

TOWN OF FLOWER MOUND

ORDINANCE NO. _____

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

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

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

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

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

WHEREAS, in the Lake Grapevine Watershed, over 1,600 natural gas wells and over 180 oil wells have been completed, with many more expected; and

WHEREAS, oil and natural gas operations include the clearing and leveling of a site, the construction of access roads, potential digging of reserve pits and impacts upon the water supply; and

WHEREAS, well stimulation, which is the process of creating or enlarging existing pores to allow gas to more readily reach the producing well, and hydraulic fracturing (“fracing”), associated therewith, includes the use of a fracturing fluid, high pressure and proppants such as sand; and

WHEREAS, fracing usually involves the use of heavy equipment, including large trucks and related equipment, and often excessive amounts of noise, light, and potential damage to public roads and streets; and

WHEREAS, oil drilling and production operations are currently being conducted in the communities and unincorporated areas around Flower Mound; and

WHEREAS, oil drilling and production operations pose similar regulatory and environmental protection issues as natural gas drilling and production operations; and

WHEREAS, oil and natural gas exploration and operations involve or otherwise impact the Town's environment, infrastructure and related public health, welfare and safety matters, including noise issues, road repair issues due to use of heavy equipment, site security and signage issues, issues related to operating hours, venting of gas, fire suppression issues, lighting issues, containment systems, hazardous materials management, spill issues, operator insurance issues, environmental impairment matters and other regulatory issues; and

WHEREAS, the Lake Grapevine watershed, in which Flower Mound is located in part, has unique and precious environmental features that will or may be impacted by oil and natural gas wells, oil and natural gas exploration and oil and natural gas operations; and

WHEREAS, the Town of Flower Mound has various types of valuable environmental features, including remnant stands of the ancient Cross Timbers Forest, wetlands, creeks, streams, ponds, and native prairies and savannahs; and

WHEREAS, the Eastern Cross Timbers tree stands are a unique ecological and historically significant geographic feature, facing rapid decline throughout the north central Texas region;

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

SECTION 1

The matters and facts recited in the preamble hereof are hereby found and determined to be true and correct and incorporated herein by reference as if fully set forth herein.

SECTION 2

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

Div. 1. Purpose, § 34-416.

Sec. 34-416. PURPOSE.

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

Div. 2. Definitions, § 34-417.

Sec. 34-417. DEFINITIONS.

All technical industry words or phrases related to the drilling and production of oil and gas wells not specifically defined shall have the meanings customarily attributable thereto by prudent operators in the oil and gas industry. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

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

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

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

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

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

Commission means the Texas Railroad Commission.

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

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

Daytime means the timeframe between 7:00 a.m. to 9:00 p.m.

Derrick means 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 oil and/or gas.

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

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

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

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

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

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

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

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

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

Inspector means the oil and gas inspector designated by the Town Manager of the Town of Flower Mound, Texas.

Nighttime means the timeframe between 9:00 p.m. to 7:00 a.m.

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

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

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

Permit means any written license granted by the Town for the exploration, development, and production of oil and/or gas wells issued pursuant to rules and regulations of this Article. Four (4) types of permits may be issued by the Town, including an oil well permit, gas well permit, or a combined permit for the exploration, development, and production of both oil and gas wells as indicated on a single application, and a pad site permit for multiple oil or gas wells as enumerated on a single permit application.

Person means both the singular and the plural and means a natural person, a corporation, association,

guardian, partnership, receiver, trustee, administrator, executor, and fiduciary or representative of any kind.

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

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

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

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

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

Residence means a house, duplex, apartment, townhouse, condominium, mobile home, or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for an oil, gas, or combined well permit is filed with the oil and gas inspector.

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

the existing well bore, or replacement of well liners or casings.

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

School means any public and private, primary and secondary educational facilities providing education up through and including the twelfth grade level and any licensed day care centers, meaning a facility licensed by the State of Texas or by the Town of Flower Mound, Texas that provides care, training, education, custody, treatment or supervision for more than six (6) children under fourteen (14) years of age, and for less than twenty-four (24) hours per day.

Storage tank means any vessel, having a liquid capacity that exceeds 230 L (60 gal) containing a flammable or combustible product that is intended for fixed installation and is not used primarily for dwelling purposes.

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

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

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

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

Town means the Town of Flower Mound, Texas.

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

Town Code means the Code of Ordinances of the Town of Flower Mound, Texas, as amended.

Well means a hole or holes, bore or bores, to any horizon, formation, or strata used for the purpose of producing oil, gas, liquid hydrocarbon, brine water, or sulphur water, or used as an injection well for secondary recovery, disposal or production of oil, gas, or other hydrocarbons from the earth.
(Ord. No. 89-03, § 2, 12-15-2003)

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

Sec. 34-418. OIL AND GAS INSPECTOR.

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

requested material shall be deemed a violation of this article.

Div. 4. Agent, § 34-419

Sec. 34-419. OPERATOR'S AGENT.

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

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

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

- (a) A person desiring to engage and/or operate in oil and/or gas production activities shall apply for and obtain an oil, gas, or combined well permit under this article. It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to drill any well, assist in any way in the site preparation, re-working, fracturing, or operation of any such well, or to conduct any activity related to the production of oil and/or gas without first obtaining an oil, gas, or combined well permit issued by the Town in accordance with this division. Such activities include, but are not limited to, re-working, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing, and pressurizing.
 - (1) A permit shall not be required for seismic surveys. The operator conducting the seismic survey, however, shall provide notice to the oil and gas inspector in no less than seven (7) business days prior to the commencement of any seismic survey activities on site, and therein shall provide the following information:
 - a. Operator/applicant name, phone number, address, and, if possible, email address; if the operator is a corporation,

the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners shall be provided.

- b. Location of seismic survey.
- c. Date and time the seismic survey will be conducted.
- d. Detailed explanation of the seismic survey method to be used on site.
- e. Date and time the seismic survey will be completed.

(2) Under no circumstances may explosive charges, including, but not limited to the use of dynamite, be used in any way related to the preparation and/or operation of conducting a seismic survey without the authorization of the Town Fire Marshal.

- (b) The operator must apply for and obtain an oil, gas, or combined well permit for the drilling, re-drilling, deepening, re-entering, activating or converting of each well. The operator may apply for and obtain a "pad site" well permit for more than one (1) well if multiple wells are located on the same pad site. Under a pad site permit, all proposed wells must be individually identified and comply with all requirements of this article.
- (c) An oil, gas, or combined well permit shall not constitute authority for the re-entering and drilling of an abandoned well. An operator shall obtain a new well permit in accordance with the provisions of this section if the operator is re-entering and drilling an abandoned well.
- (d) When an oil, gas, or combined well permit has been issued to the operator for the drilling, re-drilling, deepening, re-entering, activating, or converting of a well, such oil, gas, or combined well permit shall constitute sufficient authority for drilling, operation, production gathering or production maintenance, repair,

re-working, testing, plugging and abandonment of the well and/or any other activity associated with mineral exploration at the site of such well, provided, however, that a new or amended permit shall be obtained before such well may be reworked for purposes of re-drilling, deepening or converting such well to a depth or use other than that set forth in the then current permit for such well.

- (e) Any person who intends to re-work a permitted well using a drilling rig, to fracture stimulate a permitted well after initial completion, or to conduct seismic surveys or other exploration activities shall give written notice to the oil and gas inspector no less than ten (10) business days before the activities begin. The notice must identify where the activities will be conducted and must describe the activities in detail, including whether explosive charges will be used, the duration of the activities and the time the activities will be conducted. The notice must also provide the address and twenty-four-hour phone number of the person conducting the activities. If requested by the oil and gas inspector, the person conducting the activities will post a sign on the property giving the public notice of the activities, including the name, address and twenty-four-hour phone number of the person conducting the activities.

- (f) The following requirements shall apply to all fracture stimulation operations performed on a well: 1) at least forty-eight (48) hours before operations are commenced, the operator shall post a sign at the entrance of the well site advising the public of the date the operations will commence; 2) "flowback" operations to recover fluids used during fracture stimulation shall be performed during daylight hours only unless the oil and gas inspector approves such operations during non-daylight hours; 3) a watchperson shall be required at all times during such operations; and 4) at no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank. All formation fracturing operations shall be conducted during daylight hours unless the operator has notified and received authorization from the oil and gas inspector that fracturing operations will occur before or after daylight hours to meet safety requirements.

- (g) An oil, gas, or combined well permit shall automatically terminate, unless extended, if drilling is not commenced within sixty (60) days from the date of the issuance of the permit. Drilling must commence within sixty (60) days from the date of the issuance of the permit on at least one (1) well under a “pad site permit,” as described in section 34-420(b) in order to maintain the validity of the permit for the multiple wells. A permit may be extended by the oil and gas inspector for an additional sixty (60) days upon request by the operator and proof that the regulatory standards of the requested permit for such location have not changed.
- (h) The oil, gas, or combined well permits required by this division are in addition to and are not in lieu of any permit that may be required by any other provision of this Code or by any other governmental agency.
- (i) No additional oil, gas, or combined well permit or filing fees shall be required for:
 - (1) Any wells, existing and approved by the Town on the effective date of this article; or
 - (2) Any wells in existence or on any wells on which drilling has commenced on land annexed into the Town after the effective date of this article.
- (j) No oil, gas, or combined well permit shall be issued for any well to be drilled within any public park.
- (k) No oil, gas, or combined well permit shall be issued for any well to be drilled within five hundred feet (500') of a floodplain.
 - (1) For floodplains identified by the Federal Emergency Management Agency (FEMA) on the most current Federal Insurance Rate Map (FIRM), except for Zones A or X, the distance measurement from the closest edge of construction or surface disturbance shall be calculated as a straight line, without regard to intervening structures or objects, to the closest exterior point of the base flood elevation topographic contour.

