

ORDINANCE B-775-07

AN ORDINANCE OF THE CITY OF BURLESON REPEALING B-761-06, ARTICLE VII OF CHAPTER 14, OIL AND GAS, REGULATING THE DRILLING AND PRODUCTION OF GAS WELLS WITHIN THE CITY OF BURLESON CODE OF ORDINANCES AND REPLACING IT IN ITS ENTIRETY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 8, 2004, the City Council adopted Ordinance Number B-710 regulating gas drilling within the city limits of Burleson; and

WHEREAS, on December 14, 2006, the City Council adopted Ordinance Number B-761-06, regulating gas drilling within the City of Burleson and superseding Ordinance B-710; and

WHEREAS, the City Council directed staff to study revisions to the gas drilling Ordinance that would improve the quality of life for those citizens working and living near the drilling sites; and

WHEREAS, the City Council finds that the regulation of the development of gas and other hydrocarbon substances within and under the City is necessary in order to protect the surface property rights, to protect the owners of mineral rights and to provide for the safe and orderly exploration, development, and production of gas; and

WHEREAS, it is advisable to repeal the current regulations for the drilling, production and re-drilling of gas so that these activities may be conducted in a manner that protects the public health, safety and welfare of the citizens of Burleson, conforms with established codes and regulations while minimizing the potential impact of surface property and mineral rights owners; and

WHEREAS, the provisions set forth in Chapter 14 Article VII shall be considered the minimum requirements for the development of gas and other hydrocarbon substances within and under the City and shall not relieve any person from any duty imposed by law to use reasonable care and precautions for the safeguarding of people and the protection of and noninterference of property rights;

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

SECTION 1

Chapter 14, Article VII "Oil and Gas" of the Code of Ordinances of Burleson, Texas is hereby reads as follows:

ARTICLE VII. GAS DRILLING AND EXPLORATION

DIVISION I. General

Sec. 14-351. Purpose.

The exploration, development, and production of gas in the city is an activity which necessitates reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to peaceably enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this Ordinance 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 gas and other substances produced in association with gas within the city 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 resources.

Sec. 14-352. Definitions.

Terms, words, phrases and their derivatives used, but not specifically defined in this division, shall have the meanings defined in the American Heritage Dictionary of the English Language, Third Edition. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine. For purposes of this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended.

Abandonment. As defined by the Texas Railroad Commission and includes the plugging of the well and the restoration of any well site as required by this Ordinance.

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.

Berm. A mound of soil used to obstruct a view. The side slope of a berm shall be no steeper than four foot horizontal to one foot vertical.

Blowout preventer. 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 for preventing blowouts.

Building. 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."

City. The City of Burleson, Texas.

City Code. The Code of Ordinances of the City of Burleson, Texas.

City Attorney. The City Attorney of the City of Burleson, Texas.

City Manager. The City Manager of the City of Burleson, Texas or any other person designated by the City Manager to act on his behalf.

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.

Commission. The Texas Railroad Commission and all state rules.

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

Decibel (db). A unit for measuring the intensity of a sound/noise

Derrick. Any portable framework, tower, mast and/or structure which is required or used in connection with drilling or re-working a well for the production of gas.

Drilling. Digging or boring a new well for the purpose of exploring for, developing or producing gas or other hydrocarbons, or for the purpose of injecting gas, water or any other fluid or substance into the earth.

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

Drill site. The pad used during the drilling or re-working of a well or wells and subsequent life of a well or wells or any associated operation.

Emergency. An event or situation that could result in injury, death or property damage.

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

FEMA. The Federal Emergency Management Agency.

FIRM. Flood Insurance Rate Map.

Fire Department. The Fire Department of the City of Burleson.

Frac or fracking. The process of fracture stimulation a rock formation.

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

Nighttime. The period between 10:00 p.m. and 7:00 a.m. on weekdays, and 6 p.m. and 7 a.m. on weekends.

Operation site. The area used for development and production and all operational activities associated with gas after drilling activities are complete.

Operator. The person listed on the Railroad Commission Form W-1 or Form P-4 for a 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 a gas lease of any premises affected by the provisions of this Ordinance, then such lessee shall also be deemed to be an Operator. In the event that there is no gas lease relating to any premises affected by this Ordinance, the owner of the fee mineral estate in the premises shall be deemed an Operator.

Permit. A Gas Well Permit or Gas Well Permit for Multiple Wellheads.

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

Property owner. The owner of the surface property.

Public building. All buildings used or designed to and 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, shopping malls, stores, and hospitals.

Public park. Any land area dedicated to and/or maintained by the City for traditional park-like recreational purposes, but shall not include privately-owned parks or privately-owned or privately-managed golf courses.

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

Residence. 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 a Gas Well Permit is filed with the City.

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

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

School. Any public and private, primary and secondary educational facilities providing education up through and including the twelfth grade level and any day care centers licensed by the State of Texas that provides care, training, education, custody, treatment or supervision for more than six children under 14 years of age, and for less than 24 hours per day.

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

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

Technical advisor. Such person(s) familiar with and educated in the gas industry or the law as it relates to gas matters that may be retained from time to time by the City.

Well. A hole or holes, bore or bores, to any horizon, formation, or strata for the purpose of producing gas, liquid hydrocarbon, brine water or sulfur water, or for use as an injection well for secondary recovery, disposal or production of gas, or other hydrocarbons from the earth.

Sec. 14-353. City Manager.

- A. The City Manager shall have the authority to issue any orders or directives required to carry out the intent and purpose of this Ordinance and its particular provisions. Failure of any person to comply with any such order or directive shall constitute a violation of this Ordinance.
- B. The City Manager shall have the authority to enter and inspect any premises covered by the provisions of this Ordinance to determine compliance with the provisions of this Ordinance and all applicable laws, rules, regulations, standards or directives of the State and to issue citations for violations of this Ordinance. Failure of any person to permit access to the City Manager shall constitute a violation of this Ordinance. The City Manager may conduct periodic inspections of all permitted wells in the city to determine that the wells are operating in accordance within proper safety parameters as set out in this Ordinance and all regulations of the Commission.
- C. The City Manager 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 necessary to establish and determine compliance with the applicable Gas Well Permit. Failure of any person to provide any such requested material shall be deemed a violation of this Ordinance.
- D. The City Manager shall have the authority to allow alternatives to the technical standards of this Ordinance related to public safety and welfare, such as new technology, if the Operator has demonstrated to the City Manager's satisfaction that the alternatives provide equal or greater protection of the environment or public.

Sec. 14-354. Operator's Agent.

Every Operator of any well shall designate an agent upon whom all orders and notices provided in this Ordinance may be served in person or by registered or certified mail. Every Operator so designating such agent shall within ten (10) days notify the City Manager in writing of any change in such agent or such mailing address unless operations within the City are discontinued.

Sec. 14-355. Technical Opinion and Report.

To determine the acceptability of technologies, processes, products, facilities, materials and uses as they pertain to gas matters, the City Manager is authorized to require the Operator to provide, without charge to the City, a technical opinion and report. The opinion and report shall be prepared by a qualified engineer, specialist, laboratory or specialty organization acceptable to the City Manager. The opinion and report shall analyze the properties of the technology, process, product, facility, material or use and provide a recommendation as to its applicability in the Operator's particular set of circumstances. The City Manager is authorized to require design submittals to be prepared by, and bear the stamp of, a registered design professional.

DIVISION II. Gas Well Permits

Sec. 14-356. Gas Well Permit required.

- A. A person wanting to engage in and operate in gas production activities shall apply for and obtain a Gas Well Permit as required by this Ordinance. 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 gas without first obtaining a Gas Well Permit issued by the City in accordance with this Ordinance. Such activities include, but are not limited to re-working, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing and pressurizing.
- B. The Operator must apply for and obtain a Gas Well Permit for the drilling, re-drilling, deepening, re-entering, activating or converting of each well. The Operator may apply for and obtain a Gas Well Permit for Multiple Wellheads for more than one well located on the same drill site. All wells covered by the Gas Well Permit for Multiple Wellheads shall be described in the application.
- C. An Operator shall obtain a new Gas Well Permit in accordance with the provisions of this Ordinance if the Operator is re-entering and drilling an abandoned well.
- D. A person wanting to engage in and operate in gas production activities outside of the city limits of the City is not required to obtain a Gas Well Permit under this Ordinance. However, it shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to utilize City owned

and/or maintained roadways for any portion of their haul route without first entering into Road Damage Remediation Agreement with the City, and paying the applicable Road Damage Fee as outlined in that agreement for the portion of roadways utilized for trucking activities associated with any gas production activities.

