

Chapter 42
ENVIRONMENT

ARTICLE IV. ~~OIL AND GAS WELL DRILLING~~ PRODUCTION, PLUGGING AND
ABANDONMENT

DIVISION I. GENERALLY

Section 42-181. Purpose

It is hereby declared to be the purpose of this article to:

- (a) Protect the health, safety and general welfare of the public;
- (b) Establish reasonable and uniform limitations, safeguards and regulations for present and future operations on private and public property that will serve as minimum standards for exploring, developing, producing, and storing of oil, gas and other substances produced in association with oil and gas; and
- (c) Establish reasonable and uniform limitations, safeguards and regulations for present and future operations on private and public property that will serve as minimum standards to protect the health, safety and general welfare of the public;
- (d) Minimize the potential impact to private and public property and mineral rights owners;
- (e) Protect the quality of the environment and encourage the orderly production of available mineral resources;

Section 42-182. Applicability

- (a) All persons shall comply with the provisions of this Article that will engage and are currently engaged in operations for the exploration, development, or production of oil and gas.
- (b) The permits required by this Ordinance are in addition to and are not in lieu of the Special Use Permits required by Chapter 125, Zoning or any other provision of this Code or by any other governmental agency. If any provision of this Chapter imposes a higher standard than that required by any other City regulation, the provisions of this Chapter shall control. If any provision of any City regulation, not contained in this Chapter, imposes a higher standard, that regulation shall control.
- (c) Neither the provisions of this Chapter, nor any permit issued under this Chapter, shall be interpreted to grant any right or license to the permittee to enter upon, use or occupy in any respect any surface land except by the written contract of the surface owner; nor shall this article limit or prevent the free right of any owner to contract for the amount of damages, rights or privileges with respect to his own land and property.

Section 42-183. Definitions

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

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

Affiliate. Any individual partnership, association, joint stock company, limited liability company, trust, corporation or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in person.

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

ASME. American Society of Mechanical Engineers or its successor(s).

ANSI. American National Standards Institute or its successor(s).

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

Building. Any structure for the support, shelter, or enclosure or partial enclosure of persons, animals, chattels, or movable property of any kind including pools.

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

City. Shall mean the incorporated City of League City.

Closed loop mud system. A series of above-ground tanks used to store, process, and recycle drilling mud, cuttings and other fluids. This system is used in place of the traditional earthen pits at a drilling operation.

Company. The company authorized by an agreement to install and maintain gas pipelines within the right-of-way.

Completion. The date the work is completed for the drilling, re-drilling or workover and the drilling rig is released by the Operator or Production Representative.

Compressor. Any device used alone or in a series that raises the pressure of any vapor or gas and creates a pressure differential to move or to compress a vapor or a gas.

Compressor stations. Facilities, also referred to as inline booster stations, which increase the pressure on gas during its extraction, transport and storage.

Contact Information. The legal name, address, and phone number.

Daytime. The period from 6:30 a.m. to 7:00 p.m.

Decibel (db). A unit of measurement of noise intensity. The measurements are based on the energy of the sound waves, and the units are logarithmic. The decibels are read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

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

Dwelling unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

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

FEMA. Federal Emergency Management Agency.

FIRM. Flood Insurance Rate Map.

Flowline. A line that carries the product (usually a mixture of oil, gas, water or other impurities) from the wellhead to the first vessel (such as a separator, dehydrator, or heater-treater) for the purpose of separating the liquid from the oil and gas.

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

Gas well. Any well drilled, to be drilled, or used for the intended or actual production of natural gas or other hydrocarbons and as defined by statute and the Railroad Commission.

Gas well drilling. Digging or boring a 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.

HCR valve. A hydraulically operated gate valve that is used on diverter systems and choke lines leading from the blowout preventers.

Hospital. State licensed facility providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons. This classification includes facilities for inpatient or outpatient treatment, including drug and alcohol abuse programs as well as training, research, and administrative services for patients and employees.

IADC. International Association of Drilling Contractors or its successor(s).

Incident. An occurrence of an action or situation that could have a negative or detrimental impact.

Nighttime. The period between 7:00 p.m. and 6:30 a.m.

Non-site essential. Equipment or materials such as lumber and casings that are not absolutely necessary to the specific activity under which a permit is issued.

Oil and Gas Compliance Officer. The city staff person designated by the City Manager charged with overseeing drilling, production, and pipeline operations.

Oil or Condensate. A substance occurring naturally in the earth and composed mainly of mixtures of chemical compounds of carbon and hydrogen, with or without other nonmetallic elements such as sulfur, oxygen, and nitrogen. The compounds that compose it may be in the gaseous, liquid, or solid state, depending on their nature and on the existent conditions of temperature and pressure.

Oil well. Any well drilled, to be drilled, or used for the intended or actual production of oil or petroleum as defined by statute and the Railroad Commission.

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

Operation site. The area used for development and production of oil, gas and all operational activities associated with an oil or gas well after drilling and completion activities are finished.

Operator. The person listed on the appropriate Railroad Commission forms that is, or will be, actually in charge and in control of operations and maintenance related to drilling, production, and pipelines, including, without limitation, a unit Operator or Operator of Record in instances of multiple partners and general partnership. If the Operator, as herein defined, is not

the lessee of any premises affected by the provisions of this Ordinance, then such lessee shall also be deemed to be an Operator. The lessees shall include all working interest owners.

Operator agent. The person designated by the Operator, 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.

OSHA. Occupational Safety and Health Administration.

Parks, Private. Tract of land utilized for playgrounds, recreational facilities, community centers, playing fields, courts, gymnasiums, swimming pools, and picnic facilities operated and maintained by a homeowners' association.

Parks, Public. Tract of land, excluding trails, for recreational use owned and operated by a public authority, such as the city or county, for the express use of the general public.

Person. An individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

Persons. Every person, firm, co-partnership, association, partnership, corporation or society; and shall include both singular and plural and the masculine shall include the feminine gender.

Piping. A line that carries any liquid or gas to and between other equipment (such as a separator, dehydrator, heater-treater, and tanks).

Production. Activities leading to and supporting the extraction of oil, gas, and/or other hydrocarbons from subsurface formations or strata.

Protected Use. A dwelling unit; religious assembly; hospital building; public or private school boundary; day care boundary; or public, private or Homeowners' Association park.

