

ORDINANCE NUMBER 18412-12-2008

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT WORTH, BY AMENDING ARTICLE II OF CHAPTER 15, "GAS", ENTITLED, "GAS DRILLING AND PRODUCTION," BY AMENDING SECTION 15-31 "DEFINITIONS" TO AMEND THE DEFINITION OF A PUBLIC BUILDING, REMOVE PUBLIC BUILDINGS FROM THE PROTECTED USE DEFINITION AND ADD HOTELS, MOTELS AND JAILS TO THE DEFINITION OF A RESIDENCE; AMEND SECTION 15-34 "GAS WELL PERMIT REQUIRED" TO ADD GRANDFATHERING FROM MINIMUM DISTANCE REQUIREMENTS IN CERTAIN CIRCUMSTANCES AND TO CHANGE THE NAME "PAD SITE PERMIT" TO "MULTIPLE WELL SITE PERMIT"; AMEND SECTION 15-42 "TECHNICAL REGULATIONS" TO ESTABLISH A MINIMUM SETBACK OF THREE HUNDRED FEET FOR PROTECTED USES AND PUBLIC BUILDINGS; AMEND VARIOUS SECTIONS TO DELETE OR ADD "PUBLIC BUILDINGS" WHERE APPROPRIATE; 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 NAMING AN EFFECTIVE DATE

WHEREAS, on December 11, 2001, the City Council adopted Ordinance Number 14880 regulating gas drilling within the city limits of Fort Worth; and

WHEREAS, in June of 2006, the City Council amended the gas drilling ordinance (Ordinance Number 16986) for the drilling, production and re-drilling of gas so that these activities may be conducted in a manner that protects the public health and welfare of the citizens of Fort Worth, conforms with established codes and regulations while minimizing the potential impact of surface property and mineral rights owners; and

WHEREAS, in 2008, the City Council appointed a third task force of gas industry, developer and neighborhood representatives to study revisions to the gas drilling ordinance, including revisions to the current regulations for compressors, noise, public notice, protected use definitions, setbacks, roads, and other revisions that will improve the quality of life while allowing the continued access to the minerals; and

WHEREAS, on December 9, 2008, the City Council amended the gas drilling ordinance, including revisions for new environmental provisions to reduce emissions from wells and trucks, new salt water piping standards, the requirement for the submission of noise management plans; mitigation and enforcement for low-frequency and pure tone noise, compressor setback and noise standards, permits and standards for certain pipeline routes, the creation of a gas drilling review committee to provide problem-solving venue for high-impact wells, pipelines through residential areas, and non-commercial truck routes, clarification of definitions and language for clearer enforcement; the establishment of landscaping deadlines, the creation of permitting and

regulations for fracture ponds and a requirement for surface reclamation plans (Ordinance Number 18399-12-2008); and

WHEREAS, on December 9th, the City Council did not adopt proposed provisions related to the definition of a public building and the requirements of a multiple well site permit in order to study the two issues further at the next City Council meeting; and

WHEREAS, after further study the City Council deems it advisable to adopt a new definition and a drilling setback requirement for Public Buildings and increase the minimum setback for Protected Uses and Public Buildings to three hundred feet consistent with the International Fire Code as adopted by the City and to add hotels, motels and jails to the definition of a Residence; and

WHEREAS, in order to allow those operators who have existing well sites to drill additional wells where uses were allowed to drill under the existing two hundred foot setback, existing sites will be grandfathered as to distance under certain circumstances; and

WHEREAS, due to the possible consequences and unintended impacts to the neighborhoods due to more single well sites and pipeline routes as a result of the suggested mandatory multiple well site permit for additional wells on a pad site, the City Council deems it advisable to retain the current language for pad site permits allowing the permit to be requested at the option of the operator but requiring a six hundred foot radius from the pad site boundary for determining the number of Protected Uses; and

WHEREAS, the provisions set forth in Chapter 15 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 FORT WORTH, TEXAS:

SECTION 1.

Section 15-31, "Definitions" of Article II to Chapter 15, "Gas" of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend the definitions of a Protected Use, a Public Building and a Residence to read as follows:

Protected Use means a residence, religious institution, hospital building, school or public park.

Public building means all buildings with occupancies greater than 50 persons and more than 750 square feet used or designed to and intended to be used for motion picture theaters, symphony and concert halls, television and radio studios

admitting an audience, theaters, banquet halls, night clubs, restaurants, taverns and bars, amusement arcades, art galleries, bowling alleys, community halls, courtrooms, dance halls, exhibition halls funeral parlors, gymnasiums without spectator seating, indoor swimming pools and tennis courts without spectator seating, lecture halls, libraries, museums, waiting areas in transportation terminals, pool and billiard parlors, arenas with spectator seating, skating rinks with spectator seating, swimming pools with spectator swimming, tennis courts with spectator seating and amusement park structures, bleachers, grandstands and stadiums used for viewing outdoor activities.