- E. When a Gas Well Permit has been issued to the Operator for the drilling, re-drilling, deepening, re-entering, activating or converting of a well, such Gas 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 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.
- F. A Gas Well Permit shall automatically terminate, unless extended, if drilling of the well bore has not commenced within one hundred eighty (180) days from the date of issuance of the permit. A Gas Well Permit for Multiple Wellheads shall automatically terminate, unless extended, if drilling on at least one well included in the permit has not commenced within one hundred eighty (180) days from the date of issuance of the permit. A permit may be extended by the City Manager for an additional one hundred eighty (180) days upon request by the Operator and proof that the classification of the requested permit for such location has not changed. For a Gas Well Permit for Multiple Wellheads, drilling operations for all wells authorized under the permit must be commenced within (1) year from the date of approval by the City Council, unless a specific time period is authorized by the Council as a condition of the permit.
- G. Gas Well Permits required by this Ordinance are in addition to and are not in lieu of any permit which may be required by any other provision of the City's Code or by any other governmental agency.
- H. No additional Gas Well Permit or filing fees shall be required for the following:
 - 1. any wells, existing, previously permitted or approved by the City, within the corporate limits of the City on the effective date of this Ordinance; or
 - 2. any wells at which drilling has commenced on or before the effective date of this Ordinance; or
 - 3. any wells in existence or any wells on which drilling has commenced on land annexed into the City after the effective date of this Ordinance; or
 - 4. any well planned before the 90th day before the effective date of its annexation and one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for such well, and the completed application for the initial authorization was filed before the date the annexation proceedings were instituted, provided that drilling of the well commenced within 180 days from the date of annexation.

- I. A Gas Well Permit shall not be issued for any well to be drilled within any floodplain identified by FEMA on the most current FIRM without obtaining a floodplain development permit from the City. No permits shall be issued for any drill site, wellhead, or any other proposed disturbance of soil located within any floodway identified by FEMA on the most current FIRM.
- J. By obtaining a Gas Well Permit the Operator agrees to all the provisions of this Article with the same force and effect as if this Article were copied verbatim in such permit.

Sec. 14-357. Gas Well Permit application and filing fees.

- A. Every application for a Gas Well Permit issued pursuant to this Ordinance shall be in writing signed by the Operator, or some person duly authorized to sign on his behalf, and filed with the City Manager.
- B. Every application shall be accompanied by a permit fee as set forth by the City of Burleson Fee Schedule.
- C. The application shall include the following information:
 1. Completed and signed application form containing at least the following information: proposed well name; names, addresses and phone numbers of all the property owners of the drill site; names, addresses and phone numbers of the Operator and applicants; name and address of individual designated to receive notice; name of representative with supervisory authority over all gas operation site activities and a 24-hour phone number.
 2. An accurate legal description of the lease property to be used for the gas operation. Property recorded by plat shall reference subdivision, block and lot numbers. Unplatted property shall reference abstract numbers and survey names, and tract numbers if applicable.
 3. An original, fully executed Road Damage Remediation Agreement that has been accepted by the City and executed by the City Manager or his designee. If a Road Damage Remediation Agreement has been filed with the City, the Operator may submit a copy of that Agreement with subsequent permit applications. A Road Damage Remediation Fee will apply to each Gas Well Permit. The fee is set forth in the City of Burleson Fee Schedule.
 4. A site grading plan showing that the following requirements will be met:
 - a. Provide existing and proposed contours and any additional information to clearly indicate how the site will be graded. The City Engineer may approve a plan showing a cut and fill diagram and flow arrows.
 - b. Fill material must be leveled and graded for positive drainage

- c. The placement of fill material may not cause the substantial release of dust and/or odor; damage any public improvements or public infrastructure; result in flooding or significant increase in runoff to adjacent properties in accordance to state law.
5. A list of owner names and the address of every parcel of property within one thousand (1,000) feet of the proposed wellhead, and self adhesive mailing labels for those owners.
6. A copy of the determination by the Texas Commission on Environmental Quality (TCEQ) of the depth of useable quality ground water.
7. Evidence of insurance and surety requirements under this Ordinance.
8. A copy of the approved Commission Permit to Drill (W-1) and Pooling Certificate (P-12), together with attachments and survey plats which are applicable to the drill and operation sites.
9. A copy of the Stormwater Pollution Prevention Plan as may be required by the Texas Commission on Environmental Quality. A copy of the notice of intent, as required, shall be submitted to the City of Burleson at least three (3) days prior to the commencement of any onsite activity.
10. A copy of a completed Water Needs Questionnaire. If water is purchased from the City, and in the event of implementing a Stage 1 or higher water rationing or restriction, water service could be interrupted until the restrictions are lifted. The City reserves the right to terminate water service at any time in the event of emergency water demands.
11. A site plan or survey plat drawn to scale on a sheet size of ANSI B, ANSI C or ANSI D, and containing the following information:
 - a. The names and addresses of the current Property Owner of the drill site and the Gas Well Operator.
 - b. The name, address and telephone number of the surveyor responsible for the site plan, which shall contain the seal of a Texas Registered Professional Land Surveyor.
 - c. Title block containing the proposed name of the gas well(s), acres in lease, abstract number and survey name.
 - d. A location map showing the tract by reference to streets or highways.
 - e. The date the site plan was prepared.

- f. A written scale and graphic scale symbol and a north arrow indicating the approximate true north.
- g. The location and general outline of any existing permanent structures, parking lots, driveways, and other significant structures within five-hundred (500) feet of the wellhead.
- h. The location of the city limit boundaries of the City of Burleson and any adjacent city, if applicable.
- i. The location of all truck routes to the well site, commencing at the drill site and ending at an Interstate Highway or the City limits and including:
 - (1) a list of non-TXDOT roads that will be used, and;
 - (2) lengths of each public road that will be used to access the site.
- j. The location and dimensions of existing or proposed driveway(s) into the drill site. A visibility triangle is required at the intersection of the driveway with its access point to a public or private roadway, driveway or other access easement or alley. The visibility triangle shall measure a minimum of seven (7) feet by sixty (60) feet from the property corner (or edge of driveway or access easement) in each direction along the property line (or edge of driveway or access easement). If the proposed pad is located at any of these locations, the site plan must show these requirements will be satisfied in the permanent infrastructure.
- k. The limits of the 100-year floodplain and floodway.
- l. The location of the wellhead(s), labeled with NAD83 coordinates.
- m. The location of lease lines, including labels showing the distance between wellheads and the lease lines.
- n. The location of all existing and proposed underground pipelines on or adjacent to the site. Any pipelines proposed in the public right-of-way shall require separate approval of an easement and right-of-way use agreement.
- o. The acreage of the lease and the number of wells, if applicable, included in the Gas Well Permit application.
- p. A Hazardous Materials Management Plan (HMMP) showing all hazardous materials that will be located, stored, transported and/or temporarily used on the operations site.
- q. A landscape plan for the completed site, which demonstrates the requirements of 14-363(G) of this Ordinance shall be satisfied.

Sec. 14-358. Gas Well Permit application review procedures.

- A. The City Manager may establish application submittal requirements and review procedures for Gas Well Permits. Permit applications shall not be accepted for filing until the application is complete and the fee established by the City Council has been paid. Incomplete applications shall be returned to the applicant.
- B. The Gas Well Permit shall not be forwarded to the City Council for approval until the City Manager determines that all information required in the application by the Ordinance has been submitted and accepted, and the application has been deemed complete.
- C. If the wellhead is located within 1,000 feet of a residential lot shown on a recorded subdivision plat, then prior to City Council public hearing on the permit application, the operator shall hold a public meeting with the owners of real property within 1,000 feet of the wellhead. The purpose of the meeting is to give residents and property owners an opportunity to review information related to the gas drilling permit request and to ask questions about the project or gas drilling in general. The meeting shall be held in the Burleson city limits. The Operator shall be responsible for notice of the public meeting to the property owners, arranging for a meeting place, and conducting the meeting. The Operator shall notify the City Manager of the date, time and place of the meeting.
- D. The City Council shall conduct a public hearing on the permit application at a regularly scheduled meeting date. The City Manager shall give notice of a public hearing, and notice of public hearing shall be provided in accordance with the provisions below.
 1. The City shall publish a public notice in the official newspaper of the City at least ten (10) days prior to the hearing.
 2. The City shall provide written notice, by regular United States mail, to the surface owners of real property located within one-thousand (1,000) feet of the drill bore site. Notices shall be provided based on ownership as rendered in latest approved tax roll. In cases where ownership information provided with the permit application differs from the approved tax roll, notice shall be given to all parties.
 3. The Operator shall erect a sign on the premises for which said permit application has been submitted. Said sign shall state that an application for a Gas Well Permit has been filed and shall also provide the telephone number and e-mail address of the City's webmaster (See Figure 1). The sign shall be erected on the premises at least ten (10) days prior to filing the application with the City Manager. The sign may be designed as follows:

Figure 1: Permit Application Sign

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| <p style="text-align: center;">Name of Operator HAS FILED AN APPLICATION FOR A GAS WELL PERMIT WITH THE CITY OF BURLESON. FOR FURTHER INFORMATION CONTACT 817-447-5400 OR WEBMASTER@BURLESONTX.COM.</p> |
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- E. After conducting the public hearing, the City Council may approve the Gas Well Permit subject to terms and conditions as it determines to be necessary to protect the public health and safety.
- F. In making its decision, City Council shall, in addition to other considerations, have the power and authority to deny any permit to drill any well at any particular location within the city based on any of the following findings:
 - 1. It is determined that drilling at a particular location may constitute a hazard to residences, commercial activities, schools, hospitals, parks, and civic purposes existing in the area surrounding the proposed drill site.
 - 2. It is determined that drilling at a particular location may be detrimental to the public health, safety or general welfare of the city.
 - 3. It is determined that the drilling of such wells may conflict with the orderly growth and development of the city.
 - 4. It is determined that there are other alternative well site locations that would allow access to explore, develop and produce the mineral estate.
 - 5. It is determined that there is not adequate access for the City fire personnel and fire fighting equipment.
 - 6. It is determined that the impact upon the adjacent property and the general public are not reasonable and justified, balancing the following factors:
 - a. The right of the owners(s) of the mineral estate to explore, develop, and produce the minerals; and
 - b. The availability of alternative drill sites, both presently and at other times during the lease term.
 - 7. It is determined that the location of the drill site conflicts with the location of future streets or expansion of existing Burleson streets or public rights-of-way.
- G. The City Council may require an increase in the operator/applicant's proposed distance that the well is to be set back from any residence, platted residential lot, religious institution, public building, hospital building, school or public park; or other public gathering area, or require any change in operation, plan, design, layout or any change in the on-site and technical regulations in Division IV of this Ordinance.
- H. The City Council may accept, reject or modify the application in the interest of securing compliance with this Ordinance, the Code of Ordinances, and/or to protect the health, safety and welfare of the community.