Production Representative. The Owner representative(s) on site representative(s) with supervisory authority over all oil and gas on site activities is responsible for addressing and correcting issues.

Public or Private school. Facilities for educational and/or classroom purposes operated by public or private educational institutions offering a general course of study at primary, middle, or high school levels, including study centers, child care and limited child care centers, vocational and trade programs that are incidental to the operation of such schools.

Pump stations. Facilities utilized for the treatment, regulation and extraction of materials conveyed through pipelines, including but not limited to compressor stations, inline booster stations, pigging stations, and valve stations.

Railroad Commission. The Railroad Commission of Texas or its successor(s).

Religious assembly. Facilities for religious worship and other religious ceremonies with incidental religious education, offices, social services, and community programs but not including private schools.

Right-of-way. Any area of land within the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, by prescriptive right or other interest and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, sidewalk, alley, utility, drainage, or public access easement or used for the provision of governmental services or functions. The term includes the area on, below, and above the surface of the public right-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved.

Salt water disposal well or injection well. A well used for the purpose of injecting produced water back into the subsurface formation or strata.

Seismic survey. An exploration method in which low frequency sound waves are generated on the surface to find subsurface rock structures that may contain hydrocarbons. Interpretation of the survey record can reveal possible hydrocarbon-bearing formations.

SEMS. Safety and Environmental Management System.

Street. A strip of land, privately or publicly owned, which affords the principal means of access to abutting property.

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

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

Valve stations. Facilities used to regulate flow, temperature and pressure of various mediums being conveyed through pipelines.

Well. A hole or holes, bore or bored, to any horizon, formation or strata for the purpose of producing oil, gas and other hydrocarbons from the earth.

Sections 42-184 – 42-190. Reserved.

DIVISION 2. PERMITS

Section 42-191. Permits required.

All person(s) desiring to conduct the associated operations shall make an application to the City's Development Review Committee for the following permits. These permits are in addition to and are not in lieu of any permit which may be required by any other provision of the Code of Ordinances or by any other governmental agency.

- (a) *Production permit* – Any person(s) desiring to produce oil or gas from a well.
- (b) *Well plugging and abandonment permit* – Any person(s) desiring to plug and/or abandon an oil or gas well.

Section 42-192. Review of permit applications.

- (a) An approved Special Use Permit is required before a production permit or well plugging and abandonment can be obtained from the City.
- (b) The permits required by this Ordinance are in addition to and are not in lieu of any permit which may be required by the Zoning Ordinance or any other provision of this Code or by any other governmental agency.
- (c) City staff shall review the application and may submit it to a Technical Advisor for review.
- (d) The applicant may appeal the denial of a permit based upon the procedures noted in this Article.

Section 42-193. Issuance of permits.

The City Manager or his designee shall issue applicable production permits and well plugging and abandonment permits upon compliance of all regulations applicable to the permit that is being sought.

Section 42-194. Amending permits.

- (a) An Operator or Production Representative shall submit an application to amend a permit for changes that are not materially different from the activities covered by the existing permit, and if the proposed activities are in conformance with the applicable Special Use Permit.
- (b) The decision to deny an amendment to a permit shall be provided to the Operator or Production Representative in writing with an explanation of the basis for the decision.

The Operator or Production Representative may appeal based upon the procedures noted in this Article.

Sections 42-195. Expiration of permits.

- (a) A permit shall automatically terminate, unless extended, if the operation or construction is not commenced within one hundred and eighty (180) days from the date of the issuance of the permit.
- (b) A permit shall automatically terminate, unless renewed, within one (1) year from the date of the issuance of the final approval to operate.

Sections 42-196. Extension and renewal of permits.

- (a) If the operation or construction is not commenced within one hundred and eighty (180) days from the date of the issuance of the permit, the permit may be extended for an additional one hundred and eighty (180) days upon request by the Operator or Production Representative and proof that the classification of the requested permit for such location has not changed.
- (b) A permit may be renewed annually if the operations have been in compliance with all City ordinances and state and federal regulations.

Sections 42-197 – 42-200. Reserved.

DIVISION 3. APPLICATIONS

The following regulations apply to all person(s) making applications for production and well plugging and abandonment permits unless a particular permit is denoted. The City may return any application as incomplete if there is a dispute pending before the Railroad Commission regarding the determination of the Operator or Production Representative.

Section 42-201. Application fee.

Submit a non-refundable application fee as established by the City's fee resolution for the actual costs the City incurs for permit application processing and for the services of a technical expert to review the application, plans and documentation.

Section 42-202. Application form.

Submit a completed application in accordance with the written instructions on the form provided by the City. Deficient applications will be returned to the applicant with a written explanation. Additionally, the City may return any application as deficient if there is a dispute pending before the Railroad Commission regarding the Operator or Production Representative.

Section 42-203. Operator or Production Representative information.

Provide name, address and contact information of the operator, production representative and any corporate officers, registered agents, general and limited partners, as well as, a copy of the Articles of Incorporation and any “Doing Business As” filings.

Section 42-204. Contacts sheet.

Submit a listing of project positions of authority with title, name, address, and contact information of, but not limited to, the operator, production representative, operator agent, site representative(s) and their assignees if absent.

Section 42-205. Aerial.

Submit an aerial map photographed within one (1) year prior to application date delineating the subject property boundaries including the area within one thousand (1000) feet of the tank batteries. Denote on the map any new structures that are existing at the time of application that are not seen in the aerial.

Section 42-206. Legal description.

Submit a property deed with an appraisal district map inclusive of the site and property within one thousand (1000) feet, inclusive of subdivision plat reference, block and lot number, if applicable.

Section 42-207. Proof of property interests.

Submit a listing of property interest owners with surface, mineral and/or lease interests by name with contact information and documentation of their respective interests.

Section 42-208. Applicable state permits.

Submit a copy of the application filed with the Railroad Commission along with the approved permit by the Commission for operations within the City, copies of the “Water Board” letter from the Texas Commission on Environmental Quality, and any casing exceptions applied for and/or granted.

Section 42-209. Staffing during production operations.

Submit details of staffing during production operations. The Operator shall have a representative on-site (in addition to any truck driver(s)) when any loading or unloading operations are ongoing. During any ongoing production operations, Operator shall have a representative checking the site a minimum of once every forty-eight (48) hours.

Section 42-210. Site plans and construction documents.

