

PLANNING AND ZONING COMMUNICATION

Date: August 6, 2007

Subject: Proposed amendments to Section 7960 of the Zoning Ordinance, “Gas Well Drilling and Production”

The following revisions to Section 7960 of the Zoning Ordinance were reviewed and revised by Sub-Committees of the Mansfield Planning and Zoning Commission and City Council at a Joint Worksession held on July 24, 2007. These amendments will be brought to the Planning and Zoning Commission for public hearing and consideration at a future meeting.

The amendments include minor items such as requiring video submissions in DVD format and setting gas well inspection fees by the City’s Development Fee Schedule. There will also be changes to the permitting process and technical requirements for drilling activities. These revisions include:

- An ambient noise provision that will replace the current set-level noise limitation;
- A requirement for a closed loop mud system (a storage tank system) rather than an open reserve pit;
- A provision to require a gas well operator to connect to the City water system to obtain water for the fracturing process if within 1,500 feet of a water line;
- Screening options for an operation site or compressor station and a landscaping and irrigation requirement if water is available to the property; and
- Language imposing the submitted pipeline routing map on the operator as well as the addition of a pipeline routing map amendment procedure.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AS AMENDED, BY AMENDING SECTION 7960 GOVERNING GAS WELL DRILLING AND PRODUCTION IN THE CITY OF MANSFIELD; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Mansfield, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City has previously adopted regulations governing the operation and impact of oil and gas wells within the City; and

WHEREAS, the City Council now desires to amend such regulations to incorporate reasonable provisions governing the gas well operations and production within the City and finds that such amendment is in the best interest of the public health, safety and general welfare; and

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Mansfield, Texas, in compliance with the laws of the State of Texas with reference to the amendment of the Comprehensive Zoning Ordinance of the City of Mansfield, Texas (hereinafter "the Zoning Ordinance"), have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all interested citizens, the governing body of the City is of the opinion and finds that the Comprehensive Zoning Ordinance should be amended.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS:

SECTION 1.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph M.9 to read as follows:

9. The equipment or facilities on an Operation Site must be enclosed, individually or collectively, by an eight (8) foot high screening enclosure. Low-profile equipment or facilities must be used on the Operation Site and must not exceed the height of the screening enclosure. Any gates in the screening enclosure shall remain locked

at all times when no operations personnel are present. The Operator must provide the City Fire Marshal with a Knox box with a key to access the Operation Site in case of an emergency. The screening shall be constructed of the following materials:

- a. Brick, stone or split-face concrete masonry unit;
- b. Pre-cast concrete wall or pour-in-place concrete wall with a similar appearance as brick, stone or split-face concrete masonry unit;
- c. Earthen berm, appropriately landscaped;
- d. Wrought iron fence with dense evergreen planting to form a solid hedgerow that is at least eight feet tall at the time of planting; or
- e. A combination of landscaped earthen berm and one of the construction materials listed above.

An election by the Operator to install one or more of the screening devices set forth above containing a landscaping component shall also require the installation of an automatic landscape sprinkler irrigation system if a public water source is available on the lot or tract. The system must provide sufficient coverage and water to maintain the landscaping.

SECTION 2.

That Section 7960 of the Zoning Ordinance is hereby amended by adding a new subsection 13 to paragraph P, which shall read as follows:

13. The following shall be required for all fracturing pits:

- a. All fracturing pits, excluding pre-existing water features, must be filled in and the surface revegetated and returned to a state prior to the creation of the pit after the drilling of all wells identified in the application have been completed.
- b. Notwithstanding subsection a. of this section 13, the filling of the fracturing pit shall not be required where the original application indicates an intent to convert the fracturing pit into a permanent water feature to serve as a neighborhood amenity and includes plans detailing the design and conversion date for the intended water feature. The City Engineer must determine that a water feature is suitable for its intended location and that the design of the water feature complements the surrounding present or future development. Once a fracturing pit has been converted to a community water feature, the water contents may no longer be used to fracture a well. The permanent water feature must also comply with the landscape requirement in Section 7300 for detention and retention ponds.
- c. No pre-existing body of surface water may be used as a fracturing pit or a source of water without the approval of the City Engineer. In addition, any detention or retention pond used as a fracturing pit must be engineered and sized to accommodate both the water for the fracturing process and any drainage from surrounding development or properties.
- d. Each new fracturing pit shall be enclosed with open design chain link black or dark green fencing on all four sides during drilling operations.

