

ORDINANCE NO. 8591

AN ORDINANCE AMENDING THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, BY THE ADDITION OF CHAPTER 64 RELATING TO THE REGULATION, DRILLING, AND PRODUCTION OF GAS WELLS WITHIN THE CITY; PROVIDING FOR THE ISSUANCE OF PERMITS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING A GOVERNMENTAL PURPOSE CLAUSE.

WHEREAS, there has been increased interest in gas drilling and production within the City of Irving; and

WHEREAS, the City Council recognizes that commercial gas deposits underlie areas of the City; and

WHEREAS, there is a need to allow for the development of this natural resource in a manner that protects the health, safety, and welfare of the public; and

WHEREAS, the City Council deems it necessary to enact comprehensive regulations for the drilling and production of gas within the city limits;

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

SECTION 1. That The Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended by adding Chapter 64 to read as follows:

Chapter 64

GAS DRILLING AND PRODUCTION

ARTICLE I. PURPOSE

Sec. 64-1. Purpose.

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

ARTICLE II. DEFINITIONS

Sec. 64-2. Definitions.

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

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

Amended permit means the permit required every time a change is made to or effects the original site-plan.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (one-hundred-year flood level).

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."

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

City means the City of Irving.

City attorney means the city attorney of the City of Irving or the city attorney's designee.

City code means The Code of Civil and Criminal Ordinances of the City of Irving, Texas.

Commission means the Texas Railroad Commission.

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

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

Director of water utilities means the director of water utilities for the City of Irving or such director's designee.

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.

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

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

Fire department means the fire department of the City of Irving.

Floodplain means the land within a community subject to a 1% or greater chance of flooding in any given year (one-hundred year flood level).

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

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

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

High impact permit means a permit required if the proposed well is to be located within six hundred (600) feet of a residence, religious institution, public building, hospital building, school, or public park.

Inspector means the gas inspector designated by the city manager of Irving.

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

Operator means, for each well, the person listed on the Texas 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 article, 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 article, the owner of the fee mineral estate in the premises shall be deemed an operator.

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

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

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

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

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

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

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

Right-of-way 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.

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 Irving that provides care, training, education, custody, treatment, or supervision for more than six (6) children under fourteen (14) years of age, and for less than twenty-four (24) hours per day.

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

Supplemental permit means the City authorization required whenever drilling, re-drilling, deepening, re-entering, activating, or converting an existing gas well requires the return and re-employing of a drilling rig on site.

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.

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

Urban gas well permit means a gas well permit other than a high impact gas well permit.

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

ARTICLE III. GAS INSPECTOR

Sec. 64-3. Gas inspector.

(a) The city manager shall designate a gas inspector who shall enforce the provisions of this chapter. The gas inspector shall have the authority to issue any orders or directives required to carry out the intent and purpose of this chapter and its particular provisions. Failure of any person to comply with any such order or directive shall constitute a violation of this chapter.

(b) The gas inspector shall have the authority to enter and inspect any premises covered by the provisions of this chapter to determine compliance with the provisions of this chapter and all applicable laws, rules, regulations, standards, or directives of the state. Failure of any person to permit access to the gas inspector shall constitute a violation of this chapter. The gas inspector shall conduct periodic inspections at least once a year of all permitted wells in the city to determine that the wells are operating in accordance within proper safety parameters as set out in this chapter and all regulations of the commission.

(c) The gas inspector shall have the authority to request and receive any records, including any records sent to the commission, logs, reports and the like, relating to the status or condition of any permitted well 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 chapter.

ARTICLE IV. AGENT

Sec. 64-4. 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 chapter 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.

ARTICLE V. GAS WELL PERMITS

Sec. 64-5. Gas well permit required.

(a) A person wanting to engage in and operate in gas production activities shall apply for and obtain a gas well permit under this chapter and shall indicate what type of gas well permit is requested. 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, reworking, 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 article. Such activities include, but are not limited to, reworking, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing, and pressurizing. A permit shall not be required for seismic surveys.

(b) Operator must apply for and obtain a gas well permit for the drilling, re-drilling, deepening, re-entering, activating, or converting of each well.

(c) 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 article if the operator is re-entering and drilling an abandoned well.

(d) 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.

(e) Any person who intends to re-work a permitted well using a drilling rig, to fracture stimulate a permitted well after initial completion or to conduct seismic surveys or other exploration activities shall give written notice to the gas inspector no less than ten (10) days before the activities begin. The notice must identify where the activities will be conducted and must describe the activities in detail, including whether explosive charges will be used, the duration of the activities, and the time the activities will be conducted. The notice must also provide the address and twenty-four-hour phone number of the person conducting the activities. If requested by the gas inspector, the person conducting the activities will post a sign on the property giving the public notice of the activities, including the name, address, and twenty-four-hour phone number of the person conducting the activities. If the gas inspector determines that an inspection by the gas inspector is necessary, the operator will pay the city for the inspection. The following requirements shall apply to all fracture stimulation operations performed on a well within six hundred (600) feet of an occupied residence: 1) at least forty-eight (48) hours before operations are commenced, the operator shall post a sign at the entrance of the well site advising the public of the date the operations will commence; 2) "flowback" operations to recover fluids used during fracture stimulation shall be performed during daylight hours only unless the gas inspector approves such operations during non-daylight hours; 3) a watchman shall be required

at all times during such operations; and 4) at no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank.

(f) A gas well permit shall automatically terminate, unless extended, if drilling is not commenced within one hundred eighty (180) days from the date of the issuance of the gas well permit. A gas well permit may be extended by the gas inspector for an additional one hundred eighty (180) days upon request by the operator and proof that the classification of the requested gas well permit for such location has not changed.

(g) The gas well permits required by this article are in addition to and are not in lieu of any permit which may be required by any other provision of this code or by any other governmental agency, provided that fences and tanks shown on the permit shall not require additional permits or additional fees.

(h) No additional gas well permit or filing fees shall be required for:

- (1) Any wells, existing, previously permitted, or approved by the city, within the corporate limits of the city on the effective date of this chapter; or
- (2) Any wells which drilling has commenced on the effective date of this chapter; or
- (3) Any wells in existence or on any wells on which drilling has commenced on land annexed into the city after the effective date of this chapter; or
- (4) Any well that was planned for the land before the 90th day before the effective date of its annexation and one (1) or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for such well and the completed application for the initial authorization was filed before the date the annexation proceedings were instituted.

A person shall have forty-five (45) days after the enactment of this chapter or annexation into the city to designate a gas operation as a preexisting operation by filing a site plan drawn to scale that shows the proposed location of the well with respect to survey lines and the proposed associated production facilities, if any, with the gas inspector.

(i) No gas well permit shall be issued for any well to be drilled within any public park without the prior consent of the city council. The city council shall review the insurance and security requirements on an individual basis prior to issuing the permit.

(j) No gas well permit shall be issued for any well to be drilled within any floodway or floodplain without the prior consent of the director of public works and transportation, pursuant to Chapter 47 of the Irving City Code. The director of public works and transportation shall review the floodplain and floodway requirements on an individual basis prior to the issuance of a permit.

(k) No gas well permit shall be issued for any well to be drilled on city-owned property without the prior consent of the city council. The city council shall review the insurance and security requirements on an individual basis prior to issuing the permit.

(l) By acceptance of any gas well permit issued pursuant to this article, the operator expressly stipulates and agrees to be bound by and comply with the provisions of this chapter.

The terms of this chapter shall be deemed to be incorporated in any gas well permit issued pursuant to this chapter with the same force and effect as if this chapter was set forth verbatim in such gas well permit.

Sec. 64-6. Gas well permit application and filing fees.

(a) Every application for a gas well permit issued pursuant to this article shall be in writing signed by the operator, or some person duly authorized to sign on his behalf, and filed with the gas inspector.