Residence means a house, duplex, apartment, townhouse, condominium, city-inspected mobile homes 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 Gas Inspector. Residence shall include assisted living facilities, nursing homes (both intermediate care facilities and skilled nursing facilities), residential board and care facilities, group homes, 24-hour shelters, half-way houses, hotels, motels and jails.

SECTION 2.

Section 15-34, "Gas Well Permit Required" of Article II to Chapter 15, "Gas" of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend Subsection H to provide a time limit for Operators to notify the City regarding existing well sites to read as follows:

- H.** No additional Gas Well Permit or filing fees shall be required for:
- a. 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
 - b. any wells which drilling has commenced on the effective date of this Ordinance; or
 - c. any wells in existence or on any wells on which drilling has commenced on land annexed into the City after the effective date of this Ordinance; or
 - d. any well that was planned for the land 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.

A person shall have forty-five (45) days after the effective date of this Ordinance or annexation into the City to designate a gas operation as a preexisting operation by filing a site plan drawn to scale that shows the

proposed location of the well or pad site with respect to survey lines and the proposed associated production facilities, if any, or designate an existing pad site as a Multiple Well Site with the Gas Inspector.

A Operator or property owner shall have forty-five days after the effective date of this Ordinance to notify the City of sites that have a Protected Use (permitted or built) or a residential lot that is located between 300 and 200 feet from an existing well site. Sites that meet the above notice and distance requirements will be grandfathered to the setback requirements existing prior to January 1, 2009. For residential lots only, the City Council can waive the minimum setback. For residential lots only, if the above required notice is not received by the City within forty-five days, the minimum setback distance may be reduced by the City Council to 200 feet.

SECTION 3.

Section 15-34, "Gas Well Permit Required" of Article II to Chapter 15, "Gas" of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend Subsection L. regarding a Pad Site Permit to read as follows:

L. Multiple Well Site Permit. An individual well permit shall be allowed only in those instances where there is a single well on the pad site. At the time the Operator submits an application for the issuance for a single well permit, the Operator, at his option, may also request the issuance of a Multiple Well Site Permit for drilling future wells. Applications for gas wells drilled on a Multiple Well Site shall comply with the following:

a. For all purposes, the measurement shall be from the boundary line of the pad site.

b. If the pad site is located within six hundred (600) feet of a Protected Use at the time of the filing of a Multiple Well Site Permit application, the applicant must obtain a variance granted by the City Council or waivers from all Protected Uses within a six hundred (600) foot radius before the Multiple Well Site Permit may be issued.

c. Notice that a Multiple Well Site Permit application has been filed with the City must be included in any notice to property owners and in the published newspaper notice as required by Section 15-36 for the initial gas well permit.

d. All Multiple Well Site Permits must be filed of record by the Operator, at his expense in the applicable county deed records and indicated on all applicable plats filed in the deed records. Each filed Multiple Well Site Permit shall contain the address, lot and block, subdivision name and plat volume and page of each lot, tract or parcel located within 1000 feet of the Multiple Well Site Permit.

e. Prior to the issuance of a Multiple Well Site Permit by the City, the Operator must place at least one sign on the property located in a conspicuous place or places upon the property at a point or points visible from nearest any right-of-way, street, roadway, public thoroughfare or Protected Use adjacent to such property. The Gas Inspector may require additional signage if the pad site fronts on more than one right-of-way, street, roadway, or public thoroughfare. The sign shall indicate that a Multiple Well Site Permit to drill multiple wells for gas on this site has been applied for, and shall further set forth that additional information can be acquired by telephoning the applicant/Operator at the number indicated on the sign. A permanent sign approved by the Gas Inspector indicating that a Multiple Well Site Permit has been issued shall remain posted at the pad site location for the duration of the Multiple Well Site Permit.

f. Prior to the commencement of drilling of each additional gas well on a permitted Multiple Well Site Permit pad site, the Operator must submit an application for the issuance of a Gas Well permit, for each such future well, in accordance with this ordinance.

g. All subsequent gas wells drilled on a permitted gas well pad site permit shall comply with all regulations, including the notice and landscape provisions, and all other provisions of this ordinance, except for the distance setback requirements related to drilling a well from a Protected Use. All additional wells drilled on a permitted Multiple Well Site must comply with all regulations except that no variance or waiver for a distance setback from a Protected Use shall be required; however no well shall be drilled closer than 300 feet from any Protected Use or Public Building.