SECTION 3.

That Section 7960 of the Zoning Ordinance is hereby amended by adding a new subsection f. to paragraph C.11, which shall read as follows:

- f. A Specific Use Permit issued for the activities regulated by this Section shall not permit the reopening of a fracturing pit that has been filled in unless a written consent is provided by the surface owner or the applicant receives approval from the City Council pursuant to an amendment to the existing SUP. In addition, an operation site that has been reduced in size may not be enlarged, to a size not exceeding its original permitted size, unless each permitted drill site meets the setback requirements set forth in Section M, of this Section.

SECTION 4.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph B, by adding the following definitions, which shall read as follows:

Ambient Noise Level: The all-encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location, constituting the normal or existing level of environmental noise at a given location.

Closed Loop Mud System: A system utilized while drilling so that reserve pits are not used and instead steel bins are used to collect all drilling waste.

Daytime: The period from 7:00 a.m. to 7:00 pm.

Nighttime: The period between 7:00 p.m. and 7:00 a.m.

Protected Use: A residential structure, public building, hospital, institution, school, day care center, or commercial building.

SECTION 5.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph N.4 and deleting paragraph N.5, which shall read as follows:

4. Noise.
 - a. No well shall be drilled, redrilled or any equipment operated at any location within the City in such a manner so as to create any noise which causes the exterior noise level when measured at the nearest Protected Use receiver's/receptor's property line or one hundred (100) feet from the nearest Protected Use structure (as measured to the closest exterior point of the building), whichever is closer to the receiver/receptor, that exceeds the Ambient Noise Level by more than five (5) decibels during daytime hours and more than three (3) decibels during nighttime hours. Fracing operations may not exceed the Ambient Noise Level by more than ten (10) decibels. Backflow operations may not exceed the Ambient Noise Level by more than five (5) decibels during nighttime hours.
 - b. The Operator shall be responsible for establishing and reporting to the City the pre-drilling Ambient Noise Level prior to the issuance of a gas well permit. Once the drilling is complete, the Operator shall be required to establish a new Ambient Noise Level prior to the installation of any new noise generation equipment.
 - c. Adjustments to the noise standards as set forth above in subsection a. of this section may be permitted in accordance with the following:

Permitted Increase (dBA)	Duration of Increase (minutes*)
5.....	15
10.....	5

15.....1
 20.....less than 1

*Cumulative minutes during any one hour.

- d. The exterior noise level generated by the drilling, redrilling or other operations of all gas wells located within six hundred (600) feet of a Protected Use shall be continuously monitored, to ensure compliance. The cost of such monitoring shall be borne by the Operator.
- e. Acoustical blankets, sound walls, mufflers or other alternative methods as approved by the Gas Inspector may be used to ensure compliance. All soundproofing shall comply with accepted industry standards and subject to approval by the City’s Fire Department.
- f. The sound level meter used in conducting noise evaluations shall meet the American National Standard Institute’s Standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

5. *Reserved for future use.*

SECTION 6.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph D.4., which shall read as follows:

- 4. Gathering Stations shall be subject to the operation and equipment practices and standards set forth in Section 7960.N, Paragraphs 1 through 4, and 6 through 9 in the same manner as they apply to an Operation Site.