- (a) *Production permits* – Submit engineered construction drawings of the site showing, but not limited to, major components, improvements and equipment; rigs; tanks; compressors; separators; storage sheds; fire hydrants; water and power supply; impacted vegetation, creeks and other topographic features; easements; and adjoining roadways, property, parks, buildings, and structures.
- (b) Submit a hazardous materials inventory statement including MSDS sheets on all products being used and at which operation phases they are being utilized, including all chemicals used during any fracking process.

Section 42-211. Well plugging and abandonment plan.

Well plugging and abandonment permit – Submit the following:

- (a) A copy of the approved W-3A “Notice of Intention to Plug & Abandon” and W-3 “Plugging Record” forms from the Railroad Commission.
- (b) Details on how the property will be graded, leveled and restored to the same or better surface conditions as existed before operations.

Section 42-212. Landscaping and screening plan.

Production permits – Submit a landscaping and screening plan showing the plantings and screening that will be installed on the site in accordance with the Special Use Permit and the regulations of this article.

Section 42-213. Lighting plan.

Production permits – Submit lighting plan demonstrating how lighting will be provided in conformance with the Special Use Permit and City ordinance. The plan shall reflect the lighting for the entire site, including the grounds, equipment and any apparatus or structure including the type of light to be used, location, height and degree of illumination up to 1,000 feet as demonstrated by a photometric study.

Section 42-214. Environmental Assessment.

Submit Phase I and Phase II Environmental Assessments in accordance with Texas Commission on Environmental Quality and Environmental Protection Agency standards.

Section 42-215. Environmental management – noise.

Production permits – To establish noise levels different than what is required by this Chapter, submit a pre-operation ambient noise level report with twenty-four (24) hour measurements in one (1) hour increments for seven (7) consecutive days in a week without a holiday. The plan shall document how mitigation measures will be utilized so that the noise level does not exceed permitted decibel levels in accordance with the Special Use Permit and the regulations of this

article. The plan shall include details on how the equipment will be utilized in the production in order to meet the permitted noise levels. The plan shall take into consideration: the location, type, nature, and proximity of adjacent development; seasonal and prevailing weather patterns; vegetative cover on or adjacent to the site; and topography.

Section 42-216. Environmental management – air emissions.

Production permits – Submit documentation demonstrating how the surrounding environment will be protected, monitored, and managed against adverse noxious odor impacts and emissions of regulated air pollutants per the Clean Air Act as administered by Texas Commission on Environmental Quality.

Section 42-217. Environmental management – spill prevention, control and countermeasure plan.

Production permits – Submit a spill prevention, control and countermeasure plan utilizing requirements established by the Environmental Protection Agency, Texas Commission on Environmental Quality, Department of Transportation, and the Texas Railroad Commission (or their successor agencies).

Section 42-218. Environmental management – hazard mitigation plan.

Production permits – Submit hazard mitigation plan demonstrating:

- (a) *Illicit discharges* – How the surrounding environment will be protected, monitored, and managed against adverse impacts during an illicit discharge of oil, gas, or other hazardous substance used on site in accordance with Chapter 43 of the Code of Ordinances entitled “Clean Water”.
- (b) *Inclement weather and civil emergencies* – How the surrounding environment will be protected, monitored, and managed against adverse impacts during civil emergencies such as a bad weather event in accordance with Chapter 34 of the Code of Ordinances entitled “Civil Emergencies”.

Section 42-219. Environmental management – risk management assessment.

Production permits – Submit a risk management assessment to identify, assess, and prioritize risks including coordination and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events.

Section 42-220. Environmental management – storm water pollution prevention plan.

Production permits – Submit a storm water pollution prevention plan adhering to Environmental Protection Agency and Texas Conservation on Environmental Quality standards for the testing of storm water samples and performing best management practices.

Section 42-221. Emergency management – emergency action response plan.

Production permits – Submit an emergency action response plan in accordance with Chapter 46 of the Code of Ordinances entitled “Fire Protection” incorporating:

- (a) Written procedures to minimize any hazard resulting from operations utilizing standards established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation, and the Environmental Protection Agency.
- (b) Drive-to-maps from public rights-of-way to operation site.
- (c) Evacuation routes for surrounding area that utilize the same roadways.

Section 42-222. Access management plan.

Production permits – Provide access management plan incorporating:

- (a) Delineation of the access route from the city limits to the production site and all above ground equipment.
- (b) A table indicating roadway name, trail, sidewalk, length, and construction type.
- (c) Documentation as to how the roadways, trails and sidewalks will be protected, monitored, and managed against adverse impacts during access in accordance with Chapter 98 of the Code of Ordinances entitled “Streets, Sidewalks and Other Public Places”.

Section 42-223. Surety.

Submit documentation in accordance with the regulations in this article.

Section 42-224. Amended permit applications.

Submit the following items for amended permit applications:

- (a) Application form completed in accordance with the written instructions provided by the City.
- (b) A non-refundable application fee to the City for the actual costs it incurs for the services of a technical expert to review the proposed amendment.
- (c) A description of the proposed amendments including any changes to the existing permit.
- (d) Such additional information as is reasonably required by the City to demonstrate compliance with the applicable permit and to prevent imminent destruction of property or injury to persons.

- (e) A non-refundable fee to the City for the actual cost it incurs for the services to implement the proposed amendment.

Sections 42-225. Expiration of application.

Application shall expire forty-five (45) days from submittal to the City if the operator, production representative or applicant does not show progress towards meeting any required regulations in order to obtain the permit.

Sections 42-226 – 42-230. Reserved.

DIVISION 4. FEES

The following regulations apply to all production and well plugging and abandonment permits unless a particular permit is denoted. The fees shall be set by resolution of the City Council and amended from time to time.

Section 42.231. Permit fee.

A permit fee as established by the City’s fee resolution shall be rendered prior to issuance and each renewal of the permit. The permit fee shall be for the enforcement, monitoring and inspections associated with the operations described in this article to ensure compliance. The amount shall be calculated by applying a daily cost for service times the estimated time to complete; and, if the time of completion exceeds the initial estimated duration, additional amounts will be billed monthly.

Section 42.232. Access maintenance and road damage fees.

