

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. 36-11**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, TO PROVIDE GUIDANCE FOR TOWN STAFF, OPERATORS AND OTHERS IN INTERPRETING THE PROVISIONS OF TOWN ORDINANCE NO. 29-11 AND TOWN ORDINANCE NO. 30-11 IN THE EVENT OF AMBIGUITY RELATIVE TO SAID ORDINANCES; AMENDING SECTION 34-422(d)(2) OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, TO CLARIFY SETBACK VARIANCE DISTANCES; MAKING FINDINGS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on or about July 18, 2011, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. 29-11, which ordinance adopted a new Article VII of Chapter 34 of the Town's Code of Ordinances, entitled "Natural Gas Well Drilling and Operations"; and

**WHEREAS**, on or about July 18, 2011, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. 30-11, which ordinance adopted a new Article VIII of Chapter 34 of the Town's Code of Ordinances, entitled "Oil and Gas Pipeline Standards," and a new Article IX of Chapter 34 of the Town's Code of Ordinances, entitled "Vested Rights/Preemption Determination"; and

**WHEREAS**, in the past, with previous amendments to the Town's oil and natural gas-related ordinances, issues have arisen about the interpretation of said amendments, including legislative intent behind said amendments; and

**WHEREAS**, in an effort to provide guidance to Town staff, operators and others in the event that future issues arise relative to the interpretation of any of the provisions of Town Ordinance No. 29-11 and Town Ordinance No. 30-11, it is the intent of this Ordinance to provide the bases upon which ordinance provisions may be interpreted and legislative intent correctly determined; and

**WHEREAS**, the documentation attached to this Ordinance should provide a means by which legislative intent may be discerned, without doing violence to the provisions of Town Ordinance No. 29-11 and Town Ordinance No. 30-11; and

**WHEREAS**, since the adoption of Town Ordinance No. 29-11, an issue has been raised relative to the interpretation of several words contained in Section 34-422(d)(2) of Town Ordinance No. 29-11, now codified in the Town's Code of Ordinances, and it is the intent of this Ordinance to clarify the language contained therein by amending said language so that, out of an abundance of caution, there is no ambiguity or misinterpretation of said language.

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

**SECTION 1**

All of the above premises are hereby found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**SECTION 2**

From and after the effective date of this Ordinance, in an effort to provide guidance to Town staff, operators and others in the event that future issues arise relative to the interpretation of any of the provisions of Town Ordinance No. 29-11 and Town Ordinance No. 30-11, it is the intent of this Ordinance to provide the bases upon which ordinance provisions may be interpreted and legislative intent correctly determined by reference to the following Town documents utilized during the Town's consideration of Town Ordinance No. 29-11 and Town Ordinance No. 30-11:

1. Oil and Gas Drilling and Production Ordinance Comparison Chart: Current Provisions and Proposed Amendments, attached hereto as Exhibit A.
2. Oil and Gas Pipeline Ordinance/Zoning Ordinance Comparison Chart: Current Provisions and Proposed Amendments, attached hereto as Exhibit B.
3. 2011 Oil and Gas Ordinance/Pipeline Ordinance Modifications, attached hereto as Exhibit C.
4. Minutes and audio recordings of any Town Council meeting at which amendments to the foregoing ordinances were discussed, including any staff or outside consultant presentations made at such meetings, and any and all reports or studies conducted or referenced by said staff or outside consultants, all of which are on file with the Town Secretary and/or Town administrative departments.
5. Final Recommendations of the Oil and Gas Advisory Board to the Flower Mound Town Council, dated February 28, 2011, and all supporting documentation, on file with the Town Secretary's Office.
6. Correspondence received from Mr. Brian Phelps, Operations Project Manager, Trinity Regional Project, United States Army Corps of Engineers—Fort Worth, Operations Division, dated on or about April 18, 2011, on file with the Town Secretary's Office.

**SECTION 3**

From and after the adoption of this Ordinance, Section 34-422(d)(2) of the Town's Code of Ordinances is hereby amended by replacing the phrase contained therein "but said distances shall never be reduced to less than:" with the phrase "but said setback distance variances shall never exceed:". No other portion of said Section is amended hereby.