SECTION 7.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph O.1. and adding new paragraphs O.7, O.8, and O.9, which shall read as follows:

O. Flow Lines and Gathering Lines:

- 1. A Natural Gas Pipeline Permit shall be required for all flow lines and gathering lines and shall be submitted in writing on forms provided by the

City and signed by the Operator. In addition the following shall be required:

- a. Applications for Natural Gas Pipeline Permits shall be filed with the Planning Department.
- b. An application fee shall be charged for each Natural Gas Pipeline Permit in the amount set forth in the City's most recent Fee Schedule. The fee is not refundable regardless of the outcome of the application. Incomplete applications shall be returned to the Applicant. The City shall return any application as incomplete if there is a dispute pending before the Railroad Commission regarding the determination of the Operator.
- c. No Natural Gas Pipeline Permit shall be issued if the proposed activities are not in conformance with the approved Specific Use Permit and associated site plan, provisions of this section, Building Code, Fire Code and all other applicable City ordinances.
- d. A decision to deny an application for a Natural Gas Pipeline Permit shall be provided to the Operator in writing, including the reason for the decision. The Operator may appeal any such denial to the City Council.
- e. If an application for a Natural Gas Pipeline Permit is denied, nothing herein contained shall prevent a new application from being submitted to the City for the same lines. A new application fee shall accompany each new application.

* * * * *

7. An Operator shall place an identifying sign, in English and Spanish, at each point where the Operator has constructed or caused to be constructed a flow line or gathering line across a public street or road.
8. A Pipeline Easement Map indicating the location of the nearest Gathering Station and the alignment of the pipeline(s) connecting the Operation Site to the Gathering Station shall be submitted at the time of application for a Gas Well Permit.
9. An approved Natural Gas Pipeline Permit shall expire on the one year anniversary of its date of issuance unless installation of the pipeline authorized by the permit has commenced.

SECTION 8.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph C.10 to read as follows:

10. A video, provided in DVD format only, documenting existing conditions of the City streets within one (1) mile of the Drill Site that will be used by truck traffic to the site, plus a video of the property being used for the Drill Site.

SECTION 9.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph P.9 to read as follows:

9. A Closed Loop Mud System shall be used in conjunction with all drilling and reworking operations for all Gas Well Permits unless waived by the City Council.

SECTION 10.

That Section 7960 of the Zoning Ordinance is hereby amended by adding a new subsection 8. to paragraph F., which shall read as follows:

8. An approved Gas Well Permit shall expire on the one year anniversary of its date of issuance unless the drilling of one or more wells under the permit have commenced.

SECTION 11.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph E. to read as follows:

E. Preservation of Roads; Transportation of Water on Public Roads:

1. A Road Repair Agreement shall be submitted in conjunction with the application for Specific Use Permit. The Agreement must be signed by the Operator. The City Manager shall have the authority to execute the Road Repair Agreement. Only one Road Repair Agreement shall be required per Operator; subsequent applications may include a written statement from the Operator that the Operator shall be bound by the terms of the existing agreement.
2. In order to mitigate damage to public roads any Operation Site within fifteen hundred (1500') feet of a City water supply line or outlet shall be prohibited

from transporting water to the Operation Site for well fracturing purposes from beyond this radius. Water for well fracturing purposes may either be purchased from the City or the Operator may acquire water from an alternate lawful source within fifteen hundred (1500') feet of the Operation Site.

SECTION 12.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph M.2 to read as follows:

2. No well may be drilled closer than two hundred (200) feet from a railroad right-of-way, when measured from the surface of the well bore to the edge of the railroad right-of-way.

SECTION 13.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph C.9 to read as follows:

9. A Pipeline Routing Map indicating the location and size of all existing and planned pipelines within both the territorial and extraterritorial limits of the City intended to serve the well or wells identified in the above-referenced site plan; irrespective of whether such pipelines are owned/operated by the applicant. If approved by the City Council, the submitted Pipeline Routing Map shall be made a condition of the Specific Use Permit.

Proposed revisions or modification to an approved Pipeline Routing Map shall be submitted to the City Council for its review and determination as to whether the proposed revision constitutes such a significant change in routing that a public hearing should be called regarding said revision. If, in the City Council's determination, said revised Pipeline Routing Map does not constitute a significant change, no public hearing shall be called and the revision shall be deemed approved. If such revision is determined by the City Council to be a significant change, a public hearing shall be scheduled regarding such revision, proper notice given, and thereafter be considered by the City Council for approval or denial; provided, however, the City Council in its sole discretion may direct any Pipeline Routing Map revision to the Planning and Zoning Commission for its review and recommendation and, in such event, said revision shall follow the procedures set out in Section 8600 herein regarding amendments to the Zoning Ordinance. No proposed revision shall be effective until it is approved by the City Council.