- (a) *Access maintenance* – An access maintenance fee as determined by the Director of Public Works to cover the anticipated annual costs for access maintenance and cleaning of city rights-of-way. The access maintenance fee shall be rendered prior to the commencement of any site activity under the Permit. The fee shall be paid on or before the issuance and renewal of the permit.
- (b) *Road damage* – A road damage fee as determined by the Director of Public Works for city rights-of-way shall be calculated based on the access lane miles for the appropriate road type, the assessment per lane mile, and the number of lane miles included in each permit. Replacement costs for asphalt and/or concrete road segments shall be determined from current cost per square yard of road surface material, including installation and labor.

Section 42.233 – 42.240. Reserved.

DIVISION 5: SPECIAL PROVISIONS

The following regulations apply to all production and well plugging and abandonment permits unless a particular permit is denoted.

Section 42-241. Final inspections.

- (a) Any operations associated with production shall not commence until the City has performed the appropriate inspections and issued final approval for operations. Any significant nonconformance shall be addressed and re-inspected before operations may commence.
- (b) The Operator or Production Representative shall notify the Oil and Gas Compliance Officer of all inspection requests in accordance with established policy.
- (c) *Well plugging and abandonment permits* – After the well has been plugged and abandoned, the equipment has been removed and the site fully restored, then the Operator or Production Representative shall notify the Oil and Gas Compliance Officer for final inspection.

Section 42-242. Required compliance inspections.

Routine compliance inspections for production operations – The City shall at minimum perform quarterly inspections to ensure compliance with all permits and City ordinances. Copies of all approved environmental management plans shall be kept on-site and ready for inspection.

Section 42-243. Periodic reports.

- (a) The Operator or Production Representative shall immediately notify the Oil and Gas Compliance Officer of any changes to the conditions upon which the permit was issued including, but not limited to, contact information, site layout, spill prevention, control and countermeasure plans, safety management plans and environment management plans within one business day.
- (b) *Production permits* – Beginning on the first anniversary date of the permit, the Operator or Production Representative shall submit an annual operational status report addressing periodic noise level monitoring, air quality, water samplings, the status (pending, drilling, completing, producing, plugged or abandoned) of the well and/or operations, and current certifications for all pressure control and hoisting equipment. The report shall include the Well Name, API Number, Lease Name, City Case Number, Commission Permit Number, Commission Lease and ID Number.

Section 42-244. Incident reports.

- (a) The Operator or Production Representative shall provide the Oil and Gas Compliance Officer a copy of any incident reports or written complaints received from and operator's

response submitted to the Railroad Commission, Texas Commission on Environmental Quality, Texas General Land Office, Environmental Protection Agency, Occupational Safety and Health Administration, or other applicable governmental agency within 30 days after the Operator or Production Representative has notice of the existence of such reports or complaints.

- (b) The Operator or Production Representative shall immediately report the following incidents to the Oil and Gas Compliance Officer as required by Chapter 43 of the Code of Ordinances, the Environmental Protection Agency, the Texas Commission on Environmental Quality and the Texas General Land Office:
 - (1) Any incident resulting in product loss for a hydrocarbon storage facility, blowout, fire, explosion;
 - (2) Any incident resulting in an injury recordable by the Occupational Safety and Health Administration, death or property damage;
 - (3) The release of oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances, any refuse including wastewater or brine from any oil or gas operation, unauthorized gases or the contents of any container used in connection with any oil or gas operation; or
 - (4) Any other significant incidents as defined by the Railroad Commission, Environmental Protection Agency and the Texas Commission on Environmental Quality.
- (c) A preliminary written report with a summary of the incident shall also be submitted to the City staff person noted in the Spill Prevention, Control and Countermeasure Plan by the close of the first business day of the City following the incident.
- (d) A signed final report shall be submitted to the City staff person noted in the Spill Prevention, Control and Countermeasure Plan within thirty (30) days following the incident containing:
 - (1) Description of the incident, including the date, time, location and cause.
 - (2) Duration of the incident, including when it began, when it terminated to the degree that it no longer constituted a hazard to the health, safety, and well being of persons or property, regardless of the distance or separation of the place of the incident.
 - (3) Description of how the incident was brought under control or remedied.
 - (4) Description of the type of investigation or inquiry that was made concerning the incident, the findings thereof, and the action taken as a result of the findings to prevent a recurrence of the incident.

Section 42-245. Revocation or suspension of permit.

- (a) If at any time any applicable permit issued by a state and federal entity expires or is revoked, then the permit issued by the City shall be suspended until the state or federally issued permit is reinstated.
- (b) Operators and Production Representatives shall comply at all times with all applicable federal, state and City laws, regulations and rules. If an Operator or Production Representative (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of a permit, the Operator or Production Representative is subject to immediate citation, injunction, abatement or any other remedy permitted by law and this article. When possible under the circumstance, the City shall give written notice to the Operator or Production Representative specifying the nature of the failure and giving the Operator or Production Representative 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.
- (c) If the Operator or Production Representative fails to comply within ten (10) days after notice, or fails to comply immediately if there is an imminent health and safety issue, the City may suspend the permit and pursue revocation of the permit by the Zoning Board of Adjustments.
- (d) The Operator or Production Representative may file an appeal in writing directed to the Zoning Board of Adjustments within thirty (30) days of the date of the decision of the City in writing to suspend the permit.
- (e) No person shall carry on any operations performed under the terms of any permit issued under this Article during any period of suspension or revocation or pending a review of the decision or order of the City. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the permit was ordered for the safety of persons or as required by the Railroad Commission.

Sections 42-246– 42-250. Reserved.

DIVISION 6. REGULATIONS

The following regulations apply to all production and well plugging and abandonment permits unless a particular permit is denoted.

Section 42-251. Compliance with applicable regulations.

All operations related to production and well plugging and abandonment permits within the city shall comply with all applicable provisions of the regulations in this article, the American

Petroleum Institute, the Occupational Safety and Health Administration, and federal and state codes.

Section 42-252. Location of electric lines.

All electric lines to site development and/or facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision. Production power lines shall be placed underground.

Section 42-253. Distancing and setbacks.

The distancing and setback requirements noted in this subsection shall apply to all new permits for production and shall be consistent with the approved Special Use Permit. These requirements shall not apply to any renewal permits for existing operations that have state and federal permits in good standing.