- I. No Gas Well Permit shall be issued until the Road Damage Remediation Fee has been paid in full.

Sec. 14-359. Suspension or revocation of Gas Well Permit; issuance of a citation, effect.

- A. If an Operator, or its officers, employees, agents, contractors, or representatives, fails to comply with any requirement of a Gas Well Permit, including any requirement incorporated by reference as part of the Gas Well Permit, the City Manager 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. In no event, however, shall the cure period be less than three (3) days unless the failure presents a violation of the noise provisions, 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 Ordinance.
- B. If the Operator fails to correct the noncompliance within the time specified by the City Manager in the notice, the City Manager may suspend or revoke the Gas Well Permit or issue a citation pursuant to the provisions of this Ordinance.
- C. No person shall carry on any operations performed under the terms of the Gas Well Permit issued under this Ordinance during any period of any Gas Well Permit suspension or revocation or pending a review of the decision or order of the City in suspending or revoking the Gas Well 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 Gas Well 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 Ordinance, the City Manager, upon written notice to the Operator, may notify the Commission and request that the Commission take any appropriate action.
- E. Operator may, within thirty (30) days of the date of the decision of the City Manager in writing to suspend or revoke a Gas Well Permit, file an appeal to the City Council under the provisions outlined in this Ordinance pursuant to Sec. 14-366, "Appeals" of this Ordinance.

Sec. 14-360. Periodic Reports.

- A. The Operator shall notify the City Manager of any changes to the following information within one business week after the change occurs:
 1. The name, address, and phone number of the Operator;
 2. The name, address, and phone number of the person designated to receive notices from the City; and

3. The Operator's Emergency Action Response Plan.

- B. The Operator shall notify the City Manager of any change to the name, address, and 24-hour phone number of the person(s) with supervisory authority over drilling or operations activities within one business day.
- C. The Operator shall provide 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.

DIVISION III. Insurance, Bond and Indemnity

Sec. 14-361. Bond, Indemnity, Insurance.

A. General Requirements. The Operator shall:

- 1. Comply with the terms and conditions of this Ordinance and the Gas Well Permit issued hereunder.
- 2. Indemnify and hold harmless the City, 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 a Gas 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.
- 3. Promptly pay all fines, penalties and other assessments imposed due to breach of any terms of the Gas Well Permit.
- 4. Promptly restore to its former condition any public property damaged by the gas operation.

B. Bond.

- 1. Prior to the issuance of a Gas Well Permit the Operator shall provide the City Manager with a security instrument in the form of a bond. The bond shall be executed through a company duly approved to transact that class of instrument in the state of Texas and acceptable to the City. The bond shall become effective on or before the date the Gas 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 Gas Well Permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The Operator shall be listed as principal and the instrument shall run to the City, as obligee, and shall be conditioned that the Operator will comply with the terms and regulations of this Ordinance and the City. The original bond shall be submitted to the City Manager.

2. Bond for Single Well. The principal amount of any security instrument shall be Fifty Thousand Dollars (\$50,000) for any single well. If, after completion of a well, the Applicant/Operator, who initially posted a fifty thousand dollars (\$50,000) bond, has complied with all of the provisions of this Ordinance and whose well in the producing stage and all drilling operations have ceased, may submit a request to the City Manager for approval to reduce the existing bond to fifteen thousand dollars (\$15,000) for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond shall be maintained at fifty thousand dollars (\$50,000).
3. Blanket Bond for Multiple Wells. An operator drilling or reworking between one and five wells at any given time may elect to provide a blanket bond in the principal minimum amount of One Hundred Fifty Thousand Dollars (\$150,000). If the operator drills or reworks more than five wells at a time, the blanket bond shall be increased in increments of \$50,000 per each additional well. Once the wells are in the producing stage and all drilling operations have ceased, the Operator may elect to submit a request to the City Manager for approval to reduce the existing bond and provide a blanket bond of seventy-five thousand dollars (\$75,000) for the remainder of the time the well produces, without reworking.
4. Whenever the City Manager finds that a default has occurred in the performance of any requirement or condition imposed by this Ordinance, 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 City Manager 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 to be performed, or failing to do so, shall pay to the City one hundred twenty-five (125) percent 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 Ordinance.
5. The City shall be authorized to draw against any bond to recover such amount due from the Operator. Upon receipt of such monies, the City shall proceed by such mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the Commission, such additional money may be demanded from the

Operator as is necessary to properly plug and abandon the well and restore the drill site in conformity with the regulations of this Ordinance.

6. In the event the Operator does not cause the work to be performed and fails or refuses to pay over to the City the estimated cost of the work to be done as set forth in the notice, or the issuer of the security instrument refuses to honor any draft by the City against the applicable bond the City may proceed to obtain compliance and abate the default by way of civil action against the Operator, or by criminal action against the Operator, or by both such methods.
 7. When the well or wells covered by said bond have been properly abandoned in conformity with all regulations of this Ordinance, and in conformity with all regulations of the Commission and notice to that effect has been received by the City, or upon receipt of a satisfactory substitute, the bond issued in compliance with these regulations shall be terminated and cancelled.
- C. Insurance. In addition to the bond required pursuant to this Ordinance, 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 cancelled, the Gas Well Permit shall be suspended on such date of cancellation and the Operator's right to operate under such Gas Well Permit shall immediately cease until the Operator files additional insurance as provided herein.
1. General Requirements applicable to all policies.
 - a. The City, 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 on a claims-made basis.
 - c. All policies shall be written by an insurer with an A- Class 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 City.
 - 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 City Manager evidencing all the required coverages, including endorsements, prior to the consideration of a Gas Well Permit by the City Council.
 - f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.

- g. Any failure on part of the City 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 City a minimum thirty-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days notice shall be acceptable in the event of non-payment of premium.
- i. During the term of the Gas Well Permit, the Operator shall report, in a timely manner, to the City Manager 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 City.

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 \$1,000,000 per occurrence for Bodily Injury and Property Damage.

3. Excess or Umbrella Liability.

- a. Coverage shall be \$5,000,000 Excess if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
- b. Coverage shall be \$10,000,000 Excess if the Operator does not have a stand-alone EPL policy.
- c. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period Insurance when necessary.

4. Environmental Pollution Liability Coverage.

- a. Operator shall purchase and maintain in force for the duration of the Gas 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 any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

- 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 City.
5. Control of Well.
- a. The policy should 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.
 - b. Coverage shall be \$5,000,000 per occurrence/no aggregate, if available, otherwise an aggregate of ten (10) million dollars.
 - c. Coverage shall be \$500,000 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 \$500,000 per accident.
 - c. Such coverage shall include a waiver of subrogation in favor of the City and provide coverage in accordance with applicable State and Federal laws.
7. Automobile Liability Insurance.
- a. Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
 - b. Coverage must include all owned, hired and not-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 City, with the exception of Environmental Pollution Liability and Control of Well coverage.

- c. Certificates 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 City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT 30 DAYS ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED 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. In submitting a Gas Well Permit application, the Operator agrees to the following indemnification: **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 assigns may have, or claim to have, against the City of Burleson, 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 a Gas Well Permit. The Operator shall fully defend, protect, indemnify, and hold harmless the City of Burleson, Texas, its departments, agents, officers, servants, employees, successors, assigns, sponsors, or volunteers from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and expenses incurred in defense of the City of Burleson, Texas, its departments, agents, officers, servants, or employees, 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 Gas Well Permit. The Operator agrees to indemnify and hold harmless the City of Burleson, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the City, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the City of Burleson occurring on the drill site or operation site in the course and scope of inspecting and permitting the gas wells including, but not limited to, claims and damages arising in whole or in part from the negligence of the City of Burleson occurring on the drill site or operation site in the course and scope of inspecting and permitting the gas 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 City of Burleson, Texas and/or its departments, agents, officers, servants, or employees from the consequences of the negligence of the City of Burleson, 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. Acceptance and Indemnity Agreement. The Operator who has a net worth of not less than twenty-five million dollars (\$25,000,000), as shown in such Owner's or Operator's most recent audited financial statements, may substitute an acceptance and indemnity agreement in lieu of the bond and insurance requirements set forth in this Ordinance, provided that such acceptance and indemnity agreement shall be in a form acceptable to, and approved by, the City Attorney and the Director of Human Resources of the City. The City Manager may request an annual review of the Operator's most recent audited financial statements to assure compliance with this section.

DIVISION IV. Technical Regulations

Sec. 14-362. Technical Regulations.