**SECTION 4**

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

**SECTION 5**

This Ordinance shall take effect and be in full force from and after its passage.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 1ST DAY OF AUGUST, 2011.**

**APPROVED:**

  
Melissa D. Northern, MAYOR

**ATTEST:**

  
Theresa Scott, TOWN SECRETARY

**APPROVED AS TO FORM:**

  
Terrence S. Welch, TOWN ATTORNEY

**OIL AND GAS DRILLING AND PRODUCTION ORDINANCE COMPARISON CHART:  
CURRENT PROVISIONS AND PROPOSED AMENDMENTS**

**1. Detailed Findings in Support of Oil and Gas Drilling and Production Ordinance**

Current: Preamble addresses general drilling issues in Flower Mound and the vicinity.

Proposed: Preamble and Section 1 makes detailed findings in support of the amendments to Ordinance, including the following matters: (1) Integra Well Site Impact Study in support of increased residential setbacks from well sites based upon a decrease in residential property values; (2) an analysis of air quality monitoring that has been conducted in the Town since 2010, including sampling done by the Texas Commission on Environmental Quality and Kleinfelder; (3) a review of the U.S. Environmental Protection Agency's study being conducted relative to the effect, if any, of hydraulic fracturing on drinking water resources; (4) description of the citations issued by the Town for soil contamination by gas operators, and the necessity for additional soil monitoring; (5) the request by the United States Army Corps of Engineers for review of any gas drilling applications within 3,000 feet of federal public works, including critical infrastructure; (6) the necessity of an increase in the insurance coverage amounts included in the proposed amendments; and (7) a detailed description of the overlap between the purposes of the Town's SMARTGrowth Program and the issues presented by natural gas drilling activities in the Town.

**2. Administrative Approval of Well Permits and Public Notice/Comment**

Current: If an application for a new oil and gas well permit meets all applicable requirements, the oil and gas inspector issues a permit; no public notice/comment process included [§ 34-422(c)(5)].

Proposed: If an application for a new oil and gas well permit meets all applicable requirements, the oil and gas inspector shall issue a permit; however, prior to the issuance of the permit, and within thirty (30) days after the oil and gas inspector's determination that the application complies with all applicable requirements, notice of the pending permit approval shall be mailed, via hand delivery or United States mail, to all property owners, as indicated by the most recently approved town tax roll, within one thousand five hundred feet (1,500') of the proposed operations site, informing the property

owners of a meeting open to the public at which meeting the property owners may ask questions about and discuss the pending permit. All costs of property owner notification shall be borne by the operator and the meeting must occur no later than twenty-one (21) days after the date of mailing of property owner notification [§ 34-422(c)(5)].

### **3. Noise Mitigation**

Current: Requires submission of an approved Noise Management Plan to detail meeting the following requirements: 56 dB during night [9 p.m.—7 a.m.] drilling measured at nearest noise sensitive area; 70 dB drilling and fracturing noise requirement measured at 300' from the drilling, operating or producing equipment – fracturing allowed during daytime [7 a.m.—9 p.m.] only; 3 dB over ambient noise standard during nighttime and 5 dB during daytime for any compressor station measured at the nearest property line or noise sensitive area – compressor station must be enclosed and designed/painted to complement the surrounding area [§ 34-422(h)].

Proposed: Requires submission of an approved Noise Management Plan to detail meeting the following requirements: 56 dB during night [7 p.m.—7 a.m.] drilling measured at nearest noise sensitive area; 70 dB drilling and fracturing noise requirement measured at 300' from the drilling, operating or producing equipment – fracturing allowed during daytime [7 a.m.—7 p.m.] only; 3 dB over ambient noise standard for any compressor station measured at the nearest property line or noise sensitive area – compressor station must be enclosed and designed/painted to complement the surrounding area. [§ 34-422(i)(1), (2), (4) and (5)].

Low frequency noise standards have been included for drilling, production or other operations, as follows:

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

[§ 34-422(i)(3)].

Operator required to identify the location of noise blankets, sound walls or other applicable noise mitigation effects around pad site area. Noise mitigation required for all drilling, fracturing and production operations [§ 34-422(i)(5)(d)].

#### **4. Pad Site Screening (General)**

Current: Screening installed completely around all permanent structures associated with extraction, production and transportation of minerals, within 45 days of production [§ 34-428(a)].

Proposed: Screening installed completely around entire perimeter of pad site within 45 days following the completion of drilling of the first permitted well [§ 34-428(a)].