- (a) The proposed mud pits, open return mud flow lines, and mud processing area shall not be within six hundred (600) feet of a dwelling unit, religious assembly building, hospital building, public or private school boundary, or day care boundary for which a building permit has been issued on or before the date of the Special Use Permit application.
- (b) The proposed battery and storage tanks cannot be within three hundred (300) feet or the distance mandated by the applicable state entity, whichever is greater, of any building or structure off-site, public or private park, dwelling unit, religious assembly building, hospital building, public or private school boundary, or day care boundary for which a building permit has been issued on or before the date of the permit application for production.
- (c) The proposed battery and storage tanks shall not be within two hundred (200) feet to any fresh water well. Setbacks to municipal, public or private fresh water wells that serve multiple residential or commercial properties shall be determined by the City, but shall be no less than 200 feet. The measurement shall be in a direct line from the closest tank to the fresh water well bore. The reduction of the distance requirement for fresh water wells is subject to the Railroad Commission regulations and any other state or federal requirements.
- (d) Salt water disposal lines, flowlines, intralease piping, and tanks shall be prohibited within one hundred (100) feet of any natural stream high bank, drainage canal easement, designated wetland preservation area or mean high tide.

Section 42.254. Landscaping.

Production permits – Landscaping and buffer yards shall be installed in accordance with City ordinance, the approved landscape plan and Special Use Permit prior to issuance of the permit. At minimum, a 50-foot buffer yard around the perimeter of the operation site containing the following plantings or an alternative approved by the City Arborist that provides equivalent screening and aesthetic quality shall be required:

- (a) Southern Wax Myrtle Shrub in minimum 5-gallon containers spaced 30 inches apart.
- (b) Chinese Elm trees with a minimum 3-inch caliper diameter and a minimum height of 12 feet, spaced 20 feet apart.
- (c) Little Gem Magnolia trees with a minimum 3-inch caliper diameter and a minimum height of 12 feet, spaced 15 feet apart.

Section 42-255. Screening and fences

Screening and fences shall be installed on the site in accordance with approved plans and the Special Use Permit prior to issuance of the permit.

- (a) The perimeter of the location shall be secured with a commercial quality fence with a minimum height of six (6) feet, regardless of on-site supervision.
- (b) Any secured entrance gate shall contain a Knox-Box keybox or pad lock or equivalent.
- (c) *Production, and pump station permits* – At minimum, the site shall be enclosed by an eight (8) foot tall, opaque fence, unless otherwise restricted by Homeland Security.
- (d) All fences shall be equipped with at least one (1) gate. The gate shall meet the following specifications:
 - (1) All gates shall be equipped with a 911 override control switch. Gate specifications must be submitted to the Fire Marshal’s Office and approved prior to installation.
 - (2) Each gate shall be not less than twelve (12) feet wide and be composed of two (2) gates, each of which is not less than six (6) feet wide, or one (1) sliding gate not less than twelve (12) feet wide. If two (2) gates are used, gates shall latch and lock in the center of the span.
 - (3) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site.
 - (4) Operator or Production Representative must provide the Fire Department with a Knox Padlock or Knox Box entry system or equivalent on the gate to access the site in case of an emergency.

Section 42.256. Lighting.

Lighting shall be provided on the site in accordance with the Special Use Permit and City ordinance.

Section 42-257. Noise.

(a) The usage of a muffler cutout, bypass or straight exhaust on any motor machinery is prohibited.

(b) Permitted sound levels

(1) Production operations within 600 feet of protected uses excluding parks – When measured at the required setbacks, the decibel levels shall not exceed ~~the greater of seventy (70)~~ fifty-five (55) decibels during daytime hours and forty-five (45) decibels during nighttime hours. If utilizing a noise study to establish an ambient noise level, then the decibel level shall not be five (5) decibels above the established ambient noise level during the daytime hours and three (3) decibels above the established ambient noise level during the nighttime hours.

(2) Production operations adjoining all other uses – When measured at the required setbacks, the decibel levels shall not exceed sixty-seven (67) decibels during daytime hours and sixty (60) decibels during nighttime hours. If utilizing a noise study to establish an ambient noise level, then the decibel level shall not be five (5) decibels above the established ambient noise level during the daytime hours and three (3) decibels above the established ambient noise level during the nighttime hours.

(3) The exterior noise level generated by the related operations located within six hundred (600) feet of a protected use shall be continuously monitored to ensure compliance. The cost of such monitoring shall be borne by the Operator or Production Representative.

(b) Acoustical blankets, sound walls, mufflers or other alternative methods may be used to ensure compliance. All soundproofing shall comply with accepted industry standards and subject to approval by the City.

(c) The sound level meter used in conducting noise evaluations shall meet the American National Standards Institute's standard for sound meters.

Section 42-258. Illicit discharges.

(a) 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 oil or gas operation or the contents of any container used in connection with any oil or gas operation in, into, or upon any public rights-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain or any body of water or any private or public property in the City.

(b) No person shall allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame.

- (c) Clean-up operations of hazardous substances shall be in compliance with Chapter 54 of the Code of Ordinances.
- (d) After any spill, leak or malfunction, the Operator or Production Representative shall perform environmental remediation to the satisfaction of the Fire Marshal, Emergency Management Department, and the Technical Advisor all waste materials from any public or private property affected by such spill, leak or malfunction. Remediation must begin immediately. If the Operator or Production Representative fails to begin site remediation within twenty-four (24) hours, the City may contract for or otherwise employ any remediation experts by contract or otherwise at the sole expense of the Operator or Production Representative. The Operator or Production Representative shall submit an incident report to the City detailing disposal methods, documentation on contamination of soil and corrective actions to prevent reoccurrence.
- (e) Operator or Production Representative expressly consents by applying for a permit to allow a draw down of any bond or letter of credit to cover any clean up expenses. In the event that the bond or letter of credit is exhausted, Operator or Production Representative agrees to immediately replenish the amount. City shall have the right to contact the Railroad Commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.

Section 42-259. Water well sampling.

Water samples may be required at the discretion of the City and at the expense of the Operator utilizing proper protocol from an approved laboratory by the Environmental Protection Agency and the Texas Commission on Environmental Quality. The samples shall include the area of concern on the site as well as the area down grade from the site. Monitoring shall consist of elements, chemicals and bacteria including calcium, magnesium, sodium, potassium, sulfate, pH, specific conductance, alkalinity (CaCO₃), total coliform/e-coli, total suspended solids, total dissolved solids, iron manganese, acidity, methane/ethane, oil and grease (HEM), barium, total petroleum hydrocarbons (TX 1005), BTEX, chlorides, strontium, and turbidity.

