality that state law increasingly occupies major policy areas connected to projects like these, including electric market regulation, ERCOT governance, statewide energy policy, and state-created economic incentives for qualifying data centers.

Finally, your letter suggests the City is unfairly "blaming the State" for local challenges.

The State does not take a neutral stance on data centers.

The Governor has actively recruited data center and AI infrastructure investment to Texas. The State provides substantial sales tax exemptions for qualifying data center equipment and infrastructure. Texas' deregulated electric market is regularly promoted as a competitive advantage for these industries.

Those are state policy decisions.

Respectfully, it is appropriate to acknowledge the role state policy plays in shaping these issues.

- The Legislature reduced municipal annexation authority.
- The Legislature has not given counties meaningful land use regulatory authority.
- The Legislature made moratoriums slower and harder to implement through HB 2559.
- The State provides substantial tax incentives for qualifying data centers.
- The Governor actively recruits these industries to Texas.

Those actions have real consequences for local governments attempting to manage projects of this scale.

Local governments are left to address land use compatibility, traffic, infrastructure, utility demand, noise, and community impacts with a narrower set of local tools than cities have historically possessed.

The City's position remains straightforward:

- We are using the limited authority still available to us under state law;
- We are actively regulating in the areas where municipal authority exists;
- Moratoriums do not create new authority;
- Moratoriums do not suspend vesting rights; and
- The Legislature made moratoriums more difficult and less effective as a practical tool for local governments.

If the State believes cities should have more control over projects of this scale, then cities will need additional tools from the Legislature — not continued reductions in local authority.

Sincerely,

Timothy Davis

Timothy Davis
Mayor - City of Temple