(b) Every application shall be accompanied by a permit fee as listed in section 64-19 "Gas well fees." Any amendment, extension, or supplement to the permit and any change in operator(s) shall be required to pay an additional fee as outlined in section 64-19. The operator shall be required to pay an annual inspection fee per well on or before the anniversary date of the issuance of the original gas well permit for that particular well as outlined in section 64-19.

(c) The application shall include the following information:

- (1) The date of the application and type of gas well permit requested.
- (2) 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 recorded by plat should reference subdivision, block, and lot numbers.
- (3) Map showing proposed transportation route and road for equipment, chemicals, or waste products used or produced by the gas operation.
- (4) Proposed well name.
- (5) Surface owner names(s) and address(es) of the lease property.
- (6) Mineral lessee name and address.
- (7) Operator/applicant name and address and 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.
- (8) Name and address of individual designated to receive notice.

- (9) Name of representative with supervisory authority over all gas operation site activities and a twenty-four-hour phone number.
- (10) Location and description of all improvements and structures within one thousand feet (1,000) feet of the well.
- (11) Owner and address of each parcel of property within one thousand (1,000) feet of the proposed drill site.
- (12) A survey map prepared by a licensed surveyor or registered engineer and drawn to scale, of the proposed operation site showing the following information:
 - a. Date, scale, north point, name of owner, and name of person preparing the site plan.
 - b. Location of existing boundary lines and dimensions of the tract.
 - c. Approximate location of all improvements and equipment, including the location of the proposed well(s) and other facilities, including, but not limited to, tanks, pipelines, compressors, separators, and storage sheds.
 - d. Designate the existing zoning of the site, and the existing flood zone as determined from the most recent Flood Insurance Rate Maps.
 - e. Clear designation of areas reserved for off-street parking and for off-street loading; type of surface material.
 - f. Location and size of points of ingress and egress to public streets.
 - g. Dimension from property line to centerline of existing watercourses, and drainage features.
 - h. Location and size of existing and proposed streets and alleys with location of all street intersections adjacent to the area of request indicated by dimension and bearing from a corner of the property.
 - i. Location, type, and height of existing and proposed fences or screening walls.
 - j. Landscaping plan shall be required where such treatment is essential to proper arrangement of development. Requirement of a landscape plan will be determined when the survey map is reviewed by the gas inspector, at which time the details of the plan will be determined. The city council may require the landscaping plan in a case which comes to the council.
 - k. Location and type of signs, lighting, luminaries, and exterior auditory speakers will be indicated on survey map when they are at variance to city standards.
 - l. Area map indicating the neighborhood in which the property is located.

- m. Location, type, and size of all easements shall be indicated on the site plan, along with the volume and page number where the easement is recorded with Dallas County Deed Records.
 - n. Tree survey showing all trees six (6) inches in caliper or larger on the site.
 - o. Electricity usage plan showing the equipment to be powered by electricity, the amount of electricity needed, the sources of the electric power (whether generated on site or purchased from a retail electric provider), as well as the approximate location of the lines, poles, generators, generator fuel tanks transformers, fuse boxes, and other apparatus necessary to utilize electric power.
 - p. Limits of the 100 year flood plain as shown on the most recent Flood Insurance Rate Map published by FEMA, and the existing and base flood elevations at the location of any proposed improvement including, but not limited to, the well head
- (13) The name, address, and twenty-four-hour phone number of the person to be notified in case of an emergency.
 - (14) The exact and correct acreage, included in the gas well permit application.
 - (15) Copies of all reports required by the commission.
 - (16) A signed road maintenance agreement supplied by the city that provides that the operator shall repair, at his own expense, any damage to roads, streets, or highways caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, and operation of gas wells.
 - (17) A description of public utilities required during drilling and operation.
 - (18) A description of the water source to be used during drilling. Use of city water service may be interrupted where the director of water utilities determines that the system would require such interruption to maintain service to other customers or in the event of a period of general water restrictions.
 - (19) A copy of the approved commission permit to drill together with attachments and survey plats which are applicable to the drill and operation sites.
 - (20) A copy of the stormwater pollution prevention plan as required by the Texas Commission on Environmental Quality. A copy of the notice of intent shall be submitted to the City of Irving, Public Works and Transportation Department, Engineering Division, three (3) days prior to the commencement of any onsite activity.
 - (21) A copy of the determination by the Texas Commission on Environmental Quality of the depth of useable quality ground water.
 - (22) Evidence of insurance and security requirements under this chapter.

- (23) 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.
- (24) All required application and gas well permit fees.
- (25) An Emergency Action Response Plan which includes “drive-to-maps” from public rights of way as well as turn arounds and staging areas for emergency equipment. The Emergency Action Response Plan shall also include all equipment required by Federal, state or local law, which may include, but not limited to, fire hydrants or other equipment determined to be necessary at the site by the fire marshal. The Emergency Action Response Plan must be approved by the fire marshal prior to approval of a gas well permit.

Sec. 64-7. Gas well permit classifications.

Sec. 64-7.1. High impact gas well permit.

(a) *Generally.* High impact gas well permit shall be required if the proposed well is to be located within six hundred (600) feet of residence, religious institution, public building, hospital building, school, or public park. This provision applies to any residence, religious institution, public building, hospital building, school, or public park which a building permit has been issued on the date the application for a permit is filed with the gas inspector.

For the purpose of a high impact gas well permit the measurement of the six hundred (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 to the property line of a park.

(b) *Application requirements.* An application for a high impact gas well permit shall include the following information:

- (1) All the requirements of section 64-6 of this article;
 - (2) A detailed site plan that includes all the information required in section 64-6, but also includes specific details to the projected location of the major components of the drilling site, impacted vegetation, creeks, and other topographic features, adjacent building and other structures, and the measured distance from the well site to these buildings and structures, temporary and permanent fencing and landscaping.
- (c) *Permitting procedure.*
- (1) Within forty-five (45) days of receipt of a complete application, the gas inspector shall place the matter on the city council agenda for a public hearing and give notice by mail of the 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 period shall not begin to run until the applicant/operator has provided the gas inspector with a complete application package.

- (2) At least twenty (20) days, and no more than thirty (30) days prior to the date of the public hearing before the city council for a high impact gas well permit under this article, operator shall notify, at operator's expense, each surface owner of property, as shown by the current tax roll, within six hundred (600) feet of the proposed well not owned by or under lease to the operator and the hearing date and time. Such notice, as outlined below, shall be by depositing the same, properly addressed and postage paid, in the United States mail. The operator shall file an affidavit with the gas inspector showing the name and last known address, as identified by the current tax roll, of each owner of property to whom notice was mailed and the names of each owner of property to whom notice is required to be given, but whose address is unknown. Notice shall be sent to all registered neighborhood associations within one-half (1/2) mile of the proposed drill site.
- (3) At least fifteen (15) days, and no more than twenty (20) days prior to the date of the public hearing before city council for a high impact gas well permit under this article, operator shall publish a copy of the notice as outlined below, at operator's expense, in one (1) issue of a daily newspaper of the city for ten (10) consecutive days. 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. The notice shall read as follows:

"Notice is hereby given that, acting under and pursuant to the ordinances of the City of Irving, Texas, on the ____ day of _____, 20____, _____ filed with the gas inspector of the City of Irving, an application for a high impact gas well permit to drill, complete, and operate a well for gas upon property located at _____, Irving, Dallas County, Texas, more particularly shown on the map of record in Volume _____, Page _____, Plat Records of _____ County, Texas, or per Tax Tract Number _____, _____ County, Texas. The City Council will conduct a public hearing on the request for said permit on the ____ day of _____, 20____ at ____ o'clock ____m. in the City Council Chambers located at 825 West Irving Boulevard, Irving, Texas."