Section 42-260. Soil sampling.

Soil sampling may be required at the discretion of the City. Soil contamination assessments shall be conducted at the expense of the Operator and shall utilize an approved laboratory testing for any increase about the Texas-specific median background concentrations for metals or specific contaminants that might have been present on the site. A minimum of five (5) samples shall be taken and shall include pit or area of concern as well as the area down grade from the site.

Section 42-261. Fire prevention.

- (a) *Explosives.* Use of explosive charges within the City limits shall require approval by the Fire Marshal as required in Chapter 46, Fire Protection and Prevention of the Code of Ordinances.
- (b) *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 or Production Representative shall immediately report such condition to the contact specified in the Spill Prevention, Control and Countermeasure Plan. A written report with a summary of the incident shall also be submitted by the close of the first business day of the City following the incident.
- (c) *Fire prevention; sources of ignition.* Firefighting apparatus and supplies as approved by the Fire Department and required by any applicable federal, state, or local law shall be provided by the Operator or Production Representative, at the Operator's or Production Representative's cost, and shall be maintained on the site at all times during operations. The Operator or Production Representative shall be responsible for the maintenance and upkeep of such equipment. All equipment, other than wellheads, shall be equipped with an automated valve that closes or shuts down the equipment in the event of an abnormal change in operating pressure. All well heads shall contain an automated emergency shut off valve to the well production sale line.
- (d) *Equipment and vehicles.* 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 on the site. The Fire Marshal shall be the entity that determines whether equipment on the site shall constitute a fire hazard.
- (e) *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 outside of the duration of operations. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

Section 42-262. Hoisting and rigging equipment.

- (a) The hoisting and rigging equipment shall be all from a recognized American Petroleum Institute licensed OEM and of origin from the United States or Western Europe.
- (b) All hoisting and rigging equipment and all components of the hoisting system shall be certified at a minimum of once per year. No equipment shall be used on site with a certificate expiration date that will expire during its expected time of use on the well.
- (c) Suitable warning devices shall be activated during crane hoisting operations in accordance with all regulations for lighting and noise regulated in this Chapter.

Section 42-263. Mud pits and flow lines.

All mud pits and flow lines shall be fully enclosed (covered top).

Section 42-264. Other production operation controls.

All production operation controls shall be designed as fail/safe.

Section 42-265. Storage tanks.

- (a) No tank shall be erected of a greater capacity than 500 barrels and filled beyond a maximum capacity of 80 percent.
- (b) The height of any storage tank within 1,000 feet of any zoning district that permits residential uses shall not exceed the maximum height limit of 30 feet.
- (c) All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications unless other specifications are approved by the Fire Marshal. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the largest tank in accordance with the Fire Code, and buried at least one (1) foot below the surface. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank.
- (d) All tanks must have a vent line with a conservation vent, flame arrester and pressure relief valve.
- (e) 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.
- (f) Tank battery facilities shall be equipped with a lightning arrestor system and a remote foam application piping system approved by the Fire Marshal. The foam system shall be provided with a 2 1/2" Siamese FDC secured with a locking Knox cap at a location approved by the Fire Department a minimum of two hundred (200) feet from the tanks. On-site storage of foam shall be required under the conditions as set forth by the Fire Department and shall be replaced immediately upon expiration. All components shall be installed in accordance with nationally recognized standards and shall be properly maintained by the Operator.

Section 42-266. Storage vessel labels.

All storage vessels containing chemicals shall be labeled on two (2) sides with National Fire Protection Association (NFPA) chemical hazard labels.

Section 42-267. Access management.

- (a) It shall be unlawful for any person(s) to block, encumber, obstruct or close any street, alley or other public way within the city, except by special permit by order of the Department of Public Works Director of designee.
- (b) *Production permits* – Prior to the commencement of operations, all roads used for access to the site shall be at least twenty-four (24) feet wide, have an overhead clearance of fourteen (14) feet and shall be surfaced with concrete, asphalt, gravel or caliche. In particular cases, these requirements governing surfacing of private roads may be altered at the discretion of the City after consideration of all circumstances including, but not limited to: distances from 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.
- (c) The Operator shall use watering, wetting or other methods or materials to control dust on the site.
- (d) The Department of Public Works may restrict the hours of operation of vehicles based upon the location of the property and adjoining land uses.
- (e) Emergency access and turnabouts shall be included as deemed appropriate by the Fire Marshal. The access route should be of appropriate width to accommodate emergency response equipment. Street turnabouts should be of adequate turning radius to facilitate forward or reverse hose lays and/or exit of any emergency response equipment.

Section 42-268. Maintenance of sites.

- (a) The site shall be kept in a clean and sanitary conditions, free from rubbish and combustible materials of every character, to the satisfaction of the health officer and fire marshal, at all times during operations.
- (b) The site shall at all times be kept free of pools of water and other liquids, contaminated soil, weeds, and brush within a radius of one hundred (100) feet around any separators, tanks and producing wells.
- (c) All equipment shall be maintained by the Operator or Production Representative at all times, including, wellheads, pumping units, tanks, and buildings or structures. The City 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.

Section 42-269. Waste disposal.

- (a) Any material classified as hazardous waste according to the EPA shall be disposed in accordance with EPA standards.

- (b) Unless otherwise directed by the Railroad 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.
- (c) Water stored in on-site tanks shall be removed as necessary.
- (d) All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the State, this Ordinance and any other applicable ordinance of the City.

Section 42-270. Hours of operation.

- (a) Site preparation, well servicing, truck deliveries and pick-up of equipment and materials, and other related work conducted on the site shall be limited to daytime hours. The restriction on work hours shall not apply in cases of fires, blowouts, explosions and any other emergencies or where the delivery of equipment is necessary to prevent the cessation of production.
- (b) The Operator shall conduct on-site meetings to inform all personnel of nighttime operation noise control requirements.

Section 42-271. Plugging and abandonment of wells.

