

ORDINANCE NUMBER 1286

AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, AMENDING CHAPTER 8.36 - "OIL AND GAS WELLS" OF THE BENBROOK MUNICIPAL CODE, BY RETITLING THE CHAPTER TO "GAS DRILLING AND PRODUCTION", AND REVISING THE REGULATIONS RELATED TO THE DRILLING AND PRODUCTION OF GAS WITHIN THE CITY INCLUDING REVISED REGULATIONS REGARDING DISTANCE, NOISE, PIPELINES AND TECHNICAL PROVISIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has previously adopted Chapter 8.36 of the Benbrook Municipal Code regulating oil and gas wells; and

WHEREAS, the City Council now deems it necessary to amend the current regulations for the drilling, production and redrilling of gas so that these activities may be conducted in a manner that protects the health, safety and welfare of the citizens of Benbrook and conforms with established codes and regulations, while minimizing the potential impact of surface property and mineral rights owners; and

WHEREAS, the provisions set forth in Chapter 8.36 shall be considered the minimum requirement for the development of gas and other hydrocarbon substances within and under the City and shall not relieve any person from any duty imposed by law to use reasonable care and precautions for the safeguarding of people and the protection of and noninterference of property rights.

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

SECTION 1

Chapter 8.36, of the Benbrook Municipal Code (1985, as amended) is hereby amended in its entirety to read as follows:

"CHAPTER 8.36 GAS DRILLING AND PRODUCTION

8.36.010 PURPOSE

The exploration, development, and production of natural gas in the City necessitate

reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to peaceably enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this Ordinance to establish reasonable and uniform limitations, safeguards and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of gas and other substances produced in association with gas within the City to protect the health, safety and general welfare of the public, minimize the potential impact to property and mineral rights owners, protect the quality of the environment and encourage the orderly production of available mineral resources.

8.36.020 DEFINITIONS

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

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

“Ambient Noise Level” means the all encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location, constituting the normal or existing level of environmental noise at a given location, measured in A-weighted decibels.

“Blowout” means the uncontrolled flow of gas, oil, or other fluids from a well.

“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 for preventing 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."

“Casing” means steel pipe in a gas well to prevent the wall of the hole from caving in, to prevent movement of fluids from one formation to another and to aid in well control.

“Cathodic Protection” is a technique to control the corrosion of a metal surface by making it work as a cathode of an electrochemical cell. Cathodic protection systems are used to protect steel, water, or fuel pipelines and storage tanks and well casings.

“**Cellar**” means a pit in the ground to provide additional height between the rig floor and the well head to accommodate the installation of blowout preventers, ratholes, and mouseholes.

“**City**” means the City of Benbrook.

“**City Code**” means the Municipal Code of the City of Benbrook.

“**City Attorney**” means the City Attorney of the City of Benbrook.

“**City Engineer**” means the City Engineer or other individual responsible for inspecting and enforcing gas wells and this Ordinance as designated by the City Manager.

“**City Regulated Pipelines**” means those pipelines within the City that, under Federal and State rules and regulations, are not exempt from City regulations and ordinances regarding mapping, inventorying, locating or relocating of pipelines, including, but not limited to, pipelines over, under, along, or across a public street or alley, pipelines from the well to the first point of custody transfer or in private residential areas within the boundaries of the City.

“**Closed Loop Mud System**” means a drilling waste system of closed tanks used as an alternative to reserve pits, and which allows for storage and separation of fluids such as mud, water, and additives from drill cuttings such as rock fragments, and allows for recycling of some drilling fluids.

“**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 their work or contract or by their employer.

“**Compressor**” means the engine used to increase the pressure of natural gas so that it will flow more easily through a pipeline.

“**Daytime**” means the period from 7:00 am to 7:00 pm.

“**Decibel (db)**” means a unit for measuring the intensity of a sound/noise and is equal to 10 times the logarithm to the base 10 of the ratio of the measured sound pressure squared to a reference pressure, which is 20 micropascals.

“**Demobilization**” means those activities when the drilling has ceased and the rig equipment and related pad site equipment is being dismantled for the purpose of moving off the drill pad site.

“**Derrick/Drilling Rig**” means a steel structure mounted over the borehole to support the drill pipe and other equipment that is lowered and raised during drilling

operations.

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

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

“Drilling Operations” means drilling with drill pipe and bit, running casing, circulating mud and fluids, tripping tools and setting production casing/tubing.

“Drill Site” means the area used for drilling, development, production and all operational activities associated with gas production.

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

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the officially-adopted Flood Insurance Rate Map.

“Fire Department” means the Fire Department of the City of Benbrook.

“Flaring” is the result of a controlled burn of natural gas from a well as a way to test a well’s performance.

“Flowback” means the process of recovering water and residual sand from the gas stream of a completed/fractured well prior to sending gas down a sales line.

“Fracturing” means the application of hydraulic pressure to the reservoir formation to create fractures through which gas may move to the well bore. The terms may sometimes be abbreviated as “frac” and “fracing”.

“Freshwater Fracture Pit” means a pit used for the collection and storage of fresh water for the purpose of fracture stimulation of gas wells.

“Fresh Water” means water obtained from any source (natural or reuse) that contains three thousand parts per million (3,000 ppm) chlorides or less or as defined by the Texas Railroad Commission.

“Gas” means any fluid, either combustible or non-combustible, 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.

“Gathering Lines” means pipelines that move natural gas from wells to processing or transmission facilities.

“Habitable Structure” means any structure, other than Protected Use or Public Building structures, for which a certificate of occupancy is required. A habitable structure shall not include detached accessory buildings, garages and sheds.

“Hospital Building” means all buildings used or designed to and intended to be used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis, including convalescent facilities.

“Lift Compressor” means a device that raises the pressure of a compressible fluid (gas) in order to lift gas from the well.

“Line Compressor” means a device that raises the pressure of a compressible fluid (gas) in order for the gas to be transported.

“Mobilization” means those activities when the drilling rig and related equipment and personnel arrive at the well site and are conducting activities to “rig up” or position the rig equipment at the well and prepare for drilling. This includes all activities and services prior to the drill bit being lowered below the rotary table and entering the conductor pipe in an attempt to make a hole (“spud well”) for the first time at the pad site.

“Mousehole” means shallow holes under a rig floor, usually lined with pipe, in which joints or drill pipe are temporarily suspended for later connection to the drill string.

“Natural Gas” means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in porous rock formations. Its principle component is methane.

“Nighttime” means the period between 7:00 p.m. and 7:00 a.m.

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

“Pad Site” means the cleared and finished surface area where drilling and production operations occur.

“Permit” means a Gas Well Permit or Multiple Wellhead Permit.

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

“Pipeline” means all parts of those physical facilities through which gas, hazardous liquids, fresh water, salt water, or chemicals move in transportation, including but not limited to pipe, valves and other appurtenance attached to pipe, whether or not laid in a public or private easement or public or private right-of-way within the City, including but not limited to gathering lines, production lines and transmission lines. This definition does not include pipelines associated with franchise utilities.

“Pipeline Construction” means the initiation of any excavation or other disturbance of property for the purpose of installation, construction, maintenance, repair, replacement, modification or removal of a pipeline.

“Pipeline or Well Emergency” means a pipeline or well incident that is required to be reported to the Railroad Commission, the Texas Commission on Environmental Quality, or any Federal, State, or local regulatory agency under any applicable law or regulation.

“Pipeline Permit” means a permit for the movement of gas, oil, water or other products.

“Pipeline Operator” means any persons owning, operating or responsible for operating a pipeline.

“Private Residential Area” means any area within the territorial limits of the City zoned and used for single or multi-family residential uses.

“Property Owner” means the owner of the surface property.

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

“Public Building” means all buildings that meet the definition of Assembly Group “A” occupancy, as defined by Section 303 of the International Fire Code, as currently adopted by the City of Benbrook, or as may be adopted in the future.

“Public Park” means any land area dedicated to, or maintained by, the City for active or passive recreational purposes.

“Rathole” means a hole in the rig floor into which equipment is placed when hoisting operations are in progress.

“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.

“Reduced Emission Completion” means techniques or methods that minimize the release of natural gas and vapors to the environment when a well is being flowed during the completion or re-completion phase of a well.

“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.

“Reservoir” means a subsurface, porous, permeable or naturally fractured rock body in which gas or oil is stored.

“Residence” means a house, duplex, apartment, townhouse, condominium, City-Inspected mobile home or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for a Gas Well Permit is filed with the City Engineer or designee. Residence shall include assisted living facilities, nursing homes (both intermediate care facilities and skilled nursing facilities), residential board and care facilities, group homes, 24-hour shelters, half-way houses, hotels, motels and jails.

“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 City and which is dedicated to the use and benefit of the public.

“Saltwater” or “produced water” is a waste by-product of drilling operations.

“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 City of Benbrook that provides care, training, education, custody, treatment or supervision for more than six children under 14 years of age, and for less than 24 hours per day.

“Secondary Containment” means an enclosure surrounding primary containment equipment such as tanks to protect from overflow.

“Separation” means the process of separating liquid and gas hydrocarbons and water. This is typically accomplished in a pressure vessel or “separation tanks” at the surface.

“Shut In Well” means to close valves at the well to stop production, or a well in

which the valves have been closed. Reasons for well being shut in may be lack of pipeline access to market or economically unfavorable market prices.

“Sidetrack Operations” means to use equipment to drill around the original planned path of a well.

“Site Preparation” means any grading, tree removal, construction of access roads, delivery of fill material, staging of equipment or any other activity that would disturb the surface of the property.

“Spud A Well” means to begin drilling operations; the ‘rig is up’ and drilling commenced.

“State or Federal Regulated Pipelines” means those pipelines within the City that under State and Federal rules and regulations are exempt from City regulations and ordinances regarding mapping, inventorying, locating and relocating pipelines.

“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 gas or other hydrocarbons for holding or storing fluids.

“Tank Battery” is part of the production equipment installed after a well is completed. Tank batteries store the salt water, or ‘produced’ water that is removed from a producing well.

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

“Wellhead” means the equipment installed at the surface of a well, consisting of outlets, valves, and blowout prevention equipment, used to control the pressure, the point at which hydrocarbons and water exit the ground.

“Workover Operations” means work performed in a well after its completion in an effort to secure production where there has been none, restore production that has ceased, or increase production. For example, should the perforations in the casing become clogged by particulate matter, a workover rig (much smaller than a drilling rig) may be used to clear the plugs and clogs.

8.36.030 AUTHORITY OF CITY ENGINEER OR DESIGNEE

A. City Engineer or Designee as Authority: The City Engineer or designee shall enforce the provisions of this Ordinance. The City Engineer or designee shall have the authority to issue any orders or directives required to carry out the intent and purpose of this Ordinance and its particular provisions. The failure of any

person to comply with any such order or directive shall constitute a violation of this Ordinance.

- B. Authority to Inspect:** The City Engineer or designee shall have the authority to enter and inspect any premises covered by the provisions of this Ordinance to determine compliance with the provisions of this Ordinance and all applicable laws, rules, regulations, standards or directives of the State and to issue citations for violations of this Ordinance. Failure of any person to permit access to the City Engineer or designee shall constitute a violation of this Ordinance. The City Engineer or designee will conduct periodic inspections of all permitted wells in the City to determine that the wells are operating in accordance with proper parameters as set out in this Ordinance and all regulations of the Commission. Should the City Engineer or designee engage an outside consultant to conduct inspections, the Operator shall be assessed and pay the actual cost of the consultants inspection services.
- C. Authority to Request Records:** The City Engineer or designee shall have the authority to request and receive any records, including any records sent to the Commission, logs, reports and the like, relating to the status or condition of any permitted well, necessary to establish and determine compliance with the applicable Gas Well Permit. Failure of any person to provide any such requested material shall be deemed a violation of this Ordinance.
- D. Authority to Allow Alternatives:** The City Engineer or designee shall have the authority to allow alternatives to the technical standards of this Ordinance such as new technology, if the Operator has demonstrated to the City Engineer or designee's satisfaction that the alternatives provide equal or greater protection to the environment or public.