- (4) At least twenty (20) days prior to the date of the public hearing before city council for a high impact gas well permit under this article the operator shall, at operator's expense, erect at least one (1) sign, no less than three (3) feet by three (3) feet, upon the premises upon which a high impact 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 a point or points nearest any right-of-way, street, roadway, or public thoroughfare adjacent to such property.
 - a. The sign(s) shall substantially indicate that a high impact gas well permit to drill for gas has been requested and state the date, time, and place of the public hearing, and shall further set forth that additional information can be acquired by telephoning the applicant/operator at the number indicated on the sign.
 - 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 article.

- c. Any sign(s) shall be removed subsequent to final action by the city council.
- (5) All notice provisions contained herein shall be deemed sufficient upon substantial compliance with this section.
 - (6) After a high impact permit application is submitted, the gas inspector shall evaluate the public impact of the proposed activity. The gas inspector shall consider the proposed site and the proposed operations or drilling program and shall draft recommended restrictions or conditions, including minimum separation distance for drilling or other operations, special safety equipment and procedures, recommended noise reduction levels, screening, and any other requirements the gas inspector deems appropriate. The recommendation shall be submitted to the city council for consideration prior to the public hearing.
 - (7) At the public hearing and before the city council considers the merits of the application and the recommendations of the gas inspector, the applicant/operator shall provide evidence of a certificate of publication establishing timely publication of the notice of the hearing, that timely actual notice of the hearing was given to all persons as required by this article and that the applicant/operator has otherwise complied with or satisfied all other requirements of this article, including full and complete compliance with the insurance and security requirements.
 - (8) The burden of proof on all matters considered in the hearing shall be upon the applicant/operator.
 - (9) 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 high impact gas well permit:
 - a. 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;
 - b. Whether the drilling of such wells would conflict with the orderly growth and development of the city;
 - c. Whether there are other alternative well site locations;
 - d. Whether the operations proposed are consistent with the health, safety, and welfare of the public when and if conducted in accordance with the high impact gas well permit conditions to be imposed;
 - e. Whether there is adequate access for the city fire personnel and fire fighting equipment; and
 - f. 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:

1. The right of the owners(s) of the mineral estate to explore, develop, and produce the minerals; and
 2. The availability of alternative drill sites.
- g. The recommendations of the gas inspector.
- (10) The city council may require an increase in the distance the well is setback from any residence, religious institution, public building, hospital building, school, or public park. or require any change in operation, plan, design, layout, or any change in the onsite and technical regulations in section 64-12 of this chapter, including fencing, screening, lighting, delivery times, noise levels, tank height, or any other matters reasonably required by public interest.
- (11) The city council may accept, reject or modify the application in the interest of securing compliance with this chapter, the city code, and/or to protect the health, safety, and welfare of the community.

(d) *Well setbacks for high impact gas well permit.* It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located within three hundred (300) feet from any public park (unless prior consent is obtained from the city council to drill in a public park pursuant to section 64-5(i)) or from any residence, religious institution, public building, hospital building, or school for which a building permit has been issued on the date of the application for a drilling permit is filed with the gas inspector. The distance shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

This setback distance may be reduced by the city council to less than three hundred (300) feet from residence, religious institution, public building, hospital building, school, or public park only when there is the unanimous consent of the property owners within a three hundred (300) foot radius around said well and the affirmative vote of not less than three-fourths (3/4) of all the members of the city council. For protection of the public health, safety, and welfare, the city council may impose additional requirements for a reduction of such distance.

Tank batteries, well facilities, and equipment shall be located at least one hundred (100) feet from any public park (unless prior consent is obtained from the city council to drill in a public park pursuant to section 64-5(i)) or from any residence, religious institution, public building, hospital building, or school for which a building permit has been issued on the date of the application for a drilling permit is filed. The distance shall be calculated from the closest tank batteries, well facilities, and/or equipment, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

(e) *Fencing for high impact gas well permit.*

- (1) A coated chain link fence colored green, black, or brown, a minimum of eight (8) feet in height shall enclose all completed wells and tanks located within a high impact gas well permit area. The city council may require screening with a masonry wall or other type of screening depending on the visual impact of the location proposed.
- (2) Gates requirements and other fencing requirements as outlined in section 64-13 of this chapter shall also be required.

(f) *Landscaping.* Landscaping and irrigation shall be required along all street frontages of the well site with suitable screening shrubs that complement the architectural character of the surrounding neighborhood. Screening shrubs shall be installed completely around the well site and all fences and be sufficient to screen from view the structures sought to be screened. Screening shrubs shall be a minimum of three (3) feet in height at planting, have the potential to grow to a mature height of a minimum of six (6) feet and must have an installed irrigation system that provides total water coverage to all plant materials. The vegetation or berms shall be kept in an attractive state and in good condition at all times by the applicant or operator. All landscape and irrigation plans shall be submitted to the gas inspector for approval.

(g) *Vehicle routes for high impact gas well permit.* Vehicles associated with drilling and/or production in excess of three (3) tons shall be restricted to such streets designated as either truck routes or commercial delivery routes by the city code wherever capable of being used. 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 council for the use by any commercial motor vehicle, truck-tractor, trailer, semi-trailer, or any combination thereof.

(h) *Work hours for high impact gas well permit.* Site development, other than drilling, shall be conducted only between 6:00 a.m. and 9:00 p.m. on weekdays, and from 7:00 a.m. to 8:00 p.m. on weekends. 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 between the hours of 6:00 a.m. to 9:00 p.m. on weekdays, and from 7:00 a.m. to 8:00 p.m. on weekends 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.

(i) *Noise restrictions for high impact gas well permit.*

- (1) No drilling, producing, or other operations shall produce a sound level greater than seventy-eight (78) dB(a) when measured at a distance of three hundred (300) feet from the production equipment in question. The noise level shall be the average of sound level meter readings taken consecutively at any given time from four (4) or more diametrically opposite positions, four (4) feet above ground level, when measured at a distance of three hundred (300) feet from the production equipment. A maximum sound level of eighty-five (85) dB(a) shall apply to formation fracturing when measured at a distance of three hundred (300) feet from the production equipment in question.

- (2) No person shall operate or permit to be operated in connection with the operation of a producing well any engine, compressor, or motor-driven machinery of any type which creates a sound level greater than sixty-five (65) dB(a) when measured at a distance of three hundred (300) feet from the well site. The noise level shall be the average of sound level meter readings taken consecutively at any given time from four (4) or more diametrically opposite positions measured at a distance of three hundred (300) feet from the well site.
- (3) Sound level measurements shall be made with a sound level meter conforming as a minimum, to the requirements of the American National Standards Institute.
- (4) If sound levels exceed the dB(a) levels cited in (1) and (2) of this subsection, the gas inspector may require sound reducing mufflers.

(j) *Tank specifications for high impact gas well permit.* All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications unless other specifications are approved by the fire chief. The top of the tanks shall be no higher than eight (8) feet above the terrain surrounding the tanks. All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association, but in all cases, shall be at least twenty-five (25) feet from any public right-of-way or property line.

(k) *Fluid disposal for high impact gas well permit.* Fluids, including but not limited to, return flows from well fracturing operations, shall not be stored in open pits on site, but shall be immediately trucked away from the site and disposed in a closed loop system in accordance with the requirements of the law relating to the fluid and the materials within the fluid. If the fluids meet the requirements for discharge into the sanitary sewer system, and the director of water utilities approves with due consideration to the abilities of the system to handle such discharges and the ability to monitor such discharges, appropriate fluids may be disposed in the sanitary sewer system.

(l) *Water for high impact gas well permit.* Operator shall purchase water to be used at the site from the city unless such purchase is waived by the director of water utilities, such waiver being based on due consideration of the needs of other system users, the time of the year, and whether water use restrictions are in place or reasonably imminent.

(m) All other provisions outlined in this chapter shall be required.

Sec. 64-7.2. Urban gas well permit.