- A. On Site Requirements. The following requirements shall apply to each gas drilling site.
1. Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Section 14-365 of this Ordinance.
 2. Blowout prevention. In all cases, blowout prevention equipment shall be used on all wells being drilled, worked-over or in which tubing is being changed. Protection shall be provided to prevent blowout during gas operations as required by and in conformance with the requirements of the Commission and the recommendations of the American Petroleum Institute. The Operator must equip all drilling wells with adequate blowout preventers, flow lines and valves commensurate with the working pressures involved as required by the Commission.
 3. 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, chemical 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.
 4. Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

5. Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including wastewater or brine from any gas operation or the contents of any container used in connection with any gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain or any body of water or any private property in the City.
6. 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 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.
7. Drip pans and other containment devices. Drip pans, absorption pads and other containment devices as approved by the Gas Well Inspector shall be placed or installed underneath all tanks, containers, pumps, and lubricating oil systems. Containment devices shall also be properly installed below engines, fuel and chemical storage tanks, system valve 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 inseparable by simple mechanical removal processes.
8. Drive approach. A permanent drive approach, meeting the City design requirements, shall be constructed at the entrance of the access road onto a public street within sixty (60) days after operations have ceased or at the request of the City Manager. If the drive approach is located on a State maintained roadway, additional approval of the drive approach shall be required by TXDOT.
9. Dust, vibrations and odors. 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; nor shall the site or structures thereon 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.
10. Electric lines. All electric lines to production facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision.
11. Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City Ordinances and the appropriate national codes.

12. Emergency Action Response Plan. Prior to the commencement of any gas or other hydrocarbons production activities, Operator shall submit to the Fire Marshal and City Manager an Emergency Action Response Plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of gas wells.
13. Explosives. Use of explosive charges within the City limits shall require approval by the Fire Marshal.
14. Fire notice. A "Muster Point" sign shall prominently be posted at the entrance of the drill site and the Fire Marshal shall be notified of its location. The sign shall be metal and mounted on a steel post. The sign shall be white in color with red letters that are a minimum of 8" tall. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the fire department and all capable persons on the drill site shall immediately report to the Muster Point. The Operator shall instruct all persons who go on the drill site of this emergency procedure prior to their entrance onto the drill site.
15. Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire 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 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 wellheads shall contain an appropriately labeled emergency shut off valve to the well distribution line.
16. Fracing Operations. All formation fracture stimulation operations shall be conducted during daylight hours unless the Operator has notified and obtained permission from the City Manager for operations during nighttime hours. 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.
17. Gas lift compressor. Any onsite compressor used to 'lift gas' shall be designed to comply with the noise requirements of this Ordinance.
18. Gas emission or burning restricted. No person shall allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except in an emergency situation. If an emergency occurs and gases must be burned or vented into the atmosphere, then such vent or open flame shall be located within one hundred twenty five (125) feet of the wellhead.
19. Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be

constructed, established or maintained on the premises unless approved as part of the Gas Well Permit.

20. Grass, weeds, trash. All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash.
21. Hazardous Materials Management Plan. A Hazardous Materials Management Plan (HMMP) shall be submitted with each application and also kept on file at each drill site with all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, stored, transported and/or temporarily used on the operations site, and shall immediately be made available to the City Manager or Fire Marshal upon their request to inspect any aspect of either the plan or data sheets.
22. Lightning arrestor. All drill sites shall be equipped with a lightning arrestor system satisfying industry standards.
23. Lights. No person shall permit any lights located on any drill or operation site to be directed in such a manner so that they shine directly on public roads, adjacent property or property in the general vicinity of the operation site. To the extent practicable, and taking into account safety considerations, site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet.
24. Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any 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 disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.
25. Notice of activities. The Operator shall provide 48-hour notice to the Fire Marshal and the city Gas Well Inspector before the start of any of the following operations by either e-mail with a return receipt requested or by fax:
 - a. Initial construction of drill site and access roadway
 - b. Completion of drill site and access roadway
 - c. Start of drilling operations
 - d. Perforation of casing (as explosives may be located or stored on the site)
 - e. Fracturing of the well
 - f. Setting the wellhead valves and equipment

26. Pits. The following regulations shall apply for pits used for drilling and completion operations:
 - a. Lined earthen mud or circulating pits or a closed loop mud system shall be used.
 - b. All pits and contents shall be dewatered, backfilled and compacted following the schedule established by the statewide rules of the Railroad Commission.
 - c. No drill cuttings, rotary mud or wastewater generated during the drilling operations may be buried on the site unless permitted by the Railroad Commission and approved by the City Manager after submission of an acceptable pre-burial test.
 - d. No pit shall be placed in a floodplain without obtaining a floodplain development permit .
 - e. The fresh water fracing pit shall be enclosed with open design chain link fencing on all unsecured sides. No fresh water pit may be placed in any City-recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water fracing pit must comply with any city, state or federal regulations.
 - f. No flowback waste water produced by fracing operations shall be placed in any open pit without a copy of a valid State permit submitted to the City Manager.
 - g. Fresh water fracing pits that are not transferred to the surface owner shall be closed and the site restored within one hundred twenty (120) days after completion operations have ceased, unless extended by the City Manager.
27. Private roads and drill sites. All private roads used for access to the drill site and the operation site itself shall be at least twenty-four (24) feet wide, drain appropriately, have an overhead clearance of fourteen (14) feet and shall be surfaced with a crushed rock, gravel or ore and maintained to prevent dust and mud. All roads shall be watered or wetted to minimize dust.
28. Salt water wells. No salt water disposal wells or any other injection-type wells shall be located within the City of Burleson.
29. Shakers. A shaker system, as shown in Figure 2, shall be installed where well property fronts and provides direct access to city or state roads. All trucks exiting such properties, including all vehicles weighing five thousand (5,000) pounds or more must have all of their tires driven over the installed shaker system immediately before exiting such properties to the city or state roads. The shaker system must minimally be eighteen (18) feet in length and be sufficiently wide enough to provide easy access for all required vehicles.

Figure 2: Shaker System

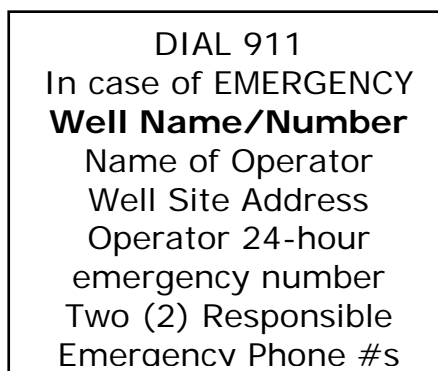


30. Signs.

- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing (See Figure 3: Gate Sign). Such sign shall be 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. Signs may be designed as show below.

- (1) The emergency 911 number
- (2) Well name and number
- (3) Name of Operator;
- (4) The address of the well site, as assigned by the City
- (5) A 24-hour emergency contact number of the Operator;
- (6) Telephone numbers of two (2) persons responsible for the well, who may be contacted twenty-four (24) hours a day in case of emergency

Figure 3: Gate Sign



- b. Permanent weatherproof signs reading “DANGER NO SMOKING”, in both English and Spanish as shown in Figure 4, shall be posted during all gas well operations at the entrance of each site and tank battery and in any other location approved or designated by the Fire Marshal. Sign lettering shall be four (4) inches in height and shall be red on a white background or white on a red background. Signs may be designed as show below.

Figure 4: Danger No Smoking Signs



- c. The appropriate National Fire Prevention Association (NFPA) fire diamond hazard placard shall be place on each storage tank.
 - d. “Non-Potable Water” signs shall be displayed on all tanks containing non-potable water.
31. Storage of equipment. On-site storage is prohibited on the 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 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 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. The Fire Marshal shall be the entity that determines whether equipment on the site shall constitute a fire hazard.

32. Storage tanks. All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications unless other specifications are approved by the Fire Marshal. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three feet (3') in height and have a volume of one and one-half (1½) times the contents of the largest tank in accordance with the Fire Code, and shall be buried at least one foot (1') below grade and lined with a leak proof barrier. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks.

33. Soil sampling. If reserve pits, completion/work 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 or well site and are not stored above ground in tanks, the City Manager shall have the discretion to require the well operator to perform a soil contamination assessment. All soil contamination assessments will abide by the State soil concentrations standards.
34. Surface casing. Surface casing shall be run and set in full compliance with the applicable rules and regulations of the Commission.
35. Tank battery equipment. All tank battery facilities shall be equipped with a remote foam line arrestor system. A sign shall be erected to clearly indicate the location of the foam line arrestor system. All connections and the sign for the remote foam line arrestor system shall meet industry specifications and be approved by the Fire Marshal's Office.
36. Valves. Each well must have a shut-off valve to terminate the well's production. The valve shall be clearly identified and labeled. The Fire Department shall have access to the well site and the shut-off valve in an emergency.
37. Visibility triangle. If the location of the well pad is at the intersection of a public street and another public street, a driveway, or an access easement or an alley, the Operator must at all times ensure a visibility triangle measuring a minimum of seven (7) feet by sixty (60) feet from the property corner (or edge of driveway or access easement) in each direction along the property line (or edge of driveway or access easement) is neither temporarily nor permanently obstructed. The visibility triangle distances shall be increased as required to meet AASHTO sight visibility requirements for intersections on horizontal or vertical curves.
38. 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 the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve. No tank battery shall be within one hundred (100) feet of any dwelling or other combustible structure.
 - b. Unless otherwise directed by the Commission, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than every thirty (30) days. Water stored in on-site tanks shall be removed as necessary.
 - c. 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 Ordinance and any other applicable Ordinance of the City.