8.36.040 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 Ordinance may be served in person or by registered or certified mail. Every Operator so designating such agent shall within ten (10) days notify the City Secretary in writing of any change in such agent or such mailing address unless operations within the City are discontinued.

8.36.050 GAS WELL PERMIT REQUIRED

- A. Permit Required:** A person wanting to engage in and operate gas production activities within the City of Benbrook shall apply for and obtain a Gas Well Permit under this Ordinance. It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person, to drill any well, assist in any way in the site preparation, re-working, fracturing or operation of any such well, or to conduct any activity related to the production of gas without first obtaining a Gas Well Permit issued by the City in accordance with this Ordinance. Such activities include, but are not limited to, re-working, initial site preparation, drilling, operation, construction of rigs or tank batteries,

fracturing and pressurizing. A permit for seismic surveys is only required for seismic surveys conducted on City-owned property or public rights-of-way, unless such requirement is waived, in writing, by the City.

B. Separate Permit Per Well: Operator must apply for and obtain a separate Gas Well Permit for the drilling, re-drilling, deepening, re-entering, activating or converting of each well.

1. Abandoned Well: A previously-issued Gas Well Permit shall not constitute authority for the re-entering and drilling of an abandoned well. An Operator shall obtain a new Gas Well Permit in accordance with the provisions of this Ordinance if the Operator is re-entering and drilling an abandoned well.

2. New Permit for Use Other Than Original Permit: When a Gas Well Permit has been issued to the Operator for the drilling, re-drilling, deepening, re-entering, activating or converting of a well, such Gas Well Permit shall constitute sufficient authority for drilling, operation, production gathering or production maintenance, repair, re-working, testing, plugging and abandonment of the well and/or any other activity associated with mineral exploration at the site of such well, provided, however, that a new or supplemental 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.

C. Termination of Permit: A Gas Well Permit shall automatically terminate, unless extended, if drilling of the well bore has not commenced within three hundred sixty five days (365) days from the date of the issuance of the Gas Well Permit. A Gas Well Permit may be extended one time by the City Engineer or designee for an additional three hundred sixty five (365) days, upon written request by the Operator if:

1. the Operator provides proof that there are no additional Protected Uses located within 600 feet since the time of the filing of the of the original permit application; and

2. the request is submitted prior to the expiration of the original permit.

No permit shall be extended beyond the expiration date of the current Railroad Commission permit.

D. Other Required Permits: Any Gas Well Permits required by this Ordinance are in addition to and not in lieu of any permit which may be required by any other provision of this Code or by any other governmental agency, including erosion control permits and floodplain modification permits.

E. New Permit Not Required: No additional Gas Well Permit or filing fees shall be required for:

1. **Existing/Permitted Wells:** Any wells that are existing or previously-permitted or approved by the City within the corporate limits of the City on the effective date of this Ordinance, or;
2. **Drilling Commenced:** Any permitted wells where drilling has commenced on the effective date of the Ordinance; or
3. **Wells on Annexed Land:** Any wells in existence or on which drilling has commenced on land annexed into the City after the effective date of this Ordinance, or any well in an area to be annexed that had obtained all required permits from all governmental jurisdictions that have authority over gas well permits prior to the effective date of the annexation.

F. Council Approval for City-Owned Property or Parks: No Gas Well Permit shall be issued for any well to be drilled on City-owned property or within any public park without the prior consent of the City Council.

G. Non-Permitted Operators Utilizing City Roadways: A person wanting to engage in and operate in gas production activities outside of the city limits of the City is not required to obtain a Gas Well Permit under this Ordinance; however, is shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to utilize City owned and/or maintained roadways for any portion of their haul route without first entering into a Road Damage Remediation Agreement with the City, and paying the applicable Road Damage Fee as outlined in that agreement for the portion of roadways utilized for trucking activities associated with any gas production activities.

H. Operator to Operator Transfers: Operator to Operator transfers are permitted subject to a Transfer Review Fee as established in the Chapter 1.12 of the Benbrook Municipal Code. The new operator shall provide information as follows:

1. **Well Name:** Well name.
2. **Date/Type:** The date of the application.
3. **Operator/Applicant Name and Address:** Designate if the new Operator is a corporation, the State of incorporation, and, if the Operator is a partnership, the names and addresses of the general partners.
4. **Operator's Agent:** Name, address, and phone number of individual designated to receive notice, correspondence, or communications regarding the permit.
5. **Emergency Contact:** Name, address, and phone number (that is answered on a 24-hour basis) of the person to be notified in case of emergency on drill site. Operator must furnish, and provide regular updates, the emergency contact information to the Fire Chief of the Benbrook Fire Department.

6. **Operations Manager:** Name of the representative with regulatory response and supervisory authority over all gas operation site activities and a phone number that is answered on a 24-hour basis.
7. **Legal Description:** An accurate legal description of the lease property to be used for the gas operation, the parcel and the production unit, and name of the geologic formation as used by the Commission. Property that has been recorded by plat should reference subdivision, block and lot numbers.
8. **Insurance and Security:** Evidence of insurance and security requirements under this Ordinance.
9. **Changes to Gas Well Permit Information:** A description of any changes to information provided in the original and filed Gas Well Permit Application. At the sole discretion of the City Engineer or designee, changes may require a new Gas Well Permit Application and applicable Gas Well Permit fee.

8.36.060 GAS WELL PERMIT APPLICATION REQUIREMENTS

No permit shall be issued until a copy of the approved Railroad Commission permit to drill, together with all submitted attachments and survey plats which are applicable to the drill and operation sites are submitted to, and approved by, the City Engineer or designee.

- A. **Application in Writing and Signed:** Every application for a Gas Well Permit issued pursuant to this Ordinance shall be in writing, signed by the Operator, or some person duly authorized to sign on his/her behalf, and filed with the City Engineer or designee.
- B. **Permit Fee:** Every application shall be accompanied by the permit fee(s) required in Chapter 1.12 of the Benbrook Municipal Code.
- C. The application shall include the following information:
 1. **Well Name:** Proposed well name.
 2. **Date/Type:** The date of the application and type of well permit being requested.
 3. **Operator/Applicant Name and Address:** Designate 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.
 4. **Operator's Agent:** Name, address, and phone number of individual designated to receive notice, correspondence, or communications regarding the permit.
 5. **Emergency Contact:** Name, address, and phone number (that is answered

on a 24-hour basis) of the person to be notified in case of emergency on drill site. Operator must furnish, and provide regular updates, the emergency contact information to the Fire Chief of the Benbrook Fire Department.

6. **Operations Manager:** Name of the representative with regulatory response and supervisory authority over all gas operation site activities and a phone number that is answered on a 24-hour basis.
7. **Legal Description:** An accurate legal description of the lease property to be used for the gas operation, the parcel and the production unit, and name of the geologic formation as used by the Commission. Property that has been recorded by plat should reference subdivision, block and lot numbers.
8. **Transportation Route Map:** A map showing the proposed transportation route(s) for equipment, chemicals, water or waste products used or produced by the gas operation.
9. **Leased Surface Owner Information:** Surface owner names(s) and address(es) of the pad site property, along with a copy of the surface use agreement.
10. **Parcel Information:** List of property owner names and address and mailing labels (in electronic format) for each parcel of property within one thousand feet (1,000') of the proposed drill site.
11. **Gas Well Site Information:** The exact and correct acreage and number of wells, if applicable, included in the Gas Well Permit application.
12. **Structures in Proximity:** Location and description of all improvements and structures within six hundred (600) feet of the well.
13. **Water Source:** A description of the water source to be used during drilling and the method and route of conveying that water from the source to the well site.
14. **Insurance and Security:** Evidence of insurance and security requirements under this Ordinance.
15. **Signage:** The Operator, at his expense, shall erect at least one sign, approved by the City Engineer or designee, no less than three feet by three feet (3'X3'), upon the premises for which a Gas Well Permit has been requested. Where possible, the sign or signs shall be located in a conspicuous place or places upon the property at the point or points nearest any right-of-way, street, roadway or public thoroughfare adjacent to such property. The City Engineer or designee may require additional signage if the premise fronts more than one right-of-way, street, roadway, or public thoroughfare.
 - a. The sign shall indicate that a Gas Well Permit to drill for gas has been requested, and provide an Applicant/Operator telephone number for public

inquiries.

- b. The continued maintenance of any such sign(s) shall not be deemed a condition precedent to the holding of any public hearing or to any other official action concerning this Ordinance.
- c. The sign shall remain posted at the pad site. Upon approval of the Gas Well Permit by the City, the Operator shall modify or replace the sign to indicate that a Gas Well Permit has been approved for the site.

16. True and Correct Statement: 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.

17. Required Attachments (Permits/Plans/Reports) to Application:

- a. **Commission Permit:** A copy of the approved Railroad Commission permit to drill, together with attachments and survey plats which are applicable to the drill and operation sites.
- b. **Commission Reports:** Copies of all reports submitted to the Railroad Commission as may be requested by the City Engineer or designee.
- c. **Surveyed Site Plan:** A surveyed site plan of the proposed operation site shall display a Registered Professional Land Surveyor seal, a legend with a scale for measurements and north arrow, and a complete legal description. The site plan shall include specific details of the projected location of the major components of the drilling site, location of all improvements and equipment, including the location of the proposed well (s) and other facilities, including, but not limited to, tanks, City-regulated pipelines, compressors, separators, lights, storage sheds, fencing and any access roads. The site plan shall show the location of specific wells, pipelines, tanks and reservoir(s) in relationship with existing and proposed water and sanitary sewer lines and any other utility easements. The site plan shall also indicate any floodway and floodplain boundaries or City recognized drainage ways and the elevation and slope of the pad site, creeks and other topographic features, adjacent buildings and other structures and the measured distance from the well site to these buildings and structures, temporary and permanent fencing and landscape.
- d. **Road Damage Remediation Agreement:** An original, fully executed Road Damage Remediation Agreement that has been accepted by the City Engineer or designee. If a Road Damage Remediation Agreement has been filed with the City, the Operator may submit a copy of that Agreement with subsequent permit applications. A Road Damage Remediation Fee will apply for each Gas Well Permit. The fee is set forth in Chapter 1.12 of the Benbrook Municipal code.

- e. **Erosion Control and Grading Plan/Permit:** An approved erosion control and grading plan, required by the City under Chapter 15.42 of the Benbrook Municipal Code, is required to prevent any off-site migration of salt or sediment. Upon approval of the plan, a permit is issued by the Community Development Department.
- f. **Storm Water Pollution Prevention Plan/Notice of Intent:** Where required or applicable, a copy of the Storm Water Pollution Prevention Plan as required by the City, Texas Commission on Environmental Quality (TCEQ) and/or U.S. Environmental Protection Agency (EPA). A copy of the Notice of Intent (NOI) shall be submitted to the City of Benbrook three (3) days prior to the commencement of any onsite activity.
- g. **Groundwater Determination:** A copy of the determination by the Texas Commission on Environmental Quality (TCEQ) of the depth of useable quality ground water.
- h. **Fracture Pond Permit:** Fracture pond approval/permit from the Community Development Department, pursuant to Section 8.36.120 of this Ordinance, if applicable.
- i. **Surface Reclamation Plan:** A surface reclamation plan to restore drill site and fracture pond/pit property through clean-up, maintenance and landscaping (in accordance with Chapter 27 of the Benbrook Zoning Ordinance—Ordinance 808 as amended.) The surface reclamation plan must meet the requirements outlined in Section 8.36.120 of this Ordinance.
- j. **Gathering Pipeline Route:** The proposed gathering pipeline route from the well to the transmission pipeline, including all existing and proposed City rights-of-way and public or private property crossed by the proposed gathering pipeline.
- k. **Noise Management Plan** as outlined in Section 8.36.120B.
- l. **Concept Plan:** Where applicable, a concept plan for future development of the property containing the proposed well and pipeline routes demonstrating that future development will not be unreasonably restricted by the well and pipeline locations. The concept plan shall not constitute an application for development under the City's development ordinances or Chapter 245 of the Texas Local Government Code, but is simply used to show that the orderly growth and development of the City will not be unreasonably hindered by the proposed well and pipeline.
- m. **Floodplain Permit:** No Gas Well Permit shall be issued for any well to be drilled within any special flood hazard area (100-year floodplain) identified by FEMA on the most current FIRM, without first obtaining a floodplain development permit from the Community Development Department

- n. **Hazardous Materials Management Plan (HMMP):** as described in Section 8.36.120 of this Ordinance, showing all hazardous materials that will be located, stored, transported and/or temporarily used on the operations site.
- o. **Emergency Response Plan:** Prior to the commencement of any gas or other hydrocarbons production activities, Operator shall submit to the City Engineer or designee an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of gas wells. Said plan shall use existing guidelines established by the Commission, Texas Natural Resource Conservation Commission, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be provided to the City Fire Chief and kept on site.