#### **5. Pad Site Landscaping Requirements**

Current: Combination of shrubs, trees, etc. required after 45 days of production. Trees must be a minimum three inch (3") caliper and three feet (3') in height and have potential to grow to a mature height of at least five feet (5'), with operable irrigation system. Within 3 years, 50% of the structures landscaped shall be screened from view of adjacent property owners and public right-of-way (design criteria). At least 40% of the landscape vegetation shall be evergreen. Emphasis on preservation of existing vegetation and transplanting. Native, drought tolerant plant list provided in ordinance for direction. Planting of the vegetation screen may be deferred, through an escrow agreement with a cash deposit, until a plat is submitted for the subject property within 1,000 feet, or a public right-of-way is constructed within 500 feet of the well. The Town may enter onto the property in the event of a failure to comply with the escrow agreement and Town may plant and install required vegetation screen and operator must reimburse the Town [§ 34-428(a)(1) and (4)].

Proposed: Combination of shrubs, trees, etc. required within 45 days following completion of drilling of first permitted well. Trees shall be a minimum three inch (3") caliper at time of planting. A minimum of six (6) trees per 100 linear feet is required, with operable irrigation system. Required species of vegetation are consistent with pipeline ordinance species requirements. At least 40% of the landscape vegetation shall be evergreen. Emphasis on preservation of existing vegetation and transplanting. Native, drought tolerant plants shall be proposed. No escrow agreements permitted and all escrow provisions deleted from ordinance [§ 34-428(a)(1)].

## 6. Emergency Response Plans

- Current: Prior to drilling, operator must submit an emergency response plan establishing written procedures to minimize any hazard, using guidelines established by the Texas Commission on Environmental Quality, Texas Department of Transportation and/or the United States Environmental Protection Agency. The emergency response plan must be current with any additions, modifications and/or amendments concerning all construction-related activities, operations and production. Updated plans must be submitted within two (2) business days after any additions, modifications, and/or amendments to said plan(s). A copy of the emergency response plan shall be kept on site. The emergency response plan shall at a minimum provide for: prompt and effective response to emergencies regarding leaks or releases; fire or explosions; or natural disasters; an effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency; availability of personnel, equipment, tools, and materials as necessary at the scene of an emergency; measures to be taken to reduce public exposure to injury and the probability of accidental death or dismemberment; emergency shut down of an oil or gas well and related site; safe restoration of service and operations following an emergency or incident; a follow-up incident investigation and the implementation of corrective measures [§ 34-427(a)(15)].
- Proposed: All of the current provisions in § 34-427(a)(15), with the addition of the following:
- A copy of the emergency response plan shall be provided to any impacted school district for comment by said school district [§ 34-427(a)(15)].
- An automated audible alarm system installed and maintained at each drill site to provide warnings for substantial drops in pressure, the release of any gas or oil, or fire. The alarm system must be approved by fire chief [§ 34-427(a)(15)(b)].
- A copy of an emergency evacuation plan shall be provided, detailing all persons to be notified in the event of an evacuation, including, without limitation, all persons residing within one-half (1/2) mile of the edge of construction or surface disturbance [§ 34-421(d)(26)].
- Operator must submit a notarized letter from a hazardous materials cleanup service company, approved by the Town, affirming that the



operator has entered into a contract to perform cleanup services, at operator's cost, in the event of a hazardous materials spill, leak, seepage or accident. A contract shall remain in full force and effect during the term of a permit and any change in contractor must be approved in advance by the Town [§ 34-421(d)(27)].

Within two (2) years of the effective date of the oil/gas permit and every two (2) years thereafter, operator must conduct on-site emergency drill that includes the personnel operating the well, local law enforcement personnel, the fire chief or designee, and personnel from the Town's Environmental Services Division [§ 34-427(a)(2)(f)].

## **7. Seismic Surveys and Required Information**

Current: Not permitted on Town property or right-of-way [§ 34-420(a)(3)]. On other property, permitted under the following circumstances: the operator must provide notice to the oil and gas inspector no less than seven (7) business days prior to the commencement of any seismic survey activities on site, and provide the following information: (a) operator/applicant name, phone number, address, and, if possible, email address; if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners; (b) location of seismic survey; (c) date and time the seismic survey will be conducted; (d) detailed explanation of the seismic survey method to be used on site; and (e) date and time the seismic survey will be completed. Explosive charges may not be used without express Town authorization [§ 34-420(a)].