39. Work hours for site development. Construction activities involving the erection of, including excavation of, demolition of, alteration to, or repair work on any access road or drill site, structure, or flatwork shall not occur during nighttime hours.

B. Noise.

1. The following noise requirements shall apply to all gas drilling operations:

- a. No Well shall be drilled, re-drilled or any equipment operated at any locations within the city in such a manner so as to create any noise which causes the exterior noise level when measured at the nearest receivers/receptor's property line or one hundred (100) feet from the nearest public building structure, whichever is closer, that exceeds the ambient noise level by more than five (5) decibels during daytime hours and more than three (3) decibels during nighttime hours.
- b. The operator shall be responsible for establishing and reporting to the City the pre-drilling ambient noise levels prior to commencing of drilling operations. 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 to10..... | 15 |
| >10 to 15..... | 5 |
| >15 to 20..... | 1 |
| 20+..... | less than 1 |

*Cumulative minutes during any one hour

- d. All workover operations shall be restricted to daytime hours. "Workover operations" shall mean work performed in a well after its completion in an effort to secure production where there has been none, restore production that has ceased or increase production.
- e. Acoustical blankets, sound walls, mufflers or other alternative methods as approved by the Gas Well Inspector may be used to ensure compliance. All soundproofing shall comply with accepted industry standards and subject to approval by the Fire Marshal.
- 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.

- g. A citation may be issued for the failure to correct the violation within 24 hours of the notice of violation by either the Gas Well Inspector or the City of Burleson police.
- h. During nighttime operations, the operation of vehicle audible back up alarms shall be prohibited or replaced with approved non-auditory signaling systems, such as spotters or flagmen. Deliveries of pipe, casing and heavy loads shall be limited to daytime hours. The derrick-man and driller shall communicate by walkie-talkie only when the derrick-man is in the derrick. Horns may not be used to signal for connection or to summon crew (except that a horn may be used for emergency purposes only). The operator shall conduct onsite meetings to inform all personnel of nighttime operations noise control requirements.

C. Well setback requirements.

- 1. It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located:
 - a. Within five hundred (500) feet of a residential lot line as shown on a recorded final plat or an approved and unexpired preliminary plat, unless the residential lot is under lease by the Operator;
 - b. Within one-hundred (100) feet of any public street, road, highway or future street, right-of-way; or
 - c. Within five hundred (500) feet from any building or outdoor facility used, or designed and intended to be used, for a residence, religious institution, public building, public gathering area, hospital building or public or private school.
- 2. The distance shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any object listed above.
- 3. The setback distances set out in this subsection may be reduced or increased by the City Council as part of the approval of a Gas Well Permit.
- 4. Gas Well Permits for subsequent wells on a drill site where a producing gas well permitted by the City of Burleson is located shall be required to meet the distance setback requirements only for those buildings, outdoor facilities and platted lots in existence at the time the first Gas Well Permit on the site was issued, but shall meet all other requirements and provisions of this Ordinance in full.

5. Tank batteries, well facilities and equipment shall be located at least two hundred (200) feet from any public park or from any residence, religious institution, public building, hospital building or school for which a building permit has been issued on the date of the application for a drilling permit is filed. The distance shall be calculated from the closest tank batteries, well facilities and/or equipment, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

D. Installation of pipelines on, under or across public property.
The Operator shall apply to the City for an Easement and Right-of-Way Use Agreement on, over, under, along or across the city streets, sidewalks, alleys and other City property for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines so long as production or operations may be continued under any Gas Well Permit issued pursuant to this Ordinance. Operator shall:

1. Not interfere with or damage existing water, sewer or gas lines or the facilities of public utilities located on, under or across the course of such rights-of way.
2. Furnish to the Director of Engineering Services of the City a plat or map showing the location of such pipelines.
3. Construct such lines out of pipe in accordance with the City codes and regulations properly cased and vented if under a street;
4. Grade, level and restore such property to the same surface condition, as nearly as practicable, as existed when operations for the pipeline construction were first commenced.

E. Street blockage limitations.
No street or alley shall be blocked or encumbered or closed due to any exploration, drilling or production operations unless prior consent is obtained from the City Manager. Any consent from the City Manager shall be temporary in nature and state the number of hours and/or days that any street or alley may be blocked, encumbered or closed.

F. Road Damage Remediation Agreement.
A Road Damage Remediation Agreement is required as part of the application for a Gas Well Permit. Operators of gas wells located outside the City limits, who use roads within the City as a portion of their truck route, are required to enter into a Road Damage Remediation Agreement with the City prior to use or any further use of any such roads.

Sec. 14-363. Security and screening.

A. Requirements during drilling operations. During drilling operation, the operator shall provide the following:

1. a. an on-site watchperson supplied by the Operator to provide 24-hour security of the drill site, or;
 - b. a chain link fence that encloses the perimeter of the drill site, with "No Trespassing" signs attached to the fence every fifty (50) feet. Fencing must meet the perimeter fencing requirements given in Sec. 14-363 (D).
 2. a secured entrance gate on the access road. The gate shall be secured with a Knox lock and the gate shall be kept locked when the Operator or site employees are not on the premises. Gate shall meet requirements of gate specifications under 14-363(E).
- B. Requirements after drilling operations. Once drilling operations are complete, the operator shall provide the following:
1. Internal fencing. Within twenty (20) days after production capability has been established, all production equipment on the operation site shall be completely enclosed by a permanent chain link fence with a secured gate. The equipment may be enclosed in a single fence, or components may be fenced separately. The gates shall be locked when operation personnel are not present. Temporary fence is only acceptable if application for a new well on the same drill site has been made within the same twenty (20) day limit.
 2. Perimeter fencing. Within thirty (30) days after production capability has been established, if there are no additional active permits on the drill site, the perimeter of the drill site shall be enclosed by a permanent fence unless otherwise agreed to. In most locations, the perimeter fence shall be constructed of chain link. However, in certain urban locations, at the discretion of City Council, a masonry wall or wrought iron fence may be required.
 3. Security system. Within ten (10) days of completion of the perimeter fencing, all sites shall have a fully operational security system that meets the following requirements:
 - a. Remotely Monitored Access Control System. All vehicular gates in the perimeter fencing shall be secured by a permitted, remotely monitored control access system. The system shall meet the following requirements:
 - 1) Monitoring. The system shall be monitored by a central monitoring facility capable of monitoring security related alarm systems and meeting all required state and federal guidelines. The central monitoring facility shall be staffed and operational at all times.
 - 2) Access control. Gate access shall be secured by an access control system with an unlocking and re-locking mechanism that requires a card, numeric code, or other identification device for gate operation.

The system shall record the identity of the entering party and the date and time of such entry.

- 3) Intrusion detection system. The system shall include a gate closure contact sensor that will be activated when the gate closure sensor is violated in any manner by non-identified access. The system shall be equipped to signal a control panel which activates an on-site audible signal and registers at the monitoring facility when an access breach is detected.
 - 4) Open gate detection. The security system shall include an open gate detection alarm to notify the monitoring facility if the gate closure sensors, once accessed, are not closed and thereby reactivated within five (5) minutes of being opened.
 - 5) Exit sensor. Gates shall be equipped with a motion sensor, weight sensor or other device to unarm the gate for vehicles exiting the site.
- b. Personnel exit gate. An exit-only gate for personnel shall be provided near the vehicular gate entrance.
 - c. Response to alarms. The alarm system shall be permitted with the City of Burleson Police Department (BPD) in accordance with the city's alarm Ordinance. The monitoring facility shall notify the Operator and the BPD in case of security breach at the drill site. The Operator shall respond with an authorized representative on site within forty five (45) minutes of notification of alarm. Fines for false alarms shall be as follows:

| Number per calendar year | Fine per each |
|--------------------------|---|
| 1-3 | \$ 500 |
| 4-9 | \$1000 |
| 10-15 | .. \$1500 |
| 16-20 | . \$2000 |
| 21+ | \$2000 and suspension of <u>Gas Well Permit</u> |

- C. Additional heightened security measures for sites near high pedestrian traffic areas. The following additional security measures will be required for drill sites located within a 1000' radius of any building or outdoor facility used, or designed and intended to be used, for a religious institution, public building, public gathering area, hospital building or public or private school:
 - 1. Security Camera(s). At all times after the perimeter fence is in place, a minimum of one (1) security camera shall be mounted inside the perimeter fence. Signs shall be posted on the fencing of the site to indicate that any activity on the site may be recorded by video surveillance. Camera systems shall be designed and located as required to meet the following requirements and shall be maintained in proper operating condition:

- a. capture clear video images of all traffic entering and exiting the gate(s);
 - b. capture clear video images of all production equipment located on the site;
 - c. be equipped with motion detection technology
 - d. be equipped with panning technology to pan immediately to any motion detected on the site
 - e. show the date and time of all activity on the footage
 - f. be capable of being viewed at the monitoring facility
2. Data Archival. Operator shall maintain video data for a period of 400 hours. At the request of the City, the Operator shall produce to the City any recorded views of the fenced area. Data from videos may only be requested by the City Manager or law enforcement officials.
- D. Fence specifications. Fences on drill sites shall meet the following specifications:
1. Chain link fence specifications are as follows:
 - a. Chain link fence shall be a minimum of six (6) feet in height.
 - b. Support posts shall be set in concrete and shall be embedded 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;
 - c. The chain link shall be vinyl coated, and either dark green or black in color;
 - d. The chain link fabric shall be a minimum of nine (9) gauge (0.148" diameter) wire secured to line post and rail at a maximum of 12" o.c. using 9 gauge tie wire;
 - e. The chain link fence shall be non-climbable, 1-1/4" mesh or smaller
 - f. Posts and rails shall be standard dark green or black pipe.
 - g. Tension rods shall be three-eighths-inch round steel bolt stock. Adjustable tighteners shall be turnbuckle or equivalent having a six-inch minimum thickness of one-fourth by three-fourths inch.
 - h. The chain link fence shall have a 1-5/8" o.d. bottom rail secured in the center with a 3/8" diameter galvanized steel eye hook anchored into a concrete footing.

