

TOWN OF FLOWER MOUND

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY REPEALING EXISTING ARTICLE VII, ENTITLED “OIL AND NATURAL GAS WELL DRILLING AND OPERATIONS,” OF CHAPTER 34 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, AND ADOPTING A NEW ARTICLE VII, ENTITLED “OIL AND NATURAL GAS WELL DRILLING AND OPERATIONS,” RELATIVE TO REGULATING AND PERMITTING THE EXPLORATION, DEVELOPMENT, AND PRODUCTION OF MINERAL, OIL, AND GAS RESOURCES; MAKING DETAILED FINDINGS RELATED THERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound (“Town”) is located in the Barnett Shale Gas Field in the Fort Worth Basin; and

WHEREAS, Barnett Shale is a fine grained sedimentary rock deposited by a shallow sea and that such Shale is a porous rock that contains hydrocarbons but has practically no permeability; and

WHEREAS, due to technological advances and energy related issues, the exploration and production of natural gas in the Barnett Shale Gas Field has become economically feasible in the recent past; and

WHEREAS, in or about 1997 new natural gas production was established in Denton and Tarrant Counties, Texas; and

WHEREAS, in 2003, the Town adopted its first comprehensive ordinance relative to oil and natural gas drilling and production operations, and thereafter has adopted amendments to said ordinance, including major amendments in 2007; and

WHEREAS, natural gas drilling and production operations are currently being conducted in Flower Mound as well as in the communities and unincorporated areas around Flower Mound; and

WHEREAS, natural gas drilling and production operations involve or otherwise impact the Town’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, by an ordinance adopted by the Town Council on or about June 7, 2010, there was created an Oil and Gas Advisory Board to review Town ordinances related to oil and natural gas drilling and production operations; and

WHEREAS, the Town Council thereafter appointed members to the Oil and Gas Advisory Board and after a lengthy and exhaustive review process by said Oil and Gas Advisory Board, on or about January 20, 2011, the Oil and Gas Advisory Board presented to the Town Council its preliminary recommendations for amendments to applicable Town ordinances related to oil and natural gas drilling and production operations; and

WHEREAS, on February 10 and 12, 2011, additional public hearings were held by the Oil and Gas Advisory Board to solicit further public input; and

WHEREAS, on February 28, 2011, the Oil and Gas Advisory Board presented its Final Recommendations to the Town Council, which Final Recommendations are incorporated by reference; and

WHEREAS, at the Town Council work session on March 21, 2011, items that were not completely resolved or considered outstanding by some of the Oil and Gas Advisory Board members were discussed and as a consequence, Town staff scheduled and coordinated a public comment period relative to those outstanding issues; and

WHEREAS, the public comment period was designed as an opportunity for the public, including gas well drilling and production companies currently operating in the Town, to provide detailed feedback, if any, on those outstanding issues; and

WHEREAS, the public comment period was designated from April 1 through April 18, 2011, during which period the Town received additional comments from the United States Army Corps of Engineers, citizens, and permitted operators; and

WHEREAS, during the public comment period, two (2) additional public comment meetings were held, on April 7 and 12, 2011, to solicit additional public feedback; and

WHEREAS, the Town Council provided Town staff with direction at the May 2, 2011, work session, generally requesting that an ordinance be presented that addressed the concerns of the public and the recommendations made by the Oil and Gas Advisory Board; and

WHEREAS, a public hearing was held by the Town Council on June 20, 2011, at which time additional public input was received, with Town staff being tasked to make appropriate modifications to the Ordinance in conformance with Town Council direction; 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, the Town has undertaken extensive study on its own to determine what, if any, effects natural gas drilling may have on the public health, welfare and safety of Flower Mound and its residents, in part as reflected in Section 1 of this Ordinance; and

WHEREAS, Chapter 211 of the Texas Local Government Code provides, in part, various methods and processes through which land uses, structures, businesses and related activities may be regulated, and which chapter and regulations are utilized herein; and

WHEREAS, after extensive review, public hearings and public comments, this Ordinance is considered and adopted in furtherance of the health, safety and welfare of the citizens of the Town of Flower Mound, Texas, with due respect for the property rights of the citizens of the Town of Flower Mound, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

The matters and facts recited in the preamble hereof are hereby found and determined to be true and correct and incorporated herein by reference as if fully set forth herein. In addition, the Town Council also makes the following findings in furtherance of this Ordinance:

Integra Well Site Impact Study

1. In August 2009 Integra Realty Resources (“Integra”) prepared for the Town a Well Site Impact Study (“Study”).
2. The objective of the Study was “to develop an opinion of the impact, if any, of the proximity of improved residential properties as a result of their proximity to natural gas well sites.”
3. The Study employed four (4) methods for examining the impact of well sites on residential property values: (1) Price-Distance Relationship; (2) Comparable Sales Analysis; (3) Statistical Analysis; and (4) Survey of Market Participants.

4. The Study concluded, in general, “that in the Flower Mound area, *when houses are immediately adjacent to well sites* there is a measurable impact of value. As distance from the well site increases, this affect quickly diminishes.” (Emphasis in original).

5. The Study further showed the following:

- Residential property in the Flower Mound market with price points over \$250,000 and immediately adjacent to well sites can experience an impact from -3% to -14% in value based on the sales comparison method. Any influence on property values on a linear basis was found to dissipate at around 1,000 feet from the wellhead;

- Sales comparison research indicated that a diminution in value due to proximity to natural gas sites occurs only for properties immediately adjacent to the well site, and several sales where view of the well site was obstructed by buffers such as trees or other structures indicated that value is not measurably impacted, even when the property is in close proximity to a well site; and

- The range in property value decline found in price-distance relationships was observed to be about -2% to -7%. This methodology was less conclusive than the sales comparison method but still indicated the same general trends. Sites that resulted in negative impacts were in close proximity to houses and most were in the Flower Mound area. Impact on housing prices by the price-distance method generally dissipated between 1,000 and 1,500 feet. The sales comparison method indicated the impact to dissipate at a closer proximity.

6. The Integra Study was presented and discussed at the March 21, 2011, Town Council Work Session and in its presentation, Integra noted and concluded that:

- At that time, little data is available that suggests damages from compressor stations and collection facilities are different from well sites in the Flower Mound market;

- Measurable damages were found to single-family residences in the Flower Mound market if the values of homes were over \$250,000 to \$300,000; the homes are immediately adjacent to the well/drill site; and there are no buffers such as trees or other buildings between the home and the well or other natural gas facilities; and

- The foregoing conclusions may change over time depending upon media influence, results of environmental and health studies and past experience suggests as the market becomes accustomed to natural gas facilities, the impact on property values will diminish.

Kleinfelder Ambient Air Quality Evaluations

1. Quarterly air evaluations conducted by Kleinfelder began in the first quarter of 2010 and the Town subsequently contracted with Kleinfelder to conduct monthly ambient air evaluations for 2011.
2. The initial quarterly air evaluations included sampling for Volatile Organic Compounds (VOCs) at eight (8) locations throughout the Town—sampling locations included sites adjacent to permitted gas well operations and sites in other areas not associated with natural gas operations.
3. During the second quarter sampling in 2010, the Texas Commission on Environmental Quality (TCEQ) published health-based screening criteria for air evaluations called Air Monitoring Comparison Values (AMCVs). An objective for establishing AMCVs was to provide clarity relative to appropriate screening criteria for air monitoring.
4. The AMCVs have been utilized by the Town and Kleinfelder as the comparison criteria for each subsequent quarterly air sampling evaluation and the monthly air sampling evaluations.
5. Kleinfelder's presentation to the March 21, 2011, Town Council Work Session addressed its 2010 results summary and its 2011 monthly monitoring program.
6. The aforementioned eight (8) primary locations were used for the 2010 quarterly assessments, with four additional locations added for the May 2010 testing and one additional location was added adjacent to the Hilliard well site in the Town, with said locations including active well sites/pads and active compressor stations in both rural and urban surroundings and additionally, in October 2010 the TCEQ air monitoring station at Fire Station No. 2 on Shiloh Road was added.
7. The 2010 quarterly assessments (conducted in February, May, August and November) included field screening for VOCs, methane and carbon disulfide and the 2010 assessments identified air quality results consistent with urban air.
8. For the 2011 monthly assessments, the aforementioned eight (8) primary locations were utilized by Kleinfelder, with three (3) additional short duration samples for the January 2011 assessment, with said locations including active well sites/pads and active compressor stations in both rural and urban surroundings.

9. The 2011 quarterly assessments included field screening for VOCs, methane and carbon disulfide, with monthly assessments including the addition of twenty (20) reduced sulfur compounds and twelve (12) carbonyl compounds.

10. To date, the 2011 monthly assessments again have identified air quality results consistent with urban air and below TCEQ AMCVs; however, certain reduced sulfur compounds and carbonyl compounds had increased, but were still within acceptable TCEQ ranges.

11. Kleinfelder has indicated that additional air testing is advisable and prudent under the circumstances for public health and safety reasons. Specifically, in its report for April 2011 (the most current report), Kleinfelder wrote that “[w]hile the current ambient air observations appear to be consistent with urban ambient air and not indicative of significant releases or fugitive emissions from the nearby natural gas activities in and/or surrounding Flower Mound, the changing nature of the exploration, production, and transmission activities may necessitate periodic evaluation to provide additional confirmation. . . . It may also be prudent to request information from the operators concerning their current monitoring program so the Town’s efforts could be used to supplement these activities.”

EPA Concerns about Hydraulic Fracturing and Drinking Water Resources

1. According to the United States Environmental Protection Agency (EPA) (www.epa.gov), hydraulic fracturing is defined as a well stimulation process used to maximize the extraction of underground resources—oil, natural gas and geothermal energy. Hydraulic fracturing processes are utilized in Flower Mound for natural gas extraction.

2. Hydraulic fracturing involves the pressurized injection of fluids commonly made up of water and chemical additives into a geologic formation. The pressure exceeds the rock strength and the fluid opens or enlarges fractures in the rock. As the formation is fractured, a “propping agent,” such as sand or ceramic beads, is pumped into the fractures to keep them from closing as the pumping pressure is released. The fracturing fluids (water and chemical additives) are then returned back to the surface. Natural gas will flow from pores and fractures in the rock into the well for subsequent extraction.

3. Water is needed during the hydraulic fracturing process and it is a central component of the waste products. Potential impacts to drinking water supplies have been suggested from many recent reports.

4. Fracturing fluids can be up to 99% water. The volume of water needed for hydraulic fracturing varies by site and type of formation and two to five million gallons of water may be necessary to fracture one horizontal well in a shale formation.

5. Wastewaters from the hydraulic fracturing process may be disposed in several ways. For example, the flowback water following fracturing may be returned underground using a permitted underground injection well, discharged to surface waters after treatment to remove contaminants, or applied to land surfaces. Not all fracturing fluids injected into the geologic formation during hydraulic fracturing are recovered. Estimates of the fluids recovered range from 15-80% of the volume injected, depending on the site.

6. The EPA notes that public concerns have focused recently on the impacts of the hydraulic fracturing process used during natural gas production from shale, and that potential risks to surface and underground sources of drinking water might occur at various points in the hydraulic fracturing process. As a consequence, Congress directed the EPA to conduct research to examine the relationship between hydraulic fracturing and drinking water resources.

7. EPA's draft study plan was presented to the EPA's Science Advisory Board in February 2011 for review and comment. Initial research results are expected by the end of 2012 with a full report expected in 2014.

8. The fundamental research questions for the study include the following relative to each stage of water use in hydraulic fracturing operations: (1) at the water acquisition stage, how might large volume water withdrawals from ground and surface water impact drinking water resources? (2) at the chemical mixing stage, what are the possible impacts of releases of hydraulic fracturing fluids on drinking water resources? (3) at the well injection stage, what are the possible impacts of the injection and fracturing process on drinking water resources? (4) at the flowback and produced water stage, what are the possible impacts of releases of flowback and produced water on drinking water resources? and (5) at the wastewater treatment and waste disposal stage, what are the possible impacts of inadequate treatment of hydraulic fracturing wastewaters on drinking water resources?

9. EPA has recognized in its February 2011 Hydraulic Fracturing Study Plan "that there are important potential research areas related to hydraulic fracturing other than those involving drinking water resources, including effects on air quality, aquatic and terrestrial ecosystem impacts, seismic risks, public safety concerns, occupational risks, and economic impacts," and even though such additional research areas are not within the scope of the current EPA study, the EPA recommends that these topics "should be examined in the future."

Natural Gas Drilling and Soil Contamination Issues

1. While hydraulic fracturing may result in contamination of drinking water resources, such processes also may result in the contamination of soil and

underground areas due to drilling pipe and other equipment-related leakages, spills, seepages and accidents.

2. Additionally, natural gas surface equipment malfunctions, spills, seepages and accidents at drilling pad sites may cause contamination of the soil at and around such equipment.

3. Produced water and related spills in Flower Mound, as reflected in Town records, have caused soil contamination and necessitated site remediation by the natural gas operators, to-wit:

- On March 17, 2010 (Operator: Williams Production; Location: Cummings C Pad), a frac tank hatch was damaged causing a spill of fracture fluid on the Cummings C pad and off the pad site to the east. The damage to the hatch occurred at approximately 2:24 a.m. The contractor failed to notify the Town or Williams of the emergency causing eighty (80) barrels of frac fluid to leak until approximately 7:15 a.m. Sixty-five (65) barrels were recovered on-site immediately. Williams, the Town, and the Texas Railroad Commission were notified of the spill. Williams' environmental contractor Eagle SWS arrived on location that morning to start delineating and removing the impacted soils off the pad site. Soil samples were taken from the contaminated soil and new soil was brought onto the site. A citation was issued for the spill.

- On August 20, 2010 (Operator: Williams Production; Location: Cummings C Pad), a contractor noticed that the produced water tank was flowing from a hose connection used to equalize the frac tanks. The hoses were not properly connected to the valve. The contractor closed the appropriate valves to stop the flow of water. The spill was reported to Williams and thereafter immediately reported to the Town. After notification to the Town, Williams notified the Texas Railroad Commission of the spill. One hundred ninety (190) barrels of produced water were spilled and one hundred forty (140) barrels were recovered on-site. Williams' environmental contractor Eagle SWS arrived on location that morning to start delineating and removing the impacted soils off the pad site. Soil samples were taken from the contaminated soil and new soil was brought onto the site. A citation was issued for the spill.