SECTION 14.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph G.2 to read as follows:

2. Applications for Gas Well Permits shall be filed with the Planning Department. Each application shall be accompanied by the application fee, comprised of an administrative fee and an inspection fee, as set forth in the City's most recent Fee Schedule. The administration fee is not refundable regardless of the outcome of the application. Incomplete applications shall be returned to the Applicant. The City shall return any application as incomplete if there is a dispute pending before the Railroad Commission regarding the determination of the Operator.

SECTION 15.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph H.1.e to read as follows:

- e. Copies of the pertinent portion of the insurance policies evidencing all coverages and endorsements required by this section must be presented to the City before the issuance of the Gas Well Permit, and the acceptance of a policy without the required limits and/or coverages shall not be deemed a waiver of these requirements. The City may, in its sole discretion, accept a certificate of insurance in lieu of a copy of the pertinent portion of the policy pending receipt of such document by the City. After the issuance of the Gas Well Permit, the City may require the Operator to provide a copy of the most current insurance coverages and endorsements for review at any time. An administration fee will be charged to cover the cost of such review, as set forth in the City's most recent Fee Schedule.

SECTION 16.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph K.2.a to read as follows:

- a. An application fee in the amount set forth in the City's most recent Fee Schedule. The application fee is not refundable regardless of the outcome of the application;

SECTION 17.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph K.3. to read as follows:

3. If, in the judgment of the City or the Gas Well Inspector, the activities proposed by the amendment require an inspection, an inspection fee shall be charged, as set

forth in the City's most recent Fee Schedule. The Operator must pay the fee before the Amended Gas Well Permit will be issued.

SECTION 18.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph P.11 to read as follows:

11. The Gas Well Inspector shall conduct periodic inspections at least once a year of all permitted Wells in the City to determine that the Wells are operating in accordance with the requirements of this section and all regulations of the Railroad Commission. If a violation of the applicable Specific Use Permit and associated site plan or the Gas Well Permit is found during an annual inspection, a reinspection fee shall be charged, as set forth in the City's most recent Fee Schedule.

SECTION 19.

That Section 7960 of the Zoning Ordinance is hereby amended by amending paragraph R to read as follows:

- R. **Re-working of Well; Notice:** Any person who intends to re-work a Well using a Drilling rig, to fracture stimulate a Well after initial completion, or to conduct seismic Exploration involving explosive charges shall give written notice to the City at least twenty (20) days before the activities begin. The notice shall identify where the activities will be conducted and shall describe the activities in reasonable detail, including but not limited to the duration of the activities and the time of day they will be conducted. The notice must also provide the address and twenty-four (24) hour phone number of the person conducting the activities. The person conducting the activities shall post a sign, in English and Spanish, on the property giving the public notice of the activities, including the name, address, and twenty-four (24) hour phone number of the person conducting the activities. No Well shall be re-worked without the approval of the Gas Well Inspector. If the Gas Well Inspector determines that an inspection is necessary, the Operator must pay an inspection fee, as set forth in the City's most recent Fee Schedule.

SECTION 20.

This ordinance shall be cumulative of all provisions of ordinances of the City of Mansfield, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 21.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 22.

All rights and remedies of the City of Mansfield are expressly saved as to any and all violations of the provisions of any other ordinances affecting oil and gas exploration, drilling or production, or zoning that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 23.

Any person, firm or corporation violating any of the provisions of this ordinance or the Zoning Ordinance, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of Mansfield, Texas, shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

SECTION 24.

This ordinance shall take effect immediately from and after its passage on third and final reading and the publication of the caption, as the law and charter in such cases provide.

First reading approved on the _____ day of _____, 2007.

Second reading approved on the _____ day of _____, 2007.

DULY PASSED on the third and final reading by the City Council of the City of Mansfield, Texas, this _____ day of _____, 2007.

Barton Scott, Mayor

ATTEST:

Vicki Collins, City Secretary

APPROVED AS TO FORM AND LEGALITY

Allen Taylor, City Attorney

DRAFT