- i. The chain link fence shall have one (1) strand of barbed wire at the bottom of the fence.
 - j. The chain link fence shall be constructed with three (3) strands of barbed wire, located on an arm at the top of the fence, spaced at 6" intervals and angled at 45 degrees toward the exterior of the fence,
 - k. All fences shall have a minimum of one (1) gate. Gates shall meet specifications given in Sec. 14-363 (E).
 2. Masonry fence specifications are as follows:
 - a. Masonry fences shall be constructed in accordance with standard engineering practices;
 - b. Masonry fences shall be compatible with facilities, buildings, and structures adjacent to the drill site;
 - c. Masonry fences shall be constructed of brick, stone, or reinforced concrete panels. Other similar materials may be approved by the City Manager if their projected life expectancy is 30 years or more and are resistant to sunlight and moisture;
 - d. Masonry fences shall be a minimum of eight (8) feet in height.
 3. All fences shall be maintained in sound structural condition. The owner shall maintain the fence at all times in a state of good repair, safe and secure condition.
 4. The fence requirements of this section may be modified by the City Council as part of the approval of a gas well permit.
- E. Gate specifications. All fences shall be equipped with at least one (1) gate. Each gate shall meet the following specifications:
 1. Each gate opening on internal fencing shall be not less than three (3) feet wide.
 2. Each vehicular gate opening on perimeter fencing shall be not less than twenty-four (24) feet wide. The personnel gate shall not be less than three (3) feet wide.
 3. The gates for masonry fences shall be constructed of ornamental iron.
 4. Gates for chain link fences shall meet all fence specifications given in Sec. 14-363(D), including barbed wire and bottom rail.
 5. The Operator shall provide the City Manager a "Knox Padlock" to access all gates surrounding and within the well site to conduct inspections and in case of an emergency.

- F. Security compliance review and upgrade requirement. All well sites within the City limits are expected to meet the requirements in this Section at all times and shall be subject to a periodic security review to assure they remain in compliance with the requirements of this Section as conditions change around the well site. This shall apply to all wells within the city limits, including existing wells and wells annexed into the city. Operators shall be given a reasonable time, but in no case more than ninety (90) days, once notified of a finding of noncompliance, to cure the noncompliance.
- G. Landscaping. Within thirty (30) days after production capability on the final well on the site has been established, all drill sites shall be landscaped in accordance with the requirements of this subsection. A landscape plan is required as part of the permit application and must be approved by the City Manager prior to issuance of a Gas Well Permit. The landscape plan shall meet the following requirements:
1. Trees of diverse species shall be planted outside the perimeter fencing of the drill site, at a maximum spacing of thirty (30) feet on center. Understory landscape plants are required at a maximum spacing of eight (8) feet on center around the perimeter fencing. All plant shall be xeriscape, native or adaptive in species.
 2. Drip irrigation of landscape beds and trees is required wherever adequate public water supplies are available. The irrigation system shall be maintained in proper working order at all times. If public water supply is not available, alternate irrigation methods must be implemented and maintained for a minimum of two (2) years, or until plants and trees are sufficiently established. Irrigation methods must be continued until an established landscape rate of 80% of the required plantings is achieved.
 3. The minimum size of tree planted shall be three (3) inches in diameter measured one foot above ground level. If the tree is multi trunk, the main stem will be given full credit for its diameter and all other stems will receive one-half ($\frac{1}{2}$) credit.
 4. Any landscape plants or trees that die within two years of planting shall be replaced by the Operator and a new two- year guarantee for the replacement tree landscape or plant will begin at the time of replacement.
 5. All landscaping shall be kept neat and orderly at all times. Failure to comply with this requirement will subject the Operator to the penalties as listed in Section 5 of this ordinance.
 6. The City Manager may authorize a delay in the planting of the trees or other landscape due to adverse weather conditions or seasonal variations. The Operator of the site shall comply with the landscaping requirements of this Ordinance when the City Manager makes the determination that weather conditions or seasonal planting variations are no longer detrimental to landscape plantings.

7. Berms shall be utilized to enhance the topography and to create a more aesthetic landscape plan.
8. The trees and other landscape plants on the following lists shall be used to satisfy the landscaping requirement. These species trees are considered appropriate for the Burleson and North Central Texas area. Other landscape species trees may be considered by the City Manager and granted on a case-by-case basis. The approval of additional species will be judged on adaptability, long-term health, low water demand, and growing characteristic of the tree type.

Recommended Tree Species*

| Common Name | Scientific Name |
|--------------------|---------------------------------------|
| Afghan Pine | <i>Pinus eldarica</i> |
| American Elm | <i>Ulmas Americana</i> |
| Bigelow Oak | <i>Quercus sinuata var. breviloba</i> |
| Bur Oak | <i>Quercus macrocarpa</i> |
| Caddo Maple | <i>Acer saccharum</i> |
| Cedar Elm | <i>Ulmas crassifolia</i> |
| Chinquapin Oak | <i>Quercus muhlenbergii</i> |
| Durrand Oak | <i>Quercus sinuata var. sinuate</i> |
| Lacebark Elm | <i>Ulmas parvifolia</i> |
| Lacey Oak | <i>Quercus glaucoides</i> |
| Live Oak | <i>Quercus virginiana</i> |
| Pecan | <i>Carya Illinoensis</i> |
| Shumard Oak | <i>Quercus shumardii</i> |
| Texas Ash | <i>Fraxinus</i> |
| Texas Red Oak | <i>Quercus texana</i> |
| Western Soapberry | <i>Sapindus drummondii</i> |

Recommended Understory Species*

| Common Name | Scientific Name |
|-----------------------|------------------------------------|
| Verbena | <i>Vervain North America</i> |
| Lantana | <i>Lantana camara</i> |
| Sedum | <i>Sedum spectabile</i> |
| Lirope | <i>Lirope spicata</i> |
| Bluebeard | <i>Penstemon virgatus</i> |
| Purple Fountain Grass | <i>Pennisetum setaceum</i> |
| Yellow Pampas Grass | <i>Cortaderia</i> |
| Feather Grass | <i>Stipa pennata English</i> |
| Prickly Pear Cactus | <i>Opuntia fragilis</i> |
| Saguaro Cactus | <i>Canegiea gigantus</i> |
| Nandina | <i>Nandina domestica</i> |
| Barberry | <i>Berberis vulgaris (various)</i> |
| Spirea | <i>Spirea North America</i> |
| Privet | <i>Ligustrum vulgare</i> |

(*This list is not exclusive)

Sec.14-364. Cleanup and maintenance.

- A. Clean-up 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 sixty (60) 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 Fire Marshal and the City Manager all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations shall begin immediately. If the owner fails to begin site clean-up immediately, the City Manager or Fire Marshal, at the owner's expense, may then employ any cleanup expert or experts or other contractors or suppliers of special services.
- C. Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material.
- D. Painting. All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such 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 tan, beige, and unobtrusive shades of black or dark green.
- E. Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this Ordinance and shall notify the City Manager and Fire Marshal as soon as practicable. If the City Manager or Fire Marshal, in his opinion, believes that danger to persons and property exists because of such loss of well control and that the Operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the City Manager or Fire Marshal may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which they deem necessary to regain control of such well. The City shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the City pursuant to such action of the City Manager in gaining control of said well.

Sec. 14-365. Plugged and abandoned wells.

- A. Surface requirements for plugged and abandoned well. Whenever abandonment occurs pursuant to the requirements of the Commission, the Operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly

as practicable, in conformity with the regulations of this Ordinance or under the Operator's surface use agreement.

- B. Abandonment shall be approved by the City Manager after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the City Manager:
1. The derrick and all appurtenant equipment thereto shall be removed from drill site;
 2. All tanks, towers, and other surface installations shall be removed from the drill site;
 3. All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the 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; and
 6. During abandonment, Operator shall comply with all applicable sections in this Ordinance.
- C. Abandoned well requirement. The Operator shall furnish the following to the City Manager:
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 prior 48-hour 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.
 3. All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three (3) feet below the surface. 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 (4) inches in diameter with a length of four (4) feet visible above the ground level.
- 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 prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

DIVISION V. Appeals

Sec. 14-366. Appeals.