h. No Multiple Well Site Permit shall be issued for a gas well pad site greater than five (5) acres in surface area or the amount of surface area acreage included in the surface use agreement, whichever is larger.

i. All wells will be set back a minimum of seventy- five (75) feet from the outer pad site boundary.

j. The Multiple Well Site Permit shall automatically terminate if drilling of the initial well bore has not commenced within three hundred sixty-five (365) days from the date of the issuance of the Gas Well Permit unless the initial Gas Well Permit is extended by the Gas Inspector.

k. The issuance of a gas well pad site permit is for the sole purpose of allowing future wells to be drilled on an existing pad site and within 600 feet of Protected Uses without obtaining waivers and/or variances as set forth in Section 15.42 of this Ordinance. All gas wells drilled upon a permitted gas well pad site must otherwise comply with any drilling distance regulations from a Protected Use or other structure as required by state law and applicable fire code regulations and all other provisions of this Ordinance.

SECTION 4.

Section 15-36, "Gas Well Permitting Procedure" of Article II to Chapter 15, "Gas" of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend Subsection A. "Wells located within 600 feet of a Protected Use" to delete all references to a "Public Building" to read as follows:

A. WELLS LOCATED WITHIN 600 FEET OF A PROTECTED USE.

A Gas Well Permit shall not be issued for any well to be drilled within six hundred (600) feet of a residence, religious institution, hospital building, school or public park without:

1. Waiver granted by the City Council; or
2. Written notarized waiver granted by the all the Protected Use property owners within a six hundred (600) foot radius around the proposed well pursuant to this Section. All waivers must identify the property address, block and lot number, subdivision name (if applicable) and plat volume and page and be filed, at the expense of the operator, in the applicable county records prior to the application of a Gas well Permit.

This setback distance may be reduced, but never less than three hundred (300) feet, from any residence, religious institution, hospital building, school or public park.

This provision applies to any existing residence, religious institution, hospital building, school or public park or where a building permit has been issued for a Protected Use on the date the application for a permit is filed with the Gas Inspector.

The measurement of the six hundred (600) foot distance shall be made from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building or boundary line of a public park.

SECTION 5.

Section 15-42, "Technical Regulations" of Article II to Chapter 15, "Gas" of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend Subsection C. "Setbacks" to read as follows:

- A. It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located:
- 1) Within twenty-five (25) feet from any storage tank, or source of ignition;
 - 2) Within seventy-five (75) feet of any public street, road, highway or future street or right-of-way or property line;
 - 3) Within six hundred (600) feet from any Protected Use;

- 4) Within three hundred (300) feet from any Public Building;
- 5) Within two hundred (200) feet from any Habitable Structure;
- 6) Within one hundred (100) feet of any building accessory to, but not necessary to the operation of the well;
- 7) Within two hundred (200) feet to any fresh water well not drilled by the operator as a specific source of water used for drilling or completion operations without the express written permission of the owner of the water well; or.
- 8) Within three hundred (300) feet from an outer boundary surface property line or a distance minus the required zoning setback of the adjacent property at the time of permitting the first gas well unless one of the following conditions exist:
 - a. the oil, gas and mineral lease precedes the formation of an outer boundary surface property line; or
 - b. the adjacent property is owned or under lease by the operator.

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 in 1) through 5) and 7) above, except that the measurement from a well bore to a school not located within another Protected Use shall be from the property line of the school to the well bore, in a straight line, without regard to intervening structures or objects.

The measurement for 6) above shall be in a direct line from the closest well bore to the fresh water well bore. The distance requirement for fresh water wells is subject to the Railroad Commission regulations and any other state or federal requirements.

B. Distance Reduction for Protected Uses

The distance set out in subsection 3) of this section may be reduced to three hundred (300) feet from any Protected Use, with a:

- a. Waiver granted by the City Council; or
- b. Written notarized waivers granted by the all the Protected Use property owners within a six hundred (600) foot radius around the proposed well pursuant to Section 15-36 of this Ordinance

SECTION 6.

Section 15-42, "Technical Regulations" of Article II to Chapter 15, "Gas" of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend 33f. "Storage

Tanks” of Subsection A. “On Site Requirements” to add a reference to a “Public Building” to read as follows:

f. Tank batteries, separators and equipment shall be set back at least 200 feet from the Protected Use, Public Building or Habitable Structure or 100 feet from the property line, whichever is greater. The setback shall apply for any Protected Use, Public Building or Habitable Structure for which a building permit has been issued on the date of the application for a drilling permit. 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.