8.36.070 GAS WELL PERMITTING PROCEDURE

A. General

1. **Application Review:** It is the responsibility of the City Engineer or designee to review and approve or disapprove all applications for gas well drilling permits based on the criteria established by this Ordinance. The City Engineer or designee, upon receipt of a completed application and remittance of all fees, insurance and security requirements of this Ordinance for a Gas Well Permit, shall determine, within 45 days of receiving a complete application, whether the application complies in all respects with the provisions of this Ordinance, including distance requirements, and approve or disapprove of said application.
2. **Prior Building Permits:** The provisions of this Ordinance shall apply to any dwellings or buildings for which an application for a building permit has been submitted on or before the date the application for a Gas Well Permit is filed with the City Engineer or designee.
3. **Road Damage Remediation Fee:** No Gas Well Permit shall be issued until the Road Damage Remediation Fee has been paid in full.
4. **Permit Issuance:** If all the requirements of this Ordinance are met, the City Engineer or designee shall issue a Gas Well Permit for the drilling of the well or the installation of the facilities applied for.
5. **Denial of Permit Other Than Distance Setback:** If the City Engineer or designee denies a Gas Well Permit application for reasons other than lack of required distance as set out in this Ordinance for the requested Gas Well Permit, he/she 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 City Engineer or designee to deny the Gas Well Permit, the Operator

may:

- a. cure those conditions that caused the denial and resubmit the application to the City Engineer or designee, at no additional fee, for approval and issuance of the Gas Well Permit; or
- b. file an appeal to the Appeals Commission under the provisions outlined in Section 8.36.190 of this Ordinance.

6. Distance Setback Application Denial/Resubmitted: If the City Engineer or designee determines that all of the provisions of this Ordinance have been met by the Operator, but that the proposed drill site does not comply with the distance requirements of this Ordinance, the City Engineer or designee shall notify the Operator. The Operator may modify the well location or resubmit the application for a Gas Well Permit.

7. Operator May File New Application: If an application for a Gas Well Permit is denied by the City Engineer or designee, nothing herein contained shall prevent a new permit application from being submitted to the City Engineer or designee for the same well.

B. Permitting Procedure for Gas Wells Located Greater than 600 Feet from a Protected Use

1. Surface Property Owner Notice: At least ten (10) days after the date of filing of a completed application for a Gas Well Permit, the City shall notify, at Operator's expense, each surface owner of property, as shown by the current tax roll within one thousand (1,000) feet of the proposed well site. Such notice shall be deposited, properly addressed and postage paid, in the United States mail. The notice shall contain the information as outlined below:

- a. a City of Benbrook website link for general information on gas drilling operations,
- b. the number of wells requested by the Applicant/Operator,
- c. that drilling may commence within three hundred sixty-five (365) days from the issuance of a permit, and
- d. contact telephone numbers for City staff and the Applicant/Operator.

2. Neighborhood Association Notice: The City shall send notice to all registered neighborhood associations within one-half mile of the proposed drill site.

3. Gas Well Permit Newspaper Notice: Within fourteen (14) days of the date of filing a completed application for a Gas Well Permit, the Operator shall, at Operator's expense, publish a copy of the notice, as outlined above, in a

newspaper of general circulation in the City for two (2) consecutive weeks. An affidavit by the printer or publisher of the newspaper indicating publication of the notice shall be filed with the application and will be prima facie evidence of such publication. All notices shall follow a format required by the City.

4. **Notice Deemed Sufficient:** All notice provisions contained herein shall be deemed sufficient upon substantial compliance with this section.

C. **Permitting Procedure for Gas Wells Located Within 600 Feet of a Protected Use**

1. **Well Setback Requirements:** A Gas Well Permit shall not be issued for any well to be drilled within six hundred feet (600') of a Protected Use without first obtaining:
 - a. **Protected Use Waivers:** Written notarized waivers granted by all the Protected Use property owners within a six hundred foot (600') radius around the proposed well. All waivers must identify the property address, block and lot number, subdivision name (if applicable) and plat volume and page, and be filed, at the expense of the Operator, in the applicable county records prior to the application of a Gas well Permit, or
 - b. **City Council Waiver:** A waiver granted by the City Council.
2. **Minimum Setback:** Even with a waiver, in no case shall a well be located less than three hundred feet (300') from any Protected Use.
3. **Building Permits:** This provision applies to any existing Protected Use where a building permit has been issued for a Protected Use on or before the date the application for a permit is filed with the City Engineer or designee.
4. **Method of Distance Measurement:** The measurement of the six hundred foot (600') distance shall be made from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building or boundary line of a public park.
5. **Request Public Hearing or Provide Copies of Waivers:** In addition to the requirements of Section 8.36.060 above, an application for a Gas Well Permit to drill a well within six hundred feet (600') of a Protected Use shall include a letter to the City Engineer or designee requesting either a public hearing to obtain a Gas Well Permit from City Council or a copy of the written notarized waivers from the Protected Uses within six hundred feet (600') of the proposed well and evidence of filing of each waiver in the applicable county deed records.

6. Permitting Procedure for a Waiver from Protected Use Property Owners

- a. **Waivers Required:** No application for a gas well permit within six hundred feet (600') of a Protected Use shall be accepted unless the written notarized waivers are obtained from all Protected Use property owners within six hundred feet (600') of the proposed well.
- b. **Waivers Filed in County Deed Records:** Written notarized waivers granted by all the Protected Use property owners within a six hundred foot (600') radius around the proposed well must be filed, at Operator's expense, in the applicable county deed records. All waivers must identify the property address, block and lot number, subdivision name, and plat volume and page number. Copies of the filed Protected Use property owner waivers must be submitted with the completed gas well application.
- c. **Surface Owner Written Gas Well Notice:** Within ten (10) days of receipt of copies of all Protected Use waivers filed in the applicable county deed records, and a completed application, the City shall notify, at Operator's expense, each surface owner of property as shown by the current tax rolls within one thousand feet (1,000') of the proposed well. Such notice shall be deposited, properly addressed and postage paid, in the United States mail. The notice shall contain information as outlined below:
 1. A map noting the location of the well site as a point of reference,
 2. a description of the physical address of the site,
 3. City of Benbrook website link for general information on gas drilling operations,
 4. that drilling may commence within three hundred sixty-five (365) days from the issuance of a permit, and
 5. contact telephone numbers for City staff and Applicant/Operator.
- d. **Homeowners Association Notice:** The City shall send notice to all registered neighborhood associations within one-half mile of the proposed drill site.
- e. **Gas Well Permit Newspaper Notice:** After submittal of a completed application for a Gas Well permit to drill within 600 feet of a Protected Use by Protected Use Waiver under this Ordinance, the Operator shall, at Operator's expense, publish notice in a newspaper of general circulation in the City for two (2) consecutive weeks. An affidavit by the printer or publisher of the newspaper indicating publication of the notice shall be filed with the application and will be prima facie evidence of such publication. All notices shall include the information provided in **Section C6c 2-5** above

and follow a format required by the City.

- f. Notice Deemed Sufficient:** All notice provisions contained herein shall be deemed sufficient upon substantial compliance with this section.
- g. Failure to Secure Waivers:** If the Operator fails to obtain written waivers from all property owners within a six hundred foot (600') radius around the proposed well, the Operator may submit a request for a waiver to drill a gas well within six hundred feet (600') of a Protected Use from City Council, pursuant to the requirements of Section 4 below, or modify the well location to comply with the six hundred foot (600') setback from all Protected Uses.
- h. Previous Waiver for Pad Sites:** A pad site with existing well(s) that have previously been granted a waiver from City Council are not required to secure additional waivers for additional wells on that pad site.

7. Permitting Procedure for Request of a Waiver by the City Council

- a. Public Hearing Placed on Council Agenda:** Within forty-five (45) days of receipt of a completed application and a request for a City Council waiver to drill a gas well within 600 feet of a Protected Use, the City Secretary or designee shall schedule the matter on a City Council agenda for a public hearing and give notice by mail of the date, time, place and purpose thereof to the applicant and any other party who has requested in writing to be so notified. The forty-five (45) day time period shall not begin until the Applicant/Operator has provided the City Engineer or designee with a complete application package, as determined by the City Engineer or designee.
- b. Surface Property Owner Notice of Public Hearing:** At least twenty (20) days, and no more than thirty (30) days prior to the date of the public hearing before City Council for a waiver and the issuance of a Gas Well Permit to drill within 600 feet of a Protected Use, the City shall, at Operator's expense, notify each surface owner of property, as shown by the current tax rolls within one thousand feet (1,000') of the proposed well of the public hearing date, time, place, and purpose. Such notice shall be deposited, properly addressed and postage paid, in the United States mail. The notice shall contain information as provided below:
 - 1. A map noting the location of the well site as a point of reference,
 - 2. a description of the physical address of the site,
 - 3. City of Benbrook website link for general information on gas drilling operations,

4. that drilling may commence within three hundred sixty-five (365) days from the issuance of a permit, and
 5. contact telephone numbers for City staff and Applicant/Operator.
- c. Homeowners Association Notice:** Notice shall be sent by the City to all registered neighborhood associations within one-half mile of the proposed drill site.
- d. Public Hearing Newspaper Notice:** At least fourteen (14) days, and no more than twenty-one (21) days prior to the date of the public hearing before City Council, the City shall, at Operator's expense, publish a notice of the hearing date, time, place and purpose in a newspaper of general circulation in the City for two (2) consecutive weeks. An affidavit by the printer or publisher of the newspaper indicating publication of the notice shall be filed with the application and will be prima facie evidence of such publication. All notices shall include the information provided in Section B3 above and follow a format required by the City.
- e. Public Hearing Sign Required:** Within seventy-two (72) hours of notification by the City Secretary of the public hearing date, time, place and purpose, the Operator shall, at Operator's expense, erect at least one sign, as approved by the City Engineer or designee, no less than three feet by three feet (3'X3') upon the proposed drill site. Where possible, the sign or signs shall be located in a conspicuous place or places upon the property at the point or points nearest any right-of-way, street, roadway or public thoroughfare adjacent to such property. The City Engineer or designee may require additional signage if the premise fronts on more than one right-of-way, street, roadway, or public thoroughfare.
1. The sign(s) shall state that a Gas Well Permit to drill within six hundred feet (600') of a Protected Use has been requested and state the date, time, place, and purpose of the public hearing.
 2. The sign (s) shall include an Applicant/Operator telephone number for public inquiries.
 3. The continued maintenance of any such sign(s) shall not be deemed a condition precedent to the holding of any public hearing or to any other official action concerning this Ordinance.
 4. The sign shall remain posted at the pad site. Upon approval of the Gas Well Permit by the City, the Operator shall modify or replace the sign to indicate that a Gas Well Permit has been approved for the site.
- f. Informational Meeting Required:** At least 7 days prior to the public hearing, the Applicant/Operator must host and staff an informational meeting to be available for attendance by all Protected Use Surface

Owners by written invitation at a time and place convenient to a majority of the Protected Use Surface Owners. The meeting, at a minimum, must provide information about the proposed drill site and answer questions from Protected Use Surface Owners in preparation for the public hearing.