- A. The City Council shall have and exercise the power to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the revocation or suspension of any Gas Well Permit issued hereunder as provided by this Ordinance. Any person or entity whose Gas Well Permit is suspended or revoked or whose well or equipment is deemed by the City Manager to be abandoned may, within thirty (30) days of the date of the written decision of the City Manager file an appeal to the City Council in accordance with the following procedure:
1. An appeal shall be in writing and shall be filed with the City Secretary. The grounds for appeal must be set forth specifically, and the error described, by the appellant.
 2. Within forty-five (45) days of receipt of the records, the City Secretary shall transmit all papers involved in the proceeding, place the matter on the City Council agenda for hearing and give notice by mail of the time, place and purpose thereof to appellant and any other party who has requested in writing to be so notified. No other notice need be given.
- B. The application fee for an appeal shall be established by the City Council.

Sec. 14-367. 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 a Gas Well Permit issued under this Ordinance.
 2. Fail to comply with any condition set forth in a Gas Well Permit issued under this Ordinance; or,
 3. Violate any provision or requirement set forth under this Ordinance.
- B. Any violation of this Ordinance shall be punished by a fine of not more than \$2,000.00 per day, subject to applicable State law. Each day that a violation exists shall constitute a separate offense.

SECTION 2. CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances of the City of Burleson, Texas, except when 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 3. SAVINGS CLAUSE

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of any ordinances affecting gas drilling and exploration which 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 4. SEVERABILITY CLAUSE

If any article, section, sub-section, sentence or phrase of this Ordinance should be held to be invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this Ordinance which shall remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. PENALTY CLAUSE

Any person, firm, association of persons, company, corporation, or their agents, servants, or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than two thousand dollars (\$2,000.00), and each day any violation of noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in V.T.C.A. Local Government Code 54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

SECTION 6. PUBLICATION CLAUSE

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause and effective date clause of this ordinance at least two (2) times within fourteen (14) days after the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

SECTION 7. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

PASSED AND APPROVED this the 12th day of February 2008.



Mayor, Ken Shetter

Attest:



City Secretary, Amanda McDowell

Road Damage Remediation Agreement

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

ROAD DAMAGE REMEDIATION AGREEMENT

This Road Damage Remediation Agreement, (hereafter the “Agreement”), is made and entered into on this the _____ day of _____, 200_____, by and between the City of Burleson, Texas (hereafter the “City”), a municipal corporation and a home-rule municipality of the State of Texas, located within Johnson & Tarrant Counties, Texas; and _____ (hereafter the “Operator”) for the payment of fees for damage remediation of certain streets and/or roadways within the City of Burleson, Texas, as more fully described herein.

WHEREAS, Operator is in the business of drilling gas wells and, in connection therewith, shall be engaged in drilling and production activities on property identified on Operator’s gas well permit, which abuts or is adjacent to, and/or is accessed by roadways within the City of Burleson, and

WHEREAS, the Operator’s gas well permit from the City of Burleson, dated _____200_____, is made a part of this Agreement by reference; and

WHEREAS, the nature of heavy vehicular traffic during natural gas well development (“drilling”), post-production well stimulation (“fracing”) and re-working activities will exceed the normal and anticipated use of the public roadways within the City’s corporate limits; and

WHEREAS, according to the study conducted by C & P Engineering, LTD., (hereafter the “Study”) the life expectancy of a roadway decreases with heavy vehicular traffic traveling upon it, and heavy equipment loads produce greater amounts of road distress according to the Study; and

WHEREAS, distress which may either be structural or functional, which in turn, increases overall maintenance oversight, repair, and replacement costs to the City respecting the roadways, in connection with the Operator’s gas well drilling and production activities; and

WHEREAS, structural distress is recognized as the pavement’s ability to carry traffic and/or cracking or deterioration of the pavement section; whereas functional distress is recognized as the ride quality and safety of the pavement; and

WHEREAS, use of the roadways by the Operator for the purpose of performing the activities described hereinabove causes distress to the roadways as a result of the frequency of their specific operations and such distress may be immediate or it may be gradual and delayed, and also will exceed the design criteria of said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS, the City and Operator, for the mutual consideration hereinafter stated, desire to enter into this Agreement for Operator to compensate City for the maintenance and damage remediation of such roadways for

the duration of the term of this Agreement in consideration for Operator's use of such roadways for the purpose of the activities described hereinabove;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1.
RECITALS

The foregoing recitals are understood and agreed upon by the parties and are incorporated into the terms of this Agreement.

ARTICLE 2.
DAMAGE REMEDIATION OBLIGATION

1. **Fee:** City and Operator understand and agree that use by Operator, its contractors, subcontractors, employees and agents (all hereafter referred to as "Operator") of roadways that abut and lead to the property for which a Gas Well Permit has been issued to Operator, will decrease the life expectancy of such roadways. Operator and City agree that it is and will continue to be impracticable and extremely difficult to determine the actual amount of such damage. Therefore, City and Operator hereby agree that Operator shall pay to City a road damage remediation fee based upon the formula set forth in Exhibit "A" to this Agreement, a copy of which is attached hereto and incorporated herein. Both City and Operator agree that the amount assessed pursuant to the formula set forth herein is the minimum value of the costs and actual damage and decreased life expectancy of roadways caused by the normal use of the roadways by Operator. Such sum of money shall be paid by Operator to the City prior to the commencement of any activity under the Gas Well Permit. It is expressly understood and agreed that such formula and fee are not to be considered a penalty, nor a tax, but shall be deemed taken and treated as a fee that is roughly proportionate and necessary for City to repair and maintain its roadways based upon normal usage by Operator acting in the ordinary course of its business.
2. **Truck Route:** Operator shall be liable for and shall pay additional road damage assessments should Operator deviate from the truck route that is designated in the Gas Well Permit.
4. **Timely Payment:** In the event that Operator does not timely and adequately make payment under this Agreement upon written demand of the City, the City has the authority to prohibit further use of its roadways by Operator's vehicles, to suspend any and all Gas Well Permits issued to Operator, and to make a claim on Operator's bond or other security instrument.

ARTICLE 3.
ROAD DAMAGE REMEDIATION FEE

1. **Methodology:** The Road Damage Remediation Fee shall be calculated using the method outlined in Exhibit "A." Replacement costs for asphalt and/or concrete road segments shall be determined from current fair market value cost per square yard of road surface material, including installation and labor. The City shall provide as an attachment to this Agreement, a copy of the calculations directly related to the methodology used

to determine the fee paid by Operator; such attachment is identified as Exhibit "A", a copy of which is attached hereto and incorporated herein.

The City's investigation and determination of any and all aspects of the above referenced methodologies constitute generally accepted practices of road replacement, repair, and maintenance professionals undertaking similar project evaluations at the same time, and in the same geographical area. The City observes the same degree of care and skill generally exercised by professionals under similar circumstances and conditions.

2. Road Damage Remediation Fee Calculation: The Road Damage Remediation Fee, hereafter stated, and in compliance with all applicable methodologies hereinabove enumerated, shall be an amount as determined by the Road Damage Remediation Calculation, Exhibit "A".

Type I - Six inch (6") flex base with chip seal.

Type II - Six inch (6") treated flex base with chip seal.

Type III - Six inch (6") treated flex base with two inch (2") asphalt overlay.(No C&G)

Type IV - Six inch (6") treated flex base with two inch (2") asphalt overlay.(With C&G)

Type V - Eight inch (8") treated soil subgrade with six inch (6") asphalt overlay.

Type VI - Eight inch (8") treated soil subgrade with seven inch (7") asphalt overlay.

Type VII - Six inch (6") treated soil subgrade with five inch (5") reinforced concrete.

Type VIII - Six inch (6") treated soil subgrade with six inch (6") reinforced concrete.

Type IX - Six inch (6") treated soil subgrade with seven inch (7") reinforced concrete.

3. Payment Due: The Road Damage Remediation Fee is required to be paid in full at the time of issuance of a Gas Well Permit by the City Council. Such permit application shall be considered administratively incomplete until this Agreement is executed, Road Damage Remediation Fee payment received, and both are on file with the City.

ARTICLE 4. **TERM OF AGREEMENT**

This Agreement shall commence upon the date indicated above and shall continue in full force and effect until Operator has completed and/or permanently discontinued the activities upon the roadways, as described hereinabove.

ARTICLE 5. **INSURANCE AND INDEMNITY**

1. Insurance: The Operator shall provide or cause to be provided the insurance and other security that meet the requirements of Section 14-361 of the Code of Ordinances of the City of Burleson, Texas, as amended. Such insurance shall be maintained in effect at all times when the Operator is engaged in exploration, development, and production of gas in the city of Burleson.

2. Indemnification: Operator hereby agrees to indemnify, defend and save harmless the City, its departments, agents, officers, servants and employees from all suits, actions or claims of any character name and description brought for or on account of any injuries or damages received as sustained by any person, persons or property, including personal injury or death, on account of the operations of Operator, its agents, employees, contractors, subcontractors or representatives, or on account of any negligent act or fault of Operator, its agents, employees, contractors, subcontractors or representatives in connection with the obligations of Operator under this Agreement; and Operator shall pay any judgment, with costs, and if applicable attorney's fees which are a part of the judgment, which may be obtained against the City growing out of such injury or damage. It is understood and agreed that such indemnity is an indemnity extended by the Operator to indemnify and protect the City of Burleson and/or its departments, agents, officers, servants, or employees *from the consequences of the negligence of the City of Burleson, Texas and/or its departments, agents, officers, servants and employees, whether that negligence is the sole or a contributing cause of the resultant injury, death, and/or damage.* Operator specifically agrees that road damage in excess of the road damage remediation fee assessment provided for in this Agreement shall be paid from Operator's security required under Section 14-361 of the Code of Ordinances of the City of Burleson, Texas, as amended.