- On September 2, 2010 (Operator: Williams Production; Location: Cummings C Pad), a Williams contractor was transferring drilling mud to a temporary storage tank that was already full. This caused mud to be released through an open vent at the back of the tank. Approximately forty (40) barrels of mud were released onto the pad and the Cummings property to the south of the pad. The mud pool was located at the southwest corner, off the pad site. Williams immediately notified the Town and the Texas Railroad Commission. A vacuum truck was used to remove free liquid. One hundred (100) barrels of liquid were recovered because of rainwater mixing with the mud during the cleanup event. Upon taking soil samples of the contaminated area, it was

determined that the soil concentrations still fell within the Texas Railroad Commission clean level requirements. Soil replacement was not necessary. The contaminated soil was remediated through landfarming and a citation was issued for the spill.

- On December 30, 2010 (Operator: Williams Production; Location: Bob Smith Pad A), a washout occurred on a kimray valve on the Bob Smith Pad A site. A pinhole leak was created by the friction of sand on the inside of the valve. The valve was leaking methane. The Flower Mound Fire Department was notified by residents who said the leak sounded like a jet engine. Williams was called immediately and arrived on location approximately twenty (20) minutes later. Williams shut down the leak and replaced the kimray valves on all producing wells, including the Bob Smith A Pad, with new and improved valves. No citations were issued.

- On July 3, 2011 (Operator: Williams Production; Location: Bob Smith Pad B), the Flower Mound Fire Department received a call at approximately 9:33 p.m. regarding a potential leak at a gas well. Town firefighting personnel responded on the scene at 9:37 p.m. and discovered that natural gas and produced water were escaping through a small hole in a two-inch pipe at the wellhead. The Flower Mound Fire Department monitored the scene until a technician arrived and stopped the leak. The Town reported the incident to the Texas Commission on Environmental Quality. No soil outside the pad site was contaminated by the produced water spill; however, apparently a small amount of produced water did spill onto the pad site.

Natural Gas Drilling and Federal Government Infrastructure

1. Section 408 of Title 33 of the United States Code provides, in part, that “[i]t shall not be lawful for any person or persons to . . . destroy, . . . injure . . . or in any manner impair the usefulness of any . . . work built by the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods. . . .” That section further provides that the Secretary of the Army, “may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.”

2. During the comment period referenced in the preamble to this Ordinance, Mr. Brian Phelps, Operations Project Manager, Trinity Regional Project, United States Army Corps of Engineers—Fort Worth, Operations Division, by correspondence dated April 18, 2011, wrote that “[d]rilling and associated hydrofracturing may present an increased risk of poor performance to dams. For this reason, the United States Army Corps of Engineers, Fort Worth District and

Southwestern Division, has placed a general restriction of any drilling activities within 3,000 feet of our dams and other critical structures.”

3. In that correspondence, Mr. Phelps also wrote that “[a]dditionally, the United States Army Corps of Engineers Headquarters (USACE) has directed that all drilling in proximity to our structures is subject to 33 United States Code 408” and “the Trinity Regional Project respectfully asks that you delay permitting actions on any well within 3,000 feet of our structures and refer those directly to us.”

Insurance Issues Related to Natural Gas Drilling

1. The Town’s oil and natural gas well drilling and operations ordinance was first adopted in 2003, and the insurance requirements contained therein were appropriate at that time.

2. Since 2003, there have been more incidents and accidents related to natural gas drilling production and operations as well as pipeline-related incidents and accidents, in the United States and in North Texas.

3. Insurance amounts that were appropriate in 2003 are not necessarily appropriate in 2011, due to increases in costs, property values, the intrusion of natural gas operations into areas that are residential in nature and a variety of other reasons, all of which justify an increase in insurance amounts.

4. The amounts proposed in this Ordinance are commercially available and although perhaps more costly for smaller operators, the necessity of protecting the public health, safety and welfare far outweigh the financial impact upon smaller operators, particular in the event of accidents or spillages onto private or public property, and the costs of accident cleanup, remediation and emergency operations.

5. Representatives of the insurance industry have verified the foregoing information relative to the commercial availability of such insurance in the amounts hereinafter referenced.

Purposes for Town’s SMARTGrowth Program and Congruency with Purposes for Oil and Natural Gas Drilling and Production Regulatory Framework

1. More than a decade ago, the Town adopted a SMARTGrowth Management Plan, which name eventually was amended in or about 2002 to become known as the SMARTGrowth Program (“SMARTGrowth”).

2. When originally adopted in 1999, SMARTGrowth’s purposes included the following:

- Mitigate the ill effects of rapid and intense urbanization (Flower Mound was the nation's tenth fastest growing community during the 1990s—growing by 226.54%, from 15,527 to 50,702 inhabitants);
- Ensure growth is served with adequate public infrastructure, services and facilities;
- Ensure growth contributes to the attainment of the community character and quality of life objectives established in the Town's Master Plan;
- Preserve open lands, natural landscapes, farmland, sensitive ecological resources and scenic vistas on the urban fringe;
- Integrate the built and natural environments and contribute to a sense of place; and
- Ensure growth does not occur at the expense of environmental quality, community character or quality of life.

3. Since the initial adoption of SMARTGrowth in 1999, the purposes of SMARTGrowth were expanded to consider other aspects of the development process in Flower Mound, many of which purposes are similar in nature relative to both the scope and purposes for regulation of oil and natural gas drilling in the Town, including but not limited to the following:

- Protect the open lands, natural landforms, agricultural landscapes and scenic vistas that create and define the Town's unique community character and quality of life;
- Protect the natural, scenic and ecological resources that are essential elements of the Town's community character and which provide irreplaceable plant and wildlife habitat;
- Ensure that the character and quality of Flower Mound's built environment contribute to desired community character objectives and integrate with surrounding natural landscapes;
- Avoid conflicting interaction and/or relationships between new and existing development and a resulting diminution of property values;
- Protect existing farmland and agricultural operations from conflicts with development;

- Implement a long-term strategy of sustainable development that embodies the community's vision and values and considers the environmental and related impacts of development; and

- Preserve and enhance Flower Mound's distinctive community character and quality of life by ensuring that its natural and built environments are consistent with the community vision and values embodied in the Flower Mound Master Plan.

4. While several of the purposes of SMARTGrowth address residential and nonresidential development and related infrastructure issues, several relate to purposes that are congruent with Town concerns regarding oil and natural gas drilling and operations.

5. The foregoing purposes are of critical importance to the Town and its residents, and for such reasons, it is imperative that oil and natural gas drilling and operations address such issues.

SECTION 2

From and after the effective date of this Ordinance, existing Article VII, entitled "Oil and Natural Gas Well Drilling and Operations," of Chapter 34, "Environment," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby repealed in its entirety and a new Article VII of Chapter 34, "Environment," of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Oil and Natural Gas Well Drilling and Operations" is hereby adopted to read as follows:

"Div. 1. Purpose, § 34-416.

Sec. 34-416. PURPOSE.

The exploration, development, and production of oil and gas in the town are activities that necessitate reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this article to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting, and storing of oil and gas and other substances produced in association with oil and gas within the corporate town limits, and to the extent allowed or may be allowed by state law, the extraterritorial jurisdiction, to protect the health, safety and general welfare of the public; minimize the potential impact to property and

mineral rights owners, protect the quality of the environment and encourage the orderly production of available mineral, oil, and gas resources.

Div. 2. Definitions, § 34-417.

Sec. 34-417. DEFINITIONS.

All technical industry words or phrases related to the drilling and production of oil and gas wells not specifically defined shall have the meanings customarily attributable thereto by prudent operators in the oil and gas industry. 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:

Abandonment means “abandonment” as defined by the Texas Railroad Commission and includes the plugging of a well and the restoration of any well site as required by this article.

Ambient noise level means the all encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location except for those sources related to oil and gas drilling, production, and compression, constituting the normal or existing level of environmental noise at a given location.

Base Flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Best management practices are state-of-the-art mitigation measures applied on a site-specific basis to reduce, prevent or avoid adverse environmental or social impacts, and for purposes of this article, best management practices include those practices recommended by the American Petroleum Institute (A.P.I.), the United States Environmental Protection Agency’s Natural Gas STAR Program, and/or other similarly recognized program, acceptable to and approved by the town.

Blowout preventer means a mechanical, hydraulic, pneumatic, or other device or combination of such

devices secured to the top of a well casing, including valves, fittings, and control mechanisms connected therewith, which can be closed around the drill pipe or other tubular goods which completely close the top of the casing and are designed to prevent blowouts.

Building means any structure used or intended for supporting or sheltering any use or occupancy. The term “building” shall be construed as if followed by the words “or portions thereof.”

Cathodic protection means an electrochemical corrosion control technique accomplished by applying a direct current to the structure that causes the structure potential to change from the corrosion potential to a protective potential in the immunity region. The required cathodic protection current is supplied by sacrificial anode materials or by an impressed current system.

Closed loop mud system means a system utilized while drilling so that reserve pits are not used and instead steel bins are used to collect all drilling waste.

Closest edge of construction or surface disturbance means and refers to the nearest point or location of the drill site or pad site.

Commission or Railroad Commission means the Texas Railroad Commission, or any successor state regulatory agency.

Completion of drilling, re-drilling, and re-working means the date the work is completed for the drilling, re-drilling, or re-working and the crew is released by completing its work or contract or by its employer.

Compression facility means: (a) those facilities that compress natural gas after production-related activities which are conducted at or near the wellhead and prior to a point where the gas is transferred to a carrier for transport and serves more than one well; and/or (b) a compressor that serves a pipeline.

Days mean calendar days, unless otherwise noted.

Daytime means the timeframe between 7:00 a.m. to 7:00 p.m.

Derrick means any framework, tower, mast and/or structure used for lifting and positioning the drilling string and piping above the well bore, and containing the machinery for turning the drilling bit around in the bore hole and which is required or used in connection with drilling or re-working a well for the production of oil and/or gas.

Drilling means digging or boring a new well for the purpose of exploring for, developing or producing oil and/or gas or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth to develop, produce or improve the production of oil and/or natural gas or other hydrocarbons.

Drilling equipment means the derrick, together with all parts of any apparatus to such structure, and every piece of apparatus, machinery or equipment used or erected or maintained for use in connection with drilling.

Drill site or Pad site means the premises used during the drilling or re-working of a well or wells located there and subsequent life of a well or wells or any associated operation.

Environmentally sensitive area means the same as that term is defined in section 98-32 of the town code, as amended.

Exploration means geologic or geophysical activities, including seismic surveys, related to the search for oil, gas, or other subsurface hydrocarbons.

Fire and Emergency Services means the Fire and Emergency Services Department of the Town of Flower Mound, Texas.

Floodplain means any land area susceptible to a general and temporary condition of partial or complete base flood inundation of normally dry land areas from overflow of inland waters or from the unusual and

rapid accumulation or runoff of surface waters from any source.

Frac or Fracturing means the process of fracture stimulation of a rock formation.

Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas.

Gas well means any well drilled, to be drilled, or used for the intended or actual production of natural gas.

Habitable structure means any structure suitable for human habitation or occupation, including but not limited to a single or multifamily residence(s), hotel, condominium building, building for commercial purposes and enclosed spaces in which individuals congregate for education, worship, amusement or similar purposes, or in which occupants are engaged at or in labor, and which is equipped with means of egress, light and ventilation facilities. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a habitable structure.

Inspector means the oil and gas inspector designated by the town manager of the Town of Flower Mound, Texas. Any technical advisor retained by the town pursuant to section 34-431 shall have the authority as the oil and gas inspector, pursuant to section 34-418.

Nighttime means the timeframe between 7:00 p.m. to 7:00 a.m.

Oil well means any well drilled, to be drilled, or used for the intended or actual production of oil.

Operation site means the area used for development and production and all operational activities associated with oil and gas after drilling activities are

complete, including any private access roadway utilized for such activities.

Operator means, for each well, the person listed on the Railroad Commission Form W-1 or Form P-4 for an oil and gas well that is, or will be, actually in charge and in control of drilling, maintaining, operating, pumping or controlling any well, including, without limitation, a unit operator. If the operator, as herein defined, is not the lessee under an oil and gas lease of any premises affected by the provisions of this article, then such lessee shall also be deemed to be an operator. In the event that there is no oil and gas lease relating to any premises affected by this article, the owner of the fee mineral estate in the premises shall be deemed an operator.

Permit means any written license granted by the town for the exploration, development, and production of oil and/or gas wells issued pursuant to rules and regulations of this article. Three (3) types of permits may be issued by the town, including an oil well permit, gas well permit, or a combined permit for the exploration, development, and production of both oil and gas wells as indicated on a single application.

Person means both the singular and the plural and means a natural person, a corporation, association, guardian, partnership, receiver, trustee, administrator, executor, and fiduciary or representative of any kind.

Practicable means available and capable of being done after taking into consideration existing technology, costs, and logistics in light of the overall purpose of the activity.

Public building means all buildings used or designed or intended to be used for the purpose of assembly of persons for such purposes as deliberation, entertainment, amusement, or health care. Public buildings include, but shall not be limited to, theaters, assembly halls, auditoriums, armories, mortuary chapels, dance halls, exhibition halls, museums, gymnasiums, bowling lanes, libraries, skating rinks, courtrooms, restaurants, churches, and hospitals.

Public park means any land area dedicated to and/or maintained by the town for traditional park-like recreational purposes, but shall not include equestrian trails, trailheads, trails, and privately-owned or privately-managed golf courses.

Re-drill means re-completion of an existing well by deepening or sidetrack operations extending more than one hundred fifty feet (150') from the existing well bore.

Religious institution means any building in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Residence means a house, duplex, apartment, townhouse, condominium, mobile home, or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for an oil, gas, or combined well permit is filed with the oil and gas inspector. The term also includes structures attached to the residence, including but not limited to garages, porches, carports and similar structures.

Re-working means re-completion or re-entry of an existing well within the existing bore hole or by deepening or sidetrack operations which do not extend more than one hundred fifty feet (150') from the existing well bore, or replacement of well liners or casings.

Right-of-way means public rights-of-way including streets, easements, and other property within the town and which is dedicated to the use and benefit of the public.

School means any public or private primary, secondary and post-secondary educational facilities providing education up through and including college or university level courses or instruction; and any licensed day care centers, meaning a facility licensed by the State of Texas or by the Town of Flower Mound, Texas, that provides care, training, education,

custody, treatment or supervision for more than six (6) children under fourteen (14) years of age, and for less than twenty-four (24) hours per day.