- g. City Engineer or Designee Recommendation:** After a completed Gas Well Permit application to drill within six hundred feet (600') of a Protected Use is submitted, the City Engineer or designee shall evaluate the public impact of the proposed activity. The City Engineer or designee shall consider the proposed site and the proposed operations of the drilling program and shall draft recommended restrictions or conditions, including minimum separation distance for drilling or other operations, special equipment and procedures, recommended noise reduction levels, screening and any other requirements the City Engineer or designee deems appropriate. The recommendation shall be submitted to the City Council for consideration prior to the public hearing, along with evidence that timely actual notice of the hearing was given to all persons as required by this Ordinance.
- h. Operator Compliance With Requirements:** At the public hearing and before the City Council considers the merits of the application and the recommendations of the City Engineer or designee, the Applicant/Operator shall provide evidence that the Applicant/Operator has complied with or satisfied all requirements of this Ordinance, including full and complete compliance with the insurance and security requirements.
- i. Burden of Proof:** The burden of proof on all matters, except surface property owner and newspaper notice, considered in the hearing, shall be upon the Applicant/Operator.
- j. City Council Review:** The City Council shall review the application and any other related information. The City Council shall consider the following in deciding whether to grant a waiver and authorize the issuance of a Gas Well Permit to drill within six hundred feet (600') of a Protected Use:

 - 1. Whether the operations proposed are reasonable under the circumstances and conditions prevailing in the area considering the particular location and the character of the improvements located there;
 - 2. Whether the drilling of such wells would conflict with the orderly growth and development of the City;
 - 3. Whether there are other alternative well site locations that would allow reasonable access to explore, develop and produce the mineral estate without creating mineral waste;
 - 4. Whether the operations proposed are consistent with the health and welfare of the public when and if conducted in accordance with the Gas

Well Permit conditions to be imposed;

5. Whether there is access for City fire personnel and fire fighting equipment;
6. Whether there is a reasonable access to the gas well site that minimizes the impact to residential properties if the use of non-designated commercial or truck routes are required;
7. Whether the impact upon the adjacent property and the general public by operations conducted in compliance with the Gas Well Permit conditions are reasonable and justified, balancing the following factors:
 - i. The right of the owners(s) of the mineral estate to explore, develop, and produce the minerals;
 - ii. The availability of alternative drill sites, both presently and at other times during the lease term; and
 - iii. The recommendations of the City Engineer or designee.
8. **Increase in Setbacks:** The City Council may require an increase in the Applicant/Operator's proposed distance that the well is to be setback from any Protected Use or require any change in operation, plan, design, layout or any change in the on-site and technical regulations in this Ordinance, including fencing, screening, lighting, delivery times, noise levels, tank height, or any other matters reasonably required by public interest.
9. **City Council Decision:** The City Council may accept, reject or modify the application in the interest of securing compliance with this Ordinance, City Code, and/or to protect the health and welfare of the community.

8.36.080 AMENDED GAS WELL PERMITS

An Operator may request to amend a Gas Well Permit Application, without additional public notice, to relocate a drill site or operation site that is indicated on, or incorporated by reference as part of the Application, provided that the distance to Protected Uses is not decreased.

8.36.090 SUSPENSION OR REVOCATION OF A GAS WELL PERMIT; ISSUANCE OF A CITATION, EFFECT

A. Notice of Failure to Comply: If an Operator, or its officers, employees, agents, contractors, or representatives, fails to comply with any requirement of a Gas Well Permit (including any requirement incorporated by reference as part of the Gas Well Permit), the City Engineer or designee shall give written notice to the

Operator specifying the nature of the failure and giving the Operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community. In no event, however, shall the cure period be less than ten (10) days unless the failure presents a violation of the noise provisions, a risk of imminent destruction of property or injury to persons, or unless the failure involves the Operator's failure to provide periodic reports as required by this Ordinance.

- B. Suspension, Revocation, and/or Citation:** If the Operator fails to correct the noncompliance within ten (10) days from the date of the notice, the City Engineer or designee may suspend or revoke the Gas Well Permit or issue a citation pursuant to the provisions of this Ordinance. A citation may be immediately issued for failure to comply with the noise provisions outlined in Section 8.36.120 B of this Ordinance; however, if the Operator is in compliance with the approved Noise Management Plan, and a violation still occurs, the Operator will be given 24 hours from notice of non-compliance to correct the violation from an identified source before a citation is issued. Additional extensions of the 24-hour period may be granted by the City Engineer or designee in the event that the source of the violation cannot be identified after reasonable diligence by the Operator.
- C. No Operations Allowed:** No person shall carry on any operations performed under the terms of the Gas Well Permit issued under this Ordinance during any period of any Gas Well Permit suspension, revocation or pending a review of the decision or order of the City in suspending or revoking the Gas Well Permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the Gas Well Permit was ordered for the safety of persons or as required by the Commission.
- D. Failure to Cure:** If the Operator does not cure the noncompliance within the time specified in this Ordinance, the City Engineer or designee, upon written notice to the Operator, may notify the Commission and request that the Commission take any appropriate action.
- E. Operator Appeal:** The Operator may, within thirty (30) days of the date of the decision of the City Engineer or designee in writing to suspend or revoke a Gas Well Permit, file an appeal to the Appeals Commission under the "Appeals" provision outlined in Section 8.36.190 of this Ordinance.

8.36.100 NOTIFICATION AND REPORTING REQUIRED

- A. Notice Required Within One Week:** The Operator shall notify the City Engineer or designee of any changes to the following information within one (1) business week after the change occurs:
 - 1. Operator Information:** The name, address, and phone number of the Operator;

2. Operator's Agent Information: The name, address, and phone number of the person designated to receive notices from the City.

B. Notice Required Within One Day: The Operator shall notify the City Engineer or designee of any changes to the following information within one (1) business day after the change occurs:

1. The Operator's Emergency Response Plan as described in Section 8.36.060.

2. Operations Manager Information: The name, address, and 24-hour phone number of the person(s) with supervisory authority over drilling or operations activities.

C. Reports: The Operator shall provide the following reports to the City Engineer or designee:

1. Incident Reports/Complaints to Commission: 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.

2. Completed Well Status Report: Beginning on December 31st after each well is completed, and continuing on each December 31st thereafter, until the Operator notifies the City Engineer or designee that the well has been abandoned and the site restored, the Operator shall submit a written report to the City Engineer or designee identifying any changes that have not be previously reported to the City to the information that was included in the application for the applicable Gas Well Permit.

3. Permitted Well Status Report: Beginning on December 31st after each well is permitted by the City, the Operator shall provide an operational status report for every well permitted to the Operator within the City. The report shall include the well name, API number, lease name, Commission permit number, Commission lease ID number and current status, whether pending, drilling, completing, producing, plugged or abandoned.

D. Notice of Activities: The Operator shall provide 48-hour notice to the City Engineer or designee, by either phone call, e-mail with a return receipt requested, or by fax, before the start of the following operations:

1. Initial construction of drill site and access roadway;

2. Completion of drill site and access roadway;

3. Start of drilling operations;

4. Perforation of casing (as explosives may be located or stored on site);
5. Fracturing of the well;
6. Setting the wellhead valves and equipment; and
7. Construction of fencing and landscaping.

8.36.110 INSURANCE, BOND AND INDEMNITY

A. General Requirements - The Operator shall be required to:

1. Comply with the terms and conditions of this Ordinance and the Gas Well Permit issued hereunder.
2. Indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by Operator under a Gas Well Permit:
 - a. where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of Operator and any other person or entity; and
 - b. regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of Operator.
3. Promptly pay all fines, penalties and other assessments imposed due to breach of any terms of the Gas Well Permit.
4. Promptly restore to its former condition any public property damaged by the gas operation.

B. Bond, Irrevocable Letter of Credit

1. Prior to the issuance of a Gas Well Permit, the Operator shall provide the City Engineer or designee with a security instrument in the form of a bond or an irrevocable letter of credit in accordance with this Subsection B below. Evidence of the execution of the letter of credit shall be submitted to the City Engineer or designee by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the City Secretary.
 - a. **During Drilling:** An Operator drilling between one (1) and five (5) wells in the City at any time shall provide a blanket bond or letter of credit that meets the requirements of Subsection B in the principal minimum amount of One Hundred Fifty Thousand Dollars (\$150,000). Such Blanket bond or

letter of credit shall be increased by Fifty Thousand Dollars (\$50,000) for the sixth (6th) and each additional well being drilled in the City.

- b. During Production:** An Operator with wells that are producing and for which all drilling operations have ceased shall provide a blanket bond or letter of credit that meets the requirements of this Subsection B in the principal minimum amounts as follows:

<u>Number of Producing</u>	<u>Wells Blanket Bond /Letter of Credit Amount Required</u>
Up to 75 wells	\$100,000
75 to 150 wells	\$150,000
More than 150 wells	\$200,000

- 2. City Authorized to Draw:** The City shall be authorized to draw upon such bond or letter of credit to (i) recover any fines or penalties assessed under this Ordinance or (ii) to pay the City for the cost of doing any work required to remedy any default of the Operator under any provision of this Ordinance. Whenever the City Engineer or designee finds that a default has occurred in the performance of any requirement or condition imposed by this Ordinance, a written notice shall be given to the Operator. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the City Engineer or designee 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 City one hundred twenty-five percent (125%) of the estimated cost of doing the work as set forth in the notice. In no event, however, shall the cure period be less than thirty (30) days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the Operator's failure to provide periodic reports as required by this Ordinance.

The City 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 City shall proceed by such method and action as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the Commission, such additional money may be demanded from the Operator as is necessary to properly plug and abandon the well and restore the drill site in conformity with the regulations of this Ordinance.

In the event the Operator does not cause the work to be performed and fails or refuses to pay over to the City the estimated cost of the work to be done as set forth in the notice, or the issuer of the security instrument refuses to honor any draft by the City against the applicable irrevocable letter of credit or bond, the City may proceed to obtain compliance and abate the default by way of civil

action against the Operator, or by criminal action against the Operator, or by both such methods.

- 3. Requirements for Bonds:** A bond shall be executed by a reliable bonding or insurance institution authorized to do business in Texas, acceptable to the City. The bond shall become effective on or before the date the Gas Well Permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the Gas Well Permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The Operator shall be listed as principal, and the instrument shall run to the City, as obligee, and shall be conditioned that the Operator will comply with the terms and regulations of this Ordinance and the City. The original bond shall be submitted to the City Engineer or designee with a copy of the same provided to the City Secretary.
 - 4. Requirements for Letters of Credit:** A Letter of Credit shall be issued by a reliable bank authorized to do business in Texas and shall become effective on or before the date the Gas Well 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 Gas Well Permit term. If the Letter of Credit is for a time period less than the life of the well as required by this Ordinance, the Operator must agree to either renew the Letter of Credit or replace the Letter of Credit with a bond in the amount required by this Ordinance, on or before sixty (60) days prior to the expiration date of the Letter of Credit. If the Operator fails to deliver to the City of Benbrook either the renewal Letter of Credit or replacement bond in the appropriate amount on or before sixty (60) days prior to the expiration date of the Letter of Credit, the City of Benbrook may draw the entire face amount of the attached Letter of Credit to be held by the City of Benbrook as security for Operator's performance of its obligations under this Ordinance. The City shall be authorized to draw upon such Letter of Credit to recover any fines or penalties assessed under this Ordinance. Evidence of the execution of a Letter of Credit shall be submitted to the City Engineer or designee by submitting an original signed Letter of Credit from the banking institution, with a copy of the same provided to the City Secretary.
 - 5. Credit/Letter Terminated:** 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 Ordinance, and in conformity with all regulations of the Commission and notice to that effect has been received by the City, or upon receipt of a satisfactory substitute, the irrevocable letter of credit or bond issued in compliance with these regulations shall be terminated and cancelled.
- C. Insurance:** In addition to the bond or letter of credit required pursuant to this Ordinance, the Operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are cancelled, the Gas Well Permit shall be suspended on such date of cancellation and the Operator's right to operate under such Gas Well Permit shall immediately cease until the Operator files

additional insurance as provided herein.