ARTICLE 6.
INDEPENDENT CONTRACTOR

Operator understands and agrees that Operator, its employees, servants, agents, and representatives shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

ARTICLE 7.
GOVERNMENTAL IMMUNITY

By entering into this Agreement, the City does not waive, nor shall it be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising by third parties.

ARTICLE 8.
NO IMPACT FEE

Operator agrees that the Road Damage Remediation Fee provided hereunder is not an impact fee under Chapter 395 of the Texas Local Government Code, and expressly agrees that this Road Damage Remediation Fee is not a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to new development. Further, Operator agrees that the Road Damage Remediation Fee provided

hereunder will not be credited to any subsequent roadway impact fees if the subject property is subdivided or developed in the future.

The Road Damage Remediation Fee shall not be applied to roadways other than those maintained by the City and designated as "haul routes" as part of the permit application. Funds from these fees shall not be expended on public roadways or streets, other than those designated as City maintained gas well haul routes.

ARTICLE 9.
FORCE MAJEURE

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

ARTICLE 10.
ASSIGNABILITY/CONSENT

Except as otherwise provided herein, or except as may be hereafter determined by the parties and added as a written amendment or modification hereto, no party to this Agreement may sell, assign, or transfer its interest in this Agreement, or any of its right, duties, or obligations hereunder, without the prior written consent of the other party.

ARTICLE 11.
NOTICE

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery; sent by registered mail or certified mail; or by United States Mail, return receipt requested, postage prepaid; to:

CITY: City Manager
 City of Burleson, Texas
 141 W. Renfro Street,
 Burleson, Texas 76028

OPERATOR:

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

ARTICLE 12.
MODIFICATION

No waiver, amendment, or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver, amendment, or modification is in writing, duly executed by both parties. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

ARTICLE 13.
SAVINGS/SEVERABILITY

In the event that any one or more of the provisions, terms, phrases or clauses of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect; such invalidity, illegality, or unenforceability shall not affect the other provisions, terms, phrases or clauses of the provisions contained herein and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision, term, phrase, or clause had never been contained in this Agreement.

ARTICLE 14.
GOVERNING LAW AND VENUE

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and venue for any action arising under the terms and conditions of this Agreement shall lie in the state courts located in Johnson County, Texas.

ARTICLE 15.
ENTIRE AGREEMENT

This Agreement and the exhibits and other documents attached hereto and/or referenced herein, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly authorized and executed by the parties hereto. Notwithstanding the foregoing, this Agreement is cumulative of all applicable City Ordinances, as amended.

ARTICLE 16.
NON-WAIVER

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE 17.
CAPTIONS

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

ARTICLE 18.
CONSTRUCTION OF AGREEMENT

The parties hereto have negotiated the terms of this Agreement and therefore agree that as a negotiated document, this contract shall not be more strictly construed against either party.

ARTICLE 19.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and constitute one and the same instrument.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the _____ day of _____, 2007.

“CITY”

CITY OF BURLESON, TEXAS

ATTEST:

By: _____
Curtis E. Hawk, City Manager

Amanda McDowell, City Secretary

“OPERATOR”

By: _____

Printed Name

Title: _____

Name of Entity: _____

STATE OF TEXAS §

§
COUNTY OF JOHNSON §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Curtis Hawk, City Manager of the City of Burleson, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the City of Burleson, Texas and that he executed the same as the act of such City of Burleson, Texas for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the ____ day of _____, 200__.

[SEAL]

Notary Public in and for the State of Texas

* * * * *

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, (title) for _____ (Entity Name of Operator), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of _____ (Entity Name of Operator) and that he executed the same as the act of such Operator for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the ____ day of _____, 20__.

[SEAL]

Notary Public in and for the State of Texas.

EXHIBIT A

ROAD DAMAGE REMEDIATION CALCULATION
 Well ID

Drilling and Fracturing - Piped Water

| Road Type | Construction Cost/Lane Mile 2005 | AASHTO Design Life (ESAL) | Consumptive Use (ESAL) | Consumptive Use (%) | Assessment Per Lane Mile |
|-----------|----------------------------------|---------------------------|------------------------|---------------------|--------------------------|
| I | \$61,248 | 600 | 488.35 | 81.362% | \$49,851 |
| II | \$77,440 | 5,700 | 488.35 | 8.568% | \$6,635 |
| III | \$93,413 | 37,500 | 488.35 | 1.302% | \$1,216 |
| IV | \$229,000 | 138,100 | 488.35 | 0.354% | \$811 |
| V | \$342,000 | 376,100 | 488.35 | 0.130% | \$445 |
| VI | \$369,000 | 1,060,900 | 488.35 | 0.046% | \$170 |
| VII | \$260,000 | 200,000 | 488.35 | 0.244% | \$634 |
| VIII | \$278,000 | 500,000 | 488.35 | 0.098% | \$272 |
| IX | \$296,000 | 1,100,000 | 488.35 | 0.044% | \$130 |

Drilling and Fracturing - Hauled Water

| Road Type | Construction Cost/Lane Mile 2005 | AASHTO Design Life (ESAL) | Consumptive Use (ESAL) | Consumptive Use (%) | Assessment Per Lane Mile |
|-----------|----------------------------------|---------------------------|------------------------|---------------------|--------------------------|
| I | \$61,248 | 600 | 1,336.05 | 222.875% | \$136,384 |
| II | \$77,440 | 5,700 | 1,336.05 | 23.439% | \$18,151 |
| III | \$93,413 | 37,500 | 1,336.05 | 3.563% | \$3,328 |
| IV | \$229,000 | 138,100 | 1,336.05 | 0.967% | \$2,214 |
| V | \$342,000 | 376,100 | 1,336.05 | 0.355% | \$1,214 |
| VI | \$369,000 | 1,060,900 | 1,336.05 | 0.126% | \$465 |
| VII | \$260,000 | 200,000 | 1,336.05 | 0.668% | \$1,737 |
| VIII | \$278,000 | 500,000 | 1,336.05 | 0.267% | \$742 |
| IX | \$296,000 | 1,100,000 | 1,336.05 | 0.121% | \$358 |

| Road Type | Assessment Per Lane Mile Piped Water | X Access Lane Miles Per Site (Haul Route) | Fee Calculation Assessment Per Haul Route Lane Mile | X OCI | Assessment Per Road Type |
|-----------|--------------------------------------|---|---|-------|--------------------------|
| I | \$49,851 | | | | |
| II | \$6,635 | | | | |
| III | \$1,216 | | | | |
| IV | \$811 | | | | |
| V | \$445 | | | | |
| VI | \$170 | | | | |
| VII | \$634 | | | | |
| VIII | \$272 | | | | |
| IX | \$130 | | | | |

Total Haul Route Assessment: 3

| Road Type | Assessment Per Lane Mile Hauled Water | X Access Lane Miles Per Site (Haul Route) | Fee Calculation Assessment Per Haul Route Lane Mile | X OCI | Assessment Per Road Type |
|-----------|---------------------------------------|---|---|-------|--------------------------|
| I | \$136,384 | | | | |
| II | \$18,151 | | | | |
| III | \$3,328 | | | | |
| IV | \$2,214 | | | | |
| V | \$1,214 | | | | |
| VI | \$465 | | | | |
| VII | \$1,737 | | | | |
| VIII | \$742 | | | | |
| IX | \$358 | | | | |

Total Haul Route Assessment: 3

- Road Type I is Six inch (6") flex base with chip seal.
- Road Type II is Six inch (6") treated flex base with chip seal.
- Road Type III is Six inch (6") treated flex base with two inch (2") asphalt overlay.(No C&G)
- Road Type IV is Six inch (6") treated flex base with two inch (2") asphalt overlay (With C&G)
- Road Type V is Eight inch (8") treated soil subgrade with six inch (6") asphalt overlay.
- Road Type VI is Eight inch (8") treated soil subgrade with seven inch (7") asphalt overlay.
- Road Type VII is Six inch (6") treated soil subgrade with five inch (5") reinforced concrete.
- Road Type VIII is Six inch (6") treated soil subgrade with six inch (6") reinforced concrete.
- Road Type IX is Six inch (6") treated soil subgrade with sevenx inch (7") reinforced concrete.

OCI = Overall Condition Index from City of Burleson Street Inventory (10 = New, No maintenance needed and 100% of it's design life remaining).

OCI = Overall Condition Index

OCI Ratings from 1 to 10; 10 is new pavement or pavement that has been reconstructed to new condition and has 100% of it's design life remaining.

Access Lane Miles Per Site is total number of lane miles per type road that make up the "Haul Route" identified on the Gas Well Permit and verified by City.

Assessment Per Road Type is the total dollar assessment per lane mile of haul route as determined by the OCI per site.

Assessment Fees will be applied to each site with the total per site not to exceed the OCI of the Consumptive Use total.

Fees apply for a time period not to exceed the Gas Well Permit.

At such time as wells are re-drilled or re-fraced, fees shall be reapplied.