Storage tank means any vessel, having a liquid capacity that exceeds 230 L (60 gal) containing a flammable or combustible product that is intended for fixed installation.

Street means any street, highway, sidewalk, alley, avenue, recessed parking area, or other public right-of-way, including the entire right-of-way.

Tank means a container, covered or uncovered, used in conjunction with the drilling or production of oil and gas or other hydrocarbons for holding or storing fluids.

Tank battery means the point of collection (tanks) and disbursement (tank, meter, lease automated custody transfer [LACT] unit) of oil or gas from producing well(s).

Technical advisor means such person(s) familiar with and educated in the oil and gas industry or the law as it relates to oil and gas matters who may be retained from time to time by the town.

Town means the Town of Flower Mound, Texas.

Town attorney means the town attorney of the Town of Flower Mound, Texas.

Town code or *code* means the code of ordinances of the Town of Flower Mound, Texas, as amended.

Town engineer means the town engineer of the Town of Flower Mound, Texas.

Town manager means the town manager of the Town of Flower Mound, Texas.

Town secretary means the town secretary of the Town of Flower Mound, Texas.

Well means a hole or holes, bore or bores, to any horizon, formation, or strata used for the purpose of

producing oil, gas, liquid hydrocarbon, brine water, or sulphur water, or used as an injection well for secondary recovery, disposal or production of oil, gas, or other hydrocarbons from the earth.

Div. 3. Oil and Gas Inspector, § 34-418.

Sec. 34-418. OIL AND GAS INSPECTOR.

- (a) The town manager shall designate an oil and gas inspector who shall enforce the provisions of this article. The oil and gas inspector shall have the authority to issue any orders or directives required to carry out the intent and purpose of this article and its particular provisions. Failure of any person to comply with any such order or directive shall constitute a violation of this article.
- (b) The oil and gas inspector shall have the authority to enter and inspect any premises covered by the provisions of this article to determine compliance with the provisions of this article and all applicable laws, rules, regulations, standards, or directives of the state. Failure of any person to permit access to the oil and gas inspector shall constitute a violation of this article.
- (c) The oil and gas inspector shall conduct periodic operational inspections of all permitted wells in the town to determine that the wells are operating in accordance with proper safety parameters as set out in this article and all regulations of the Commission.
- (d) The oil and gas inspector shall have the authority to request and receive any records, including any records sent to the Commission, logs, reports and the like, relating to the status or condition of any permitted well. Failure of any person to provide any such requested material shall be deemed a violation of this article.

Div. 4. Agent, § 34-419

Sec. 34-419. OPERATOR'S AGENT.

Every operator of any well shall designate an agent, who is a resident of the State of Texas, upon whom all orders and notices provided in this article may be served in person or by registered or certified mail. Every operator so designating such agent shall within ten (10) business days notify the town secretary in writing of any change in such agent or such mailing address unless operations within the town are discontinued.

Div. 5. Oil and Gas Well Permits, § 34-420 – 34-425.

Sec. 34-420. OIL AND GAS WELL PERMIT REQUIRED.

- (a) A person desiring to engage and/or operate in oil and/or gas production activities shall apply for and obtain an oil, gas, or combined well permit under this article. It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to drill any well, assist in any way in the site preparation, re-working, fracturing, or operation of any such well, or to conduct any activity related to the production of oil and/or gas without first obtaining an oil, gas, or combined well permit issued by the town in accordance with this division. Such activities include, but are not limited to, re-working, initial site preparation, drilling, operation, construction of derricks or tank batteries, fracturing, and pressurizing.
 - (1) A permit shall be required for seismic surveys. The operator conducting the seismic survey shall pay the appropriate fee for such permit, in accordance with the provisions of appendix A of this code, and shall complete a written application for such permit, signed by the operator or some person duly authorized to sign on his or her behalf, no less than ten (10) business days prior to the commencement of any seismic survey activities on-site, and in said permit application shall provide the following information to the oil and gas inspector:
 - a. Operator/applicant name, telephone number, address, and, if possible, email address; if the operator is a corporation, the state of incorporation, and if the

operator is a partnership, the names and addresses of the general partners.

- b. Location of seismic survey.
 - c. Date and time the seismic survey will be conducted.
 - d. Detailed explanation of the seismic survey method to be used on-site.
 - e. Date and time the seismic survey will be completed.
 - f. Proof of insurance in the form of a standard commercial general liability insurance policy. This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, broad form property damage, independent contractors' protective liability and personal injury. This coverage shall be a minimum combined single limit of one million dollars (\$1,000,000.00) per occurrence location for bodily injury and property damage.
 - g. A detailed map showing the location of all vibration and geophone points.
- (2) Under no circumstances may explosive charges, including, but not limited to, dynamite, be used in any way related to the preparation and/or operation of conducting a seismic survey.
- (3) Notwithstanding any provision contained herein, no seismic surveys shall be permitted on town property or in the right-of-way, as defined in this article.
- (b) The operator must apply for and obtain an oil, gas, or combined well permit for the drilling, re-drilling, deepening, re-entering, activating or converting of each well.

- (c) An oil, gas, or combined well permit shall not constitute authority for the re-entering and drilling of an abandoned well. An operator shall obtain a new well permit in accordance with the provisions of this section if the operator is re-entering and drilling an abandoned well.
- (d) When an oil, gas, or combined well permit has been issued to the operator for the drilling, re-drilling, deepening, re-entering, activating, or converting of a well, such oil, gas, or combined well permit shall constitute sufficient authority for drilling, operation, production gathering or production maintenance, repair, re-working, testing, plugging and abandonment of the well and/or any other activity associated with mineral exploration at the site of such well; provided, however, that a new or amended permit shall be obtained before such well may be reworked for purposes of re-drilling, deepening or converting such well to a depth or use other than that set forth in the then current permit for such well.
- (e) Any person who intends to re-work or re-drill a permitted well using a drilling rig, to fracture stimulate a permitted well after initial completion, or to conduct seismic surveys or other exploration activities shall give written notice to the oil and gas inspector no less than ten (10) business days before the activities begin. The notice must identify where the activities will be conducted and must describe the activities in detail, including whether explosive charges will be used, the duration of the activities and the time the activities will be conducted. The notice must also provide the address and twenty-four-hour phone number of the person conducting the activities.
- (f) The following requirements shall apply to all fracture stimulation operations performed on a well: 1) at least three (3) business days before operations are commenced, the operator shall post a sign at the access road entrance of the well site advising the public of the date the operations will commence, said sign to be in accordance with the sign standards referenced in section 34-427(a)(36)(a) herein; 2) "flowback" operations to recover fluids used during fracture

stimulation shall be performed during daylight hours only unless the oil and gas inspector approves such operations during non-daylight hours; 3) a watchperson shall be required at all times during such operations; and 4) at no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank. All formation fracturing operations shall be conducted during daylight hours unless the operator has notified and received authorization from the oil and gas inspector that fracturing operations will occur before or after daylight hours to meet safety requirements.

- (g) An oil, gas, or combined well permit shall automatically terminate, unless extended, if drilling is not commenced within sixty (60) days from the date of the issuance of the permit. Drilling must commence within sixty (60) days from the date of the issuance of the permit on at least one (1) well in order to maintain the validity of the permit for the multiple wells. A permit may be extended by the oil and gas inspector for an additional sixty (60) days upon request by the operator and proof that the regulatory standards of the requested permit for such location have not changed. Any permit issued under this article shall otherwise expire two (2) years after its initial issuance date if no drilling has commenced on the permitted pad site. Upon the expiration of such permit, within ninety (90) days the operation site shall be restored to its original condition as nearly as practicable.
- (h) The oil, gas, or combined well permits required by this division are in addition to and are not in lieu of any permit that may be required by any other provision of this code or by any other governmental agency.
- (i) No additional oil, gas, or combined well permit or filing fees shall be required for:
 - (1) Any wells, existing and approved by the town on the effective date of this article; or
 - (2) Any wells in existence or on any wells on which drilling has commenced on land annexed into the town after the effective date of this article.

- (j) No oil, gas, or combined well permit shall be issued for any well to be drilled within any public park.
- (k) No oil, gas, or combined well permit shall be issued for any well to be drilled within seven hundred fifty feet (750') of a floodplain as measured from the closest edge of construction or surface disturbance. For floodplains identified by the Federal Emergency Management Agency (FEMA) on the most current Federal Insurance Rate Map (FIRM), the distance measurement from the closest edge of construction or surface disturbance shall be calculated in a straight line, without regard to intervening structures or objects, to the closest exterior point of the base flood elevation topographic contour.
- (l) No oil, gas, or combined well permit shall be issued for any fresh water fracture pond or well to be drilled or drill site that is in non-compliance with any standard, provision, procedure, and/or recommendation as described in the Town of Flower Mound Engineering Services Design Criteria and Construction Standards Manual.
- (m) No oil, gas, or combined well permit shall be issued for any well to be drilled on town-owned property without the prior consent of the town council. The town council shall review the insurance and security requirements, potential environmental impacts, and threats to public health and safety, on an individual basis prior to town council issuing the permit.
- (n) No oil, gas, or combined well permit shall be issued for any well to be drilled within seven hundred fifty feet (750') of a designated environmentally sensitive area. The distance from the closest edge of construction or surface disturbance shall be measured in a straight line, without regard to intervening structures or objects, to the closest exterior point of the environmentally sensitive area.
- (o) Pursuant to section 34-432 of this article, the oil and gas board of appeals may issue variances to reduce the distance requirements set out in subsections (k) and (n) of this section. In no event shall such reduction

exceed twenty-five percent (25%) of the prescribed minimum setback distance.

- (p) By acceptance of any permit issued pursuant to this article, the operator expressly stipulates and agrees to be bound by and comply with the provisions of this article. The terms of this article shall be deemed to be incorporated in any oil, gas, or combined well permit issued pursuant to this article with the same force and effect as if this article was set forth verbatim in such oil, gas, or combined well permit.

Sec. 34-421.

OIL AND GAS WELL PERMIT APPLICATION AND FILING FEES.

- (a) Every application for an oil, gas, or combined well permit issued pursuant to this article shall be in writing signed by the operator, or some person duly authorized to sign on his or her behalf, and filed with the oil and gas inspector.
- (b) Every application shall be accompanied by an appropriate permit fee that shall be assessed per well and in accordance with the provisions of appendix A of this code.
- (c) An appropriate inspection fee shall be assessed annually per well and in accordance with the provisions of appendix A of this code. Said inspection fee shall be paid annually beginning on the first anniversary of the initial issuance date of the subject oil and/or gas well permit and each year thereafter on the anniversary date thereof.
- (d) The application shall include the following information:
 - (1) The date of the application.
 - (2) An accurate legal description of the lease property to be used for the oil and/or gas operation, the parcel, and the production unit and name of the geologic formation as used by the Commission. Property recorded by plat shall reference subdivision, block and lot numbers, as applicable.

- (3) Map showing proposed transportation route and road for equipment, chemicals or waste products used or produced by the oil and/or gas operation.
- (4) Proposed well name(s).
- (5) Surface owner name(s), telephone number(s), address(es), and, if possible, email address(es), of the lease property.
- (6) Mineral lessee name(s), telephone number(s), address(es), and, if possible, email address(es).
- (7) Mineral owner name(s), telephone number(s), address(es), and, if possible, email address(es).
- (8) Operator/applicant name(s), telephone number(s), address(es), and, if possible, email address(es); if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners.
- (9) Name, telephone number, address, and, if possible, email address of the individual designated to receive notice.
- (10) Name of representative with supervisory authority over all oil and/or gas operation site activities and a twenty-four-hour phone number.
- (11) Location and description of all improvements, including water wells, and habitable structures within one thousand five hundred feet (1,500') of the proposed drill site.
- (12) Owner and address of each parcel of property within one thousand five hundred feet (1,500') of the proposed drill site.
- (13) A site plan of the proposed operation site showing the location of all improvements and drilling equipment, including the location of the proposed well(s) and other facilities, including, but not limited to, tanks, pipelines, compressors,

separators, and storage tanks, including the location of the potential maximum number of wells to be drilled and associated drilling equipment. In addition, the site plan must conform to all relevant standards and requirements described in subpart B, "Land Development Regulations," chapter 82, "Development Standards," article II, "Site Plans."

- (14) A tree survey prepared pursuant to chapter 94, "Vegetation," article II, "Trees," section 94-91, "Application." A tree survey shall be required from the outer edge of any improvements, construction areas, development, drilling equipment, materials, temporary roads, access easements, and/or built structures, extending outward therefrom five hundred feet (500'), without regard to intervening structures or objects.
- (15) The name, address and twenty-four-hour phone number of the person to be notified in case of an emergency.
- (16) The exact and correct acreage and number of wells included in the permit application.
- (17) Copies of all reports required by the Commission, specifically, including a copy of the approved Railroad Commission Form W-1 and/or P-4.
- (18) A signed road maintenance agreement supplied by the town that provides that the operator shall repair, at his or her own expense, any damage to public roads, streets, or highways caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, and operation of oil and/or gas wells.
- (19) A description of public utilities required during drilling and operation.
- (20) A description of the water source(s) to be used during drilling.

- (21) A copy of the approved Commission permit to drill together including attachments and survey plats that are applicable to the drill and/or operation sites.
- (22) A copy of the storm water pollution prevention plan as required by the Commission, Texas Commission on Environmental Quality, and/or the United States Environmental Protection Agency. A copy of the notice of intent shall be submitted to the Town of Flower Mound, Environmental Resources Division, at least seven (7) business days prior to the commencement of any onsite activity.
- (23) A copy of the erosion control plan pursuant to the town's Design Criteria and Construction Standards Manual, as amended, and approved by the town engineer.
- (24) A copy of the hazardous materials management plan as required by the town's fire chief's office. In addition to the hazardous materials management plan, all material safety data sheets (MSDSs) for all hazardous materials that will be located, stored, transported, and/or temporarily used on the drilling site shall be provided to the oil and gas inspector and fire chief.
- (25) A copy of the emergency response plan as required by the town's fire chief's office.
- (26) A copy of an emergency evacuation plan shall be provided, detailing all persons to be notified in the event of an evacuation, including, without limitation, all persons residing within one-half (1/2) mile of the edge of construction or surface disturbance.
- (27) The operator shall submit to the town a notarized letter from a hazardous materials cleanup service company, said company to be approved by the town, affirming that the operator has entered into a contract authorizing said company to perform cleanup services, at operator's cost,

in the event of a hazardous materials spill, leak, seepage or accident. A contract shall be and remain in full force and effect during the term of a permit and any change in contractor shall be approved in advance by the town, such approval not to be unreasonably withheld.