(a) *Generally.* An urban gas well permit shall be required for all wells not included within the definition of a high impact gas well permit.

(b) *Permitting procedure.*

- (1) Within forty-five (45) days of receipt of a complete application, the gas inspector shall place the matter on the city council agenda for a public hearing and give notice by mail of the 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 period shall not begin to run until the applicant/operator has provided the gas inspector with a complete application package.
- (2) At least twenty (20) days, and no more than thirty (30) days prior to the date of the public hearing before the city council for an urban gas well permit under this article, operator shall notify, at operator's expense, each surface owner of property, as shown by the current tax roll, within six hundred (600) feet of the proposed well not owned by or under lease to the operator and the hearing date and time. Such notice, as outlined below, shall be by depositing the same, properly addressed and postage paid, in the United States mail. The operator shall file an affidavit with the gas inspector showing the name and last known address, as identified by the current tax roll, of each owner of property to whom notice was mailed and the names of each owner of property to whom notice is required to be given, but whose address is unknown. Notice shall be sent to all registered neighborhood associations within one-half (1/2) mile of the proposed drill site.
- (3) At least fifteen (15) days, and no more than twenty (20) days prior to the date of the public hearing before city council for an urban gas well permit under this article, operator shall publish a copy of the notice as outlined below, at operator's expense, in one (1) issue of a daily newspaper of the city for ten (10) consecutive days. 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. The notice shall read as follows:

"Notice is hereby given that, acting under and pursuant to the ordinances of the City of Irving, Texas, on the ____ day of _____, 20____, _____ filed with the gas inspector of the City of Irving, an application for an urban gas well permit to drill, complete, and operate a well for gas upon property located at _____, Irving, Dallas County, Texas, more particularly shown on the map of record in Volume _____, Page _____, Plat Records of _____ County, Texas, or per Tax Tract Number _____, _____ County, Texas. The City Council will conduct a public hearing on the request for said permit on the ____ day of _____, 20____ at ____ o'clock ____m. in the City Council Chambers located at 825 West Irving Boulevard, Irving, Texas."

- (4) At least twenty (20) days prior to the date of the public hearing before city council for an urban gas well permit under this article the operator shall, at operator's expense, erect at least one (1) sign, no less than three (3) feet by three (3) feet, upon the premises upon which an urban 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 a point or points nearest any right-of-way, street, roadway, or public thoroughfare adjacent to such property.

- a. The sign(s) shall substantially indicate that an urban gas well permit to drill for gas has been requested and state the date, time, and place of the public hearing, and shall further set forth that additional information can be acquired by telephoning the applicant/operator at the number indicated on the sign.
 - 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 article.
 - c. Any sign(s) shall be removed subsequent to final action by the city council.
- (5) All notice provisions contained herein shall be deemed sufficient upon substantial compliance with this section.
- (6) After an urban permit application is submitted, the gas inspector shall evaluate the public impact of the proposed activity. The gas inspector shall consider the proposed site and the proposed operations or drilling program and shall draft recommended restrictions or conditions, including minimum separation distance for drilling or other operations, special safety equipment and procedures, recommended noise reduction levels, screening, and any other requirements the gas inspector deems appropriate. The recommendation shall be submitted to the city council for consideration prior to the public hearing.
- (7) At the public hearing and before the city council considers the merits of the application and the recommendations of the gas inspector, the applicant/operator shall provide evidence of a certificate of publication establishing timely publication of the notice of the hearing, that timely actual notice of the hearing was given to all persons as required by this article and that the applicant/operator has otherwise complied with or satisfied all other requirements of this article, including full and complete compliance with the insurance and security requirements.
- (8) The burden of proof on all matters considered in the hearing shall be upon the applicant/operator.
- (9) The city council shall review the application and any other related information. The city council shall consider the following in deciding whether to grant an urban gas well permit:
 - a. 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;
 - b. Whether the drilling of such wells would conflict with the orderly growth and development of the city;
 - c. Whether there are other alternative well site locations;

- d. Whether the operations proposed are consistent with the health, safety, and welfare of the public when and if conducted in accordance with the high impact gas well permit conditions to be imposed;
 - e. Whether there is adequate access for the city fire personnel and fire fighting equipment; and
 - f. 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:
 - 1. The right of the owners(s) of the mineral estate to explore, develop, and produce the minerals; and
 - 2. The availability of alternative drill sites.
 - g. The recommendations of the gas inspector.
- (10) The city council may require an increase in the distance the well is setback from any residence, religious institution, public building, hospital building, school, or public park. or require any change in operation, plan, design, layout, or any change in the onsite and technical regulations in section 64-12 of this chapter, including fencing, screening, lighting, delivery times, noise levels, tank height, or any other matters reasonably required by public interest.
- (11) The city council may accept, reject or modify the application in the interest of securing compliance with this chapter, the city code, and/or to protect the health, safety, and welfare of the community.
- (c) *Fencing for urban gas well permit.*
- (1) A chain link fence, a minimum of eight (8) feet in height with three and one-half (3-1/2) inch mesh shall enclose all completed wells and tanks located within an urban gas well permit area. The city council may require screening with a masonry wall or other type of screening depending on the visual impact of the location proposed.
 - (2) Gate and fencing requirements as outlined in section 64-13 of this chapter shall also be required.
- (d) *Vehicle routes for urban area gas well permit.* Vehicles associated with drilling and/or production rated in excess of three (3) tons shall be restricted to such streets designated as either truck routes or commercial delivery routes by the director of public works and transportation wherever capable of being used. 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 director of public works and transportation for the use by any commercial motor vehicle, truck-tractor, trailer, semi-trailer, or any combination thereof.

(e) *Noise restrictions for urban gas well permit.*

- (1) No drilling, producing, or other operations shall produce a sound level greater than eighty-five (85) dB(a) when measured at a distance of three hundred (300) feet from the production equipment in question. The noise level shall be the average of sound level meter readings taken consecutively at any given time from four (4) or more diametrically opposite positions, four (4) feet above ground level, measured at a distance of three hundred (300) feet from the production equipment. A maximum sound level of ninety (90) dB(a) shall apply to formation fracturing when measured at a distance of three hundred (300) feet from the production equipment in question.
- (2) No person shall operate or permit to be operated in connection with the operation of a producing well any engine, compressor or motor-driven machinery of any type which creates a sound level greater than seventy-eight (78) dB(a) when measured at a distance of three hundred (300) feet from the well site. The noise level shall be the average of sound level meter readings taken consecutively at any given time from four (4) or more diametrically opposite positions measured at a distance of three hundred (300) feet from the well site.
- (3) Sound level measurements shall be made with a sound level meter conforming, as a minimum, to the requirements of the American National Standards Institute.
- (4) If sound levels exceed the dB(a) levels cited in (1) and (2) of this subsection, the gas inspector may require sound reducing mufflers.

(f) *Tank specifications for urban gas well permit.* All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications unless other specifications are approved by the fire chief. The top of the tanks shall be no higher than twelve (12) feet above the terrain surrounding the tanks. All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association, but in all cases, shall be at least twenty-five (25) feet from any public right-of-way or property line.

(g) *Work hours for urban gas well permit.* Site development, other than drilling, shall be conducted only between 6:00 a.m. and 9:00 p.m. on weekdays, and from 7:00 a.m. to 8:00 p.m. on weekends. 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 between the hours of 6:00 a.m. to 9:00 p.m. on weekdays, and from 7:00 a.m. to 8:00 p.m. on weekends 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.

- (h) All other provisions outlined in this chapter shall be required.

Sec. 64-8. Issuance of gas well permits.

(a) It is the responsibility of the gas inspector to review and make recommendation on all applications for gas well drilling permits based on the criteria established by this article. The gas inspector, within thirty (30) days after the filing of a completed application and remittance of all fees, insurance, and security per the requirements of this article for a gas well permit, shall determine whether or not the application complies in all respects with the provisions of this article and determine if the proposed well to be drilled or the facility to be installed is in compliance with the distance requirements for the requested gas well permit on the date the completed application is received by the gas inspector.