Proposed: All of the current provisions in § 34-420(a), except rather than notice to the oil and gas inspector within seven (7) business days, a permit must be filed within ten (10) business days prior to the commencement of seismic survey activities [§ 34-420(a)(1)].

Seismic survey fee required (to be approved in subsequent amendment to Appendix A to the Town Code of Ordinances) [§ 34-420(a)(1)].

General liability insurance in the amount of \$1 million per occurrence required for bodily injury and property damage [§ 34-420(a)(1)(f)].

A detailed map showing location of all vibration and geophone points [§ 34-420(a)(1)(g)].



## 8. Insurance, Indemnity and Related Requirements

Current: Bonds and Letters of Credit. Bond may be posted to ensure compliance with ordinance [§ 34-426(b)(1)(a)]. Irrevocable letter of credit may be given to recover any fines or penalties under the ordinance [§ 34-426(b)(1)(b)]. Principal amount of either bond or letter of credit is \$50,000 for any single well, and may be reduced after production has ceased [§ 34-426(b)(1)(c)]. Bond or letter of credit may be increased up to \$300,000 if deemed insufficient [§ 34-426(b)(1)(d)].

Insurance. Certain general requirements for all policies, such as naming the Town as an additional insured, policies to be written on an occurrence basis, deductibles listed, non-cancellation properly endorsed, etc. [§ 34-426(c)(1)]. General liability policy: \$1,000,000 per occurrence [§ 34-426(c)(2)]. Excess or umbrella liability: \$5,000,000 excess and if no environmental pollution liability policy, \$10,000,000 excess [§ 34-426(c)(3)]. Environmental pollution liability policy: \$1,000,000 per loss with annual aggregate of at least \$10,000,000 [§ 34-426(c)(4)]. Well control coverage: \$5,000,000 per occurrence with no aggregate, if available, otherwise \$10,000,000 [§ 34-426(c)(5)]. Workers' compensation/employers liability: statutory limits, employers' liability with a minimum of \$500,000 per accident [§ 34-426(c)(6)]. Automobile liability: \$1,000,000 per occurrence [§ 34-426(c)(7)].

Indemnity. Each operator must specifically indemnify the Town and employees, agents, officers, etc. [§ 34-426(d)].

Proposed: All of the current provisions in § 34-426, except general liability is increased from \$1 million to \$25 million [§ 34-426(c)(2)]; excess or umbrella liability is increased from \$5 million excess to \$25 million excess, and if no environmental pollution liability policy, from \$10 million excess to \$75 million excess [§ 34-426(c)(3)]; and environmental pollution liability policy is increased from \$1 million per loss with annual aggregate of at least \$10 million, to \$25 million [§ 34-426(c)(4)(a)].

## 9. Monitoring

### Air Quality Monitoring

Current: Town conducts monthly air quality monitoring (TCEQ and Kleinfelder).

Proposed: Continuation of air quality monitoring

## **Water Monitoring for Fresh Water Wells**

**Current:** Operator provides the oil and gas inspector with pre-drilling and post-drilling water analysis and flow rate within 1,000 feet of the gas well [§ 34-427(a)(19)(a)]. Certain testing requirements are mandated [§34-427(a)(19)(b)]. Water well owner may object to having water tested [§ 34-427(a)(19)(c)].

**Proposed:** Third party contractor retained by the Town provides pre-drilling, post-drilling and post-fracturing water analysis and flow rate within 1,000 feet of the gas well [§ 34-427(a)(19)(a)]. Certain testing requirements are mandated [§ 34-427(a)(19)(b)]. Water well owner objection provision has been deleted.

## **Soil Monitoring**

**Current:** Soil sampling required for various types of pits [§ 34-427(a)(32)]. Soil contamination assessment may be required by oil and gas inspector relative to foregoing pits [§ 34-427(a)(32)(a)-(e)].

**Proposed:** Soil sampling for various types of pits remains the same [§ 34-427(a)(35)].

Pre-drilling and post-drilling soil sampling, and periodic soil sampling added [§ 34-427(a)(34)]. Declared unlawful to contaminate any soil and fail to remediate such contamination [§ 34-427(a)(34)]. Pre-drilling soil sampling shall be taken at the location of any proposed equipment to document baseline soil quality [§ 34-427(a)(34)(a)]. Pre-drilling and post-drilling soil analysis to be conducted by third party contractor [§ 34-427(a)(34)(b)] and analyzed [§ 34-427(a)(34)(d)]. Periodic soil samples may be taken at the drill site [§ 34-427(a)(34)(d)]. If a prohibited substance is found in the soil sample, within thirty (30) days the operator must remediate the location and subsequent soil samples will be collected and analyzed to determine compliance [§ 34-427(a)(34)(f)].