- (28) A copy of the determination by the Texas Commission on Environmental Quality of the depth of useable quality ground water.
- (29) Evidence of insurance and security requirements under this article.
- (30) A copy of the noise management plan, prepared by a noise control engineer or other qualified person approved by the oil and gas inspector, for any equipment used in the drilling, completion, or production of a well, as required in Section 34-422(i)(5) of this article.
- (31) A statement, under oath, signed by the operator, or designated representative, that the information submitted with the application is, to the best knowledge and belief of the operator or designated representative, true and correct.
- (32) All required application and well permit fees assessed in accordance with the appropriate provisions of appendix A of this code.
- (33) A copy of an environmental protection plan, paid for by the applicant or operator, and prepared by a qualified individual or firm designated or retained by the town if an environmental survey identified any environmentally sensitive area (ESA) within the proposed drill site.
- (34) A leak detection and compliance plan to ensure all site activities and equipment are in compliance with applicable federal, state and local rules and regulations. The plan shall outline the methodology to assess and evaluate the impact of drilling, fracturing, production, and other activities at the pad site and immediate surroundings. Specific elements of such a plan

shall include, but are not limited to, a quarterly leak detection monitoring program; methods and equipment utilized for emission measurements; and a response plan to address leak issues, should they arise, and any other information required by the oil and gas inspector. Monitoring shall include the evaluation of potential impact to air, soil, surface water and groundwater. Quarterly reporting of the monitoring results to the town's environmental services division is required with all laboratory data sheets, field logs, data summaries, and actions taken in the previous quarter. The plan must be created in accordance with guidelines promulgated by the town's environmental services division.

(35) No permit shall be issued unless an applicant has presented to the town written approval for a drilling site or pad site from the United States Army Corps of Engineers, verifying that such drilling site or pad site is not located within three thousand feet (3,000') of any federal public work, pursuant to Section 408 of Title 33 of the United States Code.

(36) A restoration bond payable to the town in the amount of \$100,000.00 per acre of the operation site, which shall be valid for a period of one (1) year following the expiration of an oil and gas well permit. The purpose of the restoration bond is to provide the town with a mechanism to restore proper grading and vegetation to the pad site and operation site. The town reserves the right to call the bond at any point during the one-year period after expiration of the permit. The bond shall be returned after the drilling of a permitted well.

Sec. 34-422.

OIL AND GAS WELL PERMIT.

(a) *Generally.* An oil, gas, or combined well permit shall be required for all wells related to developing or producing oil, gas, or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.

(b) *Application requirements.* An application for an oil, gas, or combined well permit shall include the following information:

- (1) All the requirements of section 34-421 of this article;
- (2) A detailed site plan that includes all the information required in section 34-421 of this article, but also includes specific details to the projected location of the major components of the drilling site, impacted environmentally sensitive areas, floodplains, topographic contours, creeks and other topographic features, adjacent buildings and other structures, and the measured distance from the drilling site to these major components of the drilling site, impacted environmentally sensitive areas, floodplains, topographic contours, creeks and other topographic features, adjacent buildings and other structures.
- (3) A traffic impact analysis in accordance with sections 82-181 through 82-183 of the town code, as amended.
- (4) All application submissions for a permit shall include at a minimum four (4) copies of the application and all associated documentation, including plats, maps, surveys, and supporting materials, reports, and/or forms.

(c) *Permitting procedure*

- (1) It is the responsibility of the oil and gas inspector to review and approve or disapprove all applications for oil, gas, or combined well drilling permits based on the criteria established by this article.
- (2) The oil and gas inspector, within forty-five (45) days after the filing of a completed application and remittance of all fees, insurance, and security per the requirements of this article for an oil, gas, or combined well permit, shall determine whether the application complies in all respects

with the provisions of this article and determine if the proposed well to be drilled and/or the drilling equipment to be installed is in compliance with the distance requirements for the requested permit on the date the completed application is received by the oil and gas inspector. Once the operator cures or otherwise complies with the conditions specifically noted by the oil and gas inspector's application comments by a resubmission of the application, such forty-five (45) day review period shall commence again.

- (3) The provisions of this article shall apply to any habitable structures or buildings for which an application for a building permit has been submitted on the date the application for an oil, gas, or combined well permit is filed with the oil and gas inspector.
- (4) With the exception of those pad sites permitted prior to the effective date of this article, all new and/or proposed construction of any buildings, habitable structures, streets, roads, and/or applicable improvements to the property upon which any oil and/or gas well is located must be in conformance with all applicable setbacks required by this article. Prior to the issuance of a building permit by the town for any of said habitable structure(s) or buildings, the owner or developer of any lot or tract for which a building permit is sought shall have the following notation placed on any deed, plat or site plan for said lot or tract: "This tract or lot is located less than one thousand five hundred feet (1,500') from an existing oil or gas well and is subject to the Codes and Ordinances of the Town of Flower Mound." The new construction setback may be reduced pursuant to section 34-432, "Appeals," of this article.
- (5) If all the requirements of this article for new oil and gas well permit applications are met, the oil and gas inspector shall issue a permit for the drilling of the well or the installation of the facilities for which the permit application was made. Prior to the issuance of such permit, and

within thirty (30) days after the oil and gas inspector's determination that the application complies in all respects with the provisions of this article, notice of the pending permit approval shall be mailed, via hand delivery or United States mail, to all property owners, as indicated by the most recently approved town tax roll, within one thousand five hundred feet (1,500') of such site, informing said property owners of a meeting open to the public at which meeting said property owners may ask questions about and discuss the pending permit application. All costs of property owner notification shall be borne by the operator and the meeting referenced herein shall occur no later than twenty-one (21) days after the date of mailing of property owner notification letters.

- (6) If the oil and gas inspector denies a permit application for cause as set out in this article for the requested oil, gas, or combined well permit, the oil and gas inspector shall notify the operator in writing of such denial stating the reasons for the denial. Within thirty (30) days of the date of the written decision of the oil and gas inspector to deny the permit, the operator shall cure those conditions that caused the denial and resubmit the application to the oil and gas inspector for approval and issuance of the permit. Alternatively, the operator may file an appeal to the oil and gas board of appeals under the provisions outlined in this article pursuant to section 34-432.

(d) *Wells setbacks for oil and gas well permits.*

- (1) It shall be unlawful to drill, re-drill, deepen, re-enter, activate or convert any oil or natural gas well, for which the closest edge of construction or surface disturbance is located:
 - a. Within one thousand five hundred feet (1,500') from any public park; or
 - b. Within one thousand five hundred feet (1,500') from any residence; or

- c. Within one thousand five hundred feet (1,500') from the property line upon which any religious institution, public building, hospital building or school is located or for which a building permit has been issued on or before the date of the application for a drilling permit is filed with the oil and gas inspector; or
 - d. Within one thousand five hundred feet (1,500') from any habitable structure; or
 - e. Within seven hundred fifty feet (750') from any recorded property, lot or tract line, except where otherwise referenced in this section. Further, where common surface and mineral estate ownership exists for adjacent and abutting tracts, no variance shall be required for such property, lot or tract lines; or
 - f. Within five hundred feet (500') from any existing storage tank, or source of potential ignition;
 - g. Within seven hundred fifty feet (750') of any public street, road, highway, or right-of-way line; or
 - h. Within one thousand five hundred feet (1,500') from any existing fresh water well.
 - i. All distances shall be measured from the closest edge of construction or surface disturbance in a straight line, without regard to intervening structures, or objects to the closest exterior point of any object, structure, or recorded property, lot or tract line, listed in subparagraphs (a) through (h), above.
- (2) The distances set out in subsection (1), "Wells setbacks for oil and gas well permits," may be reduced and documented as variances to the requested permit prior to issuance at the discretion of the oil and gas board of appeals

pursuant to section 34-432, "Appeals," of this article, but said setback distance variances shall never exceed* :

- a. Twenty-five percent (25%) of the distances set out in subsection (1), "Wells setbacks for oil and gas well permits"; or
 - b. No variance shall be permitted for any existing storage tank or source of potential ignition, pursuant to section 34-422(d)(1)(f) of this article, or any public street, road, highway or right-of-way line, pursuant to section 34-422(d)(1)(g) of this article.
- (e) *Erosion Control Plan.* Erosion control practices shall be conducted for all gas wells. Notwithstanding the requirements as stated in section 34-421(d)(23) of this article, compost berms that are at least 1 foot (1') high and two feet (2') wide, or equivalent erosion control devices, shall be installed near, around and about the downslope portion of the well pad so that off-site runoff is contained. Damage resulting from sedimentation and /or erosion shall be repaired immediately.
- (f) *Vehicle routes for oil and gas well permits.* Vehicles, in excess of three (3) tons gross vehicle weight, associated with drilling and/or production shall be restricted to such streets designated as arterials, collectors or local commercial as delineated in the town's Thoroughfare Plan. The vehicles shall be operated on state arterials whenever capable of being used. Such vehicles shall be operated on town arterials, collectors and local commercial only when it is not possible to use a state arterial to fulfill the purpose for which such vehicle is then being operated. The vehicle routes to be utilized and the operation of all such vehicles upon and across said vehicle routes shall be subject to approval by the town of a road maintenance agreement.
- (g) *Work hours for oil and gas well permits.* Site development, other than drilling, shall be conducted only between 7:00 a.m. and 7:00 p.m. Monday through Friday and between 9:00 a.m. and 5:00 p.m. on

* Wording amended by Section 3 of Ordinance No. 36-11 on August 1, 2011.

Saturday. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation and other related work conducted on the well site shall be limited to the same work hour restrictions identified above except in cases of fires, blowouts, explosions, and any other emergencies or where the delivery of equipment is necessary to prevent the cessation of drilling or production. The operator may request a variance from the oil and gas board of appeals, pursuant to section 34-432 of this article.

- (h) *Emissions requirements for oil and gas well permits; emissions compliance plan.* Gas well sites and production facilities shall comply with all state and federal emissions and air quality regulations for exhaust emissions, fugitive emissions, greenhouse gas emissions and all other applicable emissions control and air quality standards for natural gas drilling and production. In the event there are two (2) or more notices of violation during any twelve (12) month period, as determined by the Texas Commission on Environmental Quality or the United States Environmental Protection Agency, within thirty (30) days of the second notice of violation, the operator shall submit to the town an emissions compliance plan. An emissions compliance plan shall include, but is not limited to, twenty-four (24) hour on-site emissions monitoring and subsequent periodic reporting to the town council for a period of twelve (12) months of documented compliance, and the installation of appropriate equipment to meet the requirements of the emissions compliance plan, which may include but is not limited to vapor recovery units or other emissions control technology, to ensure that any emissions are within applicable state and federal regulations. Thereafter the operator shall employ best management practices to eliminate any emissions in violation of any state and federal regulations.
- (i) *Noise restrictions for oil and gas well permits.*
 - (1) No drilling, producing, or other operations shall produce a sound level greater than:

- a. Seventy (70) decibels using the “A weighting filter” (“dB(a)”) when measured at a distance of three hundred feet (300’) from the drilling, producing, or operating equipment in question during the daytime.
 - b. Fifty-six (56) dB(a) when measured to the nearest residence, public building, or habitable structure from the drilling, producing, or operating equipment in question during the nighttime.
 - c. Seventy (70) dB(a) during apply to formation fracturing when measured at a distance of three hundred feet (300’) from the production equipment in question during the daytime.
- (2) No person shall operate or permit to be operated in connection with the operation of a producing well(s) any compression facility which creates a sound level that exceeds the ambient noise level by more than three (3) dB(a) when measured at the nearest property line, residence, habitable structure, or public building, whichever is closer. In addition, if a residence, habitable structure, or public building for which an application for a building permit has been submitted on or before the date the application for a building permit for the compression facility is filed with Building Inspections is present on the property for which the compression facility is proposed, the sound level shall not exceed the ambient noise level by more than three (3) dB(a) when measured at the proposed residence, habitable structure or public building. Upon approval by the town, the compression facility shall be totally enclosed and designed to meet architectural standards complementary of the surrounding area.
- (3) *Low frequency noise standards.* No drilling, production, or other operations shall produce a low frequency sound level that exceeds the following decibel levels:

16 Hz octave band: 65 decibels

32 Hz octave band: 65 decibels

64 Hz octave band: 65 decibels

- (4) Sound level measurements shall conform to the following guidance:
 - a. Sound level meters shall conform, as a minimum, to the requirements of the American National Standards Institute.
 - b. Sound level measurements shall be taken four feet (4') above ground level.
 - c. Sound levels shall be determined by averaging minute-by-minute measurements made over minimum fifteen (15) minute sample duration, if practicable. Sound level measurements shall be taken under conditions that are representative of the noise experienced by the complainant (*e.g.*, at night, morning, evening, or during special weather conditions).
 - d. In all sound level measurements, the existing ambient noise level from all other sources in the encompassing environment at the time and place of such sound level measurement shall be considered to determine the contribution to the sound level by the oil and gas operation(s).
- (5) The noise management plan, as approved by the oil and gas inspector, shall detail how the equipment used in the drilling, completion, transportation, or production of a well complies with the maximum permissible noise levels of this article. The noise management plan must:
 - a. Identify operation noise impacts;
 - b. Provide documentation, if applicable, establishing the ambient noise level for both daytime and nighttime hours prior to construction of any wellhead compressor or compression facility and after the installation of the noise generation equipment verifying compliance with this

section. The operator shall be required to submit noise compliance reports at least semi-annually or in response to a noise complaint; and

c. Detail how the impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:

1. Nature and proximity of adjacent development, location, and type;
2. Seasonal and prevailing weather patterns, including wind directions;
3. Vegetative cover on or adjacent to the site;
4. Topography;
5. Operation and site noise management measures which may include but not be limited to: use of critical grade mufflers on generators and motors; use of structural noise curtains, walls, or enclosures; and best management practices by limiting or eliminating noisier operations, such as tripping, deliveries of pipe, casing and heavy loads, use of horns for communication, and operation of vehicle audible back-up alarms at night.

d. Identify the location of noise blankets, sound walls or other applicable noise mitigation effects around the pad side. Noise mitigation shall be required for all drilling, hydraulic fracturing and production operations.