(2) For Zones A and X, or all other areas within the Town's corporate limits, in which the proposed closest edge of construction or surface disturbance is within five hundred fifty feet (550') of any type of surface water conveyance, including, but not limited to, creeks, streams, drainage ditches, or other constructed storm water conveyance systems, measuring the distance in a straight line from the conveyance centerline, an approximate flood study shall be prepared by the applicant and approved by the Town Engineer. Upon completion of the approximate flood study, if the Town Engineer determines that the proposed closest edge of construction or surface disturbance is within one hundred feet (100') of any type of surface water conveyance, or other flood hazard area, then a detailed flood study shall be prepared by the applicant and approved by the Town Engineer. All distance measurements shall be consistent with 34-420(k)(1). (Ord. No. 89-03, § 3, 12-15-2003)

- (l) No oil, gas, or combined well permit shall be issued for any well to be drilled that is in non-compliance with any standard, provision, procedure, and/or recommendation as described in the Town of Flower Mound Engineering Services Design Criteria and Construction Standards Manual.
- (m) No oil, gas, or combined well permit shall be issued for any well to be drilled on Town-owned property without the prior consent of the Town Council. The Town Council shall review the insurance and security requirements, potential environmental impacts, and threats to public health and safety, on an individual basis prior to Town Council issuing the permit.
- (n) No oil, gas, or combined well permit shall be issued for any well to be drilled within five hundred feet (500') of a designated "Environmentally Sensitive Area" as described in Subpart B, "Land Development Regulations" of the Town's Code of Ordinances, Chapter 98, Article II, entitled "Smartgrowth Management Plan." The distance from the closest edge of construction or surface disturbance shall be

measured in a straight line, without regard to intervening structures or objects, to the closest exterior point of the environmentally sensitive area.

- (o) Pursuant to Section 34-432 of this Article, the Oil and Gas Board of Appeals may issue variances to reduce the distance requirements set out in subsections (k) and (n) of this section.
- (p) By acceptance of any permit issued pursuant to this article, the operator expressly stipulates and agrees to be bound by and comply with the provisions of this article. The terms of this article shall be deemed to be incorporated in any oil, gas, or combined well permit issued pursuant to this article with the same force and effect as if this article was set forth verbatim in such oil, gas, or combined well permit.

Sec. 34-421.

OIL AND GAS WELL PERMIT APPLICATION AND FILING FEES.

- (a) Every application for an oil, gas, or combined well permit issued pursuant to this article shall be in writing signed by the operator, or some person duly authorized to sign on his or her behalf, and filed with the oil and gas inspector.
- (b) Every application shall be accompanied by a permit fee of five thousand dollars (\$5,000.00).
- (c) A five hundred dollar (\$500.00) inspection fee shall be required annually, starting one (1) year after the initial date the oil and/or gas well permit is issued.
- (d) The application shall include the following information:
 - (1) The date of the application.
 - (2) An accurate legal description of the lease property to be used for the oil and/or gas operation, the parcel, and the production unit and name of the geologic formation as used by the Commission. Property recorded by the plat should reference subdivision, block, and lot numbers, as applicable.

- (3) Map showing proposed transportation route and road for equipment, chemicals or waste products used or produced by the oil and/or gas operation.
- (4) Proposed well name(s).
- (5) Surface owner name(s), phone number(s), address(es), and, if possible, email address(es), of the lease property.
- (6) Mineral lessee name, telephone number, address, and, if possible, email address.
- (7) Mineral owner name, telephone number, address, and, if possible, email address.
- (8) Operator/applicant name, phone number, address, and, if possible, email address; if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners shall be provided.
- (9) Name, phone number, address, and, if possible, email address of the individual designated to receive notice.
- (10) Name of representative with supervisory authority over all oil and/or gas operation site activities and a twenty-four-hour phone number.
- (11) Location and description of all improvements and structures within one thousand (1,000) feet of the proposed drill site.
- (12) Owner and address of each parcel of property within one thousand (1,000) feet of the proposed drill site.
- (13) A site plan of the proposed operation site showing the location of all improvements and equipment, including the location of the proposed well(s) and other facilities, including, but not limited to, tanks, pipelines, compressors, separators, and storage tanks. In addition, the

site plan must conform to all relevant standards and requirements described in Subpart B, "Land Development Regulations," Chapter 82, "Development Standards," Article II, "Site Plans."

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

- (22) A copy of the storm water pollution prevention plan as required by the Commission, Texas Commission on Environmental Quality, and/or the United States Environmental Protection Agency. A copy of the notice of intent shall be submitted to the Town of Flower Mound, Environmental Resources Division, seven (7) business days prior to the commencement of any onsite activity.
- (23) A copy of the erosion control plan pursuant to the Town's Design Criteria and Construction Standards Manual, as amended, and approved by the Town Engineer.
- (24) A copy of the hazardous materials management plan as required by the Town's Fire Marshal's office. In addition to the hazardous materials management plan, all material safety data sheets (MSDSs) for all hazardous materials that will be located, stored, transported, and/or temporarily used on the drilling site shall be provided to the oil and gas inspector and fire marshal.
- (25) A copy of the emergency response plan as required by the Town's Fire Marshal's office.
- (26) A copy of the determination by the Texas Commission on Environmental Quality of the depth of useable quality ground water.
- (27) Evidence of insurance and security requirements under this article.
- (28) A copy of the Noise Management Plan, prepared by a noise control engineer or other qualified person approved by the oil and gas inspector, for any equipment used in the drilling, completion, or production of a well as required in Section 34-424(i)(6) of this Article.
- (29) A statement, under oath, signed by the operator, or designated representative, that the information submitted with the application is, to

the best knowledge and belief of the operator or designated representative, true and correct.

(30) All required application and well permit fees.

Sec. 34-422.

OIL AND GAS WELL PERMIT.

- (a) *Generally.* An oil, gas, or combined well permit shall be required for all wells related to developing or producing oil, gas, or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.
- (b) *Application requirements.* An application for an oil, gas, or combined well permit shall include the following information:
 - (1) All the requirements of section 34-421 of this article;
 - (2) A detailed site plan that includes all the information required in section 34-421, but also includes specific details to the projected location of the major components of the drilling site, impacted environmentally sensitive areas, floodplains, topographic contours, creeks and other topographic features, adjacent buildings and other structures, and the measured distance from the well site to these major components of the drilling site, impacted environmentally sensitive areas, floodplains, topographic contours, creeks and other topographic features, adjacent buildings and other structures.
 - (3) All application submissions for a permit shall include at a minimum six (6) copies of the application and all associated documentation, including plats, maps, surveys, and supporting materials, reports, and/or forms.
- (c) *Permitting procedure*
 - (1) It is the responsibility of the oil and gas inspector to review and approve or disapprove all applications for oil, gas, or combined well drilling

permits based on the criteria established by this article.

- (2) The oil and gas inspector, within forty-five (45) days after the filing of a completed application and remittance of all fees, insurance, and security per the requirements of this article for an oil, gas, or combined well permit, shall determine whether the application complies in all respects with the provisions of the this article and determine if the proposed well to be drilled or the facility to be installed is in compliance with the distance requirements for the requested permit on the date the completed application is received by the oil and gas inspector.
- (3) The provisions of this article shall apply to any dwellings or buildings for which an application for a building permit has been submitted on the date the application for an oil, gas, or combined well permit is filed with the oil and gas inspector.
- (4) All new and/or proposed construction of any buildings, structures, streets, roads, and/or applicable improvements to the property upon which any oil and/or gas well is located shall be located no closer than five hundred feet (500') from the nearest surface equipment associated with the oil and gas well permit. Prior to the issuance of a building permit by the Town for any of said structure(s), the owner or developer of any lot or tract for which a building permit is sought shall have the following notation placed on any deed, plat or site plan for said lot or tract: "This tract or lot is located less than one thousand feet (1,000') from an existing oil or gas well and is subject to the Codes and Ordinances of the Town of Flower Mound." The new construction setback may be reduced pursuant to Section 34-432, "Appeals," of this Article, but said setback shall never be less than 300 hundred feet (300') from any associated equipment to oil and gas well production.
- (5) If all the requirements of this article are met, the oil and gas inspector shall issue a permit for the

drilling of the well or the installation of the facilities for which the permit application was made.