## **Venting and Open Flame Monitoring/Restrictions**

**Current:** Gases may not be vented into the atmosphere or burned by open flame except as provided by law or the Texas Railroad Commission. Vent or open flame shall not be closer than 500 feet from any dwelling and not used in operations on the drill site. Vent or open flame must be directed in such a way to minimize detrimental effects to adjacent property owners [§ 34-427(a)(20)].

Proposed: All of the current provisions in § 34-427(a)(20) with the following additional provisions: The fire chief and all property owners, as indicated by the most recently approved town tax roll, within 1,000 feet of the venting or open flame must be given seventy-two (72) hours advance notice, via hand delivery or United States mail, of any such activities and the notice must include the date and time and anticipated length of time the activities will occur [§ 34-427(a)(20)].

### **Emissions Monitoring**

Current: No provisions for emissions monitoring.

Proposed: Gas well sites and production facilities must comply with all state and federal emissions and air quality regulations for exhaust emissions, fugitive emissions, greenhouse gas emissions and all other applicable emissions control and air quality standards for natural gas drilling and production. In the event there are two (2) or more notices of violations during any six (6) month period, as determined by TCEQ or EPA, within thirty (30) days of the second violation, the operator must submit an emissions compliance plan. An emissions compliance plan must include twenty-four (24) hour on-site emissions monitoring and subsequent periodic reporting to the Town Council for a period of twelve (12) months of documented compliance, and the installation of appropriate equipment to meet the requirements of the emissions compliance plan, which may include vapor recovery units or other emissions control technology, to ensure that any emissions are within applicable state and federal regulations. Thereafter the operator must employ best management practices to eliminate any emissions in violation of any state and federal regulations [§ 34-422(h)].

### **10. Traffic Impact Analysis and Site Plans**

Current: Site plans required for the operations site showing all equipment and improvements, and site plan must be in compliance with Land Development Regulations [§ 34-421(d)(13)]. A detailed site plan showing environmental features also required [§ 34-422(b)(2)]. No traffic impact analysis required.

Proposed: Same site plan requirements as in § 34-421(d)(13) along with identification of “the location of the potential maximum number of wells to be drilled and associated drilling equipment” and same requirements in § 34-422(b)(2) (environmental features).

A traffic impact analysis in conformance with in accordance with Land Development Regulations required [§ 34-422(b)(3)].

**11. Setbacks and Minimum Setback Variance Distances (all measured from edge of construction or surface disturbance, unless otherwise noted)**

**Residence Setbacks:**

Current: 1,000 feet for residents without mineral interest in application with a variance allowed to never less than 500 feet; 500 feet for residents with mineral interest in application with variance down to 300 feet [§ 34-422(d)(1)(b) and (c), (d)(3)]

Proposed: 1,500 feet from any residence, with a maximum 25% reduction with variance [§ 34-422(d)(1)(b) and (d)(2)].

**Habitable Structure Setbacks:**

Current: 500 feet – variance down to 300 feet. “Building used, or designed and intended to be used, for human occupancy” is defined as “an enclosed space, other than a residence, in which individuals congregate for amusement or similar purposes or in which occupants are engaged at labor. . . .” [§ 34-422(d)(1)(m) and (d)(3)].

Proposed: 1,500 feet from any habitable structure, with a maximum 25% reduction with variance [§ 34-422(d)(1)(d) and (d)(2)]. Habitable structure defined as “any structure suitable for human habitation or occupation, including but not limited to a single or multifamily residence(s), hotel, condominium building, building for commercial purposes and enclosed spaces in which individuals congregate for education, worship, amusement or similar purposes, or in which occupants are engaged at or in labor, and which is equipped with means of egress, light and ventilation facilities. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a habitable structure” [§ 34-417].

**Fresh Water Well Setbacks:**

Current: 1,000 feet for water well owners without mineral interest in application; 500 feet for water well owners with mineral interest in application. No minimum setback variance [§ 34-422(d)(1)(j) and (k) and (d)(3)].