(j) *Tank specifications for oil and gas well permit.* All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications

unless other specifications are approved by the fire chief. The top of the tanks shall be no higher than eight feet (8') in height.

(k) *Building Permit Required.*

(1) No building or structure regulated by the current code adopted by the town, shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the building official. Notwithstanding the provisions of the town's building codes, compliance with all noise requirements of this article shall be documented, signed by a noise control engineer or other qualified person approved by the oil and gas inspector, and submitted to the oil and gas inspector prior to the issuance of a certificate of occupancy.

(2) It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by the current code adopted by the town, to register as a general contractor with the town. Work regulated includes but is not limited to: construction of gates, fencing, plumbing, irrigation, electricity, roadways, entrances, compressors, flow lines, pipelines, gathering lines, tank batteries, and buildings. Such registration shall be upon forms supplied by the building official and shall become null and void on December 31 of each year. An appropriate fee for registration shall be assessed in accordance with the provisions of appendix A of this code.

(l) All other provisions outlined in this article shall be required.

Sec. 34-423.

AMENDED OIL AND GAS WELL PERMITS.

(a) An operator may submit an application to the oil and gas inspector to amend an existing oil, gas, or combined well permit to commence drilling from a new

drill site that is not shown on (or incorporated by reference as part of) the existing permit, to relocate a drill site or operation site that is shown on (or incorporated by reference as part of) the existing permit, or to otherwise amend the existing permit.

- (b) Application for amended permits shall be in writing, shall be signed by the operator, and shall include the following:
 - (1) The applicant shall submit an appropriate application fee for amended oil and/or gas well permits that shall be assessed per well and in accordance with the provisions of appendix A of this Code;
 - (2) A description of the proposed amendments;
 - (3) Any changes to the information submitted with the application for the existing permit (if such updated information has not previously been provided to the town);
 - (4) Such additional information as is reasonably required by the oil and gas inspector to demonstrate compliance with the applicable permit; and
 - (5) Such additional information as is reasonably required by the oil and gas inspector to prevent imminent destruction of property or injury to persons.
- (c) All applications for amended permits shall be filed with the oil and gas inspector for review. Incomplete applications may be returned to the applicant, in which case the town shall provide a written explanation of the deficiencies; however, the town shall retain the application fee. The town may return any application as incomplete if there is a dispute pending before the Railroad Commission regarding the determination of the operator.
- (d) If the amended permit application is in compliance with the provisions of this article, the oil and gas inspector

shall approve the amendment within thirty (30) days after the application is filed.

- (e) The failure of the oil and gas inspector to review and issue an amended permit within the time limits specified above shall not cause the application for the amended permit to be deemed approved.
- (f) The decision of the oil and gas inspector to deny an amendment to a permit shall be provided to the operator in writing within thirty (30) days after the decision is reached, including an explanation of the basis for the decision. The operator may appeal any such denial pursuant to the procedures outlined in section 34-432 of this article.

Sec. 34-423.1. TRANSFER OF OIL AND GAS WELL PERMITS.

- (a) An oil, gas, or combined well permit may be transferred by the operator with the prior written consent of the town if no outstanding violations of the terms of this article exist, if the transfer is in writing signed by both parties, if the transferee agrees to be bound by the terms and conditions of the transferred oil, gas, or combined well permit, if all information previously provided to the town as part of the application for the transferred oil, gas, or combined well permit is updated to reflect any changes, and if the transferee provides the insurance and security required by this article. The insurance and security provided by the transferor shall be released if a copy of a written transfer meeting these requirements is provided to the town. The transfer shall not relieve the transferor from any liability to the town arising out of any activities conducted prior to the transfer. The operator also shall submit an updated emergency response plan, hazardous materials management plan, and emergency evacuation plan. The operator shall not be permitted to assume control of the permit until all required documents have been submitted, reviewed and approved by the oil and gas inspector.
- (b) The applicant shall submit an appropriate transfer fee for oil and/or gas well permits that shall be assessed per well and in accordance with the provisions of appendix A of this code.

Sec. 34-424.

SUSPENSION OR REVOCATION OF OIL AND GAS WELL PERMITS.

- (a) If an operator (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of an oil, gas, or combined well permit (including any requirement incorporated by reference as part of the permit), the oil and gas inspector shall give written notice to the operator specifying the nature of the failure and giving the operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community and potential negative impacts upon the surrounding environment. In no event, however, shall the cure period be less than thirty (30) days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this article.
- (b) If, the operator fails to correct the noncompliance within the designated timeframe, the oil and gas inspector may suspend or revoke the permit pursuant to the provisions of this article.
- (c) No person shall carry on any operations performed under the terms of a permit issued under this article during any period of time in which the permit is suspended or revoked or pending a review of the decision or order of the town suspending or revoking the permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the permit was ordered for the safety of persons or as required by the Commission.
- (d) If the operator does not cure the noncompliance within the time specified in this article, the oil and gas inspector, upon written notice to the operator, shall notify the Commission and request that the Commission take any appropriate action.
- (e) Nothing in this section shall prohibit the issuance of a stop work order or other appropriate order by the fire

chief or police chief when, in his professional opinion, there exists a risk of imminent destruction of property or injury to persons. In such event, an operator shall comply with such order and efforts shall be undertaken by an operator and such town official to bring such circumstances or condition into compliance with this article or pertinent provisions of the International Fire Code, as amended, and any other applicable local, state or federal regulations giving rise to the issuance of such order.

- (f) An operator may file an appeal of the suspension or revocation of a permit to the Board of Appeals under the provisions outlined in this article pursuant to section 34-432, "Appeals" of this article.
- (g) If an application for an oil, gas, or combined well permit is denied by the oil and gas inspector, nothing herein contained shall prevent a new permit application from being submitted to the oil and gas inspector for the same well.

Sec. 34-425.

PERIODIC REPORTS.

- (a) The operator shall notify the oil and gas inspector of any changes to the following information within seven (7) business days after the change occurs:
 - (1) The name, address, and/or phone number of the operator;
 - (2) The name, address, and/or phone number of the person designated to receive notices from the town (which person must be a resident of Texas that can be served with such notices in person or by registered or certified mail); and
 - (3) The operator's emergency action response plan (including "drive-to-maps" from public rights-of-way to each drill site).
- (b) The operator shall notify the oil and gas inspector of any change to the name, address, and twenty-four-hour phone number of the person(s) with supervisory authority over drilling or operations activities within one (1) business day.

(c) *Requirement to report emergencies.*

- (1) The operator shall immediately notify the oil and gas inspector and fire chief of any incident resulting in product loss from a hydrocarbon storage facility or pipeline facility, blowout, fire, explosion, incident resulting in injury, death, or property damage, or any other significant incidents as defined by the Commission.
- (2) A written report, containing a brief summary of the incident, shall be submitted to the oil and gas inspector by 5:00 p.m. on the first business day of the town following the incident, and a duplicate report shall be submitted to the fire chief by the same time.
- (3) A follow-up report, signed and dated by the person responsible for said report, shall be submitted to the oil and gas inspector and the fire chief within thirty (30) days following the incident. The operator responsible for the follow-up incident report shall include the following information:
 - a. Operator/applicant name, phone number, address, and, if possible, email address.
 - b. Description of the incident, including, but not limited to, the time, date, location, and cause of the event.
 - c. Duration of the incident, that is, when it began and when it terminated to the degree that it no longer constituted a hazard to the health, safety, and well-being of persons or property, regardless of the distance or separation from the place of incident.
 - d. How the incident was brought under control and/or remedied.
 - e. A full and complete description of the type of intercompany investigation or other investigation or inquiry that was made

concerning the incident, the findings or results of such inquiry or investigation, and the action taken as a result of the findings and inquiry concerning the prevention of the existence of future hazards.

- (d) The operator shall provide the oil and gas inspector and the fire chief a copy of any “incident reports” or written complaints submitted to the Railroad Commission within thirty (30) days after the operator has notice of the existence of such reports or complaints. This shall include, but not be limited to, notification of any reportable quantity releases of oil, natural gas, and/or associated minerals, chemicals, or solid and/or liquid wastes, pursuant to regulatory requirements established by the Commission, and notification to the fire marshal of any fire, and/or equipment strikes by lightning.
- (e) Beginning on December 31 after each well is completed, and continuing on each December 31 thereafter until the operator notifies the oil and gas inspector that the well has been abandoned and the site restored, the operator shall submit a written report to the oil and gas inspector identifying any changes to the information that was included in the application for the applicable permit that have not been previously reported to the town.

Sec. 34-425.1. PUBLIC INFORMATION.

- (a) After approval of a permit application, the operator shall submit in writing an accurate timeline account, which is updated weekly, of planned operational events associated with the permit to the oil and gas inspector. The account shall state a timeline and description of events that will occur. Events to be documented shall include but not be limited to: site preparation and grading, site construction of the derrick and drilling equipment and accessory structures, the expected amount of time spent drilling on-site, all casing installation, testing, flaring, disassembly of the derrick, pipeline installation, fracture stimulation, maintenance, tank battery construction, site cleanup, and production.
- (b) The applicant shall submit an educational letter of operations within fifteen (15) days of approval of the

application to all property owners within one thousand five hundred feet (1,500') of the edge of construction or surface disturbance. The letter shall detail typical operations associated with oil and gas drilling activity with an intended audience of the general public. The topics to be detailed shall include, but not be limited to: site preparation, site development and construction, drilling, casing, fracturing, pipeline construction, production, transportation, and general weekly, monthly, and yearly maintenance of the operation site.

Div. 6. Insurance, Bond and Indemnity, § 34-426.

Sec. 34-426. BOND, LETTERS OF CREDIT, INDEMNITY, INSURANCE.

(a) *General requirements.* The operator shall be required to:

- (1) Comply with the terms and conditions of this article and the permit issued hereunder.
- (2) Promptly clear drill sites and operation sites of all litter, trash, waste, materials, and/or other substances used, allowed, or occurring in the operations, and after abandonment or completion grade, level and restore such property to the same surface conditions as nearly as possible as existed before any oil and gas drilling, exploration and production operations were commenced.
- (3) Indemnify and hold harmless the town, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by operator under an oil, gas, or combined well permit:
 - a. Where such injuries, death or damages are caused by operator's sole negligence or the joint negligence of operator and any other person or entity; and

- b. Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of operator.
- (4) Promptly pay all fines, penalties and other assessments imposed due to breach of any requirements and/or terms of the oil, gas, or combined permit.
- (5) Promptly restore to its former condition any public property damaged by the oil and gas drilling, exploration or production operation.

(b) *Bond, irrevocable letter of credit.*

- (1) Prior to the issuance of an oil, gas, or combined well permit the operator shall provide the oil and gas inspector with a security instrument in the form of a bond or an irrevocable letter of credit as follows:
 - a. *Bond.* A bond shall be executed by a reliable bonding or insurance institution authorized to do business in Texas, acceptable to the town. The bond shall become effective on or before the date the oil, gas, or combined well permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the permit term or until the well is plugged and abandoned and the site is fully restored, whichever occurs first. The operator shall be listed as principal and the instrument shall run to the town, as obligee, and shall be conditioned that the operator will comply with the terms and regulations of this article and the town. The original bond shall be submitted to the oil and gas inspector with a copy of the same provided to the town secretary.
 - b. *Letter of credit.* An irrevocable letter of credit shall be issued in favor of the town by a reliable bank or other financial

institution, acceptable to the town, authorized to do business in Texas and shall become effective on or before the date the permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the permit term. The town shall require a local banking association to be named as a confirming bank for purposes of presentment and collection in Denton or Tarrant Counties, Texas. The town shall be authorized to draw upon such letter of credit to recover any fines or penalties assessed under this article. Evidence of the execution of a letter of credit shall be submitted to the oil and gas inspector by submitting an original signed letter of credit from the banking or financial institution, with a copy of the same provided to the town secretary.

- c. The principal amount of any security instrument shall be fifty thousand dollars (\$50,000.00) for any single well and shall not be less than \$200,000.00 per pad site. If, after completion of a well, the applicant/operator who initially posted a single well or pad site bond has complied with all of the provisions of this article and such operator's well(s) is (are) in production and all drilling operations have ceased, the operator may submit a request to the oil and gas inspector to reduce the existing bond to ten thousand dollars (\$10,000.00) per well for the remainder of the time the well produces without reworking. During any re-drilling or re-working, the amount of the bond or letter of credit shall be reinstated to and maintained at fifty thousand dollars (\$50,000.00) for any single well and shall not be less than \$200,000.00 per pad site.
- d. If at any time after no less than a fifteen (15) day written notice to the operator, the oil and gas inspector shall deem any

operator's bond or letter of credit to be insufficient, the town may require the operator to increase the amount of the bond or letter of credit up to a maximum of three hundred thousand dollars (\$300,000.00) per well.

- e. The operator agrees to renew the bond or irrevocable letters of credit prior to expiration thereof so the bond or letters of credit shall remain in full force and effect during the entire permit term, including any extension. The operator shall provide the town evidence that the bond or irrevocable letter of credit has been renewed at least thirty (30) days prior to its scheduled expiration date. If an operator fails to timely provide the town with such certification of renewal, the town shall be authorized to immediately, and at any time prior to the expiration date of the bond or irrevocable letters of credit accepted hereunder by the town by presenting the original thereof, together with an affidavit executed by the town manager stating that operator is in default under the terms of this article.

- f. Whenever the oil and gas inspector finds that a default has occurred in the performance of any requirement or condition imposed by this article, a written notice shall be given to the operator. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the oil and gas inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the operator shall, within the time therein specified, either cause or require the work so identified to be performed, or failing to do so, shall pay over to the town one hundred twenty-five percent (125%) of the estimated cost of doing the work as set forth in the notice. In no event, however, shall the cure

period be less than thirty (30) days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this article.