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

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

- (1) It shall be unlawful to drill, re-drill, deepen, re-enter, activate or convert any well, the center of which, at the surface of the ground, is located:
 - a. Within one thousand (1,000) feet from any public park; or
 - b. Within one thousand feet (1,000') from any residence owned by a person that does not have a mineral interest in the oil, gas, or combined well permit application; or
 - c. Within five hundred feet (500') from any residence owned by a person that has a mineral interest in the oil, gas, or combined well permit application; or
 - d. Within one thousand feet (1,000') from any religious institution, public building, hospital building or school for which a building permit has been issued on or before the date of the application for a drilling permit is filed with the oil and gas inspector; or

- e. Within five hundred feet (500') from any building used, or designed and intended to be used, for human occupancy; or
- f. Within five hundred feet (500') from any recorded property, lot or tract line; or
- g. Within five hundred feet (500') from any existing storage tank, or source of potential ignition;
- h. Within five hundred (500) feet of any public street, road, highway, or right-of-way line; or
- i. Within one hundred (100) feet of any building accessory to, but not necessary to the operation of the well; or
- j. Within one thousand feet (1,000') from any fresh water well whose owner does not have a mineral interest in the oil, gas, or combined well permit application; or
- k. Within five hundred feet (500') from any fresh water well whose owner does have a mineral interest in the oil, gas, or combined well permit application;
- l. All distances shall be measured from the proposed well bore in a straight line, without regard to intervening structures or objects, to the closest exterior point of any object or structure listed in subparagraphs (a) through (k) above.
- m. For purposes of this section, a "building used, or designed and intended to be used, for human occupancy" means an enclosed space, other than a residence, in which individuals congregate for amusement or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation facilities.

- (2) Tank batteries, compression facilities, well facilities, and equipment shall be at least one thousand feet (1,000') 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 or before the date the application for a drilling permit is filed, and five hundred feet (500') from any building used, or designed and intended to be used, for human occupancy, for which a building permit has been issued on or before the date the application for a drilling permit is filed. The distance shall be calculated from the closest tank batteries, compression facilities, well facilities, and/or equipment in a straight line without regard to intervening structures or objects to the closest exterior point of the building. Centralized tank batteries, compression facilities, and associated facilities shall comply with all well bore permit setback requirements.
- (3) The distances set out in subsections (1) and (2) of this section may be reduced and documented as variances to the requested permit prior to issuance at the discretion of the Oil and Gas Board of Appeals pursuant to Section 34-432, "Appeals," of this Article, but said distances shall never be reduced to less than:
- a. Five hundred feet (500') from any religious institution, public building, hospital building or school; or
 - b. Five hundred feet (500') from any residence owned by a person that does not have a mineral interest in the oil, gas, or combined well permit application; or
 - c. Three hundred feet (300') from any residence owned by a person that does have a mineral interest in the oil, gas, or combined well permit; or
 - d. Three hundred feet (300') from any building used, or designed and intended to be used, for human occupancy.

- (e) *Erosion Control Plan.* Erosion control practices shall be conducted for all gas wells. Notwithstanding the requirements as stated in Section 34-421(d)(23), compost berms that are at least 1 foot (1') high and two feet (2') wide, or equivalent erosion control devices, shall be installed near the downslope portion of the well pad so that off-site runoff is contained. Damage resulting from sedimentation and /or erosion shall be repaired immediately.
- (f) *Vehicle routes for oil and gas well permits.* Vehicles, in excess of three (3) tons gross vehicle weight, associated with drilling and/or production shall be restricted to such streets designated as arterials, collectors or local commercial as delineated in the Town's Thoroughfare Plan. The vehicles shall be operated on state arterials whenever capable of being used. Such vehicles shall be operated on Town arterials, collectors and local commercial only when it is not possible to use a state arterial to fulfill the purpose for which such vehicle is then being operated.
- (g) *Work hours for oil and gas well permits.* Site development, other than drilling, shall be conducted only between 7:00 a.m. and 7:00 p.m. Monday through Friday and between 9:00 a.m. and 5:00 p.m. on Saturday. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation and other related work conducted on the well site shall be limited to the same work hour restrictions identified above except in cases of fires, blowouts, explosions, and any other emergencies or where the delivery of equipment is necessary to prevent the cessation of drilling or production. The operator may request a variance from the Oil and Gas Board of Appeals, pursuant to Section 34-432 of this Article.
- (h) *Noise restrictions for oil and gas well permits.*
 - (1) No drilling, producing, or other operations shall produce a sound level greater than:
 - a. Seventy (70) decibels using the "A weighting filter" ("dB(a)") when measured at a distance of three hundred feet (300') from

the drilling, producing, or operating equipment in question during the daytime.

b. Fifty-six (56) dB(a) when measured to the nearest residence, public building, or human occupied building from the drilling, producing, or operating equipment in question during the nighttime.

c. A maximum sound level of seventy (70) dB(a) shall apply to formation fracturing when measured at a distance of three hundred feet (300') from the production equipment in question during the daytime.

(2) No person shall operate or permit to be operated in connection with the operation of a producing well(s) any engine, small compressor or motor-driven machinery of any type which creates a sound level that exceeds the ambient noise level by more than five (5) decibels ("dB") during the daytime and more than three (3) dB during the nighttime when measured at the nearest property line, residence, human occupied building, or public building whichever is closer. In addition, if a residence, human occupied building, or public building for which an application for a building permit has been submitted on or before the date the application for a drilling permit is filed with the oil and gas inspector is present on the property that the engine, small compressor or motor driven machinery of any type is proposed, the sound level shall not exceed the ambient noise level by more than five (5) db during the daytime and more than three (3) db during the nighttime when measured at the proposed residence, human occupied building, or public building.

(3) No person shall operate or permit to be operated in connection with the operation of a producing well(s) any compression facility which creates a sound level that exceeds the ambient noise level by more than five (5) dB during the daytime and more than three (3) dB during the nighttime when measured at the nearest property line, residence, human occupied building, or public

building whichever is closer. In addition, if a residence, human occupied building, or public building for which an application for a building permit has been submitted on or before the date the application for a building permit for the compression facility is filed with Building Inspections is present on the property that the compression facility is proposed, the sound level shall not exceed the ambient noise level by more than five (5) dB during the daytime and more than three (3) dB during the nighttime when measured at the proposed residence, human occupied building, or public building. Upon approval by the Town, the compression facility shall be totally enclosed and designed to meet architectural standards complimentary of the surrounding area.

- (4) Sound level measurements shall conform to the following guidance:
 - a. Sound level meters shall conform, as a minimum, to the requirements of the American National Standards Institute.
 - b. Sound level measurements shall be taken four feet (4') above ground level.
 - c. Sound levels shall be determined by averaging minute-by-minute measurements made over minimum fifteen (15) minute sample duration, if practicable. The sample shall be taken under conditions that are representative of the noise experienced by the complainant (e.g., at night, morning, evening, or during special weather conditions).
 - d. In all sound level measurements, the existing ambient noise level from all other sources in the encompassing environment at the time and place of such sound level measurement shall be considered to determine the contribution to the sound level by the oil and gas operation(s).

- (5) If sound levels exceed the dB(a) levels referenced in paragraph (1) of this subsection, the oil and gas inspector may require sound mitigation measures including, but not limited to, critical grade mufflers and sound walls.
- (6) The Noise Management Plan, as approved by the oil and gas inspector, shall detail how the equipment used in the drilling, completion, transportation, or production of a well complies with the maximum permissible noise levels of this Article. The noise management plan must:
 - a. Identify operation noise impacts;
 - b. Provide documentation, if applicable, establishing the Ambient Noise Level prior to construction of any wellhead compressor or compression facility and after the installation of the noise generation equipment verifying compliance with this section; and
 - c. Detail how the impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 1. Nature and proximity of adjacent development, location, and type;
 2. Seasonal and prevailing weather patterns, including wind directions;
 3. Vegetative cover on or adjacent to the site;
 4. Topography;
 5. Operation and site noise management measures which may include but not be limited to: use of critical grade mufflers on generators and motors; use of structural noise curtains, walls, or enclosures; and best management

practices by limiting or eliminating noisier operations, such as tripping, deliveries of pipe, casing and heavy loads, use of horns for communication, and operation of vehicle audible back-up alarms at night.

- (i) *Tank specifications for oil and gas well permit.* All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications unless other specifications are approved by the fire chief. The top of the tanks shall be no higher than eight (8) feet above the terrain surrounding the tanks.
- (j) *Building Permit Required.*
 - (1) No building or structure regulated by the current code adopted by the Town, shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the building official. Notwithstanding the provisions of the Town's building codes, compliance with all noise requirements of this article shall be documented, signed by a noise control engineer or other qualified person approved by the oil and gas inspector, and submitted to the oil and gas inspector prior to the issuance of a certificate of occupancy.
 - (2) It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by the current code adopted by the Town, to register as a general contractor with the town. Work regulated includes but is not limited to: construction of gates, fencing, plumbing, irrigation, electricity, roadways, entrances, compressors, flow lines, pipelines, gathering lines, tank batteries, and buildings. Such registration shall be upon forms supplied by the building official and shall become null and void on December 31 of each year. An appropriate fee for registration shall be assessed in

accordance with the provisions of appendix A of the Code of Ordinances of the Town of Flower Mound.

Cross References: Buildings and Building Regulations, ch. 14. Buildings, ch. 18.

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

Sec. 34-423.

AMENDED OIL AND GAS WELL PERMITS.

- (a) An operator may submit an application to the oil and gas inspector to amend an existing oil, gas, or combined well permit to commence drilling from a new drill site that is not shown on (or incorporated by reference as part of) the existing permit, to relocate a drill site or operation site that is shown on (or incorporated by reference as part of) the existing permit, or the otherwise amend the existing permit.
- (b) Application for amended permits shall be in writing, shall be signed by the operator, and shall include the following:
 - (1) The application fee for amended oil and/or gas well permits shall be five hundred dollars (\$500.00);
 - (2) A description of the proposed amendments;
 - (3) Any changes to the information submitted with the application for the existing permit (if such information has not previously been provided to the Town);
 - (4) Such additional information as is reasonably required by the oil and gas inspector to demonstrate compliance with the applicable permit; and
 - (5) Such additional information as is reasonably required by the oil and gas inspector to prevent imminent destruction of property or injury to persons.