1. General Requirements applicable to all policies.

- a. The City, its officials, employees, agents and officers shall be endorsed as an "Additional Insured" to all policies except Employers Liability coverage under the Operator's Workers Compensation policy.
- b. All policies shall be written on an occurrence basis except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess or Umbrella Liability, which may be on a claims-made basis.
- c. All policies shall be written by an insurer with an A-VIII or better rating by the most current version of the A. M. Best Key Rating Guide or with such other financially sound insurance carriers acceptable to the City.
- d. Certificates of Insurance shall be delivered to the City of Benbrook, City Engineer's Office, 911 Winscott, Benbrook, Texas 76126, evidencing all the required coverage, including endorsements, prior to the issuance of a Gas Well Permit.
- e. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
- f. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- g. Each policy shall be endorsed to provide the City a minimum thirty-day (30) notice of cancellation, non-renewal, and/or material change in policy terms or coverage. Ten days notice shall be acceptable in the event of nonpayment of premium.
- h. During the term of the Gas Well Permit, the Operator shall report, in a timely manner, to the City Engineer or designee any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- i. Upon request, certified copies of all insurance policies shall be furnished to the City.

2. Standard Commercial General Liability Policy:

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources and equipment hazard damage, broad form property damage, independent contractor's protective liability and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

3. Excess or Umbrella Liability:

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

4. Environmental Pollution Liability Coverage:

- a. Operator shall purchase and maintain in force for the duration of the Gas Well Permit insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$5,000,000 per loss, with an annual aggregate of at least \$10,000,000.
- b. Coverage shall apply to sudden and accidental, as well as gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
- c. The Operator shall maintain continuous coverage and shall purchase Extended Coverage Period insurance when necessary. The Extended Coverage Period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the City.

5. Control of Well:

- a. The policy must cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the Operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents.
- b. \$5,000,000 per occurrence/combined single limit.
- c. \$500,000 sub-limit endorsement may be added for damage to property for which the Operator has care, custody and control.

6. Workers Compensation and Employers Liability Insurance:

- a. Workers Compensation benefits shall be Texas Statutory Limits.
- b. Employers Liability shall be a minimum of \$500,000 per accident.
- c. Such coverage shall include a waiver of subrogation in favor of the City and provide coverage in accordance with applicable State and Federal laws.

7. Automotive Liability Insurance:

- a. Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
- b. Coverage must include all owned, hired and not-owned automobiles.

8. Certificates of Insurance:

- a. The company must be admitted or approved to do business in the State of Texas, unless the coverage is written by a Surplus Lines insurer.
- b. The insurance set forth by the insurance company must be: underwritten on forms that have been approved by the Texas State Board of Insurance or ISO, or an equivalent policy form acceptable to the City, with the exception of Environmental Pollution Liability and Control of Well coverage.
- c. Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read **“THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED”**.
- e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

9. Indemnification and Express Negligence Provisions:

- a. In submitting a Gas Well Permit application, the Operator agrees to the following indemnification: **“OPERATOR DOES HEREBY EXPRESSLY RELEASE AND DISCHARGE ALL CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, AND EXECUTIONS WHICH IT EVER HAD, OR NOW HAS**

OR MAY HAVE, OR ASSIGNS MAY HAVE, OR CLAIM TO HAVE, AGAINST THE CITY OF BENBROOK, AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, SUCCESSORS, ASSIGNS, SPONSORS, VOLUNTEERS, OR EMPLOYEES, CREATED BY, OR ARISING OUT OF PERSONAL INJURIES, KNOWN OR UNKNOWN, AND INJURIES TO PROPERTY, REAL OR PERSONAL, OR IN ANY WAY INCIDENTAL TO OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK PERFORMED BY THE OPERATOR UNDER A GAS WELL PERMIT. THE OPERATOR SHALL FULLY DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS THE CITY OF BENBROOK, TEXAS, ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, EMPLOYEES, SUCCESSORS, ASSIGNS, SPONSORS, OR VOLUNTEERS FROM AND AGAINST EACH AND EVERY CLAIM, DEMAND, OR CAUSE OF ACTION AND ANY AND ALL LIABILITY, DAMAGES, OBLIGATIONS, JUDGMENTS, LOSSES, FINES, PENALTIES, COSTS, FEES, AND EXPENSES INCURRED IN DEFENSE OF THE CITY OF BENBROOK, TEXAS, ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES AND DEATH IN CONNECTION THEREWITH WHICH MAY BE MADE OR ASSERTED BY OPERATOR, ITS AGENTS, ASSIGNS, OR ANY THIRD PARTIES ON ACCOUNT OF, ARISING OUT OF, OR IN ANY WAY INCIDENTAL TO OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK PERFORMED BY THE OPERATOR UNDER A GAS WELL PERMIT. THE OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF BENBROOK, TEXAS, AND ITS DEPARTMENTS, OFFICERS, AGENTS, SERVANTS, EMPLOYEES, SUCCESSORS, ASSIGNS, SPONSORS, OR VOLUNTEERS FROM ANY LIABILITIES OR DAMAGES SUFFERED AS A RESULT OF CLAIMS, DEMANDS, COSTS, OR JUDGMENTS AGAINST THE CITY, ITS DEPARTMENTS, OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES, CREATED BY, OR ARISING OUT OF THE ACTS OR OMISSIONS OF THE CITY OF BENBROOK OCCURRING ON THE DRILL SITE OR OPERATION SITE IN THE COURSE AND SCOPE OF INSPECTING AND PERMITTING THE GAS WELLS INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF BENBROOK OCCURRING ON THE DRILL SITE OR OPERATION SITE IN THE COURSE AND SCOPE OF INSPECTING AND PERMITTING THE GAS WELLS. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE OPERATOR TO INDEMNIFY AND PROTECT THE CITY OF BENBROOK, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF BENBROOK, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE.”

8.36.120 ON-SITE AND TECHNICAL REGULATIONS

A. On Site Requirements: The following requirements shall apply to each gas drilling site.

1. **Abandoned Wells:** All wells shall be abandoned in accordance with the rules of the Commission and pursuant to Section 8.36.150 of this Ordinance.
2. **Blowout Prevention:** In all cases, blowout prevention equipment shall be used on all wells being drilled, worked-over or in which tubing is being changed. Protection shall be provided to prevent blowout during gas operations as required by, and in conformance with, the requirements of the Commission and the recommendations of the American Petroleum Institute. The Operator must equip all drilling wells with adequate blowout preventers, flow lines and valves commensurate with the working pressures involved as required by the Commission.
3. **Chemical and Materials Storage:** All chemicals and/or hazardous materials shall be stored in such a manner as to prevent, contain, and facilitate rapid remediation and cleanup of any accidental spill, leak, or discharge of a hazardous material. Operator shall have all material safety data sheets (MSDSs) for all hazardous materials on-site. All applicable Federal and State regulatory requirements for the proper labeling of containers shall be followed. Appropriate pollution prevention actions shall be required and include, but are not limited to, chemical and materials raised from the ground (e.g. wooden pallets), bulk storage, installation and maintenance of secondary containment systems, and protection from storm water and weather elements.
4. **Closed Loop Mud Systems:** A closed loop mud system shall be required for all drilling and reworking operations for all gas wells.
5. **Discharge:** No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse, including wastewater or brine, from any gas operation or the contents of any container used in connection with any gas operation in, into, or upon any body of water or any private property in the City, public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, or sanitary drain.
6. **Drill Stem Testing:** All open hole formation or drill stem testing shall be done during daytime hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate gas separator to storage tanks and the effluent remaining in the drill pipe prior to the time the tool is closed and flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

- 7. Drip Pans and Other Containment Devices:** Drip pans, absorption pads and other containment devices as approved by the City Engineer or designee shall be placed or installed underneath all tanks, containers, pumps, and lubricating oil systems. Containment devices shall also be properly installed below engines, fuel and chemical storage tanks, system valve connections, and any other areas of structures that could potentially leak, discharge or spill hazardous liquids, semi-liquids, or solid waste materials including hazardous waste inseparable by simple mechanical removal processes.
- 8. Dust, Vibration, 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 gas and other hydrocarbon substances in urban areas. 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.
- 9. 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.
- 10. Electric Motors:** Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.
- 11. Equipment Painted:** All production equipment on the site shall be painted and maintained at all times, including pumping units, storage tanks, buildings and structures.
- 12. Explosives:** Use of explosive charges within the City limits shall require a permit issued by the City of Benbrook Fire Department.
- 13. Fire Notice:** In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Benbrook Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any State or Federal permitting limit.
- 14. Fire Prevention; Sources of Ignition:** Firefighting apparatus and supplies, as required by any applicable Federal, State, or local law shall be provided by the

Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. The Operator shall be responsible for the maintenance and upkeep of such equipment. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an appropriately labeled emergency shut off valve to the well distribution line.

15. Flaring: Flaring may be allowed in some instances as an alternative to venting, as allowed by the City Engineer or designee. If burning of gases by open flame is authorized by the City Engineer or designee, then such open flame shall not be located closer than three hundred (300) feet from any building not used in operations on the drilling site and such open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners.

16. Fracturing Operations:

- a. Fracture During the Day:** All formation fracture stimulation operations shall be conducted during daylight hours, except as permitted in Section c. below.
- b. Notice:** At least forty-eight (48) hours before operations are commenced, the Operator shall notify the City Engineer or designee and post a sign at the entrance of the well site advising the public of the date the operations will commence.
- c. Flowback Allowed At Night:** "Flowback" operations to recover fluids used during fracture stimulation shall be exempt from work hour restrictions; subject to noise restrictions of Section 8.36.120 B of the Ordinance.
- d. Watchman:** A watchman shall be required at all times during such operations.
- e. Directing Flow/Vent:** At no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank.

17. Fresh Water Fracture Ponds/Pits:

- a. Permit Required.** The construction and maintenance of a fresh water fracture pond/pit must comply with all City, State, and Federal regulations. All fresh water fracture ponds/pits shall require a permit from the City after approval from the following City Departments:
 - i.** Community Development for floodplain review to determine that there will be no encroachment into a designated flood plain; and
 - ii.** any other applicable City Department as determined by the City Engineer

or designee.

b. Permit to be Posted in Visible Location: The permit or authorization issued by the City shall be maintained on the location at all times during construction of the fresh water fracture pond/pit.

c. Pond/Pit Requirements: All pits shall meet the following requirements:

i. Fencing/Landscaping: The fresh water fracturing pit shall be enclosed with fencing on all four sides as described in Section 8.36.130. **Landscaping for fracture ponds/pits shall only be required per the discretion of the City Engineer or designee, and per the requirements of Section 8.36.130.**

ii. Best Management Practices: Pits shall be maintained in a manner utilizing Best Management Practices to ensure the integrity of pit walls and liners. For purposes of this subsection, "Best Management Practices" shall mean structural, nonstructural, and managerial techniques that are recognized to be the most effective and practical means to control water storage in open pits in an urban or rural setting.

iii. No Waste: No oil and gas waste by-products or salt water shall be allowed in the fresh water fracture pond/pit.

iv. Sign Required: A sign at a conspicuous place or places on the property near any right-of-way, street, road, or public thoroughfare. The sign shall provide the Operator's phone number for additional information.

v. Pond Location Restrictions: No fresh water pond/pit may be placed in any City recognized drainage way, FEMA floodplain or floodway, existing City rights-of-way or City easements.

vi. Agreement Provided: A copy of the surface use agreement with the surface property owner shall be provided to the City.

vii. Water Tests: Periodic tests may be required by the City Engineer or designee. All costs for testing shall be borne by the Operator of the fresh water fracture pond/pit. All samples collected for testing shall be witnessed by the City Engineer or designee.

18. Gas Processing Onsite: Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises unless approved as part of the Gas Well Permit.