(b) The provisions of this chapter shall apply to any dwellings or buildings for which an application for a building permit has been submitted on the date the application for a gas well permit is filed with the gas inspector.

(c) If all the requirements of this article are met and the city council approves, the gas inspector shall issue a gas well permit for the drilling of the well or the installation of the facilities applied for.

(d) If the gas inspector determines that all of the provisions of this article have been complied with by the operator but that the proposed drill site does not comply with the distance requirements of this article under the requested urban gas well permit, the gas inspector shall notify the operator. The operator may revise the permit to comply with an urban gas well permit or the gas inspector shall notify the city manager and the city manager shall place the request for a gas well permit under this article on the city council agenda for public hearing within the next forty-five (45) days.

(e) All notice provisions contained herein shall be deemed sufficient upon substantial compliance with this section.

(f) Following the public hearing, the city council may grant such gas well permit upon such terms and conditions as it determines to be necessary to protect the public health and safety. The city council may require changes in the operations, plan, design, layout, fencing, screening, lighting, or other matters reasonably required in the interest of the public.

(g) In making its decision, the city council shall have the power and authority to refuse any gas well permit to drill any well at any particular location within the city, when by reason of such particular location and other characteristics, the drilling of such wells at such particular location would be injurious to the health, safety, or welfare of the inhabitants in the immediate area of the city.

(h) If the operator elects not to accept the gas well permit under the terms and conditions imposed by the city council and wishes to withdraw his application, the operator must notify the gas inspector in writing of his decision.

Sec. 64-9. Amended gas well permits.

(a) An operator may submit an application to the gas inspector to amend an existing gas well permit to relocate a drill site or operation site that is shown on (or incorporated by reference as part of) the existing gas well permit, or to otherwise amend the existing gas well permit.

(b) Applications for amended gas well permits shall be in writing, shall be signed by the operator, and shall include the following:

- (1) The application fee as set by city ordinance;
- (2) A description of the proposed amendments;
- (3) Any changes to the information submitted with the application for the existing gas well permit (if such information has not previously been provided to the city);
- (4) Such additional information as is reasonably required by the gas inspector to demonstrate compliance with the applicable gas well permit; and
- (5) Such additional information as is reasonably required by the gas inspector to prevent imminent destruction of property or injury to persons.

(c) All applications for amended gas well permits shall be filed with the gas inspector for review. Incomplete applications may be returned to the applicant, in which case the city shall provide a written explanation of the deficiencies; however, the city shall retain the application fee. The city may return any application as incomplete if there is a dispute pending before the commission regarding the determination of the operator.

(d) If the activities proposed by the amendment are not materially different from the activities covered by the existing gas well permit, and if the proposed activities are in conformance with the applicable gas well permit, then the gas inspector shall approve the amendment within thirty (30) days after the application is filed. If, however, the activities proposed by the amendment are materially different and, in the judgment of the gas inspector, might create a risk of imminent destruction of property or injury to persons that was not associated with the activities covered by the existing gas well permit or that was not otherwise taken into consideration by the existing gas well permit, the gas inspector may require the amendment to be processed as a new gas well permit application.

(e) The failure of the gas inspector to review and issue an amended gas well permit within the time limits specified above shall not cause the application for the amended gas well permit to be deemed approved.

(f) The decision of the gas inspector to deny an amendment to a gas well permit shall be provided to the operator in writing within ten (10) days after the decision, including an explanation of the basis for the decision. the operator may appeal any such denial to the city council.

Sec. 64-10. Suspension or revocation of gas well permit; effect.

(a) If an operator (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of a gas well permit (including any requirement incorporated by reference as part of the gas well permit), the gas inspector shall give written notice to the operator specifying the nature of the failure and giving the operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community. 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, unless there is a failure to immediately clean contamination, or unless the failure involves the operator's failure to provide periodic reports as required by this article.

(b) If the operator fails to correct the noncompliance within thirty (30) days from the date of the notice, or within the reasonable time specified by the gas inspector to prevent imminent destruction of property or injury to persons, clean contamination or failure to provide periodic reports, the gas inspector may suspend or revoke the gas well permit pursuant to the provisions of this chapter.

(c) No person shall carry on any operations performed under the terms of the gas well permit issued under this article during any period of any gas well permit suspension or revocation or pending a review of the decision or order of the city in suspending or revoking the gas well permit. Nothing contained herein shall be construed to prevent the necessary, diligent, and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the gas well permit was ordered for the safety of persons or as required by the commission.

(d) If the operator does not cure the noncompliance within the time specified in this chapter, the gas inspector, upon written notice to the operator, may notify the commission and request that the commission take any appropriate action.

(e) Operator may, within thirty (30) days of the date of the decision of the gas inspector in writing to suspend or revoke a gas well permit, file an appeal to the city council under the provisions outlined in this article pursuant to section 64-17, "Appeals" of this chapter.

(f) If an application for a gas well permit is denied by the gas inspector, nothing herein contained shall prevent a new permit application from being submitted to the gas inspector for the same well.

Sec. 64-11. Periodic reports.

(a) The operator shall notify the gas inspector of any changes to the following information within one (1) business week after the change occurs:

- (1) The name, address, and phone number of the operator;

- (2) The name, address, and phone number of the person designated to receive notices from the city (which person must be a resident of Texas that can be served in person or by registered or certified mail); and
- (3) The operator's emergency action response plan (including "drive-to-maps" from public rights-of-way to each drill site).

(b) The operator shall notify the gas inspector of any change to the name, address, and twenty-four-hour phone number of the person(s) with supervisory authority over drilling or operations activities within one (1) business day.

(c) The operator shall provide a copy of any "incident reports" or written complaints submitted to the commission within thirty (30) days after the operator has notice of the existence of such reports or complaints.

(d) Beginning on December 31st after each well is completed, and continuing on each December 31st thereafter until the operator notifies the gas inspector that the well has been abandoned and the site restored, the operator shall submit a written report to the gas inspector identifying any changes to the information that was included in the application for the applicable gas well permit that have not been previously reported to the city.

ARTICLE VI. INSURANCE, BOND, AND INDEMNITY

Sec. 64-12. Bond, letters of credit, indemnity, insurance.

- (a) *General requirements.* The operator shall be required to:
 - (1) Comply with the terms and conditions of this article and the 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.* Prior to the issuance of a gas well permit the operator shall provide the gas inspector with a security instrument in the form of a bond or an irrevocable letter of credit, both in a form acceptable to the city attorney as follows:

- (1) **Bond.** 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 chapter. The original bond shall be submitted to the gas inspector with a copy of the same provided to the city secretary.
- (2) **Letter of credit.** A letter of credit, in a form approved by the city attorney 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 chapter, the operator must renew the letter of credit or replace the letter of credit with a bond in the amount required by this chapter, on or before forty-five (45) days prior to the expiration date of the letter of credit. If the operator fails to deliver to the City of Irving 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 of Irving may draw the entire face amount of the attached letter of credit to be held by the City of Irving as security for operator's performance of its obligations under this chapter.

The city shall be authorized to draw upon such letter of credit to recover any fines or penalties assessed under this chapter. Evidence of the execution of a letter of credit shall be submitted to the gas inspector by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the city secretary.

- (3) The principal amount of any security instrument shall be fifty thousand dollars (\$50,000.00) for any single well. If, after completion of a well, the applicant/operator, who initially posted a fifty thousand dollar (\$50,000.00) bond or letter of credit, has complied with all of the provisions of this chapter and whose well in the producing stage and all drilling operations have ceased, may submit a request to the gas inspector to reduce the existing security instrument to ten thousand dollars (\$10,000.00) for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond or letter of credit shall be maintained at fifty thousand dollars (\$50,000.00).