- (c) All applications for amended permits shall be filed with the oil and gas inspector for review. Incomplete applications may be returned to the applicant, in which case the Town shall provide a written explanation of the deficiencies; however, the Town shall retain the application fee. The Town may return any application as incomplete if there is a dispute pending before the Railroad Commission regarding the determination of the operator.
- (d) If the activities proposed by the amendment are not materially different from the activities covered by the existing permit, and if the proposed activities are in conformance with the applicable permit, then the oil and gas inspector shall approve the amendment within thirty (30) days after the application is filed.
- (e) If the activities proposed by the amendment are materially different from the activities covered by the existing permit, and if the proposed activities are in conformance with the permit requirements, then the oil and gas inspector shall approve the amendment within thirty (30) days after the application is filed. If, however, the activities proposed by the amendment are materially different and, in the judgment of the oil and gas inspector, might create a risk of destruction of property, negative impact on the environment, or injury to persons that was not associated with the activities covered by the existing permit or that was not otherwise taken into consideration by the existing permit, the oil and gas inspector may require the amendment to be processed as a new permit application.
- (f) The failure of the oil and gas inspector to review and issue an amended permit within the time limits specified above shall not cause the application for the amended permit to be deemed approved.
- (g) The decision of the oil and gas inspector to deny an amendment to a permit shall be provided to the operator in writing within thirty (30) days after the decision, including an explanation of the basis for the decision. The operator may appeal any such denial pursuant to the procedures outlined in Section 34-432 of this article.

Sec. 34-423.1.

TRANSFER OF OIL AND GAS WELL PERMITS.

- (a) An oil, gas, combined, or pad site permit may be transferred by the operator with the prior written consent of the Town if no outstanding violations of the terms of the Article exist, if the transfer is in writing signed by both parties, if the transferee agrees to be bound by the terms and conditions of the transferred oil, gas, combined, or pad site permit, if all information previously provided to the Town as part of the application for the transferred oil, gas, combined, or pad site permit is updated to reflect any changes, and if the transferee provides the insurance and security required by this Article. The insurance and security provided by the transferor shall be released if a copy of a written transfer meeting these requirements is provided to the Town. The transfer shall not relieve the transferor from any liability to the Town arising out of any activities conducted prior to the transfer.
- (b) The transfer fee for oil and/or gas well permits shall be three hundred dollars (\$300.00).

Sec. 34-424.

SUSPENSION OR REVOCATION OF OIL AND GAS WELL PERMITS.

- (a) If an operator (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of an oil, gas, or combined well permit (including any requirement incorporated by reference as part of the permit), the oil and gas inspector shall give written notice to the operator specifying the nature of the failure and giving the operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community and potential negative impacts upon the surrounding environment. In no event, however, shall the cure period be less than thirty (30) days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this article.
- (b) If, the operator fails to correct the noncompliance within thirty (30) days from the date of the notice, the oil and

gas inspector may suspend or revoke the permit pursuant to the provisions of this article.

- (c) No person shall carry on any operations performed under the terms of the permit issued under this article during any period of any permit suspension or revocation or pending a review of the decision or order of the Town in suspending or revoking the permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the permit was ordered for the safety of persons or as required by the Commission.
- (d) If the operator does not cure the noncompliance within the time specified in this article, the oil and gas inspector, upon written notice to the operator, may notify the Commission and request that the Commission take any appropriate action.
- (e) An operator may file an appeal to the Board of Appeals under the provisions outlined in this article pursuant to 34-432, "Appeals" of this article.
- (f) If an application for an oil, gas, or combined well permit is denied by the oil and gas inspector, nothing herein contained shall prevent a new permit application from being submitted to the oil and gas inspector for the same well.

Sec. 34-425. PERIODIC REPORTS.

- (a) The operator shall notify the oil and gas inspector of any changes to the following information within seven (7) business days after the change occurs:
 - (1) The name, address, and/or phone number of the operator;
 - (2) The name, address, and/or phone number of the person designated to receive notices from the Town (which person must be a resident of Texas that can be served in person or by registered or certified mail); and

- (3) The operator's emergency action response plan (including "drive-to-maps" from public rights-of-way to each drill site).
- (b) The operator shall notify the oil and gas inspector of any change to the name, address, and twenty-four-hour phone number of the person(s) with supervisory authority over drilling or operations activities within one (1) business day.
 - (c) *Requirement to Report Emergencies.*
 - (1) The operator shall immediately notify the oil and gas inspector and Fire Marshal of any incident resulting in product loss from a hydrocarbon storage facility or pipeline facility, blowout, fire, explosion, incident resulting in injury, death, or property damage, or any other significant incidents as defined by the Commission.
 - (2) A written report, containing a brief summary of the incident, shall be submitted to the oil and gas inspector by 5:00 p.m. on the first business day of the Town following the incident, and a duplicate report shall be submitted to the Fire Marshal by the same time.
 - (3) A follow-up report shall be submitted to the oil and gas inspector and the Fire Marshal within thirty (30) days following the incident. The operator responsible for the follow-up incident report shall include the following information:
 - a. Operator/applicant name, phone number, address, and, if possible, email address.
 - b. Description of the incident, including, but not limited to, the time, date, location, and cause of the event.
 - c. Duration of the incident, that is, when it began and when it terminated to the degree that it no longer constituted a hazard to the health, safety, and well-being of persons or property, regardless of the distance or separation from the place of incident.

- d. How the incident was brought under control and/or remedied.
 - e. A full and complete description of the type of intercompany investigation or other investigation or inquiry that was made concerning the incident, the findings or results of such inquiry or investigation, and the action taken as a result of the findings and inquiry concerning the prevention of the existence of future hazards.
 - f. Signed and dated by the person responsible for such report.
- (d) 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. This shall include, but not limited to, notification of any reportable quantity releases of oil, natural gas, and/or associated minerals, chemicals, or solid and/or liquid wastes, pursuant to regulatory requirements established by the Commission, and notification to the fire marshal of any fire, and/or equipment strikes by lightning.
- (e) Beginning on December 31 after each well is completed, and continuing on each December 31 thereafter until the operator notifies the oil and gas inspector that the well has been abandoned and the site restored, the operator shall submit a written report to the oil and gas inspector identifying any changes to the information that was included in the application for the applicable permit that have not been previously reported to the Town.

Sec. 34-425.1. PUBLIC INFORMATION.

- (a) Public Information of Permit Activity
 - (1) After approval of a permit application, the operator shall submit in writing an accurate timeline account, which is updated weekly, of planned operational events associated with the permit to the oil and gas inspector. The account shall state a timeline and description of events

that will occur. Events to be documented shall include but not be limited to: site preparation and grading, site construction of the drilling rig and accessory structures, the expected amount of time spent drilling on site, all casing installation, testing, flaring, disassembly of the drilling rig, pipeline installation, fracture stimulation, maintenance, tank battery construction, site cleanup, and production.

- (2) The applicant shall submit an educational letter of operations within fifteen (15) days of approval of the application to all property owners within 1,500 feet of the permitted bore hole(s). The letter shall detail typical operations associated with oil and gas drilling activity with an intended audience of the general public. The topics to be detailed shall include, but not be limited to: site preparation, site development and construction, drilling, casing, fracturing, pipeline construction, production, transportation, and general weekly, monthly, and yearly maintenance of the operation site.

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

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

- (a) *General requirements.* The operator shall be required to:
 - (1) Comply with the terms and conditions of this article and the permit issued hereunder.
 - (2) Promptly clear drill and operation-sites of all litter, trash, waste, materials, and/or other substances used, allowed, or occurring in the operations, and after abandonment or completion grade, level and restore such property to the same surface conditions as nearly as possible as existed before operations.
 - (3) Indemnify and hold harmless the Town, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs,

and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by operator under an oil, gas, or combined well permit:

- a. Where such injuries, death or damages are caused by operator's sole negligence or the joint negligence of operator and any other person or entity; and
 - b. Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of operator.
- (4) Promptly pay all fines, penalties and other assessments imposed due to breach of any terms of the oil, gas, or combined permit.
 - (5) Promptly restore to its former condition any public property damaged by the oil and gas operation.

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

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

and regulations of this article and the Town. The original bond shall be submitted to the oil and gas inspector with a copy of the same provided to the Town Secretary.

- b. Letter of credit. A letter of credit shall be issued by a reliable bank or other financial institution, acceptable by the Town, authorized to do business in Texas and shall become effective on or before the date the permit is issued. The letter of credit shall remain in force and effect for at least a period of six (6) months after the expiration of the permit term. The Town shall be authorized to draw upon such letter of credit to recover any fines or penalties assessed under this article. Evidence of the execution of a letter of credit shall be submitted to the oil and gas inspector by submitting an original signed letter of credit from the banking or financial institution, with a copy of the same provided to the Town Secretary.
- c. The principal amount of any security instrument shall be fifty thousand dollars (\$50,000.00) for any single well. If, after completion of a well, the applicant/operator, who initially posted a fifty thousand dollars (\$50,000.00) bond, has complied with all of the provisions of this article and whose well in the producing state and all drilling operations have ceased, may submit a request to the oil and gas inspector to reduce the existing bond to ten thousand dollars (\$10,000.00) for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond or letter of credit shall be maintained at fifty thousand dollars (\$50,000.00).
- d. If at any time after no less than a fifteen (15) day written notice to the operator, the

oil and gas inspector shall deem any operator's bond or letter of credit to be insufficient, the Town may require the operator to increase the amount of the bond or letter of credit up to a maximum of three hundred thousand dollars (\$300,000.00) per well.