SECTION 7.

Section 15-42, “Technical Regulations” of Article II to Chapter 15, “Gas” of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend Paragraph 3 of subsection B. “Lift Compressors of Subsection D. “Compressor Stations - Natural Gas Facilities” to add a reference to a “Public Building” to read as follows:

3. All Lift Compressors shall be setback a minimum of 300 feet from any Protected Use, Public Building or Habitable Structure property line not necessary to the operation of the compressor. Equipment and buildings not part of the operation of the compressor shall be setback a minimum of 200 feet from the Protected Use, Public Building or Habitable Structure or 100 feet from the property line, whichever is greater.

SECTION 8.

Section 15-42, “Technical Regulations” of Article II to Chapter 15, “Gas” of the Code of Ordinances of Fort Worth, Texas is hereby amended to amend Paragraph 2 of subsection C. “Line Compressors” of Subsection D. “Compressor Stations - Natural Gas Facilities” to add a reference to a “Public Building” to read as follows:

2. All Line Compressors shall be setback a minimum of 600 feet from any Protected Use and 300 feet from all Public Buildings and Habitable Structures not necessary to the operation of the compressor. Equipment and buildings not part of the operation of the compressor shall be setback a minimum of 200 feet from the Protected Use, Public Building or Habitable Structure or 100 feet from the property line, whichever is greater.

SECTION 9.

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 10.

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 11.

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

SECTION 12.

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this

ordinance shall be fined not more than Two Thousand Dollars (\$2000.00) for each offense.
Each day that a violation exists shall constitute a separate offense.

SECTION 13.

That the City Secretary of the City of Fort Worth, Texas is hereby directed to publish this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by V.T.C.A. Local Government Code Subsection 52.013.

SECTION 14.

This ordinance shall take effect on January 1, 2009 upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: 
Assistant City Attorney

Adopted: December 16, 2008

Effective: January 1, 2009

City of Fort Worth, Texas

Mayor and Council Communication

COUNCIL ACTION: Approved on 12/16/2008 - Ord. No. 18412-12-2008

DATE: Tuesday, December 16, 2008

LOG NAME: 06GAS FINAL

REFERENCE NO.: G-16407

SUBJECT:

Adopt Ordinance Amending Article II, Chapter 15, "Gas Drilling and Production," of the City Code to Revise the Regulations Related to Protected Use Definitions, Drill Sites with Multiple Wells and Permit Application Requirements

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending Article II, Chapter 15, "Gas Drilling and Production," of the City Code to revise the regulations related to protected use definitions, drill sites with multiple wells and permit application requirements.

DISCUSSION:

On December 11, 2001, the City Council adopted Ordinance No. 14880, regulating gas drilling within the City limits of Fort Worth. Based on the work of the 2006 Task Force the ordinance was revised on June 13, 2006 (16986-06-2006). The City Council appointed a new Task Force in 2008 to study and recommend revisions to the gas drilling ordinance regarding noise, compressors, environmental impacts, pipelines, setbacks, road impacts, protected use definition, notice and well classifications.

On December 9, 2008, (M&C G-16391) the City Council approved proposed amendments to address these issues with the exception of Section 15-34 "Gas Well Permit Required" regarding multiple well site permits and Section 15-31 "Definitions" relating to the definition of Public Building. These two items were delayed to allow further discussion during a work session on December 16, 2008. It is anticipated that the City Council will evaluate the proposed setback from the multiple well pad site and the grandfathering of wells under this provision. In addition, the City Council will discuss the types of uses that should be protected under the Public Building definition.

The changes adopted on December 9, 2008, also included a temporary provision to require the submission of an approved Railroad Commission permit with a gas well permit application to the City. This change was made to ensure that speculative permits are not submitted to the City in anticipation of the new regulations while the final provisions are deliberated.

Adoption of the attached ordinance will remove the language from Section 15-35 "Gas Well Permit Applications and Filing Fees" that requires a copy of the approved Railroad Commission permit to be submitted with the application to drill a gas well in the City. If adopted, the Operator will be allowed to submit a gas drilling application to the City at the same time a permit is submitted to the Railroad Commission, thus streamlining the process.

FISCAL INFORMATION/CERTIFICATION:

The Financial Management Services Director certifies that this action will have no material effect on City funds.

TO Fund/Account/Centers

FROM Fund/Account/Centers

Submitted for City Manager's Office by:

Fernando Costa (6122)

Originating Department Head:

Susan Alanis (8180)

Additional Information Contact:

Susan Alanis (8180)