An operator drilling or reworking between one (1) and five (5) wells at any given time may elect to provide a blanket bond or letter of credit in the principal minimum amount of one hundred fifty thousand dollars (\$150,000.00). If the operator drills or reworks more than five (5) wells at a time, the blanket bond or letter of credit shall be increased in increments of fifty thousand dollars (\$50,000.00) per each additional well. Once the

wells are in the producing stage and all drilling operations have ceased, the operator may elect to provide a blanket bond or letter of credit for the remainder of the time the well produces, without reworking, as follows:

Number of Producing Wells	Blanket Bond/ Letter of Credit Amount Required
Up to 75 wells	\$150,000.00
75 to 150 wells	\$175,000.00
More than 150 wells	\$200,000.00

If at any time after no less than a fifteen (15) day written notice to the operator and a public hearing, the city council shall deem any operator's bond or letter of credit to be insufficient, it may require the operator to increase the amount of the bond or letter of credit up to a maximum of two hundred fifty thousand dollars (\$250,000.00) per well.

- (4) Whenever the gas inspector finds that a default has occurred in the performance of any requirement or condition imposed by this article, a written notice shall be given to the operator. Such notice shall specify the work to be done, the estimated cost, and the period of time deemed by the gas inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the operator shall, within the time therein specified, either cause or require the work to be performed, or failing to do so, shall pay over to the 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, unless there is failure to immediately clean contamination caused by spills, or unless the failure involves the operator's failure to provide periodic reports as required by this article. 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 mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the commission, such additional money may be demanded from the operator as is necessary to properly plug and abandon the well and restore the drill site in conformity with the regulations of this chapter.
- (5) 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.
- (6) 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 chapter, 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 canceled.

(c) *Insurance.* In addition to the bond or letter of credit required pursuant to this article, the operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are canceled, the 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 employer's 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, 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. Deductibles shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
- e. Certificates of insurance shall be delivered to the City of Irving, Inspections Department, 825 West Irving Boulevard, Irving, Texas 75060, evidencing all the required coverages, including endorsements, prior to the issuance of a gas well permit.
- f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the city.
- g. Any failure on the part of the city to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- h. Each policy shall be endorsed to provide the city a minimum thirty-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) days' notice shall be acceptable in the event of non-payment of premium.
- i. During the term of the gas well permit, the operator shall report, in a timely manner, to the gas inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- j. Upon request, certified copies of all insurance policies shall be furnished to the city.

- (2) *Standard commercial general liability policy.* This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability and personal injury. This coverage shall be a minimum combined single limit of one million dollars (\$1,000,000.00) per occurrence location for bodily injury and property damage.
- (3) *Excess or umbrella liability.* Five million dollars (\$5,000,000.00) excess. 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 one million dollars (\$1,000,000.00) per loss, with an annual aggregate of at least ten million dollars (\$10,000,000.00).
 - b. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
 - c. The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the city.
- (5) *Control of well.* The policy should cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the operator and related expenses, including, but not limited to, loss of equipment, experts, and evacuation of residents.

Five million dollars (\$5,000,000.00) per occurrence/no aggregate, if available, otherwise an aggregate of ten million dollars (\$10,000,000.00).

Five hundred thousand dollars (\$500,000.00) sub-limit endorsement may be added for damage to property for which the operator has care, custody, and control.

- (6) *Workers' compensation and employer's liability insurance.*
 - a. Workers' compensation benefits shall be Texas Statutory Limits.

- b. Employer's liability shall be a minimum of five hundred thousand dollars (\$500,000.00) per accident.
- c. Such coverage shall include a waiver of subrogation in favor of the city and provide coverage in accordance with applicable state and federal laws.

(7) *Automobile liability insurance.*

- a. Combined single limit of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- b. Coverage must include all owned, hired, and not-owned automobiles.

(8) *Certificates of insurance.*

- a. The company must be admitted or approved to do business in the State of Texas, unless the coverage is written by a surplus lines insurer.
- b. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas Department of Insurance or Insurance Service Office, or an equivalent policy form written by an eligible non-admitted surplus lines insurer carrier acceptable to the city, with the exception of environmental pollution liability and control of well coverage.
- c. Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the city. All policies shall be endorsed to read:

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

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

(d) *Indemnification and express negligence provisions.* Each gas well permit issued by the gas inspector shall include the following language:

"Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or assigns may have, or claim to have, against the City of Irving, 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 Irving, 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 Irving, 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 Irving, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the city, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the City of Irving 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 IRVING 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 IRVING, TEXAS, AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF IRVING, TEXAS, AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE."

(e) *Notice.* The individual designated to receive notice shall be a resident of Texas upon whom all orders and notices provided in this chapter may be served in person or by registered or certified mail. Every operator shall within ten (10) days notify the gas inspector in writing of any change in such agent or mailing address unless operations in the city are discontinued and abandonment is complete.

(f) *Acceptance and indemnity agreement.* The operator who has a net worth of not less than twenty-five million dollars (\$25,000,000.00), as shown in such owner's or operator's most recent audited financial statements, may substitute an acceptance and indemnity agreement in lieu of the bond or irrevocable letter of credit and insurance requirements set forth in this article, provided that such acceptance and indemnity agreement shall be in a form acceptable to, and approved by, the city attorney and the risk manager of the city. The gas inspector may request an annual review of the operator's most recent audited financial statements to assure compliance with this section.

ARTICLE VII. ON-SITE AND TECHNICAL REGULATIONS

Sec. 64-13. Technical regulations.

(a) *On-site requirements.* It shall be unlawful for the operator to fail to meet any of the following requirements:

- (1) *Abandoned wells.* All wells shall be abandoned in accordance with the rules of the commission; however, all well casings shall be cut and removed to a depth of at least ten (10) feet below the surface unless the surface owner submits deed restrictions otherwise, in which case three (3) feet shall be the minimum depth. No structures shall be built over an abandoned well.
- (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) *Compliance.* Operator shall comply at all times with all applicable federal, state, and city requirements.
- (4) *Discharge.* No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances, or any refuse including wastewater or brine from any gas operation or the contents of any container used in connection with any gas operation in, into, or upon any public right-of-way, alley, street, lot, storm drain, ditch or sewer, sanitary drain or any body of water or any private property in the city.
- (5) *Drill stem testing.* All open hole formation or drill stem testing shall be done during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate gas separator to storage tanks and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.
- (6) *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.
- (7) *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.

- (8) *Electric motors.* Only electric prime movers or motors shall be permitted for the purpose of pumping wells. As little electric power shall be generated on location at high impact gas well sites as possible. Electric power for pumping shall be supplied by a retail electric provider at both high impact and urban gas well sites. All electrical installations and equipment shall conform to the city ordinances and the appropriate national codes.
- (9) *Emergency response plan.* Prior to the commencement of any gas or other hydrocarbons production activities, operator shall submit to the gas inspector 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, Texas Department of Transportation and/or the Environmental Protection Agency. Among other things, such plan will include emergency response access routes and evacuation routes.
- (10) *Equipment painted.* All production equipment on the site shall be painted and maintained at all times, including pumping units, storage tanks, buildings, and structures.
- (11) *Fire prevention; sources of ignition.* Firefighting apparatus and supplies as approved by the fire department and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. The operator shall be responsible for the maintenance and upkeep of such equipment. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an emergency shut off valve to the well distribution line.
- (12) *Fresh water wells.* It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located within two hundred (200) feet to any fresh water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore. The operator of a gas well shall provide the gas inspector with a "pre-drilling" and "post-drilling" water analysis from any fresh water well within five hundred (500) feet of the gas well. Within one hundred eighty (180) days of its completion date, each gas well shall be equipped with a cathodic protection system to protect the production casing from external corrosion. The gas inspector may approve an alternative method of protecting the production casing from external corrosion.
- (13) *Gas emission or burning restricted.* No person shall allow, cause, or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the commission, then such vent or open flame shall not be located closer than three hundred (300) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners.