- e. Whenever the oil and gas inspector finds that a default has occurred in the performance of any requirement or condition imposed by this article, a written notice shall be given to the operator. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the oil and gas inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the operator shall, within the time therein specified, either cause or require the work to be performed, or failing to do so, shall pay over to the Town 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 or imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this article. The Town shall be authorized to draw against any irrevocable letter of credit or bond to recover such amount due from the operator. Upon receipt of such monies, the Town 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 article.

- f. When the well or wells covered by said irrevocable letters of credit or bond have been properly abandoned in conformity with all regulations of this article, and in conformity with all regulations of the Commission and notice to that effect has been received by the Town, or upon receipt of a satisfactory substitute, the irrevocable letter of credit or bond issued in compliance with these regulations shall be terminated and canceled.

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

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

- a. The Town, its officials, employees, agents and officers shall be endorsed as an "additional insured" to all policies except employers liability coverage under the operator's workers compensation policy.
- b. All policies shall be written on an occurrence basis except for environmental pollution liability (seepage and pollution coverage) and excess or umbrella liability, which may be on a claims-made basis.
- c. All policies shall be written by an insurer with an A-: VIII or better rating by the most current version of the A. M. Best Key Rating Guide or with such other financially

sound insurance carriers acceptable to the Town.

- d. Deductibles shall be listed on the certificate of insurance and shall be on a “per occurrence” basis unless otherwise stipulated herein.
- e. Certificates of insurance shall be delivered to the Town of Flower Mound, Environmental Resources Division, 2121 Cross Timbers, Flower Mound, Texas 75028, evidencing all the required coverages, including endorsements, prior to the issuance of a permit.
- f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the Town.
- g. Any failure on part of the Town to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- h. Each policy shall be endorsed to provide the Town a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) days notice shall be acceptable in the event of non-payment of premium.
- i. During the term of the oil, gas, or combined well permit, the operator shall report, in a timely manner, to the oil and gas inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- j. During the term of the permit, the operator shall report, in a timely manner, to the oil and gas inspector any known loss occurrence which could give rise to a

liability claim or lawsuit or which could result in a property loss.

- k. Upon request, certified copies of all insurance policies shall be furnished to the Town.

(2) *Standard commercial general liability policy.* This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability and personal injury. This coverage shall be a minimum combined single limit of one million dollars (\$1,000,000.00) per occurrence location for bodily injury and property damage.

(3) *Excess or umbrella liability.* Five million dollars (\$5,000,000.00) excess, if the operator has a stand-alone environmental pollution liability (EPL) policy. Ten million dollars (\$10,000,000.00) excess, if the operator does not have a stand-alone EPL policy. 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 oil, gas, combined well permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with

an loss arising from the insured site. Coverage shall be maintained in an amount of at least one million dollars (\$1,000,000.00) per loss, with an annual aggregate of at least ten million dollars (\$10,000,000.00).

- b. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
- c. The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the Town.

(5) *Control of well.* The policy 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.

- a. Five million dollars (\$5,000,000.00) per occurrence with no aggregate, if available, otherwise an aggregate of ten million dollars (\$10,000,000.00).
- b. Five hundred thousand dollars (\$500,000.00) sub-limit endorsement may be added for damage to property for which the operator has care, custody and control.

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

- a. Workers compensation benefits shall be Texas Statutory Limits.
- b. Employers liability shall be a minimum of five hundred thousand dollars (\$500,000.00) per accident.
- c. Such coverage shall include a waiver of subrogation in favor of the Town and provide coverage in accordance with applicable state and federal laws.

(7) *Automobile liability insurance.*

- a. Combined single limit of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- b. Coverage must include all owned, hired and 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 Town, with the exception of environmental pollution liability and control of well coverage.
- c. Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the Town. All policies shall be endorsed to read:

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

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

(d) *Indemnification and express negligence provisions.*

- (1) Each oil, gas, combined well permit issued by the oil and gas inspector shall include the following language: Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or assigns may have, or claim to have, against the Town of Flower Mound, and/or its departments, agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the performance of the work performed by the operator under an oil, gas, or combined well permit. The operator shall fully defend, protect, indemnify, and hold harmless the Town of Flower Mound, Texas, its departments, agents, officers, servants, or employees, including, without limitation, personal injuries and death in connection therewith which may be made or asserted by operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the operator under a permit. The operator agrees to indemnify and hold harmless the Town of Flower Mound, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or

volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the Town, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the Town of Flower Mound occurring on the drill site or operation site in the course and scope of inspecting and permitting the oil and gas wells INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE TOWN OF FLOWER MOUND OCCURRING ON THE DRILL SITE OR OPERATION-SITE IN THE COURSE AND SCOPE OF INSPECTING AND PERMITTING THE OIL, GAS, OR COMBINED WELLS. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE OPERATOR TO INDEMNIFY AND PROTECT THE TOWN OF FLOWER MOUND, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE TOWN OF FLOWER MOUND, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CASUE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE.

- (e) *Notice.* The individual designated to receive notice shall be a resident of Texas upon whom all orders and notices provided in this article may be served in person or by registered or certified mail. Every operator shall within ten (10) days notify the oil and gas inspector in writing of any change in such agent or mailing address unless operations in the Town are discontinued and abandonment is complete.
- (f) *Acceptance and indemnity agreement.* The operator who has a net worth of not less than twenty-five million dollars (\$25,000,000.00), 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 or irrevocable letter of

credit and insurance requirements set forth in this article, provided that such acceptance and indemnity agreement shall be in a form acceptable to, and approved by, the Town Attorney and the Town Manager of the Town. The oil and gas inspector may request an annual review of the operator's most recent audited financial statements to assure compliance with this section.

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

Sec. 34-427. TECHNICAL REQUIREMENTS.

(a) *On-site requirements*

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

- d. Identify the types of emergencies or incidents that will result in or require contacting the Town; and
 - e. Plan mutual activities that the Town and the operator can engage in order to minimize the risks associated with oil or gas well operation.
- (3) *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 oil and/or gas operations as required by and in conformance with the requirements of the Commission and the recommendations of the American Petroleum Institute. The operator must equip all drilling wells with adequate blowout preventors, flow lines and valves commensurate with the working pressures involved as required by the Commission.
- (4) *Chemical and materials storage.* All chemicals and/or hazardous materials shall be stored in such a manner as to prevent, contain, and facilitate rapid remediation and cleanup of any accidental spill, leak, or discharge of a hazardous material. Operator shall have all material safety data sheets (MSDSs) for all hazardous materials on site. All applicable federal and state regulatory requirements for the proper labeling of containers shall be followed. Appropriate pollution prevention actions shall be required and include, but are not limited to, chemical and materials raised from the ground (e.g., wooden pallets), bulk storage, instillation and maintenance of secondary containment systems, and protection from storm water and weather elements.
- (5) *Closed-loop drilling fluid systems.* Closed-loop drilling fluid systems shall be used instead of lined reserve pits.

- (6) *Compliance.* Operator shall comply at all times with all applicable federal, state and Town requirements.
- (7) *Discharge.* No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substance, or any refuse including wastewater or brine from any oil and/or gas operation, or the contents of any container used in connection with any oil and/or gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain or any body of water or any private property in the Town.
- (8) *Drilling Fluids.* Low toxicity glycols, synthetic hydrocarbons, polymers, and esters shall be substituted for conventional oil-based drilling fluids.
- (9) *Drilling fluid storage pit.* No drilling fluid storage pits shall be located within the Town of Flower Mound.
- (10) *Drill stem testing.* All open hole formation or drill stem testing shall be done during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate oil and/or gas separator to storage tanks and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.
- (11) *Drip pans and other containment devices.* Drip pans and other containment devices shall be placed or installed underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections, and any other areas or structures that could potential leak, discharge, or spill hazardous liquids, semi-liquids, or solid waste materials, including hazardous waste inseparable by simple mechanical removal

processes, and is made up primarily of natural material.