- g. In the event of operator's failure or refusal to timely cure such a default, the town shall be authorized to draw against the irrevocable letter of credit or bond to recover such amount due from the operator. Upon receipt of such monies, the town shall have the right but not the corresponding obligation to proceed by such mode as deemed convenient to cause the required work to be performed and completed.
- h. In the event that the well has not been properly abandoned under the regulations of the Commission, at the end of the permit term and the drill site and the operation site restored in conformity with the regulations of this article, the town shall have the right to assert a claim against the bond and/or make presentment of the irrevocable letters of credit accepted hereunder by the town by presenting the original thereof, together with an affidavit executed by the town manager stating that the operator is in default under the terms of this article. If the operator provides a bond, the operator as principal, and the guarantor of surety on the bond or the operator shall be liable to pay for the cost to properly plug and abandon the well and restore the drill site and operation site in conformity with the regulations of this article. The surety shall be liable in the amount of the bond. If, however, the operator provides an irrevocable letter of credit, rather than a bond, then the operator shall be solely liable to pay for the cost to properly plug and abandon the well and restore the drill

site and operation site in conformity with the regulations of this article. Upon receipt of such monies, the town shall have the right but not the corresponding obligation to proceed by such mode as deemed convenient to cause the required work to be performed and completed.

- i. When the well or wells covered by said irrevocable letters of credit or bond have been properly abandoned in conformity with all regulations of this article, and in conformity with all regulations of the Commission and notice to that effect has been received by the town, or upon receipt of a satisfactory substitute, the irrevocable letter of credit or bond issued in compliance with these regulations shall be terminated and canceled and returned to the applicant/operator.
- j. The only requirements for presentment of any bond or letter of credit accepted hereunder by the town shall be the presentation of the original thereof, together with an affidavit executed by the town manager stating that the applicant/operator is in default under the terms of this article.

(c) *Insurance.* In addition to the bond or letter of credit required pursuant to this article, the operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are canceled, the oil, gas, or combined well permit shall be suspended on such date of cancellation and the operator's right to operate under such oil, gas, or combined well permit shall immediately cease until the operator files additional insurance as provided herein.

(1) *General requirements applicable to all policies.*

- a. The town, its officials, employees, agents and officers shall be endorsed as an "additional insured" to all policies except

employers' liability coverage under the operator's workers compensation policy.

- b. All policies shall be written on an occurrence basis except for environmental pollution liability (seepage and pollution coverage) and excess or umbrella liability, which may be written on a claims-made basis.
- c. All policies shall be written by an insurer with an A-: VIII or better rating by the most current version of the A. M. Best Key Rating Guide or with such other financially sound insurance carriers acceptable to the town.
- d. Deductibles shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
- e. Certificates of insurance shall be delivered to the Town of Flower Mound, Environmental Resources Division, 2121 Cross Timbers, Flower Mound, Texas 75028, evidencing all the required coverages, including endorsements, prior to the issuance of a permit.
- f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the town.
- g. Any failure on part of the town to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- h. Each policy shall be endorsed to provide the town a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) days' notice shall be acceptable in the event of non-payment of premium.

- i. During the term of the oil, gas, or combined well permit, the operator shall report, in a timely manner, to the oil and gas inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- j. Upon request, certified copies of all insurance policies shall be furnished to the town.

(2) *Standard commercial general liability policy.* This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors' protective liability and personal injury. This coverage shall be a minimum combined single limit of twenty-five million dollars (\$25,000,000.00) per occurrence location for bodily injury and property damage.

(3) *Excess or umbrella liability.* Fifty million dollars (\$50,000,000.00) excess or umbrella liability coverage, if the operator has a stand-alone environmental pollution liability (EPL) policy. Seventy-five million dollars (\$75,000,000.00) excess or umbrella liability coverage, if the operator does not have a stand-alone EPL policy. This coverage must include an endorsement for sudden or accidental pollution. If excess or umbrella liability coverage is written on a "claims made" basis, the operator must maintain continuous coverage and purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the town.

(4) *Environmental pollution liability coverage.*

- a. Operator shall purchase and maintain in force for the duration of the oil, gas, combined well permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with an loss arising from the insured site. Coverage shall be maintained in an amount of at least twenty-five million dollars (\$25,000,000.00) per loss.
- b. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
- c. The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the town.

(5) *Control of well.* The policy shall cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents.

- a. Five million dollars (\$5,000,000.00) per occurrence with no aggregate, if available,

otherwise an aggregate of ten million dollars (\$10,000,000.00).

- b. Five hundred thousand dollars (\$500,000.00) sub-limit endorsement may be added for damage to property for which the operator has care, custody and control.

(6) *Workers' compensation and employers' liability insurance.*

- a. Workers' compensation benefits shall be Texas statutory limits.
- b. Employers' liability shall be a minimum of one million dollars (\$1,000,000.00) per accident.
- c. Such coverage shall include a waiver of subrogation in favor of the town and provide coverage in accordance with applicable state and federal laws.

(7) *Automobile liability insurance.*

- a. Combined single limit of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- b. Coverage must include all owned, hired and non-owned automobiles.

(8) *Certificates of insurance.*

- a. The company must be admitted or approved to do business in the State of Texas, unless the coverage is written by a surplus lines insurer.
- b. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO, or an equivalent policy form acceptable to the town, with the exception of environmental

pollution liability and control of well coverage.

c. Shall set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the town. All policies shall be endorsed to read:

“THIS POLICY WILL NOT BE CANCELED, NON-RENEWED OR MATERIALLY ALTERED WITHOUT 30 DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE TOWN EXCEPT WHEN THIS POLICY IS BEING CANCELED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE 10 DAYS ADVANCE WRITTEN NOTICE IS REQUIRED.”

e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

(d) *Indemnification and express negligence provisions.*

(1) Each oil, gas, combined well permit issued by the oil and gas inspector shall include the following language: Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or its assigns may have, or claim to have, against the Town of Flower Mound, and/or its departments, agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the performance of the work performed by the operator under an oil, gas, or combined well permit. The operator shall fully

defend, protect, indemnify, and hold harmless the Town of Flower Mound, Texas, its departments, agents, officers, servants, or employees, from and against any and all claims, suits, judgments and demands for and including, without limitation, personal injuries and death in connection therewith which may be made or asserted by operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the operator under a permit. The operator agrees to indemnify and hold harmless the Town of Flower Mound, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from and against any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the Town, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the Town of Flower Mound occurring on the drill site or operation site in the course and scope of inspecting and permitting the oil and gas wells INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE TOWN OF FLOWER MOUND OCCURRING ON THE DRILL SITE OR OPERATION-SITE IN THE COURSE AND SCOPE OF INSPECTING AND PERMITTING THE OIL, GAS, OR COMBINED WELLS. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE OPERATOR TO INDEMNIFY AND PROTECT THE TOWN OF FLOWER MOUND, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE TOWN OF FLOWER MOUND, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE.

- (e) *Notice.* The individual designated to receive notice regarding or related to the oil, gas, or combined well permit shall be a resident of Texas upon whom all orders and notices provided in this article may be served in person or by registered or certified mail. Every operator shall within ten (10) days notify the oil and gas inspector in writing of any change in such agent or mailing address unless operations in the town are discontinued and abandonment is complete.

Div. 7. On-Site and Technical Regulations, § 34-427 – 34-430.

Sec. 34-427. TECHNICAL REQUIREMENTS.

(a) *On-site requirements*

- (1) *Abandoned wells.* All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings shall be cut and removed to a depth of at least ten feet (10') below the surface unless the surface owner submits a written agreement otherwise. Three feet (3') shall be the minimum depth at which all well casings shall be cut and moved. No structures shall be built over an abandoned well. A permanent abandonment marker pipe, with the well identity and location permanently inscribed, shall be welded to the casing and shall be at least four inches (4") in diameter with a length of four feet (4') visible above the ground level.
- (2) *Annual meeting with town required.* Each operator shall meet annually with representatives of the town to review emergency response plans. These reviews shall be in accord with U.S. Department of Transportation and Commission requirements and the operator shall:
 - a. Furnish or update a copy of the emergency response plan;
 - b. Review the responsibilities of each governmental organization in response to an emergency or incident;

- c. Review the capabilities of the operator to respond to an emergency or incident;
 - d. Identify the types of emergencies or incidents that will result in or require contacting the town; and
 - e. Plan mutual activities in which the town and the operator can engage in order to minimize the risks associated with oil or gas well operation.
 - f. Within two (2) years of the effective date of the oil/gas permit and every two (2) years thereafter, the operator shall conduct an on-site emergency drill that includes, but shall not be limited to, the personnel operating the oil or gas well, local law enforcement personnel, the fire chief or his designee, and personnel from the town's environmental services division.
- (3) *Blowout prevention.* Blowout prevention equipment shall be used on all wells being drilled, worked-over, re-worked, re-drilled or in which tubing is being changed. Protection shall be provided to prevent blowout during oil and/or gas operations as required by and in conformance with the requirements of the Commission and the recommendations of the American Petroleum Institute. The operator shall equip all drilling wells with adequate blowout preventors, flow lines and valves commensurate with the working pressures involved as required by the Commission.
- (4) *Chemical and materials storage.* All chemicals and/or hazardous materials shall be stored in such a manner as to prevent, contain, and facilitate rapid remediation and cleanup of any accidental spill, leak, or discharge of a hazardous material. Operator shall have all material safety data sheets (MSDSs) for all hazardous materials on-site. All applicable federal and state regulatory requirements for the

proper labeling of containers shall be followed. Appropriate pollution prevention actions shall be required and include, but are not limited to, chemicals and materials raised from the ground (e.g., wooden pallets), bulk storage, installation and maintenance of secondary containment systems, and protection from storm water and weather elements.

- (5) *Closed-loop drilling fluid systems.* Closed-loop drilling fluid systems shall be used instead of lined reserve pits.
- (6) *Compliance.* Operator shall comply at all times with all applicable federal, state and town requirements.
- (7) *Discharge.* No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substance, or any refuse including wastewater or brine from any oil and/or gas operation, or the contents of any container used in connection with any oil and/or gas operation in, into, or upon any public rights-of-way, alleys, streets, lots, storm drains, ditches or sanitary sewer drains or any body of water or any public or private property in the town, or to the extent allowed or may be allowed by state law, in the extraterritorial jurisdiction of the town.
- (8) *Drilling Fluids.* Low toxicity glycols, synthetic hydrocarbons, polymers, and esters shall be substituted for conventional oil-based drilling fluids.
- (9) *Drilling fluid storage pit.* No drilling fluid storage pits shall be located within the Town of Flower Mound.
- (10) *Drill stem testing.* All open hole formation or drill stem testing shall be done during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate oil and/or gas separator to storage

tanks and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

- (11) *Drip pans and other containment devices.* Drip pans and other containment devices shall be placed or installed underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections, and any other areas or structures that could potentially leak, discharge, or spill hazardous liquids, semi-liquids, or solid waste materials, including hazardous waste that is inseparable by simple mechanical removal processes.
- (12) *Dust, vibrations, odors.* All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas, and other hydrocarbon substances. All equipment used shall be so constructed and operated so that vibrations, dust, odor, or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; and the site or structures thereon shall not be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.
- (13) *Electric lines.* All electric lines to production facilities shall be located in a manner compatible to those lines already installed in the surrounding area or subdivision.
- (14) *Electric motors.* Only electric prime movers or motors shall be permitted for the purpose of

pumping wells or natural gas gathering compression facilities. No electric power shall be generated on location. All electrical installations and equipment shall conform to town ordinances and applicable national codes.

(15) *Emergency response plan.* Prior to the commencement of oil and/or gas drilling, or any other hydrocarbons production activities, operator shall submit to the oil and gas inspector an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and/or gas wells. Said plan shall use existing guidelines established by the Commission, the Texas Commission on Environmental Quality, Texas Department of Transportation and/or the United States Environmental Protection Agency. The emergency response plan shall be kept current with any additions, modifications, and/or amendments concerning all construction related activities, oil and/or natural gas operations and, oil and/or natural gas production. Updated plans shall be submitted to the oil and gas inspector within two (2) business days after any additions, modifications, and/or amendments to said plan(s). A copy of the emergency response plan shall be kept on-site. Further, a copy of the emergency response plan shall be provided to any potentially impacted independent school district for comment by said school district, with a copy of said comments provided to the oil and gas inspector. The emergency response plan shall at a minimum provide for:

- a. Prompt and effective response to emergencies regarding:
 1. Leaks or releases that can impact public health, safety, welfare;
 2. Fire or explosions at or in the vicinity of an oil or gas well; or
 3. Natural disasters;

- b. Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency. Further, at the request of the town, an automated audible alarm system shall be installed and maintained at each drill site to provide warnings for a substantial drop in pressure, the release of any gas or oil, or fire. Said alarm system shall be approved by the fire chief or his designee prior to beginning any drilling or production operations;
- c. The availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency;
- d. Measures to be taken to reduce public exposure to injury and the probability of accidental death or dismemberment;
- e. Emergency shut down of an oil or gas well and related site;
- f. The safe restoration of service and operations following an emergency or incident;
- g. A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures.

(16) *Equipment painted.* All production equipment on the drill site and/or operation site shall be painted and maintained at all times, including pumping units, storage tanks, buildings and structures. Low VOC paints shall be used.

(17) *Explosive charges.* If, during any phase of drilling, re-drilling, deepening, re-entering, re-working, activating, converting, fracturing, or completing an oil and/or gas well, explosive charges are used, the operator shall provide notice to the oil and gas inspector at least ten

(10) days prior to such activities. The notice shall identify the date that the explosive charges will be used, the date and means of transporting the explosive charges, and the transportation route to and from the drill site and/or operation site that will be used for the delivery of the explosive charges.

(18) *Fire prevention; sources of ignition.* Firefighting apparatus and supplies as approved by the fire services department and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site and/or operation site at all times during drilling and production operations. The operator shall be responsible for the maintenance and upkeep of such equipment. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an emergency shut-off valve to the well distribution line. The operator shall comply with all requirements set forth in chapter 38, "Fire Prevention and Protection," of the town's code of ordinances, as amended.

(19) *Fresh water wells.* It shall be unlawful to drill any well, the center of which well bore, at the surface of the ground, is located within the setbacks as described in Section 34-422(d) of this article from any fresh water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore. Within one hundred twenty (120) days of its completion date, each oil and/or gas well shall be equipped with a cathodic protection system to protect the production casing from external corrosion. The oil and gas inspector may approve an alternative method of protecting the production casing from external corrosion.

a. A third party contractor retained by the town shall collect and analyze a "pre-drilling," "post-drilling" and "post-fracturing" water analysis and flow rate

from any existing fresh water well within one thousand five hundred feet (1,500') of the gas well. When such third party contractor is retained by the town for the purpose of collecting and analyzing water well samples, the cost of such fees and charges assessed by the third party contractor shall be borne by the operator.

b. Such water tests shall conform to the following testing requirements:

1. Water samples must be collected and analyzed utilizing proper sampling and laboratory protocol from a United States Environmental Protection Agency or Texas Commission on Environmental Quality approved laboratory.
2. Well samples shall be collected and analyzed prior to any drilling activity to document baseline water quality data of the well. A post-drilling sample shall be collected and analyzed after the conclusion of drilling of each well. A post-fracturing sample shall be collected and analyzed after the conclusion of each fracturing operation.
3. Parameters to be tested for include but are not limited to: methane, chloride, sodium, barium, and strontium, total petroleum hydrocarbons (TPH), volatile organic compounds (VOCs), ethene and ethane.