- (14) *Grass, weeds, trash.* All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any gas tank or tanks or producing wells.
- (15) *Hazardous plan.* Hazardous materials management plan shall be on file with the fire marshal and the gas inspector.
- (16) *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.
- (17) *Muffling exhaust.* Exhaust from any internal combustion engine, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and prevent the escape of obnoxious gases, fumes, or ignited carbon or soot.

All formation fracturing operations shall be conducted during daylight hours unless the operator has notified the gas inspector that such facturing will occur before or after daylight hours to meet safety requirements.

- (18) *Pits.* Lined earthen mud or circulating pits shall be used. Such pits and contents shall be removed from the premises and the drilling site within sixty (60) days after completion of the well.
- (19) *Private roads and drill sites.* Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site itself shall be at least twenty four (24) feet wide, have an overhead clearance of fourteen (14) feet, be either looped or terminate in a fifty (50) foot radius turnaround, and shall be paved according to city specifications or surfaced with crushed rock, gravel, or ore, and maintained to prevent dust and mud and to support the heaviest equipment of the Irving Fire Department. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the gas inspector and the city director of public works and transportation 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.
- (20) *Salt water wells.* No salt water disposal wells shall be located within the City of Irving.
- (21) *Signs.*

- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to section 64-13 of this chapter. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the commission, shall have a surface area of not less than two (2) square feet nor more than four (4) square feet and shall be lettered with the following:
 1. Well name and number;
 2. Name of operator;
 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. Permanent weatherproof signs reading "DANGER NO SMOKING ALLOWED" shall be posted immediately upon completion of the well site fencing at the entrance of each well site and tank battery or in any other location approved or designated by the fire chief of the city. Sign lettering shall be four (4) inches in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the fire department and the operator, well and lease designations required by the commission.

(22) *Storage of equipment.* Onsite storage is prohibited on the operation site. No equipment shall be stored on the drilling or production operation site, unless it is necessary to the everyday operation of the well. Lumber, pipes, tubing, and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The fire department shall be the entity that determines whether equipment on the site shall constitute a fire hazard. No refinery, processing, treating, dehydrating, or absorption plant of any kind shall be constructed, established, or maintained on the premises. This shall not be deemed to exclude a conventional gas separator or dehydrator.

(23) *Storage tanks.* All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications unless other specifications are approved by the fire chief. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1-1/2) 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.

All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association, but in all cases, shall be at least twenty-five (25) feet from any public right-of-way or property line. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway or the one hundred-year floodplain.

Tanks must be at least one hundred (100) feet from any residence, religious institution, public building, hospital building, school, or combustible structure.

- (24) *Tank battery facilities.* Tank battery facilities shall be equipped with a remote foam line and a lightning arrestor system.
- (25) *Tree mitigation.* All trees of six (6) inches caliper or larger which are to be removed in development of the site for drilling or production operations shall be done after obtaining a tree removal permit as specified in Section 52-35a of Zoning Ordinance No. 1144. For purposes of Section 52-35a, issuance of a gas well permit shall be considered the same as a building permit, but requirements relating to a landscape plan shall be as specified in this chapter and not in Section 52-35a. Such replacement must take place within 4 months of removal and must be watered and maintained in living condition for at least one year after replacement or during the entire time of drilling and production, whichever is longer. The total number of caliper inches of trees, six (6) inches or larger of any species which are removed, shall be replaced by an equal number of caliper inches of replacement trees, with the minimum size of each replacement tree being set at three (3) inches. Trees not to be removed shall be protected according to the following standards:
- a. The operator shall clearly mark all trees to be preserved.
 - b. The operator shall erect barriers or take other protective measures to prevent equipment from colliding with or damaging any tree to be preserved.
 - c. The operator shall not allow the movement of equipment under more than forty (40) percent of the canopy of any tree to be preserved. Movement of equipment throughout the remainder of the site should be minimized to the extent possible.
 - d. The operator shall not allow the storage of equipment, materials, or debris or fill to be placed within the canopy of any tree to be preserved.
 - e. The operator shall not allow the cleaning of equipment or material under the canopy of any tree or group of trees to be preserved.

- f. The operator shall not allow the disposal of any waste material such as, but not limited to, drilling mud, paint, oil, solvents, asphalt, concrete, mortar, etc. under the canopy of any tree or group of trees to be preserved. The operator shall not allow any liquid waste to drain under the canopy of any trees to be preserved.
- g. The operator shall not attach any wires, ropes, lights, or any other such attachment other than those of a protective nature to any tree to be preserved.

If the gas inspector shall determine that trees were removed in violation of Section 52-35a of Zoning Ordinance No. 1144 from a tract within one (1) year of the application for a gas well permit, then, upon completion of the permit procedure, the gas inspector shall suspend the gas well permit for a period of one (1) year and shall not bring the permit out of suspension until 110% of the trees estimated to be unlawfully removed have been restored as if required by in the manner specified by Section 52-35a of Zoning Ordinance No. 1144.

- (26) *Surface casing.* Surface casing shall be run and set in full compliance with the applicable rules and regulations of the commission.
- (27) *Valves.* Each well must have a shutoff valve to terminate the well's production. The fire department shall have access to the well site to enable it to close the shut-off valve in an emergency.
- (28) *Waste disposal.* Unless otherwise directed by the commission, all tanks used for storage shall conform to the following:

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. All tanks must be enclosed by a fence applicable to the issued permit classification. No tank battery shall be within one hundred (100) feet of any dwelling or other combustible structure.

Drilling mud, cuttings, liquid hydrocarbons, and all other field waste derived or resulting from or connected with the drilling, reworking, or deepening of any well shall be discharged into a lined earthen pit. All disposals must be in accordance with the rules of the commission and any other appropriate local, state, or federal agency.

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.

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 chapter, and any other applicable ordinance of the city.

- (29) *Watchman.* The operator must keep a watchman or security personnel on-site during the drilling or reworking of a well when other workmen are not on the premises.

(b) *Well setbacks.* It shall be unlawful to drill any well, the center of which, at the surface of the ground, is located:

- (1) Within twenty-five (25) feet from any outer boundary line; or
- (2) Within twenty-five (25) feet from any storage tank, or source of ignition; or
- (3) Within seventy-five (75) feet of any public street, road, highway or future street, right-of-way, or property line; or
- (4) Within three hundred (300) feet from any building used, or designed and intended to be used, for human occupancy or
- (5) Within one hundred (100) feet of any building accessory to, but not necessary to the operation of the well; or
- (6) Within two hundred (200) feet to any fresh water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore.

The distance shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any object listed in (1) through (6) above.

The distances set out in (1), (3), (4), or (6) above may be reduced at the discretion of the city council, but never less than two hundred (200) feet from any dwelling or any other building used, or designed and intended to be used, for human occupancy without the unanimous consent of the property owners within a two hundred (200) foot radius around said well and the affirmative vote of not less than three-fourths (3/4) of all the members of the city council. For protection of the public health, safety, and welfare, the city council may impose additional requirements for a reduction of such distance. The reduction of the distance requirement for fresh water wells is subject to the commission regulations and any other state or federal requirements.

(c) *Installation of pipelines on, under, or across public property.* The operator shall apply to the city for a franchise agreement on, over, under, along, or across the city streets, sidewalks, alleys, and other city property for the purpose of constructing, laying, maintaining, operating, repairing, replacing, and removing pipelines so long as production or operations may be continued under any gas well permit issued pursuant to this chapter. Operator shall:

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

No gas well permit shall be issued for any well to be drilled within any of the streets or alleys of the city and/or projected streets or alleys shown by the current comprehensive plan of the city, and no street or alley shall be blocked or encumbered or closed due to any exploration, drilling, or production operations unless prior consent is obtained from the gas inspector. Any consent from the gas inspector shall be temporary in nature and state the number of hours and/or days that any street or alley may be blocked, encumbered or closed.