- (12) *Dust, vibrations, odors.* All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas, and other hydrocarbon substances. All equipment used shall be so constructed and operated so that vibrations, dust, odor, or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; 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.
- (13) *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.
- (14) *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 Town ordinances and applicable national codes.
- (15) *Emergency response plan.* Prior to the commencement of oil and/or gas drilling, or any other hydrocarbons production activities, operator shall submit to the oil and gas inspector an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and/or gas wells. Said plan shall use existing guidelines established by the Commission, the

Texas Commission on Environmental Quality, Texas Department of Transportation and/or the United States Environmental Protection Agency. The Emergency response plan shall be kept current with any additions, modifications, and/or amendments concerning all construction related activities, oil and/or natural gas operations and, oil and/or natural gas production. Updated plans shall be submitted to the oil and gas inspector within two (2) business days after any additions, modifications, and/or amendments to said plan(s). A copy of the emergency response plan shall be kept on site. The emergency response plan shall at a minimum provide for:

- a. Prompt and effective response to emergencies regarding:
 1. Leaks or releases that can impact public health, safety, welfare;
 2. Fire or explosions at or in the vicinity of an oil or gas well; or
 3. Natural disasters;
- b. Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency;
- c. The availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency;
- d. Measures to be taken to reduce public exposure to injury and the probability of accidental death or dismemberment;
- e. Emergency shut down of an oil or gas well and related site;
- f. The safe restoration of service and operations following an emergency or incident;

- g. A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures.
- (16) *Equipment painted.* All production equipment on the site shall be painted and maintained at all times, including pumping units, storage tanks, buildings and structures. Low VOC paints shall be used.
- (17) *Explosive charges.* If, during any phase of drilling, re-drilling, deepening, re-entering, activating, converting, fracturing, or completing an oil and/or gas well, explosive charges are used, the operator shall provide notice to the oil and gas inspector at least ten (10) days prior to such activities. The notice shall identify the date that the explosive charges will be used, the date and means of transporting the explosive charges, and the transportation route to and from the drill and/or operation site that will be used for the delivery of the explosive charges.
- (18) *Fire prevention; sources of ignition.* Firefighting apparatus and supplies as approved by the fire services department and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site 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 vent of an abnormal change in operating pressure. All well heads shall contain an emergency shut off valve to the well distribution line. The operator shall comply with all requirements set forth in Chapter 38, "Fire Prevention and Protection," of the Town's Code of Ordinances, as amended.
- (19) *Fresh water wells.* It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located within the setbacks as described in Section 34-422(d) of this Article to

any fresh water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore. Within one hundred twenty (120) days of its completion date, each oil and/or gas well shall be equipped with a cathodic protection system to protect the production casing from external corrosion. The oil and gas inspector may approve an alternative method of protecting the production casing from external corrosion.

- a. The operator of a gas well shall provide the oil and gas inspector with a “pre-drilling” and “post-drilling” water analysis and flow rate from any existing fresh water well within one thousand feet (1,000’) of the gas well.
- b. Such water tests shall conform to the following testing requirements:
 1. Water samples must be collected and analyzed utilizing proper sampling and laboratory protocol from a United States Environmental Protection Agency or Texas Commission on Environmental Quality approved laboratory.
 2. Well samples shall be analyzed prior to any drilling activity to document baseline water quality data of the well. A post-drilling sample shall be analyzed within three (3) months after the drilling begins.
 3. Parameters to be tested for include but are not limited to: methane, chloride, sodium, barium, and strontium.
- c. If it is found that the fresh water well is no longer in use and without possibility of future use or if the fresh water well owner

objects to having the water well tested, the owner of the fresh water well may waive the right to have the applicant test the water by detailing the reason the fresh water well owner has waived his right to water well testing in a notarized document.

- (20) *Gas emission or burning restrictions.* No person shall allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Commission, then such vent or open flame shall not be located closer than five hundred (500) feet from any building not intended or current in use as a dwelling and not used in operations on the drilling site, and such vent or open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners.
- (21) *Gas well stimulation.* Only Light Sand Fracture Technology or technologies approved by the oil and gas inspector shall be used to fracture stimulate a well. Fracing operation shall be scheduled to occur during daylight hours unless the operator has notified the oil and gas inspector that fracing will occur before or after daylight hours to meet safety requirements. Air, gas, or pneumatic drilling shall not be permitted.
- (22) *Grass, weeds, trash.* All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any gas tank or tanks or producing wells.
- (23) *Hazardous materials plan.* Hazardous materials management plan shall be on file with the oil and gas inspector and Town fire marshal. The hazardous materials plan shall be kept current with any additions, modifications, and/or amendments concerning all construction related

activities, oil and natural gas operations, and oil and natural gas production. Updated plans shall be submitted to the oil and gas inspector within two (2) business days.

- (24) *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. In addition, no person shall permit any lights located on any drill or operation site to exceed four-tenths (.4) foot-candles at the closest public road, property line, or residence. 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.
- (25) *Lubricating Oil Purification Units.* Any and all stationary diesel power plants located on the drilling site and are associated with the exploration development, operation, and production of oil, natural gas, or associated minerals shall have a lube oil purification unit installed, maintained and functional at all times while the diesel plant is operating.
- (26) *Muffling exhaust.* Exhaust from any internal combustion engine, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.
- (27) *Organic Solvents.* Organic solvents, such as trichloroethylene and carbon tetrachloride, shall not be used for cleaning any element, structure, or component of the drilling rig, platform, and/or associated equipment, tools, or pipes. To the maximum extent practicable, high flash point Varsol shall be used.

- (28) *Pipe Dope*. Lead-free, biodegradable pipe dope shall be substituted for American Petroleum Institute (API) specified pipe dope.
- (29) *Pits*. If authorized by the Oil and Gas Board of Appeals, pursuant to Sec. 34-432, all reserve pits, completion/workover pits, drilling fluid disposal pits, fresh makeup water pits, gas plant evaporation/retention pits, mud circulation pits, or water condensate pits shall be lined with plastic or stored above ground in tanks. Such pits and contents shall be removed from the premises and the drilling site within forty (40) days after completion of the well, unless otherwise authorized by the oil and gas inspector. No washout pits shall be located within the Town, unless all fluid, sludge, solid waste materials, drilling fluids, waste oil, spent completion fluids, all other liquids, semi-liquids, mud, including hazardous waste inseparable by simple mechanical removal processes, and is made up primarily of natural material is immediately captured within a fully enclosed, above ground containment tank.
- (30) *Private roads and drill sites*. Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site itself shall be at least ten feet (10') wide with an overhead clearance of fourteen feet (14'). Such roads shall be designed to avoid impact on environmentally sensitive areas, shall be constructed outside any environmentally sensitive areas, and shall be surfaced with crushed rock, gravel or ore and maintained to prevent dust and mud. Brine water, sulphur water, or water in mixture with any type of hydrocarbon, may not be used for dust suppression. In particular cases these requirements governing the surfacing of private roads may be altered at the discretion of the oil and gas inspector and the Town engineer after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from adjoining and nearby property owners whose surface

rights are not leased by the operation; the purpose for which the property of such owners is or may be used; topographical features; nature of the soil; and exposure to wind. No aspect of this division shall be construed to supersede any permitting, review, standards, and regulations set forth in the Town Engineering Services Design Criteria and Construction Standards Manual.

(31) *Salt water wells.* No salt water disposal wells shall be located within the Town.

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

- a. The following Texas-specific median background concentrations for metals shall be used to determine contamination of existing environmental media, including, but not limited to, soils (including non-waste fill materials), groundwater, surface water, sediments, or a mixture of such materials with liquids, sludges, gases, or solids, including hazardous waste which is inseparable by simple mechanical removal processes, and is made up primarily of natural material:

Metal	Median Background Concentration (mg/kg)
Aluminum	30,000
Antimony	1
Arsenic	5.9
Barium	300
Beryllium	1.5
Boron	30
Total Chromium	30
Cobalt	7
Copper	15
Fluorine	190
Iron	15,000
Lead	15
Manganese	300
Mercury	0.04
Nickel	10
Selenium	0.3
Strontium	100
Tin	0.9
Titanium	2,000
Thallium	9.3
Vanadium	50
Zinc	30

- b. If a soil contamination assessment is required by the oil and gas inspector, it shall be conducted prior to refilling, backfilling, modifying, deactivating, or abandoning any reserve pit, completion/workover pit, drilling fluid disposal pit, fresh makeup water pit, gas plant evaporation/retention pit, mud circulation pit, washout pit, or water condensate pit located on the oil and gas operation site.
- c. The soil contamination assessment shall be completed with all data, results, documentation, and/or reports provided to the oil and gas inspector within thirty (30) days once drilling operations have been

completed and all pits have been de-watered and inactive.

- d. The operator shall perform a soil contamination assessment through the collection and analysis of a sufficient number of samples from environmental media to reliably characterize the nature and degree of contaminant metals in the drill site, as well as the horizontal and vertical extent of the contaminant metals in soil and groundwater, which equals or exceeds the median background concentration levels listed above.
- e. At a minimum, a soil contamination assessment shall consist of no less than five (5) sample locations. A minimum of two (2) samples shall be taken from within the pit and below the average water pool level. A minimum of two (2) samples shall be taken down grade, and, if applicable, in the direction of the nearest surface water source from the pit. All surface water sources located within three hundred (300) feet of the pit shall have at a minimum one (1) sediment sample taken and analyzed pursuant to the median background concentrations listed above.

(33) *Signs.*

- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to section 34-428 of this article. 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:
 - 1. Well name and number;

2. Name of operator;
3. Address of property;
4. The emergency 911 number; and
5. Telephone numbers of two (2) persons responsible for the well who may be contacted twenty-four (24) hours a day in case of an emergency.

- b. Permanent weatherproof signs reading "DANGER NO SMOKING ALLOWED" shall be posted immediately upon completion of the well site fencing at the entrance of each well site and tank battery or in any other location approved or designated by the fire chief of the Town. Sign lettering shall be four (4) inches in height and shall be red on white background or white on a red background. Each sign shall include the emergency notification numbers of the fire services department and the operator, well and lease designations required by the Commission.

(34) *Storage of equipment.* Onsite 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 services department shall be the entity that determines whether any and all equipment on the site shall constitute a fire hazard. No

refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises. This shall not be deemed to exclude a conventional gas separator or dehydrator.