Proposed: 1,500 feet from any existing fresh water well, with a maximum 25% reduction with variance [§ 34-422(d)(1)(h) and (d)(2)].

**Floodplain Setbacks:**

Current: 500 feet – no variance minimum (measured from edge of disturbance) [§ 34-420(k) and (o)].

Proposed: 750 feet from a floodplain with a maximum 25% reduction with variance [§ 34-420(k) and (o)].

**Environmentally Sensitive Areas Setbacks:**

Current: 500 feet – no variance minimum (measured from edge of disturbance) [§ 34-420(n) and (o)].

Proposed: 750 feet from an environmentally sensitive area with a maximum 25% reduction with variance [§ 34-420(n) and (o)].

**Tank Batteries, Compression Facilities Well Facilities, and Equipment Setbacks:**

Current: 1,000 foot setback from public park, church, public building, hospital and school – variance down to 500 feet; 1,000 foot setback from residence whose owner does not have mineral interest in the application – variance down to 500 feet; 500 foot setback from residence whose owner does have mineral interest in the application – variance down to 300 feet; 500 foot setback from human occupied building – variance down to 300 feet (measured from nearest tank, facility, equipment, etc.) [§ 34-422(d)(2) and (3)].

Proposed: Deleted in its entirety since all distances are measured from the edge of construction or surface disturbance.

**New Construction Setbacks:**

Current: 500 foot setback from new construction of improvements to an existing well with a variance down to 300 feet for any buildings, structures, streets, roads, and/or applicable improvements to the property upon which any oil and/or gas well is located; setback measured from nearest surface equipment [§ 34-422(c)(4)].

Proposed: With the exception of those pad sites permitted prior to the effective date of the 2011 amendments, all new or proposed construction must be in conformance with applicable setbacks and reduced in accordance with Section 34-432 [§ 34-422(c)(4)].

**Schools, Religious Institutions, Hospital Setbacks:**

Current: 1,000 feet – variance down to 500 feet [§ 34-422(d)(1)(d) and (d)(3)].

Proposed: 1,500 feet from any property line of a school, religious institution or hospital with a maximum 25% reduction with variance [§ 34-422(d)(1)(c) and (d)(2)].

**Existing Storage Tank/Source of Potential Ignition Setbacks:**

Current: 500 feet – no variance minimum [§ 34-422(d)(1)(g) and (d)(3)].

Proposed: 500 feet with no variance [§ 34-422(d)(1)(f) and (d)(2)(b)].

**Public Road or Right-of-Way Setbacks:**

Current: 500 feet – no variance minimum [§ 34-422(d)(1)(h) and (d)(3)].

Proposed: 750 feet with no variance [§ 34-422(d)(1)(g) and (d)(2)(b)].

**Property Line Setbacks:**

Current: 500 feet – no variance minimum [§ 34-422(d)(1)(f) and (d)(3)].

Proposed: 750 feet from any property, lot or tract line with a maximum 25% reduction with variance [§ 34-422(d)(1)(e) and (d)(2)].

**Accessory Building Setbacks:**

Current: 100 feet – no variance minimum [§ 34-422(d)(1)(i) and (d)(3)].

Proposed: Eliminated due to definition of “habitable structures.”

**Public Park**

Current: 1,000 feet – no variance minimum [§ 34-422(d)(1)(a)].

Proposed: 1,500 feet from any public park with a maximum 25% reduction with variance [§ 34-422(d)(1)(a) and (d)(2)].

**12. Criteria Used in Considering Approval of Variances**

Current: (1) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply

generally to other property in the vicinity; (2) a variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other properties in the vicinity, but which rights are denied to the property on which the application is made; (3) the granting of the variance on the specific property will not adversely affect any other feature of the comprehensive master plan of the Town; (4) the variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity; (5) whether the operations proposed are reasonable under the circumstances and conditions prevailing in the vicinity considering the particular location and the character of the improvements located there; (6) whether the drilling of such wells would conflict with the orderly growth and development of the Town; (7) whether there are other alternative well site locations; (8) whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with the oil, gas, or combined well permit conditions to be imposed; (9) whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas; (10) whether there is reasonable access for the Town fire personnel and firefighting equipment; (11) whether the impact upon the adjacent property and the general public by operations conducted in compliance with the oil, gas, or combined well permit conditions are reasonable and justified, balancing the following factors: (a) the reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and (b) the availability of alternative drill sites; and (12) the recommendations of the oil and gas inspector [§ 34-432(c)].