All wells shall be abandoned and the property restored in accordance with the following requirements:

- (a) After the well has been completed or plugged and abandoned, the Operator or Production Representative shall clean the site, complete restoration activities and repair all property damage caused by such operations.
- (b) All tanks, towers, and other surface installations shall be removed from the site.
- (c) 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 Railroad Commission.
- (d) All holes and depressions shall be filled with clean, compactable soil.
- (e) All waste, refuse or waste material shall be removed from the site.
- (f) All well casings shall be cut and removed to a depth of at least ten (10) feet below the surface.

Section 42-272. Signage.

- (a) A sign shall be immediately and prominently displayed at the gate on the fencing erected pursuant to this Article. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two (2) square feet nor more than four (4) square feet and shall be lettered with the following:
 - (1) Well name and number;
 - (2) Name of Operator and Production Representative;
 - (3) The emergency 911 number; and
 - (4) Telephone numbers of two (2) persons responsible for the well who may be contacted in case of emergency.
- (b) A sign shall be posted at the entrance of the well site advising the public of all fracture stimulation operations at least 72 hours prior to commencement.

Section 42-273. Storage of equipment and chemicals.

- (a) On-site storage of non-site essential equipment is prohibited on the production operation site. Non-site essential lumber, pipes, tubing and casing shall not be left on the operation site except when well servicing operations are being conducted on the site.
- (b) 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 hazardous materials. The Operator shall have all material safety data sheets (MSDS) 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, chemicals and materials raised from the ground (i.e. wooden pallets or containment pallets), installation and maintenance of secondary containment systems, bulk storage, and protection from storm water and weather elements.

Section 42-274 – 42-280. Reserved.

DIVISION 7. LIABILITY, SURETY AND INSURANCE

The following regulations apply to all production and well plugging and abandonment permits unless a particular permit is denoted.

Section 42-281. Liability.

- (a) The Company shall be liable and responsible for any and all damages, losses, liabilities (joint and several), payments, obligations, penalties, claims, litigation, demands,

defenses, judgments, lawsuits, proceedings, costs, disbursements, or expenses (including without limitation, fees, disbursements, and reasonable expenses of attorneys, accountants, professional advisors and expert witnesses and costs of investigation and preparation) of any kind or nature whatsoever, which may arise out of or be in any way connected with:

- (1) The construction, installation, operation, maintenance, or condition of any related facilities or appurtenances;
 - (2) Any claim or lien arising out of work, labor, materials, or supplies provided or supplied to Company, its contractors or subcontractors with respect to any related facilities or appurtenances; or
 - (3) The Company's failure to comply with any applicable federal, state, or local ordinance, except to the extent directly caused by gross negligence or intentional misconduct of the City.
- (b) The Company, at its sole cost and expense, shall indemnify and hold harmless the City, its officers, boards, commissions, agents, employees, and volunteers (also referred to as indemnitees) from and against any and all damages which may arise out of or be in any way connected with:
- (1) The Company's construction, installation, operation, maintenance, or condition of any related facilities or appurtenances;
 - (2) Any claim or lien arising out of work, labor, materials, or supplies provided or supplied to Company, its contractors or subcontractors;
 - (3) The Company's failure to comply with any applicable federal, state, or local ordinance; or
 - (4) The negligent act or omission(s) of the City, its officers, and employees.
- (c) The Company hereby undertakes and assumes, for and on its behalf, its officers, agents, contractors, subcontractors, agents, and employees, all risk of dangerous conditions, if any, on or about any city-owned or city-controlled property, including, but not limited to, rights-of-way.
- (d) If an action is brought against an indemnitee as described in this subsection by reason of any matter for which the indemnitee is indemnified hereunder, the City shall give the Company prompt written notice of the making of any claim or commencement of any such action, lawsuit, or other proceeding. The Company, at its sole cost and expense, shall resist and defend the same with reasonable participation by the City and with legal counsel selected by the Company and specifically approved by the City, at the City's expense. In such an event, the Company shall not admit liability in any matter or behalf of any Indemnitee without the advance written consent of the City.

Section 42-282. Bond and irrevocable letter of credit.

- (a) *Production, workover and pump station permits – Bond.* A bond, in the amount established by fee resolution, shall be executed by a reliable bonding or insurance institution authorized to do business in Texas and acceptable to the City. The bond shall become effective on or before the date the permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the permit term or until the well or pump station is abandoned and the site is restored, whichever occurs last. The Operator or Production Representative shall be listed as principal and the instrument shall run to the City, as obligee, and shall be conditioned that the Operator or Production Representative will comply and perform in accordance with the terms and regulations of this Ordinance and other applicable City ordinances. The original bond shall be submitted to the City.
- (b) *Letter of credit.* A letter of credit in the amount as established by the City fee resolution shall be issued by a reliable bank authorized to do business in Texas and shall become effective on or before the date the permit. The letter of credit shall remain in force and effect for at least a period of six (6) months after the expiration of the permit. If the letter of credit is for a time period less than the life of the well as required by this Ordinance, the Operator or Production Representative 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 forty-five (45) days prior to the expiration date of the letter of credit. If the Operator or Production Representative fails to deliver to the City either the renewal letter of credit or replacement bond in the appropriate amount on or before forty-five (45) days prior to the expiration date of the letter of credit, the City may draw the entire face amount of the letter of credit to be held by the City as security for the Operator's or Production Representative's performance of its obligations under this Ordinance.
- (c) The City shall be authorized to draw upon such letter of credit or bond to recover any fines, penalties, defaults or violations assessed under this Chapter. Also, the letter of credit may be used to draw down City road damage expense to the extent road damage cost exceeds the road damage fee paid with the permit application. Evidence of the execution of a letter of credit shall be submitted to the City by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the City.
- (d) If, after completion of a well, the applicant/Operator/Production Representative, who initially posted the bond, has complied with all of the provisions of this Ordinance and whose well in the producing stage and all drilling operations have ceased, such Operator or Production Representative may submit a request to reduce the existing bond by seventy percent (70%) for the remainder of the time the well produces without reworking.
- (e) If at any time after no less than a fifteen (15) day written notice to the Operator or Production Representative and a public hearing, the City Council shall deem any Operator's or Production Representative's bond or letter of credit to be insufficient, it may

require the Operator or Production Representative to increase the amount of the bond or letter of credit up to a maximum amount as established by the City fee resolution.