(35) *Storage tanks.* All tanks and permanent structures shall conform to the A.P.I. specifications unless other specifications are approved by the fire chief. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three feet (3') in height and one and one-half (1½) times the contents of the largest tank in accordance with the fire codes, and buried at least one foot (1') below the surface. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank.

a. All tanks shall be set back pursuant to the standards of the Commission and the National Fire Protection Association, but in all cases, shall be at least five hundred feet (500') from any public right-of-way or property line. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

b. No meters, storage tanks, separation facilities, or other aboveground facilities shall be placed in a floodway or within five hundred feet (500') of the fully developed one hundred (100) year floodplain.

(36) *Tank battery facilities.* Tank battery facilities shall be equipped with a remote foam line and a lightning arrestor system. All tank batteries shall comply with the National Fire Protection Association (NFPA) Comprehensive Consensus Codes (C3) NFPA 30 Flammable and Combustible Liquids Code.

- (37) *Surface casing.* Surface casing shall be run and set in full compliance with the applicable rules and regulations of the Commission.
- (38) *Valves.* Each well must have a shutoff valve to terminate the well's production. The fire services department shall have access to the well site to enable it to close the shut-off valve in an emergency.
- (39) *Waste disposal.* Unless otherwise directed by the Commission, all tanks used for storage shall conform to the following:
- a. Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet all A.P.I. standards. All tanks must have a vent line, flame arrester and pressure relief valve. All tanks must be enclosed by a fence applicable to the issued permit.
 - b. Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into an aboveground self-contained tank or, after authorization by the Oil and Gas Board of Appeals, a lined pit. All disposals must be in accordance with the rules of the Commission and any other applicable local, state or federal agency.
 - c. Unless otherwise directed by the Commission, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than one (1) time every thirty (30) days. Water stored in on-site tanks shall be removed as necessary.
 - d. All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the state, this article, and any other applicable ordinance of the Town.

- (40) *Watchperson.* The operator must keep a watchman or security personnel on-site during the drilling or re-working of a well when other workmen are not on the premises.
- (b) Pursuant to Section 34-432 of this Article, The Oil and Gas Board of Appeals may issue variances to technical requirements (5), (8), (19), (21), (25), (27), (28), (30), and (35) set out in subsection (a) of this section.
- (c) *Installation of pipelines on, under or across public property.* The operator shall apply to the Town for an agreement for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines on, over, under, along or across the Town's streets, sidewalks, alleys and other Town property so long as production or operations may be continued under any oil, gas, or combined well permit issued pursuant to this article. The 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 oil and gas inspector of the Town a plat showing the location of such pipelines;
 - (3) Construct such lines out of pipe in accordance with the Town 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 drilling of the well were first commenced; and
 - (5) All required agreements pursuant to this division shall be completed, reviewed, and resolved by the Town Engineer, Town Attorney, Town Manager, and, if required, by Town Council, prior to the determination of any oil, gas, or combined permit as being administratively complete.
- (d) *Flow lines and gathering lines.*

- (1) The operator shall place an identifying sign at each point where a flow line or gathering line crosses a public street or road.
 - (2) The operator shall place a warning sign for lines carrying H₂S (Hydrogen Sulfide) gas as required by the Commission and all other applicable state or federal regulatory agencies.
 - (3) All flow lines and gathering lines within the corporate limits of the Town (excluding Town utility lines and franchise distribution systems) that are used to transport oil, gas, and/or water shall be limited to the maximum allowable operating pressure applicable to the pipes installed and shall be installed with at least the minimum cover or backfill specified by the American National Safety Institute Code, as amended, provided all pipelines shall be buried to a minimum of at least thirty-six inches (36") below the ground surface. During the backfill of any pipeline excavations, whether such pipelines are located inside or outside the permitted oil and/or gas well pad site, "Buried Pipeline" warning tape shall be buried one foot (1') above any such pipeline to warn future excavators of the presence of a buried pipeline.
 - (4) Structures shall not be built over flow lines or gathering lines and within any pipeline easement.
 - (5) Easements must be acquired for all pipelines outside the permitted oil and/or gas well pad site. The location of easements shall be shown in a Pipeline Easement Map approved by the Town prior to the installation of any pipelines. In addition, once construction has been completed, as-built plans shall be provided to the Town of all pipelines, including those inside the permitted oil and/or gas well pad site.
- (f) No oil, gas, or combined well permit shall be issued for any well to be drilled within any of the streets or alleys of the Town, and 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 Town Engineer. Any consent from the oil and gas inspector 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.

Sec. 34-428.

SCREENING, FENCES, AND GATES.

(a) Screening. Screening shall be installed completely around all permanent structures associated with the extraction, production, and transportation of minerals and shall be sufficient to screen from view the structures sought to be screened within forty-five (45) days of production. Screening options shall adhere to a combination of the following:

(1) Vegetation. Native trees, shrubs, vines, groundcover, ornamental grasses, and/or wildflowers, or other adapted drought tolerant species, complimentary with the surrounding landscape, shall be proposed.

a. Trees shall be a minimum three inch (3") caliper at the time of planting and shrubs shall be a minimum of three feet (3') in height at planting, have the potential to grow to a mature height of at least five feet (5') and, if necessary, must have an installed irrigation system that provides total water coverage to all plant materials. All vegetation shall be planted and spaced to provide maximum screening, growth, and overall health.

b. Vegetated areas shall be landscaped such that at least fifty percent (50%) of the structures shall be screened from adjacent property owners and/or public streets within three (3) years. At least forty percent (40%) of the landscape vegetation shall be evergreen.

c. The vegetation shall be kept in an attractive state and in good condition at all times by the applicant or operator.

- d. Significant plant and tree specimens should be preserved to the greatest extent practicable and integrated into the design of the site through preservation, incorporation, or transplanting. Plants and trees to be saved and methods of protection shall be indicated in the site plan.
- e. Vegetation used to satisfy screening standards include, but shall not be limited to, the following species:
 - 1. Loblolly Pine (*Pinus* sp.)
 - 2. Agarita (*Mahonia* sp.)
 - 3. Arizona Cypress (*Cupressus* sp.)
 - 4. Coral Honeysuckle (*Lonicera* sp.)
 - 5. Cross Vine (*Bignonia* sp.)
 - 6. *Elaeagnus* (*Elaeagnus* sp.)
 - 7. Hollies (*Ilex* sp.)
 - 8. Texas Sage (*Leucophyllum* sp.)
 - 9. Indian Hawthorne (*Raphiolepis* sp.)
 - 10. Junipers (*Juniperus* sp.)
 - 11. Live Oak (*Quercus* sp.)
 - 12. Southern Magnolia (*Magnolia* sp.)
 - 13. Wax Myrtle (*Myrica* sp.)
- f. All landscape and irrigation plans shall be submitted to the oil and gas inspector for approval.

(2) Natural and manmade screens. When possible, sites should be located to utilize natural, structural, and topographical screens. Vegetated berms may be constructed if they are compatible with the surrounding area.

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

and be complementary to the color of the fence and painted equipment.

- (4) Escrow. The operator may enter into an escrow agreement with the Town and escrow a cash deposit with the Town to defer the planting of vegetation screening until such time as: (a) a plat is submitted for the development of the tract on which the well is situated; or (b) a plat is submitted for the development of any adjoining parcel that is within one thousand feet (1,000') of the well; or when a public right-of-way is constructed within five hundred feet (500') of the well. Deposit of such cash escrow funds will relieve the operator from immediate compliance with the required timeframe for installing vegetation screening set out herein above if, in the determination of the oil and gas inspector, the well or gas facility site is located in a remote area and is not easily visible from public view.

The escrow funds shall be in an amount equal to the total cost of purchasing and planting the required vegetation, in accordance with a detailed landscape plan prepared and sealed by a registered landscape architect and accepted by the Town, as reflected in a landscaping contract between the operator and a landscape contractor plus at least twenty percent (20%) of the landscaping contract cost, such additional amount to cover unexpected or incidental costs of completion, including administrative expenses. The landscaping contract shall be assigned to the Town, as security only, by the operator's execution of an assignment consented to by the contractor, which assignment shall grant the Town rights, but not obligations thereunder, to require the contractor's performance under the landscaping contract. The operator shall submit a written request for approval of an escrow account to the oil and gas inspector together with the signed and sealed landscape plan, a fully executed original landscaping contract for the installation or planting of the vegetation screen, an executed assignment of the landscaping contract in a form acceptable to the Town

Attorney, and a cash deposit in the amount of one hundred twenty percent (120%) of the landscaping contract amount to the oil and gas inspector for approval.

The operator shall be required to plant or install the deferred vegetation screen as required above within forty-five (45) days after receipt of notice from the oil and gas inspector that: (a) a plat has been submitted for the development of the tract on which the well is situated; or (b) that a plat has been submitted for the development of any adjoining parcel that is within one thousand feet (1,000') of the well; or that a public right-of-way is being constructed within five hundred feet (500') of the well. In the event the operator shall fail or neglect to fulfill its obligations under this provision and the escrow agreement, the operator shall be liable to pay for the cost of purchasing and planting the required vegetation screen, including but not limited to, engineering, legal, administrative and contingent costs together with any damages, either direct or consequential, which the Town may sustain as a result of the failure of the operator to carry out and execute all of the provisions of this provision.

The operator shall authorize the Town through the escrow agreement to enter upon operator's property and plant and install, or pursuant to public advertisement and receipt of bids, cause to be planted and installed the required vegetation screen in the event the operator fails or refuses to do so in accordance with the terms of the escrow agreement. The operator shall be liable to reimburse the Town the total cost to complete the required vegetation screen plus such other and further costs and expenses as may be required for the vegetation screen and all other improvements appurtenant thereto such as an irrigation system and water.