(d) *Well head easement.* For drilling operations occurring on property that is situated within or adjoins a residentially zoned district, a well head easement shall be submitted by the operator for approval by the city. Once approved, the easement shall be filed and recorded with the appropriate agency of the county government in which the well is located within thirty (30) days after the installation of the well head structure subject to the following provisions:

- (1) Such easement shall have a radius of two hundred (200) feet as calculated from the well bore, in a straight line, without regard to intervening structures or objects.
- (2) Such easement may be filed as a separate instrument dedication, or be dedicated on a land subdivision plat approved by the city.
- (3) No future residential lots shall be platted within the drill site easement until the well is abandoned pursuant to the provisions of this chapter, and the drill site easement has been vacated by the city.
- (4) If such easement is not produced within thirty (30) days after the installation of the well head structure, the gas inspector, at his discretion, may suspend or revoke the gas well permit pursuant to the provisions of this chapter, or extend the time period for filing, until the easement is filed and recorded with the county government.
- (5) The city council may approve or amend an easement proposed with an alternative shape and size. In making such a determination, the city council shall review concept plans and plats for future development proposed around the drill site to ensure that the safety and welfare of future residents is not compromised.

Sec. 64-14. Fences, walls, screening.

(a) *Fences/walls.* Fences, which may be temporary shall be required on drill sites during initial drilling, completion, or reworking operations and until such time as the permanent fence is erected. A secured entrance gate shall be required. All gates are to be kept locked when the operator or his employees are not within the enclosure. Within thirty (30) days after production has been established, all operation sites shall be completely enclosed by a permanent chain link fence, masonry wall, or other approved fencing material according to the requirements of the requested gas well permit, as follows:

- (1) *Chain link fences.*
 - a. The fence fabric shall be at least six (6) feet in height;

- b. 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;
 - c. The chain link fabric shall be galvanized steel wire with a minimum plating of one and two-tenths (1.2) ounces of zinc per square foot of surface area or shall be coated with vinyl or plastic material,;
 - d. The chain link fence fabric shall have a minimum thickness of eleven (11) gauge;
 - e. The chain link fabric shall be two-inch mesh.
 - f. Posts and rails shall be standard galvanized, welded pipe, schedule forty (40) or thicker; provided, however, that nongalvanized drill pipe may be used if it exceeds schedule forty (40) in thickness;
 - g. All pipe and other ferrous parts, except chain link fabric and drill pipe, shall be galvanized inside and outside with a plating which contains a minimum of one and two-tenths (1.2) ounces of zinc per square foot of surface area;
 - h. Tension rods shall be three-eighths inch 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 (3/4) inch; and
 - i. All fences shall have security extension arms at the top of such fences and such security extension arms shall be strung with at least two (2) strands of galvanized barbed wire.
- (2) *Masonry wall specifications.* All walls (either site constructed or prefabricated) shall be of masonry or other like material approved by the gas inspector. All walls used to enclose in whole or in part any drilling or production-site shall be constructed in accordance with standard engineering practices and shall meet the following specifications:
- a. The wall shall be of a design compatible with the facilities, buildings, and structures on and adjacent to the site; and
 - b. The wall shall be at least eight (8) feet in height unless specified for a different height by the City Council.
- (b) *Gate specifications.* All chain link fences and masonry walls shall be equipped with at least one (1) gate. The gate shall meet the following specifications:
- (1) Each gate shall open not less than twenty-four (24) feet;

- (2) The gates shall be of chain link construction that meets the applicable specifications, or of other approved material that, for safety reasons, shall be at least as secure as a chain link fence;
- (3) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site; and
- (4) Operator must 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.

Sec. 64-15. 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 gas inspector all waste materials from any public or private property affected by such spill, leak, or malfunction. Clean-up operations must begin immediately. If the owner fails to begin site clean-up within twenty-four (24) hours, the city shall have the right to contact the commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak, or malfunction.

(c) *Free from debris.* The property on which a well site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash, or other waste material within a radius of one hundred (100) feet around any separators, tanks, and producing wells.

(d) *Painting.* All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the gas inspector shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray, and unobtrusive shades of green, blue and brown, or other neutral colors approved by the gas inspector.

(e) *Blowouts.* In the event of the loss of control of any well, operator shall immediately take all reasonable steps to regain control regardless of any other provision of this article and shall notify the gas inspector as soon as practicable. The gas inspector shall certify in writing, briefly describing the same, to the city manager. If the gas inspector, 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 gas inspector may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the gas inspector 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 gas inspector in gaining control of said well.

(f) *Site condition.* Promptly clear drill and operation-sites of all litter, trash, waste, and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as possible as existed before operations.

Sec. 64-16. Plugged and abandoned wells.

(a) *Surface requirements for plugged and abandoned well.* Whenever abandonment occurs pursuant to the requirements of the commission, the operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly as practicable, in conformity with the regulations of this chapter.

(b) Abandonment shall be approved by the gas inspector after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the gas inspector:

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

(c) *Abandoned well requirement.* The operator shall furnish the following at the discretion of the gas inspector:

- (1) A copy of the approval of the commission confirming compliance with all abandonment proceedings under the state law; and
- (2) A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

(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.

ARTICLE VIII. TECHNICAL ADVISOR

Sec. 64-17. 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 relating to this article, then the cost for such services of such technical advisor(s) shall be assessed against and paid for by such operator in addition to any fees or charges assessed pursuant to this article. 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. The employment of a technical advisor shall be approved by the city council.

ARTICLE IX. APPEALS

Sec. 64-18. Appeals.

(a) The city council shall have and exercise the power to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the issuance of a gas well permit or the revocation or suspension of any gas well permit issued hereunder as provided by this chapter. Any person or entity whose application is denied by the gas inspector (other than for distance requirements set out in this chapter) or whose gas well permit is suspended or revoked or whose well or equipment is deemed by the gas inspector to be abandoned may, within thirty (30) days of the date of the written decision of the gas inspector file an appeal to the city council 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 city council agenda for hearing, and give notice by mail of the time, place, and purpose thereof to appellant and any other party who has requested in writing to be so notified. No other notice need be given.

(b) Appeal fees shall be required for every appeal in the amount of three hundred dollars (\$300.00).

ARTICLE X. PENALTY

Sec. 64-19. Penalty.

- (a) It shall be unlawful and an offense for any person to do the following:
 - (1) Engage in any activity related to the operation or maintenance of a gas well not permitted by the terms of a gas well permit issued under this chapter.
 - (2) Fail to comply with any condition set forth in a gas well permit issued under this chapter; or
 - (3) Violate any provision or requirement set forth under this chapter.
- (b) Any violation of this chapter shall be punished by a fine of not more than two thousand dollars (\$2,000.00) per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.

ARTICLE XI. GAS WELL DRILLING AND PRODUCTION FEES

Sec. 64-20. Gas well fees.

For services rendered, the following schedule of fees and charges is hereby adopted:

New gas well permit	\$5,000.00
Amended permit.....	600.00
Extended permit	270.00
Supplemental permit	180.00
Operator transfer	720.00
Seismic site inspection.....	360.00
Annual fee (per well)	1,000.00
Appeal fee	300.00

SECTION 2. That the terms and provisions of this ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause or phrase of this ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause or phrase of this ordinance.

SECTION 3. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Irving, Texas, in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING,
TEXAS, this 12th day of January, A.D. 2006.

HERBERT A. GEARS
MAYOR

ATTEST:

Janice Carroll, TRMC
City Secretary

APPROVED AS TO FORM:

David Caylor
City Attorney