19. Grass, Weeds, Trash: All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash.

- 20. Hazardous Materials Management Plan (HMMP):** shall be submitted with each application and also kept on file at each drill site with all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, stored, transported and/or temporarily used on the operations site, and shall immediately be made available to the City Engineer, designee, or Fire Chief upon their request to inspect any of either the plan or data sheets.
- 21. Lightning Arrestor:** All drill sites shall be equipped with a lightning arrestor system satisfying industry standards.
- 22. Lights:** No person shall permit any lights located on any drill or operation site to be directed in such a manner so that they shine directly on public roads, adjacent property or property in the general vicinity of the operation site. To the extent practicable and taking into account safety considerations, site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet of the well.
- 23. Mobilization and Demobilization:** Mobilization and demobilization shall be prohibited before 9 am and after 6 pm on Sundays. Other than mobilization and demobilization and advancing the bore hole, no other activities shall be allowed on the well site on Sundays.
- 24. Muffling Exhaust:** Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the drilling of any well, or for use on any production equipment, shall not be discharged into the open air unless it is equipped with an exhaust muffler or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.
- 25. Private Roads and Drill Sites:** All private roads used for access to the drill site and the operation site itself shall be at least fifteen (15) feet wide, drain appropriately, have an overhead clearance of fourteen (14) feet and be surfaced with a crushed rock, gravel or ore or better pavement and maintained to prevent dust and mud. All temporary driveway approaches must be approved by the City prior to the commencement of any drilling operations. In particular cases, these requirements governing surfacing of private roads may be altered at the discretion of the City Engineer or designee 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. Watering, wetting or other methods or materials must be used to control the dust on all roads adjacent to residential property.

26.Reduced Emission Completion: After fracturing or re-fracturing, Operators shall employ appropriate equipment and processes as soon as practicable to minimize natural gas and associated vapor releases to the environment (venting). All salable gas shall be directed to the sales line as soon as practicable or shut in and conserved. All wells that have a sales line shall be required to employ Reduced Emission Completion techniques and methods, but Operators may request a variance from the City Engineer or designee if they believe that Reduced Emission Completion techniques or methods are not feasible or would endanger the safety of personnel or the public. Reduced Emission Completion techniques and methods shall not be required for well(s) that do not have a sales line and:

- a. Were permitted prior to adoption of this ordinance.

27.Salt Water Wells: No commercial or non-commercial salt water disposal wells or any other injection-type wells shall be located within the City of Benbrook.

28.Surface Reclamation Plan Requirements: Each Operator must submit, as part of the Gas Well Permit application, a surface reclamation plan that must include information outlined in this subsection, in the degree of detail necessary to demonstrate that full site reclamation can be accomplished. The reclamation plan must include:

- a. Measures to be taken to restore property to allow future use that is compatible under the City Comprehensive Plan;
- b. The control of surface water drainage and of water accumulation and measures to be taken during the reclamation process to provide for the protection of the quantity and quality of surface and groundwater systems;
- c. Cleaning polluted surface and ground water;
- d. Backfilling, soil stabilization, compacting, grading, and appropriate re-vegetation;
- e. Soil reconstruction, replacement, and stabilization;
- f. Reconfiguration of the topography;
- g. Waste disposal;
- h. A plan for revegetation of affected lands; and
- i. Other practices necessary to ensure all disturbed areas will be reclaimed.

29.Drilling Site Signs:

- a. **Gate Signs:** A gate sign shall be immediately and prominently displayed at

the gate on the temporary and permanent site fencing. Such sign shall be of durable material, maintained in good condition and, unless otherwise required by the Commission, shall have a surface area of not less than two (2) square feet or more than four (4) square feet and shall be lettered with the following:

- i. Well name and number;
 - ii. Name of Operator;
 - iii. The address of the well site, as assigned by the City
 - iv. The emergency 911 number; and
 - v. Telephone numbers of two (2) persons responsible for the well who may be contacted twenty-four (24) hours a day in case of emergency.
- b. No Smoking Signs:** Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA " "PELIGRO NO FUMAR O INICIAR LLAMA EN ESTA AREA", shall be posted at the entrance of each well site and tank battery, or in any other location approved or designated by the City Engineer, designee, or Fire Chief of the City.
- i. Sign lettering shall be four inches (4") in height and shall be red on a white background or white on a red background.
- c. National Fire Prevention Association (NFPA) sign:** In accordance with the Benbrook Fire Code, the appropriate NFPA fire diamond hazard placard shall be placed on each storage tank.

30. Storage of Equipment: On-site storage of equipment is prohibited. 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 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.

31. Storage Tanks: All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications. The top of the tanks shall be no higher than eight (8) feet above the terrain surrounding the tanks. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1.5) times the contents of the largest tank, in accordance with the Fire Code, and buried at least one (1) foot below grade

and lined with a leak proof barrier. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks.

- a. **Secondary Containment:** Secondary containment shall be capable of containing a release of 150% of the largest storage container within the containment and have adequate freeboard to contain an average annual rain event.
- b. **Temporary “Flowback” Tanks:** Temporary “flowback” tanks shall be removed within ninety (90) days after completion of the gas well at the pad site, unless permission is obtained from the City Engineer or designee to extend the time period.
- c. **Automatic Valve:** 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.
- d. **No Tanks in Floodplain:** No meters, storage tanks, separation facilities, or other aboveground facilities, other than the wellhead and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM, or the 100-year floodplain, without a floodplain permit issued by the Community Development Department.
- e. **Tank Setbacks:** Tanks batteries, separators, and equipment shall be set back at least 200 feet from a Protected Use, Public Building or Habitable Structure or 100 feet from the property line, whichever is greater. The setback shall apply for any Protected Use, Public Building or Habitable Structure for which a building permit has been issued on the date of the application for a drilling permit. The distance shall be calculated from the closest tank batteries, well facilities and/or equipment, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

32. Street Blockage Limitations: No street or alley shall be blocked or encumbered or closed due to any exploration, drilling, or production operations unless prior consent is obtained from the City Engineer, Police Chief, and Fire Chief. Any consent from the City 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.

33. Surface Casing: Surface casing shall be run and set in full compliance with the applicable rules and regulations of the Commission.

34. Tank Battery Equipment: All tank battery facilities shall be equipped with a remote foam line and a lightning arrestor system.

35. Valves: Each well must have a shutoff valve to terminate the well's production. The valve shall be clearly identified and labeled.

36. Vehicle Truck Routes: Vehicles associated with drilling and/or production in excess of three tons shall be restricted to such streets designated, by the City, as either truck routes or commercial delivery routes, whenever possible. The vehicles shall be operated on a truck route wherever capable of being used; they shall be operated on a commercial delivery route only when it is not possible to use a truck route to fulfill the purpose for which such vehicle is then being operated. Commercial delivery route means any street or highway so designated by the City for the use by any commercial motor vehicle, truck-tractor, trailer, semi-trailer, or any combination thereof. All vehicle truck routes must be approved by the City Engineer or designee before the gas well permit is issued. The City Engineer or designee shall have the authority to require an alternate route to minimize the impact to surrounding uses.

37. Waste Disposal: Unless otherwise directed by the Commission, all tanks used for storage shall conform to the following:

a. Tank Specifications: Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve. No tank battery shall be within one hundred (100) feet of any dwelling or other combustible structure.

b. Closed Loop Mud System Required: 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 the Closed Loop Mud System. All disposals must be in accordance with the rules of the Commission and any other appropriate local, State or Federal agency.

c. Waste Removed in 30 Days: Unless otherwise directed by the Commission, waste materials shall be removed from the site and transported to an off-site disposal facility not less often than every thirty (30) days. Water stored in on-site tanks shall be removed as necessary.

d. Disposal of Waste: All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the State, this Ordinance and any other applicable ordinance of the City.

38. Watchman: 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.

39. Wellhead Status: Wellbores, Mouse Holes, Rat Holes, Cellars and Conduit Casings shall be:

a. Covered at all times when not in use by a one-half-inch ($\frac{1}{2}$ ") thick steel plate(s), adequately covering the entire bore hole annulus to prevent

accidental entrapment of persons or animals;

- b. Completed through the production casing flange with a metal plate or blind flange bolted across the head;
- c. Surrounded with a six-foot (6') tall chain link fence having a gate and lock;
- d. The cellar shall be filled or closed; and
- e. The wellhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

40. Work Hours/Days: No construction activities involving excavation of, alteration to, or repair work on any access road or pad site shall occur during nighttime hours or at any time on Sunday. 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 daytime hours 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. Other than mobilization and demobilization and advancing the bore hole, no other activities shall be allowed on the well site on Sundays.

B. Noise - Gas Wells

1. **Noise Management Plan:** Prior to the issuance of a gas well permit and the commencement of operations, the Operator shall submit a Noise Management Plan, approved by the City Engineer or designee, detailing how the equipment used in the drilling, completion, transportation, or production of a well complies with the maximum permissible noise levels of this Section. The noise management plan must:
 - a. Identify operation noise impacts;
 - b. Provide documentation establishing the ambient noise level prior to construction of any wellhead, compressor or compression facility;
 - 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:
 - i. Nature and proximity of adjacent development, location, and type;
 - ii. Seasonal and prevailing weather patterns, including wind directions;
 - iii. Vegetative cover on or adjacent to the site; and

iv. Topography.

- d. The Operator shall be responsible for verifying compliance with this section and the noise management plan after the installation of the noise generation equipment.

2. Noise Levels: No well shall be drilled, re-drilled or any equipment operated at any location within the City in such a manner so as to create any noise which causes the exterior noise level, when measured at the nearest Protected Use receiver's/receptor's property line, or from the closest exterior point of the Protected Use structure, or inside the Protected Use structure if access to the property is granted by the receiver/receptor, that:

- a. Exceeds the ambient noise level by more than five decibels (5 dBA) during daytime hours and more than three decibels (3 dBA) during nighttime hours;
- b. Exceeds the ambient noise level by more than ten decibels (10 dBA) over the daytime average ambient noise level during fracturing operations during daytime hours. No fracturing shall be allowed during nighttime hours except as provided in Section c below;
- c. Exceeds the ambient noise level by more than three decibels (3 dBA) during "flowback" operations during nighttime hours;
- d. Creates pure tones where one-third octave band sound-pressure level in the band with the tone exceeds the arithmetic average of the sound-pressure levels of two contiguous one-third octave bands by 5 dB for center frequencies of 500 Hertz and above, and by 8 dB for center frequencies between 160 and 400 Hertz, and by 15 dB for center frequencies less than or equal to 125 Hertz; or
- e. Creates low-frequency outdoor noise levels that exceed the following dB levels:

- 16 Hz octave band: 65 dB
- 32 Hz octave band: 65 dB
- 64 Hz octave band: 65 dB

3. Ambient Noise Level: The Operator shall be responsible for establishing and reporting to the City a continuous seventy-two (72) hour pre-drilling ambient noise level prior to the issuance of a gas well permit. The seventy-two hour time span shall include at least one twenty-four (24) hour reading during either a Saturday or Sunday. The Operator shall use the prior established ambient noise level for the installation of any new noise generating equipment unless the Operator can demonstrate that the increase in the ambient noise level is not associated with drilling and production activities located either on- or off-site.

4. **Permitted Noise Increase:** Adjustments to the noise standards as set forth above in subsection (2) a. b. and c. of this section may be permitted in accordance with the following:

<u>Permitted Increase (dBA)</u>	<u>Duration of Increase (minutes)*</u>
10 to 15.....	5
15 to 20.....	1
20+.....	less than 1

*Cumulative minutes during any one hour

5. **Workover Operations:** All workover operations shall be restricted to daytime hours. Workover operations refer to work performed in a well after its completion in an effort to secure production where there has been none, restore production that has ceased, or increase production.
6. **Continuous Monitoring:** The exterior noise level generated by the drilling, re-drilling or other operations of all gas wells located within six hundred feet (600') of a Protected Use shall be continuously monitored by the Operator, to ensure compliance. The cost of such monitoring shall be borne by the Operator.
7. **Sound Mitigation:** Acoustical blankets, sound walls, mufflers, or other alternative methods as approved by the City Engineer or designee may be used to ensure compliance. All soundproofing shall comply with accepted industry standards and are subject to approval by the City's Fire Department. All sound mitigation structures (e.g. blankets, walls, etc.) shall be maintained in good condition.
8. **Sound Meter Standards:** The sound level meter used in conducting noise evaluations shall meet the American National Standard Institute's standard for sound meters (Type 2 or better) or an instrument and the associated recording and analyzing equipment which will provide equivalent data.
9. **Non-Compliance Citation:** A citation may be immediately issued for failure to comply with the provisions of this Section; however, if the Operator is in compliance with the approved noise management plan, and a violation still occurs, the Operator will be given twenty-four (24) hours from the notice of non-compliance to correct the violation from an identified source before a citation is issued. Additional extensions of the twenty-four (24) hour period may be granted in the event that the source of the violation cannot be identified after reasonable diligence by the Operator.