(20) *Gas emission or burning restrictions.* No person shall allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Commission. If the venting of gases into the atmosphere or the burning of gases by open

flame is authorized as provided by law or as permitted by the Commission, then such venting or open flame shall not be located closer than five hundred feet (500') from any habitable structure and not used in operations on the drilling site, and such venting or open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners. The town's fire chief and all property owners, as indicated by the most recently approved town tax roll, within one thousand feet (1,000') of such venting or open flame, shall be given seventy-two (72) hours advance notice, via hand delivery or United States mail, of any such activities and such notice shall include the date and time and anticipated length of time such activities will occur.

- (21) *Gas well stimulation.* Only light sand fracture technology or technologies approved by the oil and gas inspector shall be used to fracture stimulate a well. Fracing operation shall be scheduled to occur during daylight hours unless the operator has notified the oil and gas inspector that fracing will occur before or after daylight hours to meet safety requirements. The operator shall add non-radioactive tracing or tagging additives into fracturing fluids and shall notify in writing the oil and gas inspector with the written formula identifying such additive(s). The written formula submitted by the operator shall be unique for each permitted pad site. Air, gas, or pneumatic drilling shall not be permitted.
- (22) *Grass, weeds, trash.* All drill sites and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred feet (100') around any gas tank or tanks or producing wells.
- (23) *Green completions.* After fracturing or re-fracturing, an operator shall utilize appropriate equipment and processes to eliminate natural gas and associated vapor releases into the environment. All salable gas shall be directed to the sales line or shut in and conserved. All wells

that have a sales line shall be required to employ reduced emission completion techniques and methods. The oil and gas inspector may modify the requirements of this subsection in the event that reduced emission completion techniques or methods are not feasible or would endanger the safety of personnel or the public.

- (24) *Hazardous materials plan.* Hazardous materials management plan shall be on file with the oil and gas inspector and town's fire chief. The hazardous materials plan shall be kept current with any additions, modifications, and/or amendments concerning all construction related activities, oil and natural gas operations, and oil and natural gas production. Updated hazardous materials plans shall be submitted to the oil and gas inspector within two (2) business days of any additions, modifications, and/or amendments.

- (25) *Lights.* No person shall permit any lights located on any drill site or operation site to be directed in such a manner that they shine directly on public roads, adjacent property or property in the general vicinity of the drill site or operation site. In addition, no person shall permit any lights located on any drill site or operation site to exceed four-tenths (.4) foot-candles at the closest public road, property line, habitable structure or residence. To the extent practicable, and taking into account safety considerations, all such lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent habitable structures and residences.

- (26) *Lubricating oil purification units.* Any and all stationary diesel power plants located on the drilling site associated with the exploration development, operation, and production of oil, natural gas, or associated minerals shall have a lube oil purification unit installed, maintained and functional at all times while the diesel plant is operating.

- (27) *Muffling exhaust.* Exhaust from any internal combustion engine, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any drilling completion or production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers, or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and prevent the escape of noxious gases, fumes and ignited carbon or soot. In the event there are two (2) or more notices of violation during any twelve (12) month period, an emissions compliance plan shall be required, pursuant to section 34-422(h) of this article.
- (28) *Organic solvents.* Organic solvents, such as trichloroethylene and carbon tetrachloride, shall not be used for cleaning any element, structure, or component of the derrick, drilling equipment, tools, or pipes. To the maximum extent practicable, high flash point Varsol shall be used.
- (29) *Pipe dope.* Lead-free, biodegradable pipe dope shall be substituted for American Petroleum Institute (API) specified pipe dope.
- (30) *Pits.* Pits are prohibited, unless authorized by the oil and gas board of appeals, pursuant to section 34-432 of this article, and in such event, any and all so authorized reserve pits, completion/workover pits, drilling fluid disposal pits, fresh makeup water pits, gas plant evaporation/retention pits, mud circulation pits, or water condensate pits shall be lined with plastic or stored above ground in tanks. Such pits and contents shall be removed from the premises and the drilling site within forty (40) days after completion of the well, unless otherwise authorized by the oil and gas inspector. No washout pits shall be located within the town, unless all fluid, sludge, solid waste materials, drilling fluids, waste oil, spent completion fluids, all other liquids, semi-liquids, and mud, including hazardous waste that is inseparable by simple mechanical removal

processes, and is made up primarily of natural material all of which is immediately captured within a fully enclosed, above ground containment tank.

- (31) *Private roads and drill sites.* Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site shall be at least twenty feet (20') from any adjacent property line (where said adjacent property is separately owned), and twenty-five feet (25') wide with an overhead clearance of fourteen feet (14'). Such roads shall be designed to avoid impact on environmentally sensitive areas, shall be constructed outside any environmentally sensitive areas, and shall be surfaced with crushed rock, gravel or ore and maintained so as to prevent dust and mud. Brine water, sulphur water, or water in mixture with any type of hydrocarbon, may not be used for dust suppression. In particular cases these requirements governing the surfacing of private roads may be altered at the discretion of the oil and gas inspector and the town engineer after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from adjoining and nearby property owners whose surface rights are not leased by the operator; the purpose for which the property of such nearby property owners, whose surface rights are not leased by the operator, is or may be used; topographical features; nature of the soil; and exposure to wind. No aspect of this division shall be construed to supersede any permitting, review, standards, and regulations set forth in the Town Engineering Services Design Criteria and Construction Standards Manual.
- (32) *Salt water disposal (injection) wells.* No salt water disposal (injection) wells shall be located within the town.
- (33) *Secondary containment systems.* All pad sites shall be equipped with a secondary containment

system, including lining with an impervious material. The secondary containment system shall be designed to prevent a harmful impact to the property adjacent to the pad site or to any surface water. The secondary containment system must be designed in accordance with guidelines promulgated by the town's environmental services division.

(34) *Soil sampling pre- and post-drilling; periodic soil sampling.* It shall be unlawful to contaminate any soil, and fail to remediate such contamination, at any drill site in the town. Soil sampling shall be subject to the following requirements:

- a. Upon application for an oil and gas well permit, soil sampling shall be conducted prior to the commencement of any drilling activities at the proposed drill site to establish a baseline study of site conditions. A minimum of one (1) soil sample shall be taken at the location of any proposed equipment to be utilized at the site to document existing conditions at the drill site.
- b. A third party contractor retained by the town shall collect and analyze all "pre-drilling" and "post-drilling" soil analysis. The cost of such fees and charges assessed by the third party contractor shall be borne by the operator.
- c. Soil samples must be collected and analyzed utilizing proper sampling and laboratory protocol from a United States Environmental Protection Agency or Texas Commission on Environmental Quality approved laboratory.
- d. Post-drilling soil samples shall be collected and analyzed after the conclusion of drilling of each well. Subsequent to the drilling of each well, periodic soil samples shall be taken to

document soil quality data at the drill site, as requested by the oil and gas inspector.

- e. Whenever abandonment occurs pursuant to the requirements of the Commission and as referenced in section 34-430 of this article, the operator so abandoning shall conduct post production soil sampling when equipment is removed from the drill site to document that the final conditions are within regulatory requirements.
- f. Methodology and parameters to be tested are referenced in subsection (35) herein.
- g. If it is found that soil contains a prohibited amount of a hazardous substance, the operator, within thirty (30) days, shall remediate the location and thereafter soil sampling shall be collected and analyzed at such locations on the drill site to determine compliance with subsection (35) herein.

(35) *Soil sampling parameters and sampling requirements for pits.* If reserve pits, completion/workover pits, drilling fluid disposal pits, fresh makeup water pits, gas plant evaporation/retention pits, mud circulation pits, washout pits, or water condensate pits are constructed, operated, or maintained on the drill site or operation site and are not stored above ground in tanks, the oil and gas inspector shall have the discretion to require the well operator to perform soil sampling.

- a. The following selected Texas-Specific Median Background Concentrations (TSBCs) are provided by the Texas Commission on Environmental Quality as representations of median concentrations across Texas. It is recommended that a site-specific background be collected to allow more specific data available unless use of the TSBCs are acceptable to the

operator. The Railroad Commission guidance concerning releases in sensitive areas provides the minimum criteria acceptable for soil sampling as illustrated below. If any media other than soil is impacted by operations at the site, consultation with the Texas Commission on Environmental Quality and Railroad Commission will be sought to determine if the Texas Risk Reduction Program (TRRP, 30 TAC 350) will be applied. The concentrations below will be utilized by the town to determine if additional sampling or reporting to the state is needed:

| Metal | Median Background Concentration (mg/kg) | Metal | Median Background Concentration (mg/kg) |
|----------------|--|--------------|--|
| Antimony | 1 | Mercury | 0.04 |
| Arsenic | 5.9 | Nickel | 10 |
| Barium | 300 | Selenium | 0.3 |
| Beryllium | 1.5 | Strontium | 100 |
| Boron | 30 | Tin | 0.9 |
| Total Chromium | 30 | Titanium | 2,000 |
| Cobalt | 7 | Thorium | 9.3 |
| Lead | 15 | Vanadium | 50 |
| Manganese | 300 | Zinc | 30 |

| Compound | RRC Limits (mg/kg) |
|-----------------|---------------------------|
| TPH | 10,000 |
| Benzene | 0.026 |
| Toluene | 8.2 |
| Ethylbenzene | 7.6 |
| Xylenes | 120 |

- b. If soil sampling is required by the oil and gas inspector, it shall be conducted prior to refilling, backfilling, modifying, deactivating, or abandoning any reserve pit, completion/workover pit, drilling fluid disposal pit, fresh makeup water pit, gas plant evaporation/retention pit, mud

circulation pit, washout pit, or water condensate pit located on the oil and gas drilling site and/or operation site.

- c. The soil sampling shall be completed with all data, results, documentation, and/or reports provided to the oil and gas inspector within thirty (30) days of sample collection. The reporting shall include at a minimum, a description of the points samples (GPS coordinates included), description of the planned/existing/removed equipment above the sampled area, methodology of sample collection, description of field conditions, summary of laboratory data results compared to the criteria noted above, copies of all laboratory data sheets, drawings (prepared to scale) of sampling points, past equipment and areas where spills are anticipated to have occurred (if applicable).
- d. The third party shall perform soil sampling through the collection and analysis of a sufficient number of samples from environmental media to reliably characterize the nature and degree of potential release(s) at the drill site, as well as the horizontal and vertical extent of the impact, if identified above the criteria listed above. Surface samples collected from surface to one foot (1') below grade are sufficient for initial screening or confirmatory sampling.
- e. At a minimum, a soil contamination assessment shall consist of no less than five (5) sample locations across a pad site. A minimum of two (2) samples shall be taken from beneath the planned tank containment area or immediately adjacent if tank containment is present. A minimum of two (2) samples shall be taken down gradient, and, if applicable, in the direction of the nearest surface water

source from the tank containment. All surface water sources located within three hundred feet (300') of the pit shall have a minimum of one (1) sediment sample taken and analyzed pursuant to compounds noted above.

(36) *Signs.*

- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent drilling site- and operation site-fencing erected pursuant to section 34-428 of this article. Such sign shall be of durable material, maintained in good condition and, unless otherwise required by the Commission, shall have a surface area of not less than two (2) square feet or more than four (4) square feet and shall be lettered with the following:
 1. Well name and number;
 2. Name of operator;
 3. Address of property;
 4. The emergency 911 number; and
 4. Telephone numbers of two (2) persons responsible for the well who may be contacted twenty-four (24) hours a day in case of an emergency.
- b. Permanent weatherproof signs reading "DANGER NO SMOKING ALLOWED" shall be posted immediately upon completion of the drill site- or operation site-fencing at the entrance of each such site and tank battery or in any other location approved or designated by the town's fire chief. Sign lettering shall be four (4) inches in height and shall be red on white background or white on a red

background. Each sign shall include the emergency notification numbers of the fire services department and the operator, well and lease designations required by the Commission.

- c. For notification of fracture stimulation activities, required signage shall have white lettering on a red background.

(37) *Storage of equipment.* Onsite storage is prohibited on the drill site or operation site. No equipment shall be stored on the drilling or production operation site, unless it is necessary to the everyday operation of the well. Lumber, pipes, tubing and casing shall not be left on the drill site or operation site except when drilling or well servicing operations are being conducted on the site. No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley, or upon any drill site or operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. Fire and emergency services shall be the entity that determines whether any and all equipment on the drill site or operation site shall constitute a fire hazard. No refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises. This prohibition shall not be deemed to exclude a conventional gas separator or dehydrator.

(38) *Storage tanks.* All tanks and permanent structures shall conform to the A.P.I. specifications unless other specifications are approved or required by the fire chief. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three feet (3') in height and have a storage capacity of one and one-half (1½) times the contents of the largest tank in accordance with the fire codes, and be

buried at least one foot (1') below the surface. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

- (39) *Tank battery facilities.* Tank battery facilities shall be equipped with a remote foam line and a lightning arrestor system. All tank batteries shall comply with the National Fire Protection Association (NFPA) Comprehensive Consensus Codes (C3) NFPA 30 Flammable and Combustible Liquids Code. An operator shall eliminate, capture or destroy any and all emissions emanating from any tanks.
- (40) *Surface casing.* Surface casing shall be run and set in full compliance with the applicable rules and regulations of the Commission.
- (41) *Valves.* Each well must have a shutoff valve to terminate the well's production. The fire services department shall have access to the well site to enable it to close the shut-off valve in an emergency.
- (42) *Waste disposal.* Unless otherwise directed by the Commission, all tanks used for storage shall conform to the following:
 - a. Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet all A.P.I. standards. All tanks must have a vent line, flame arrester and pressure relief valve. All tanks must be enclosed by a fence applicable to the issued permit.
 - b. Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-drilling, re-working or deepening of any well shall be discharged

into an aboveground self-contained tank. All disposals must be in accordance with the rules of the Commission and any other applicable local, state or federal agency.