- (f) Whenever the City finds that a default has occurred in the performance of any requirement or condition imposed by this Chapter, a written notice shall be given to the Operator or Production Representative unless immediate compliance is needed due to a serious health or safety condition. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the City to be reasonably necessary for the completion of any work. After receipt of such notice, the Operator or Production Representative 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 (125) percent of the estimated cost of doing the work as set forth in the notice. In no event, however, shall the cure period be less than thirty (30) days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the Operator's or Production Representative's failure to provide periodic reports as required by this Ordinance.
- (g) The City shall be authorized to draw against any irrevocable letter of credit or bond to recover such amount due from the Operator or Production Representative. Upon receipt of such monies, the City shall proceed by such mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the Railroad Commission, such additional money may be demanded from the Operator or Production Representative as is necessary to properly plug and abandon the well and restore the site in conformity with the regulations of this Ordinance.
- (h) In the event the Operator or Production Representative 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 Production Representative, or by criminal action against the Operator or Production Representative, or by both such methods or any other remedy available by law.
- (i) 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 Railroad 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.

Section 42-283. General insurance requirements.

*CITY COUNCIL PUBLIC HEARING #6 DRAFT (STAFF DRAFT #12)
SHOWING CHANGES SINCE 07-11-11 P&Z PUBLIC HEARING #5 DRAFT
Chapter 42, Article IV, Drilling Production, Plugging and Abandonment*

In addition to the bond or letter of credit required pursuant to this Ordinance, the Operator or Production Representative 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 permit shall be suspended on such date of cancellation and the Operator's or Production Representative's right to operate under such permit shall immediately cease until the Operator files additional insurance as provided herein. The general requirements below shall be applicable to all insurance policies described in this article.

- (a) The City, its officials, employees, agents and officers shall be endorsed as an Additional Insured on all applicable policies. A copy of the endorsement is required for evidence of coverage.
- (b) All policies shall be endorsed with a waiver of subrogation in favor of the City. A copy of the endorsement is required for evidence of coverage.
- (c) All policies shall be written on an occurrence basis where commercially available.
- (d) If coverage is written on a claims-made basis, the Operator or Production Representative must maintain continuous coverage or purchase Extended Period Coverage Insurance for four years following expiration or suspension of the permit. 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.
- (e) All policies shall be written by an insurer with an A-: VII 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.
- (f) Deductibles shall be listed on the Certificate of Insurance and shall be on a per occurrence basis unless otherwise stipulated herein.
- (g) Certificates of Insurance shall be delivered to the City evidencing all the required coverage, including endorsements, prior to the issuance of a permit.
- (h) Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- (i) Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
- (j) During the term of the permit, the Operator or Production Representative shall report, in a timely manner, to the City any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- (k) Upon request, certified copies of all insurance policies shall be furnished to the City.

- (l) Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy or failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Article.

- (m) Operator or Production Representative shall pay promptly all premiums for such insurance in strict accordance with its obligations to its carrier and maintain the required coverage in full effect so long as the permit is valid.

- (n) Failure to keep such policies in full force and effect, in accordance with the terms hereof, shall be unlawful.

- (o) Certificates of insurance.
 - (1) 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.

 - (2) 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.

 - (3) Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.

 - (4) 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.

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

- (p) *Notice.* The individual designated to receive notice shall be a resident 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 or Production Representative shall within ten (10) days notify the City in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Section 42-284. Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution (with discovery and reporting periods of not less than fifteen (15) days and thirty (30) days respectively), blanket contractual liability, underground

resources damage, broad form property damage, independent contractors protective liability and personal injury. This coverage shall be a minimum as established by the City fee resolution.

Section 42-285. Excess or Umbrella Liability.

Insurance limits in a minimum as established by the City fee resolution. Coverage is to be at least as broad as, applies of and follows form of the primary liability coverage required for commercial general liability, auto liability and employer's liability. Coverage must include an endorsement for sudden or accidental pollution.

Section 42-286. Environmental pollution liability coverage.

- (a) Operator or Production Representative shall purchase and maintain in force for the duration of the 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 as established by the City fee resolution.
- (b) Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
- (c) The Operator or Production Representative shall maintain continuous coverage or purchase Extended Period Coverage Insurance for four years following expiration or suspension of the permit.
- (d) 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.

Section 42-287. Control of well coverage.

The policy should cover the cost of restoration expenses, seepage and pollution damage as first party recovery for the Operator or Production Representative and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents in the amount as established by the City fee resolution. A minimum amount as established by the City fee resolution for sub-limit endorsement may be added for damage to property for which the Operator or Production Representative has care, custody, and control.

Section 42-288. Workers compensation and employers liability insurance.

- (a) Workers Compensation benefits shall be Texas Statutory Limits.
- (b) Employers Liability shall be a minimum in an amount as set by the City fee resolution.

- (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.

Section 42-289. Automobile Liability Insurance.

- (a) Combined Single Limit in an amount set by the City fee resolution.
- (b) Coverage must include all owned, hired and not-owned automobiles.
- (c) The City shall be named as an additional insured on the policy and provided with a waiver of subrogation.

Section 42-290. Reserved.

DIVISION 8: PENALTIES, APPEALS AND VARIANCES

The following regulations apply to all production and well plugging and abandonment permits unless a particular permit is denoted.

Section 42-291. 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 permit issued under this Chapter; or
 - (2) Fail to comply with any condition set forth in a permit issued under this Chapter.
- (b) It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to conduct any activity related to the production of oil or gas on private or public property without first obtaining a permit issued by the City in accordance with this Ordinance.
- (c) A person who violates any provision of this Chapter by performing an act prohibited or by failing to perform an act required is guilty of a misdemeanor; each day the violation continues shall be a separate offense. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed the amount established by the City fee resolution. Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed the amount established by the City fee resolution.

Section 42-292. Appeals.

- (a) An appeal shall be in writing and shall be filed with the Oil and Gas Compliance Officer. The grounds for appeal must be set forth specifically, and the error described, by the appellant.
- (b) The Zoning Board of Adjustments 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 permit, or the revocation or suspension of any permit issued hereunder as provided by this Ordinance.
- (c) The appeal shall be submitted and processed in accordance with the Zoning Board of Adjustments Policies and Procedures.

Section 42-293. Variances.

When an applicant demonstrates to the City Council that a provision of the regulations in this Chapter would cause unnecessary hardship if strictly adhered to and without destroying the spirit of the regulations or in any way compromising safety, the City Council may authorize a variance.

Section 42-294. – 42-300. Reserved.