C. Well Setback Requirements

1. It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located:

- a. Within twenty-five (25) feet from any storage tank, or source of ignition;
 - b. Within seventy-five (75) feet of any public street, road, highway, future street, right-of-way, or nearest rail of an operating railway;
 - c. Within six hundred (600) feet from any Protected Use;
 - d. Within three hundred (300) feet from any Public Building;
 - e. Within two hundred (200) feet from any Habitable Structure;
 - f. Within one hundred (100) feet of any building accessory to, but not necessary to, the operation of the well; or
 - g. Within two hundred (200) feet to any fresh water well without the express written permission of the owner of the water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore. The distance requirement for fresh water wells is subject to Commission regulations and any other State or Federal requirements.
2. The setback distance shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any object listed in paragraphs a. through f. above.

3. Distance Reduction for Protected Uses:

- a. The distance set out in Section C above may be reduced to three hundred feet (300') from any Protected Use, with either:
 - i. **Protected Use Waivers:** Written notarized waivers granted by all the Protected Use property owners within a six hundred (600) foot radius of the proposed well, pursuant to Section 8.36.070 of this Ordinance; or
 - ii. **City Council Waiver:** Waiver granted by the City Council

D. Compressors

1. Lift Compressors:

- a. **Allowed in All Zoning:** Lift Compressors shall be allowed in all zoning districts, but shall be restricted to the gas drilling pad site.
- b. **Noise Regulations:** Except as outlined below, any on-site Lift Compressor used to 'lift gas' shall be designed to comply with the noise requirements in Section 8.36.120 B of this Ordinance.
 - i. Temporary Lift Compressors for each well shall be classified as temporary for six (6) months for noise regulation purposes and shall be

allowed 5 dBA over ambient noise levels during the day and 3 dBA over ambient noise levels at night.

- ii. No compressor shall be considered temporary if installed within six months of removal of the initial compressor for that well.
 - iii. Sound blankets shall be permitted for noise abatement on temporary Lift Compressors.
 - iv. No sound blankets shall be permitted for permanent Lift Compressors. All acoustical structures for permanent compressors must be constructed of permanent material constructed of metal, masonry, or other structurally sound material, as approved by the City Engineer or designee, that significantly screens the equipment, is painted in a non-contrasting soft earth tone color to match the nearby surroundings as nearly as possible, and meets all applicable building and fire codes.
- c. Exhaust Muffler Required:** Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers, or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of noxious gases, fumes or ignited carbon or soot.

2. Line Compressors.

- a. Line Compressors shall be permitted only in accordance with the Benbrook Zoning Ordinance (Ordinance 808 as amended).

8.36.130 FENCES AND LANDSCAPING

A. Fences/Gates

- 1. **Requirements During Drilling Operations:** During drilling operations, the Operator shall provide the following:
 - a. an on-site watchman supplied by the Operator to provide 24-hour security of the drill site, or:
 - b. a chain link fence that encloses the perimeter of the drill site, with "No Trespassing" signs attached to the fence every fifty feet (50'.) Fencing must meet the perimeter fencing requirements outlined in Section 2B below. and;
 - c. a secured entrance gate on the access road. The gate shall be secured with a Knox lock and the gate shall be kept locked when the Operator or site employees are not on the premises. Gate shall meet requirements of

gate specifications under Section 4 Gate Specifications below.

2. Requirements After Drilling Operations: Once drilling operations are complete, the Operator shall provide the following:

- a. Internal Fencing:** Within thirty (30) days after first well production capability has been established, all production equipment on the operation site shall be completely enclosed by a permanent chain link fence with a secured gate. The equipment may be enclosed in a single fence, or components may be fenced separately. The gates shall be locked when operation personnel are not present. Temporary fence is only acceptable if application for a new well on the same drill site is to be made within sixty (60) days of first well completion, or at the discretion of the City Engineer or designee.
- b. Perimeter Fencing:** Within forty-five (45) days after first well production capability has been established, if there are no additional active permits on the drill site, the perimeter of the drill site shall be enclosed by a permanent fence, unless otherwise agreed to. In most locations, the perimeter fence shall be constructed of chain link. However, in certain locations, at the discretion of the City Engineer or designee, a masonry or wrought iron fence may be permitted or required.

3. Fence Specifications: Fences on drill sites shall meet the following specifications:

a. Chain link fence specifications are as follows:

- i.** Chain link fences at least six feet (6') in height.
- ii.** 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.
- iii.** The chain link shall be vinyl coated, and either dark green or black in color.
- iv.** The chain link fence shall have a minimum thickness of eleven (11) gauge.
- v.** The chain link fence shall be non-climbable, 1-1/4" mesh or smaller.
- vi.** Posts and rails shall be standard black or dark green welded pipe.
- vii.** Tension rods shall be three-eighths-inch (3/8") round steel bolt stock. Adjustable tighteners shall be turnbuckle or equivalent having a six-inch minimum take-up. Tension bars shall have a minimum thickness of one-

fourth (1/4") by three-fourths inch (3/4".)

- viii. All fences shall have a minimum of one (1) gate. Gates shall meet specifications given in Section 4 Gate Specifications below.

b. Masonry fence specifications are as follows:

- i. Masonry fences shall be constructed in accordance with standard engineering practices.
- ii. Masonry fences shall be compatible with facilities, buildings, and structures adjacent to the drill site.
- iii. Masonry fences shall be constructed of brick, stone, or reinforced concrete panels. Other similar materials may be approved by the City Engineer or designee if their projected life expectancy is 30 years or more and are resistant to sunlight and moisture.
- iv. Masonry fences shall be a minimum of eight feet (8') in height.
- c. All fences shall be maintained in sound structural condition. The owner shall maintain the fence at all times in a state of good repair.

4. Gate Specifications: All fences shall be equipped with at least one (1) gate. The gate shall meet the following specifications:

- a. Each gate opening on internal fencing shall be not less than three feet (3') wide.
- b. Each vehicular gate opening on perimeter fencing shall not be less than twenty-four feet (24') wide. The personnel gate shall not be less than three feet (3') wide.
- c. The gates for masonry fences shall be constructed of ornamental iron.
- d. Gates for chain link fence shall meet all fence specifications outlined in Section 3 Fence Specifications above.
- e. 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 access to the site.
- f. Gates shall be designed so that they do not interfere or obstruct the public rights-of-way.
- g. Operator shall provide the City 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.

B. Landscaping

1. All Gas Well and Fracture Pond Permits will require tree preservation in accordance with Section 16.28.010 of the Benbrook Municipal Code.
2. Landscaping for Gas Well shall be completely installed in accordance with Chapter 27 of the Benbrook Zoning Ordinance (Ordinance 808 as amended) no later than two hundred ten (210) days from commencement of drilling (spud a well) of the first well on a pad site, unless otherwise permitted by City Engineer or designee.

8.36.140 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 sixty (60) days.
- B. Clean-up After Spills, Leaks and Malfunctions:** After any spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Engineer or designee, 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 immediately, the City Engineer or designee may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material, which the City Engineer or designee deems necessary to clean-up such spill, leak or malfunction pursuant to Section 8.36.110 B2.
- C. Free from Debris:** The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material within a radius of one hundred feet (100') 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, secondary containment and buildings or structures. When requiring painting of such facilities, the City Engineer or designee 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 and unobtrusive shades of black or dark green. No company logos or advertisement shall be allowed.
- E. Blowouts:** In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this Ordinance and shall notify the City Engineer or designee as soon

as practicable. The City Engineer or designee shall certify in writing, briefly describing the same, to the City Manager. If the City Engineer or designee, in his opinion, believes that danger to persons and property exists because of such loss of well control and that the Operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the City Engineer or designee 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 City Engineer or designee deems necessary to regain control of such well. The City shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the City pursuant to such action of the City Engineer or designee in gaining control of said well.

8.36.150 PLUGGED AND ABANDONED WELLS

A. Surface Requirements: Whenever abandonment occurs pursuant to the requirements of the Commission, the Operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly as practicable, in conformity with the regulations of this Ordinance or under the Operator's surface use agreement.

B. City Engineer Approval: Abandonment shall be approved by the City Engineer or designee after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the City Engineer or designee:

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

C. Abandoned Well Requirements: The Operator shall furnish the following to the City Engineer or designee:

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. Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.
3. All wells shall be abandoned in accordance with the rules of the Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet (3') below the surface. A permanent abandonment marker pipe, with the well identity and location permanently inscribed, shall be welded to the casing and shall be at least four inches (4") in diameter with a length of four feet (4') visible above the ground level.

D. Abandonment Requirements Prior to New Construction: All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Commission, prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

8.36.160 GAS PIPELINES

A. General Regulations

1. **Pipelines Interference/Damage:** As determined by the sole, but reasonable, discretion of the City, pipelines may not interfere with or damage existing utilities, including, but not limited to: storm drains, water, sewer or gas lines, electric lines or the facilities of any public utilities located in public rights-of-way, utility easements or other City-owned property.
2. **Pipeline Criteria:** The Pipeline Operator shall construct, repair and/or maintain all pipelines so as to meet or exceed the applicable minimum criteria established by the statutory or regulatory requirements of the State and Federal governments for such pipeline.
3. **Pipeline Information Required:** For pipelines over, under, along or across a public street or alley or private residential area, at the time the required pipeline records are submitted to the Commission, the Pipeline Operator shall provide the City the following information, including GPS information sufficient to locate the pipelines in the future, including the beginning and end points of the pipeline and sufficient points in between the pipeline route and the depth of cover information. This information shall be submitted to the City in a format compatible with the City's own GIS system.
 - a. **As-Built or Record Drawings:** As-built or record drawings of the pipelines. Accuracy of the record drawings shall meet a survey level of one foot (1') to fifty thousand feet (50,000'). The scale of the record drawings shall be a minimum of one inch (1') to forty feet (40'). The drawings shall also be supplied in a .dxf digital file format with at least two points shown in State Plane Coordinates (North Central Texas 1983 datum);
 - b. **Beginning and End Points:** The origin point and the destination of the

pipeline;

- c. **Substance Transported:** The substance to be transported;
- d. **Engineering Plans:** Engineering plans, drawings and/or maps with summarized specifications showing the horizontal location, covering depths, and location of shutoff valves of the subject pipeline. Drawings shall show the location of other pipelines and utilities that are crossed or paralleled within fifteen feet (15') of the pipeline right-of-way;
- e. **Rights-of-Way/Easements:** Detailed cross-section drawings for all public rights-of-ways and easement crossings on City property as permitted by the City.

B. City Regulated Pipelines – Permit Required

1. **“City-Regulated Pipelines”** means those pipelines within the City that, under Federal and State rules and regulations, are not exempt from City regulations and ordinances regarding mapping, inventorying, locating or relocating of pipelines, including, but not limited to, pipelines over, under, along, or across a public street or alley or private residential areas within the boundaries of the City.
 - a. **Pipeline Design Meets State and Federal Requirements:** City-Regulated Pipelines shall adhere to all standards outlined in Section A General Regulations above. Federal and State statutory or regulatory requirements shall apply to pipelines between the well and the point of custody transfer. Prior to the transport of gas, oil, liquids or hydrocarbons, the Operator shall provide to the City certification from a professional engineer registered with the State of Texas that the design and installation of the pipelines meets all State and Federal requirements.
 - b. **Pipeline Permit Required:** Prior to Pipeline Construction, a Pipeline Operator shall obtain a Pipeline Permit from the City for all City-Regulated Pipelines. Exceptions to this permitting requirement are those pipelines from the well to the first point of custody transfer and for construction necessary to respond to a pipeline emergency.
 - c. **Pipeline Route:** At the same time the Pipeline Operator submits a Gas Well drilling permit application, the Pipeline Operator shall submit a proposed pipeline route from the well bore to the transmission line, for all City-Regulated Pipelines.
 - d. **Application Prior to Negotiations:** The Pipeline Operator shall be required to submit an application for a Pipeline Permit to the City prior to making any offer or initiating any negotiation or action to acquire any easement or other property right to construct, install, maintain, repair, replace, modify, remove or operate a pipeline in Private Residential Areas.