- c. Unless otherwise directed by the Commission, waste materials shall be removed from the drill site or operation site and transported to an off-site disposal facility not less often than one (1) time every thirty (30) days. Water stored in on-site tanks shall be removed as necessary.
- d. All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the state, this article, and any other applicable ordinance of the town.

(43) *Watchperson.* The operator must keep a watchman or security personnel on-site during the drilling, re-drilling or re-working of a well when other workmen are not on the premises.

- (b) Pursuant to section 34-432 of this article, the oil and gas board of appeals may issue variances to technical requirements (8), (19), (21), (25), (27), (28), (30), and (35) set out in subsection (a) of this section.

Sec. 34-428.

SCREENING, FENCES, AND GATES.

- (a) *Screening.* Screening shall be installed completely around the entire perimeter of the pad site and shall be sufficient to screen from view the structures sought to be screened within forty-five (45) days following the completion of drilling of the first permitted well. Screening options shall adhere to a combination of the following:

- (1) *Vegetation.* A landscape plan is required and shall include a combination of large canopy trees and small to medium canopy trees which are native or adaptive drought tolerant species, shrubs, vines, groundcover, ornamental grasses, and/or wildflowers, or other adapted drought

tolerant species, complementary to the surrounding landscape.

- a. Trees shall be a minimum three inch (3") caliper at the time of planting. A minimum of six (6) trees per one hundred linear feet (100 lf) is required. Vegetation must have an installed and operable irrigation system that provides total water coverage to all plant materials. All vegetation shall be planted and spaced to provide maximum screening, growth, and overall health.
- b. At least fifty percent (50%) of the landscape vegetation shall be evergreen.
- c. The vegetation shall be kept in an attractive state and in good condition at all times by the applicant or operator.
- d. Landscape plans shall be prepared by a landscape architect and vegetation used to satisfy screening standards shall include the following species, as may be approved by the oil and gas inspector:
 1. Juniperus species
 2. Live Oak
 3. Bur Oak
 4. Shumard Oak
 5. Water Oak
 6. Pinus species
 7. Ilex species
 8. Wax Myrtle
 9. Leyland Cypress
 10. Cedar Elm
- e. Protected trees and specimen trees removed from the area of the drill site or operation site shall be mitigated for and shall conform to the tree removal requirements in chapter 94, "Trees."

(2) *Natural and manmade screens.* When possible, sites should be located to utilize natural, structural, and topographical screens.

Vegetated berms may be constructed if they are compatible with the surrounding area.

- (3) *Fence screening.* Fencing shall be equipped with interlocking opaque slats, mesh, or other screening material approved by the oil and gas inspector. Color of materials shall be uniform, non-reflective tones, similar to the Bureau of Land Management Standard Environmental Colors chart. Approved colors shall include, but not be limited to green, brown, tan, and black and be complementary to the color of the fence and painted equipment.

- b. *Fences/walls.* Fences shall be required around all operation sites and drill sites during initial drilling, completion, re-drilling or re-working operations. A secured entrance gate to the drill site or operation site shall be required. All gates are to be kept locked when the operator or his and her employees are not within the enclosure. Within forty-five (45) days following the completion of drilling the first permitted well or the derrick being removed following the completion of drilling for wells drilled in succession, all remaining drilling equipment shall be completely enclosed by a permanent chain link fence or other approved fencing material according to the requirements of the requested permit, as follows:

- (1) The fence fabric shall be at least eight feet (8') in height, but no more than ten feet (10') in height;
- (2) Support posts shall be set in concrete and shall be imbedded into the ground to a depth sufficient to maintain the stability of the fence; provided, however, so long as stability of the fence is maintained, temporary fence posts shall not be required to be set in concrete;
- (3) The chain link fabric shall be coated with vinyl or plastic material and approved colors including, but not limited to, green, brown, tan, and black and be complimentary to the color of the fence screening and painted equipment;

- (4) The chain link fence fabric shall have a minimum thickness of eleven (11) gauge;
 - (5) The chain link fabric shall be two-inch (2") mesh; provided, however, three and one-half (3½") inch mesh may be used on any fence where the fabric is interwoven with artificial screening material approved by the fire chief;
 - (5) Posts and rails shall be standard galvanized, welded pipe, schedule forty (40) or thicker; provided, however, that non-galvanized drill pipe may be used if it exceeds schedule forty (40) in thickness;
 - (6) All pipe and other ferrous parts, except chain link fabric and drill pipe, shall be galvanized inside and outside with a plating which contains a minimum of one and two-tenths (1.2) ounces of zinc per square foot of surface area;
 - (7) Tension rods shall be three-eighths inch ($\frac{3}{8}$ ") round steel bolt stock. Adjustable tighteners shall be turnbuckle or equivalent having a six-inch (6") minimum take-up. Tension bars shall have a minimum thickness of one-fourth inch ($\frac{1}{4}$ ") by three-fourths inch ($\frac{3}{4}$ "); and
 - (8) All fences shall have security extension arms at the top of such fences and such security extension arms shall be strung with at least two (2) strands of galvanized barbed wire.
- c. *Gate specifications.* All chain link fences shall be equipped with at least one (1) gate. The gate shall meet the following specifications:
- (1) Each gate shall be not less than twelve feet (12') wide and be composed of two (2) gates, each of which is not less than six feet (6') wide, or one (1) sliding gate not less than twelve feet (12') wide. If two (2) gates are used, gates shall latch and lock in the center of the span;
 - (2) The gates shall be of chain link construction that meets the applicable specifications, or of other

approved material that, for safety reasons, shall be at least as secure as chain link fence;

- (3) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for immediate access to the drill site or operation site; and
- (4) Operator must provide the town's fire chief with a "knox padlock" or "knox box with a key" to access the well site to be used only in case of an emergency.

Sec. 34-429. EMERGENCY CONTROL; CLEANUP AND MAINTENANCE.

- (a) *Cleanup after well servicing.* After the well has been completed, or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within thirty (30) days.
- (b) *Clean-up after spills, leaks and malfunctions.* After any spill, leak or malfunction, the operator shall remove or cause to be removed to the satisfaction of the town's fire chief and the oil and gas inspector all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. If the owner fails to begin site clean-up within twenty-four (24) hours, the town shall have the right to contact the Commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.
- (c) *Free from debris.* The property on which a drill site or operation site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material within a radius of one hundred feet (100') around any separators, tanks and producing wells.
- (d) *Painting.* All drilling equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and on-site buildings or structures. When

requiring painting of such, the oil and gas inspector shall consider the deterioration of the quality of the material of which such equipment, facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue and brown, or other neutral colors approved by the oil and gas inspector.

- (e) *Blowouts.* In the event of the loss of control of any well, operator shall immediately take all steps to regain control regardless of any other provision of this article and shall notify the oil and gas inspector immediately. The oil and gas inspector shall certify in writing, briefly describing the same, to the town manager and reporting regarding any and all reported blowouts and the steps taken to regain control of such well(s). In the event of such loss of well control, the oil and gas inspector may employ any well control expert or experts or other contractors or suppliers of special services, including but not limited to companies offering hazardous materials cleanup services, or may incur any other expenses for labor and material which the oil and gas inspector deems necessary to regain control of such well. The town shall then have a valid lien against the interest in the well of all working interest owners, excluding working interest owners designated as such by the Commission as a result of a forced pooling order, to secure payment of any expenditure made by the town pursuant to such action of the oil and gas inspector in gaining control of said well.

Sec. 34-430.

PLUGGED AND ABANDONED WELLS.

- (a) *Surface requirements for plugged and abandoned well or drill site.* Whenever abandonment occurs pursuant to the requirements of the Commission, the operator so abandoning shall be responsible for the restoration of the site to its original condition as nearly as practicable in conformity with the regulations of this article.
- (b) Abandonment shall be approved by the oil and gas inspector after restoration of the drill site and operation site has been accomplished in conformity with the

following requirements at the discretion of the oil and gas inspector:

- (1) The derrick and all appurtenant equipment thereto shall be removed from the drill site or operation site;
- (2) All tanks, towers, and other surface installations shall be removed from the drill site or operation site;
- (3) All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the drill site or operation site, unless otherwise directed by the Commission;
- (4) All holes and depressions shall be filled with clean, compactable soil;
- (5) All waste, refuse or waste material shall be removed from the drill site or operation site; and
- (6) During abandonment, the operator shall comply with all applicable sections in this article.

(c) *Abandoned well requirement.* The operator shall furnish the following at the discretion of the oil and gas inspector:

- (1) A copy of the W-3A 'Notice of Intention to Plug & Abandon' and 'W-3 Plugging Record' forms on the same date these forms are submitted to the Commission; and
- (2) A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated and shall take no longer than forty-five (45) days once commenced.

(d) *Abandonment requirements prior to new construction.* All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Commission and this article prior to the issuance of any

building permit for development of the property. No structure shall be built over an abandoned well.

Div. 8. Technical Advisor, § 34-431.

Sec. 34-431. TECHNICAL ADVISOR.

The town may from time to time employ a technical advisor or advisors who are experienced and educated in the oil and gas industry or the law as it pertains to oil and gas matters. The function of such advisor(s) shall be to advise, counsel or represent the town on such matters relating to oil and gas operations within the town as the town may want or require and the effect thereof, both present and future, on the health, welfare, comfort and safety of the citizens of the town. In the event such technical advisor(s) is employed for the purpose of advising, counseling or representing the town relative to an operator's unique and particular set of circumstances, case or request relating to this article, then the cost for fees or charges assessed pursuant to this article shall be borne entirely by operator. Prior to the employment of a technical advisor, the town shall inform the operator of the intended scope of work and the estimated costs and expenses. The employment of a technical advisor shall be approved by the town council.

Div. 9. Appeals, § 34-432.

Sec. 34-432. APPEALS.

- (a) In order to hear and decide appeals of orders, decisions, or determinations made by the oil and gas inspector relative to the application and interpretation of this article, there shall be and is hereby created an oil and gas board of appeals consisting of members who shall pass on matters pertaining to all oil and/or gas well applications and permits.
- (b) The members of the zoning board of adjustment are hereby appointed as the oil and gas board of appeals as provided by section 34-432(a) of this article and shall have and exercise the authority to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the issuance of an oil, gas, or combined well permit or the revocation or suspension of any permit issued hereunder, and as provided by this

article. Any person or entity whose application is denied by the oil and gas inspector or whose permit is suspended or revoked or whose well or equipment is deemed by the oil and gas inspector to be abandoned may file an appeal to the oil and gas board of appeals pursuant to chapter 78, division 3, entitled "Board of Adjustment" in the code of ordinances of the Town of Flower Mound, Texas.

- (c) The oil and gas board of appeals shall review the appeal and any other related information. The oil and gas board of appeals shall consider the following in deciding an appeal:
 - (1) Whether there are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity;
 - (2) Whether a variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other similarly situated properties, but which rights are denied to the property on which the application is made;
 - (3) Whether the granting of the variance on the specific property will adversely affect any other feature of the comprehensive master plan of the town;
 - (4) Whether the variance, if granted, will be of no material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity;
 - (5) Whether the operations proposed are reasonable under the circumstances and conditions prevailing in the vicinity considering the particular location and the character of the improvements located there;
 - (6) Whether the drilling of the maximum number of potential wells for the proposed drill site would

conflict with the orderly growth and development of the town;

- (7) Whether there are other alternative well site locations;
 - (8) Whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with the oil, gas, or combined well permit conditions to be imposed;
 - (9) Whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas;
 - (10) Whether there is reasonable access for town fire personnel and firefighting equipment, including the ability to safely evacuate potentially affected residents; and
 - (11) Whether the impact upon the adjacent property(ies) and the general public by operations conducted in compliance with the oil, gas, or combined well permit conditions are reasonable and justified, balancing the following factors:
 - a. The reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and
 - b. The availability of alternative drilling sites.
- (d) Any person or entity aggrieved by any decision of the oil and gas board of appeals may present to a court of record a petition, duly verified, stating that such decision is illegal, in whole or in part, and specifying the grounds of the alleged illegality. Such petition shall be presented within ten (10) days after the date on which the decision of the oil and gas board of appeals was rendered and not thereafter, and judicial review of the petition shall be pursuant to section 211.011 of the Texas Local Government Code, as amended.

- (e) The oil and gas board of appeals may reverse or affirm, in whole or in part, or modify the oil and gas inspector's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination. Any action under this subsection, including the issuance of any variance authorized by this article, shall require a three-fourths majority vote of the entire oil and gas board of appeals.
- (f) Appeal fees shall be required for every appeal, which fees shall be assessed per well and in accordance with the provisions of appendix A of this code.

Div. 10. Penalty, § 34-433.

Sec. 34-433. PENALTY.

- (a) It shall be unlawful and an offense for any person to do the following:
 - (1) Engage in any activity not permitted by the terms of an oil, gas, or combined well permit issued under this article.
 - (2) Fail to comply with any condition set forth in an oil, gas, or combined well permit issued under this article; or
 - (3) Violate any provision or requirement set forth under this article.
- (b) Any violation of this article shall be punished by a fine of not more than five hundred dollars (\$500.00) per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.
- (c) Any violation of this article that governs fire safety, public health, and/or sanitation, including dumping, refuse, or discharge, shall be punished by a fine not exceeding two thousand dollars (\$2,000.00) per violation per day, subject to applicable state law. Each

day that a violation exists shall constitute a separate offense.

- (d) The penalty provided herein shall be cumulative of all other remedies provided by state law, including but not limited to the recovery of civil penalties under Subchapter B, Chapter 54, of the Texas Local Government Code. The town may institute any appropriate action or proceeding in a court of competent jurisdiction to enjoin the violation of this article. The power of injunction may be exercised in enforcing this article whether or not there has been a criminal complaint filed.

Secs. 34-434 – 451. RESERVED.”

SECTION 3

All ordinances, orders, or resolutions heretofore passed and adopted by the Town Council of the Town of Flower Mound, Texas, are hereby repealed to the extent that said ordinances, orders, or 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

This ordinance shall take effect and be in full force from and after the date of its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, THIS ____ DAY OF JULY, 2011.

Melissa D. Northern, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND CONTENT:

Terrence S. Welch, TOWN ATTORNEY