- b. Fences/walls. Fences shall be required around all operation sites and drill sites during initial drilling, completion, or re-working operations. A secured

entrance gate to the drill site shall be required. All gates are to be kept locked when the operator or his and her employees are not within the enclosure. Within twenty (20) days after production has been established and the drilling rig removed, all remaining production equipment shall be completely enclosed by a permanent chain link fence or other approved fencing material according to the requirements of the requested permit, as follows:

- (1) The fence fabric shall be at least eight feet (8') in height, but no more than ten feet (10');
- (2) Support posts shall be set in concrete and shall be imbedded into the ground to a depth sufficient to maintain the stability of the fence; provided, however, so long as stability of the fence is maintained, temporary fence posts shall not be required to be set in concrete;
- (3) The chain link fabric shall be coated with vinyl or plastic material and approved colors include, but are not limited to, green, brown, tan, and black and be complimentary to the color of the fence screening and painted equipment;
- (4) The chain link fence fabric shall have a minimum thickness of eleven (11) gauge;
- (5) The chain link fabric shall be two-inch (2") mesh; provided, however, three and one-half (3½") inch mesh may be used on any fence where the fabric is interwoven with artificial screening material approved by the fire chief;
- (6) Posts and rails shall be standard galvanized, welded pipe, schedule forty (40) or thicker; provided, however, that non-galvanized drill pipe may be used if it exceeds schedule forty (40) in thickness;
- (7) All pipe and other ferrous parts, except chain link fabric and drill pipe, shall be galvanized inside and outside with a plating which contains a minimum of one and two-tenths (1.2) ounces of zinc per square foot of surface area;

- (8) Tension rods shall be three-eighths inch ($\frac{3}{8}$ " round steel bolt stock. Adjustable tighteners shall be turnbuckle or equivalent having a six-inch (6") minimum take-up. Tension bars shall have a minimum thickness of one-fourth inch ($\frac{1}{4}$ " by three-fourths ($\frac{3}{4}$ " inch; and
 - (9) All fences shall have security extension arms at the top of such fences and such security extension arms shall be strung with at least two (2) strands of galvanized barbed wire.
- c. Gate specifications. All chain link fences shall be equipped with at least one (1) gate. The gate shall meet the following specifications:
- (1) Each gate shall be not less than twelve feet (12') wide and be composed of two (2) gates, each of which is not less than six feet (6') wide, or one (1) sliding gate not less than twelve feet (12') wide. If two (2) gates are used, gates shall latch and lock in the center of the span;
 - (2) The gates shall be of chain link construction that meets the applicable specifications, or of other approved material that, for safety reasons, shall be at least as secure as chain link fence;
 - (3) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for immediate access to the site; and
 - (4) Operator must provide the Town Fire Chief with a "knox padlock" or "knox box with a key" to access the well site to be used only in case of an emergency.

Sec. 34-429.

CLEANUP AND MAINTENANCE.

- (a) *Cleanup after well servicing.* After the well has been completed, or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within thirty (30) days.

- (b) *Clean-up after spills, leaks and malfunctions.* After any spill, leak or malfunction, the operator shall remove or cause to be removed to the satisfaction of the Town fire chief and the oil and gas inspector all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. If the owner fails to begin site clean-up within twenty-four (24) hours, the Town shall have the right to contact the Commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.
- (c) *Free from debris.* The property on which a well site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material within a radius of one hundred (100) feet around any separators, tanks and producing wells.
- (d) *Painting.* All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the oil and gas inspector 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 sand, gray and unobtrusive shades of green, blue and brown, or other neutral colors approved by the oil and gas inspector.
- (e) *Blowouts.* In the event of the loss of control of any well, operator shall immediately take all reasonable steps to regain control regardless of any other provision of this article and shall notify the oil and gas inspector as soon as practicable. The oil and gas inspector shall certify in writing, briefly describing the same, to the Town manager. If the oil and gas inspector, in his or her 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 oil and gas inspector 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 the oil and gas inspector deems necessary to regain control of such well. The Town shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the Town pursuant to such action of the oil and gas inspector in gaining control of said well.

Sec. 34-430. PLUGGED AND ABANDONED WELLS.

- (a) *Surface requirements for plugged and abandoned well.* 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 article.
- (b) Abandonment shall be approved by the oil and gas inspector after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the oil and gas inspector:
 - (1) The derrick and all appurtenant equipment thereto shall be removed from the drill site;
 - (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, the operator shall comply with all applicable sections in this article.

- (c) *Abandoned well requirement.* The operator shall furnish the following at the discretion of the oil and gas inspector:
 - (1) A copy of the W-3A 'Notice of Intention to Plug & Abandon' and 'W-3 Plugging Record' forms on the same date these forms are submitted to the Commission; and
 - (2) A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated and shall take no longer than forty-five (45) days once commenced.
- (d) *Abandonment requirements prior to new construction.* All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Commission and this article prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

Div. 8. Technical Advisor, § 34-431.

Sec. 34-431. TECHNICAL ADVISOR.

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

Div. 9. Appeals, § 34-432.

Sec. 34-432. APPEALS.

- (a) In order to hear and decide appeals of orders, decisions, or determinations made by the oil and gas inspector relative to the application and interpretation of this article, there shall be and is hereby created an Oil and Gas Board of Appeals consisting of members who shall pass on matters pertaining to all oil and/or gas well applications and permits.
- (b) The members of the Zoning Board of Adjustment are hereby appointed as the Oil and Gas Board of Appeals as provided by Section 34-432(a) and shall have and exercise the authority to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the issuance of an oil, gas, or combined well permit or the revocation or suspension of any permit issued hereunder, and as provided by this article. Any person or entity whose application is denied by the oil and gas inspector or whose permit is suspended or revoked or whose well or equipment is deemed by the oil and gas inspector to be abandoned may file an appeal to the Oil and Gas Board of Appeals pursuant to Chapter 78, Division 3, entitled "Board of Adjustment" in the Code of Ordinances of the Town of Flower Mound, Texas.
- (c) The Oil and Gas Board of Appeals shall review the appeal and any other related information. The Oil and Gas Board of Appeals shall consider the following in deciding an appeal:
 - (1) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity;
 - (2) A variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other properties in the vicinity, but which rights are denied to the property on which the application is made;

- (3) The granting of the variance on the specific property will not adversely affect any other feature of the comprehensive master plan of the Town;
- (4) The variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity;
- (5) Whether the operations proposed are reasonable under the circumstances and conditions prevailing in the vicinity considering the particular location and the character of the improvements located there;
- (6) Whether the drilling of such wells would conflict with the orderly growth and development of the Town;
- (7) Whether there are other alternative well site locations;
- (8) Whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with the oil, gas, or combined well permit conditions to be imposed;
- (9) Whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas.
- (10) Whether there is reasonable access for the Town fire personnel and fire fighting equipment; and
- (11) Whether the impact upon the adjacent property and the general public by operations conducted in compliance with the oil, gas, or combined well permit conditions are reasonable and justified, balancing the following factors:

a. The reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and

b. The availability of alternative drill sites.

(12) The recommendations of the oil and gas inspector.

(d) Any person or entity aggrieved by any decision of the Oil and Gas Board of Appeals may present to a court of record a petition, duly verified, setting for that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented within ten (10) days after the date on which the decision of the Oil and Gas Board of Appeals was rendered and not thereafter, and judicial review of the petition shall be pursuant to Section 211.011 of the Texas Local Government Code, as amended.

(e) The Oil and Gas Board of Appeals may reverse or affirm, in whole or in part, or modify the oil and gas inspector's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination. Any action under this subsection, including the issuance of any variance authorized by this article, shall require a three-fourths vote of the entire Oil and Gas Board of Appeals.

(f) Appeal fees shall be required for every appeal in the amount of one thousand five hundred dollars (\$1,500.00).

Div. 10. Penalty, § 34-433.

Sec. 34-433. PENALTY.

(a) It shall be unlawful and an offense for any person to do the following:

(1) Engage in any activity not permitted by the terms of an oil, gas, or combined well permit issued under this article.

- (2) Fail to comply with any condition set forth in an oil, gas, or combined well permit issued under this article; or
 - (3) Violate any provision or requirement set forth under this article.
- (b) Any violation of this article shall be punished by a fine of not more than five hundred dollars (\$500.00) per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.
 - (c) Any violation of this article that governs fire safety, public health, and/or sanitation, including dumping, refuse, or discharge, shall be punished by a fine not exceeding two thousand dollars (\$2,000) per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.
 - (d) The penalty provided herein shall be cumulative of other remedies provided by state law, including but not limited to the recovery of civil penalties under Subchapter B, Chapter 54, of the Texas Local Government Code. The Town may institute any appropriate action or proceeding in a court of competent jurisdiction to enjoin the violation of this article. The power of injunction may be exercised in enforcing this article whether or not there has been a criminal complaint filed.

Secs. 34-434 – 451. RESERVED.

SECTION 3

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

SECTION 4

If any section, subsection, clause, phrase, or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases, and provisions of this

Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

SECTION 5

The fact that the present ordinances, orders, resolutions, rules, regulations, policies and provisions of the Town of Flower Mound, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the Town of Flower Mound, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this Ordinance become effective from and after the date of its passage, and it is accordingly so ordained.