- e. **The Pipeline Operator to Backfill:** Pipeline Operator shall backfill all trenches and compact such trenches to ninety-five percent (95%) standard density proctor in eight inch (8") lifts and construct the pipeline so as to maintain a minimum depth of ten feet (10') below the finished grade except in public rights-of way, where minimum cover to the top of the pipe shall be at the discretion of the City based on existing or planned utilities. During the backfill of any pipeline excavations in open cut sections, the Pipeline Operator shall bury "Buried Pipeline" warning tape one foot (1') above any such pipeline to warn future excavators of the presence of a buried pipeline. The City Engineer or designee may also require that a proposed or existing pipeline be relocated should it conflict with the proposed alignment and depth of a gravity dependent utility.
- f. **Monitor Pipelines:** The Pipeline Operator shall equip all City-Regulated Pipelines with an automated pressure monitoring system that detects leaks and shuts off any line or any section of line that develops a leak. In lieu of such system, the Pipeline Operator may have twenty-four (24) hour pressure monitoring of the pipeline system which provides monitoring of the pipeline within the City limits.

2. Pipeline Permit Application Required:

- a. **Applications:** Applications for a City-Regulated Pipeline shall be submitted to the City in a form prescribed by the City.
- b. **Pipeline Plan:** Plans submitted with each application for a Pipeline Permit shall be in a format approved by the City showing the dimensions and locations of the Pipeline and related items or facilities, as well as all proposed lift stations, pumps or other service structures related to such Pipeline and the location, type and size of all existing utilities, drainage, right-of-way and roadway improvements. The plans must additionally show the elevation and location of all known public utilities within fifteen feet (15') of the centerline of the proposed Pipeline. Any application that fails to meet these requirements will be returned unfiled to the Applicant. The following information shall be provided in the application:
 - i. The name, business addresses and telephone numbers of the Pipeline Operator;
 - ii. The name, title and telephone number of the person signing the application on behalf of the Pipeline Operator;
 - iii. The name, title and telephone number of the person designated as the principal contact for the submittal;
 - iv. The name, title and telephone number of the person designated as the twenty-four (24) hour emergency contact;

- v. The origin point and the destination of the proposed subject pipeline;
- vi. A text description of the general location of the proposed subject pipeline;
- vii. A description of the substance to be transported through the proposed subject pipeline;
- viii. A copy of the substance material safety data sheet (MSDS);
- ix. Engineering plans, drawings and/or maps with summarized specifications showing the horizontal location, covering depths and location of shutoff valves of the proposed pipeline. To the extent that information can be obtained, drawings shall show the location of other pipelines and utilities that will be crossed or paralleled within fifteen feet (15') of the proposed pipeline right-of-way;
- x. A description of the consideration given to matters of public safety and the avoidance, as far as practicable, of existing Habitable Structures and Private Residential Areas;
- xi. Detailed cross section drawings for all public street right-of-way and easement crossings;
- xii. The proposed method or methods to be used for the installation of the pipeline;
- xiii. Methods to be used to prevent both internal and external corrosion;
- xiv. A binder or certificates of all bonds and insurance; and
- xv. A proposed alignment strip map showing name and address of all affected property owners.

C. Pipeline Information Reporting Requirements

1. **Reporting Responsibility:** If the Pipeline Operator has no reporting responsibility to the Railroad Commission or the U.S. Department of Transportation and is otherwise exempt from the safety regulations of either of such agencies, the following documents pertaining to the preceding reporting period of January 1 through December 31st shall be furnished to the City:
 - a. Copies of internal reports of responses to Pipeline Emergencies;
 - b. Current operations and maintenance logs; and
 - c. Current emergency response plan.

D. Abandoned Pipelines.

- 1. Notify City:** All pipelines shall be maintained in an active condition unless abandoned according to applicable State and Federal regulations. The Pipeline Operator shall notify the City within thirty (30) days of abandonment of any pipeline.
- 2. Reactivation of Abandoned Pipelines:** Reactivation of abandoned pipelines shall require notification to the City pursuant to the standards and requirements specified above. Reactivation shall require pressure testing for integrity and compliance with Railroad Commission and/or U.S. Department of Transportation regulations.

E. Pipeline Repairs and Maintenance.

- 1. State and Federal Regulations:** All repairs and maintenance of pipelines are to be performed in accordance with U.S. Department of Transportation and Railroad Commission mechanical integrity requirements.
- 2. Inspection of Pipelines:** Inspection of the interior of all Regulated Pipelines shall comply with United States Department of Transportation and Railroad Commission rules.

F. No Implied Grant of Use of Public Rights-of-Way, Utility Easements or other City-owned Property: Nothing in this Section grants permission for the use of any street, public rights-of-way, utility easements, or City-owned property. In the event a Pipeline Operator wishes to undertake any Pipeline Construction on, over, under, along, or across any public rights-of-way, utility easements or other City-owned property, the Pipeline Operator shall apply for and execute a written license agreement with the City governing the terms and conditions for such use; obtain all required permits, and comply with any other applicable provisions of the City Code.

G. Expiration of Pipeline Permit

- 1. Pipeline Permit Expiration:** If construction of a Pipeline has not commenced within one (1) year of the date of issuance of the Pipeline Permit, or if the pipeline has not been completed and the surface restored within two (2) years, the Pipeline Permit shall expire; provided, however, that the City Engineer or designee may grant an extension of time not to exceed an additional one (1) year if the City Engineer or designee determines whether other unexpected physical conditions justify such an extension.

H. No Assumption of Responsibility by City

- Nothing in this Subsection shall be construed as an assumption by the City of any responsibility of a Pipeline Operator of a Pipeline not owned by the City.

8.36.170 SALT WATER PIPELINES.

- A. All references in this subsection to “pipe” or “pipelines” shall mean “salt water pipelines.”
- B. **Permit Required:** No Pipeline for the transportation of saltwater shall be constructed, installed, maintained, repaired, replaced, modified, removed or operated within the City without first obtaining a Pipeline Permit from the City.
- C. Salt water pipe shall be installed beneath all City utilities, no seams shall be allowed within City rights-of-way and minimum cover to the top of the pipe shall be at the discretion of the City, based on existing or planned utilities. The pipeline crossings must pass through a casing of a design and constructed in accordance with the United States Department of Transportation.
- D. **Infrastructure:** All infrastructure included under this section shall be designed and sealed by a Registered Professional Engineer in the State of Texas.
- E. All new or replacement pipe or pipelines shall be installed in such a manner that the pipelines clear the lowest City utility by a minimum of five feet (5’.) In areas where no City Utilities are present, pipelines shall be covered and must be not less than thirty-six inches (36”) below the existing ground level as verified and approved by the City Engineer or designee. Prior to installation, the owner of the pipeline shall submit to the City Engineer or designee the pipeline design criteria, including but not limited to, operating pressures, pipeline gradient and elevation to sea level, location, pipe ASTM grade, pipe manufacturer, pipe wall thickness, pipeline capacity and volume. Prior to and subsequent to installation of each segment of new or replacement pipeline, the pipe and pipeline must receive and pass an on-site inspection of the compliance with design criteria and the process of installation. The design submittal must be signed and sealed by a Professional Engineer registered in the State of Texas.

The depth requirements in this subsection shall not apply to piping constructed or installed within the secondary containment perimeter of the tank battery, which piping may be placed at ground level.

- F. Pipe location information shall be provided to the City in an electronic format acceptable to the City Engineer or designee.
- G. It is the joint and several responsibility of the owner and the operator of any and all pipeline to maintain the markers in accordance with this Ordinance. The location of all new or replacement pipe and pipelines shall be marked by the owner(s) thereof or by the person installing or operating such pipelines as follows:
 - 1. Marker signs shall be placed at all locations where pipe or pipelines cross property boundary lines and at each side of a public street or road right-of-way which the pipe or pipeline crosses;

2. The top of all marker signs shall be a minimum of four feet (4') above ground level, and the support post must be sufficient to support the marker sign and shall be painted yellow or such other color as may be approved by the City Engineer or his designee;
3. All marker signs shall be a minimum of twelve inches (12") square and shall be marked as "S.W. Pipe Line;"
4. All marker signs shall contain the name of the owner and operator of the pipeline and a 24-hour local contact number;
5. Pipelines shall be marked along their entire length with a buried metal wire and metallic flag tape; and
6. The Pipeline Operator shall annually replace signage that has been lost, damaged or removed.

H. General Pipeline Design Requirements

1. All infrastructure included under this memorandum shall be designed and sealed by a Registered Professional Engineer in the State of Texas and all pipelines shall:
 - i. Have a maximum inside diameter of twelve inches (12");
 - ii. Consist of material approved by the City; and
 - iii. Be monitored by a SCADA system that allows shutdown via automatic valves spaced at each well head, major pipeline junctions, at the influent and effluent of the recycling unit(s), and prior to ultimate disposal.

8.36.180 TECHNICAL ADVISOR.

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

8.36.190 APPEALS

- A.** The Appeals Commission shall have and exercise the power to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the issuance of a Gas Well Permit or the revocation or suspension of any Gas Well Permit issued hereunder as provided by this Ordinance. Any person or entity whose application is denied by the City Engineer or designee (other than for distance requirements set out in this Ordinance) or whose Gas Well Permit is suspended or revoked or whose well or equipment is deemed by the City Engineer or designee to be abandoned, may, within thirty (30) days of the date of the written decision of the City Engineer or designee, file an appeal to the Appeals Commission in accordance with the following procedure:
1. An appeal shall be in writing and shall be filed in triplicate with the City Secretary. The grounds for appeal must be set forth specifically, and the error described, by the appellant.
 2. Within forty-five (45) days of receipt of the records, the City Secretary shall transmit all papers involved in the proceeding, place the matter on the Appeals Commission agenda for hearing and give notice by mail of the date, time, place and purpose thereof to appellant and any other party who has requested in writing to be so notified. No other notice need be given.
 3. Appeal fees shall be required for every appeal in the amount established in Chapter 1.12 of the Benbrook Municipal Code.

8.36.200 PENALTY

- A.** It shall be unlawful and an offense for any person to do the following:
1. Engage in any activity not permitted by the terms of a Gas Well Permit issued under this Ordinance.
 2. Fail to comply with any condition set forth in a Gas Well Permit issued under this Ordinance; or.
 3. Violate any provision or requirement set forth under this Ordinance.
- B.** Any violation of this Ordinance shall be punished by a fine of not more than \$2,000.00 per day, subject to applicable State law. Each day that a violation exists shall constitute a separate offense.”

SECTION 2 CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances of the City of Benbrook, Texas, except when the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of

such ordinances are hereby repealed.

SECTION 3 SAVINGS CLAUSE

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

SECTION 4 SEVERABILITY CLAUSE

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

SECTION 5 PENALTY CLAUSE

Any person, firm, association of persons, company, corporation, or their agents, servants or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not more than two thousand (\$2,000) dollars, and each day a violation or noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in Texas Local Government Code §54.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

SECTION 6 PUBLICATION CLAUSE

The City Secretary of the City of Benbrook, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Benbrook, Texas, as authorized by Texas Local Government Code §52.013.

SECTION 7 EFFECTIVE DATE

That this ordinance shall take effect after adoption and publication as required by law.

PASSED AND APPROVED the 21st day of May 2009.

Jerry B. Dittrich, Mayor

ATTEST

Joanna King, City Secretary