Proposed:

(1) Whether there are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity; (2) whether a variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other similarly situated properties, but which rights are denied to the property on which the application is made; (3) whether the granting of the variance on the specific property will adversely affect any other feature of the comprehensive master plan of the Town; (4) whether the variance, if granted, will be of no material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity; (5) whether the operations proposed are reasonable under the circumstances and conditions prevailing in the vicinity



considering the particular location and the character of the improvements located there; (6) whether the drilling of the maximum number of potential wells for the proposed drill site would conflict with the orderly growth and development of the Town; (7) whether there are other alternative well site locations; (8) whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with the oil, gas, or combined well permit conditions to be imposed; (9) whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas; (10) whether there is reasonable access for town fire personnel and firefighting equipment, including the ability to safely evacuate potentially affected residents; and (11) whether the impact upon the adjacent property(ies) and the general public by operations conducted in compliance with the oil, gas, or combined well permit conditions are reasonable and justified, balancing the following factors: (a) the reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and (b) the availability of alternative drill sites [§ 34-432(c)].

### **13. New Provisions in 2011 Amendments**

- Notice of “fracking” operations at least three (3) business days before operations are commenced, and operator must post a sign at the entrance of the well site advising the public of the date the operations will commence [§ 34-420(F)], and the sign shall be red background with white letter [§ 34-427(a)(36)(a)].
- Elimination of all “materially different” language relative to amended permits [§ 34-423].
- Town may issue stop work order or other appropriate order by the fire chief or police chief when, in his professional opinion, there exists a risk of imminent destruction of property or injury to persons. In such event, an operator must comply with such order and efforts must be undertaken by an operator and Town official to bring such circumstances or condition into compliance. [§ 34-424(e)].
- Addition of non-radioactive tracing or tagging additives into “fracking” fluid for each pad site and operator must notify in writing the oil and gas inspector with the written formula identifying such additive(s) [§ 34-427(a)(21)].

- Private roads used for access to a drill site and the operation site must be 20 feet from adjacent property lines (for property not under common ownership) [§ 34-427(a)(31)].
- Green completions: After “fracking,” operator must utilize appropriate equipment and processes to eliminate natural gas and associated vapor releases into the environment [§ 34-427(a)(23)].
- Secondary containment system: Lining of pad site with impervious material to prevent harmful impacts to adjoining property and surface water [§ 34-427(a)(33)].
- Restoration bond of \$100,000 per acre of operation site part of required application documents: bond is valid for 1 year following expiration of an oil & gas permit, for purpose of restoring proper grading and vegetation, and is returned after drilling of a permitted well [§ 34-421(d)(36)].
- Expiration date added to all existing permits (2 years after initial issuance date if no drilling occurs) [§ 34-420(g)].
- Electric motors must be utilized for natural gas compression [§ 34-427(a)(14)].

**OIL AND GAS PIPELINE ORDINANCE/ZONING ORDINANCE COMPARISON  
CHART: CURRENT PROVISIONS AND PROPOSED AMENDMENTS**

**1. Repeal All Zoning Ordinance Provisions Regarding Centralized Natural Gas Facilities**

Current: Section 98-2 of the Code of Ordinances defines “centralized natural gas compression facility,” “centralized natural gas lift facility” and “centralized natural gas produced water storage facility.”

Section 98-273 of the Code of Ordinances mandates that a specific use permit is necessary for a centralized natural gas compression facility, centralized natural gas lift facility and centralized natural gas produced water storage facility, all of which facilities are subject to the requirements contained in Article VII (oil and gas well drilling and operations) and Article VIII (oil and gas pipeline standards) of Chapter 34 of the Code of Ordinances.

Section 98-952, “Use classification,” of the Code of Ordinances contains the “schedule of use regulations” chart. Included on that chart are “centralized natural gas compression facility,” “centralized natural gas lift facility” and “centralized natural gas produced water storage facility,” all of which uses are permitted only in agriculturally-zoned areas with a specific use permit.

Proposed: The foregoing provisions of the zoning ordinance relative to “centralized natural gas compression facility,” “centralized natural gas lift facility” and “centralized natural gas produced water storage facility” are all repealed.

**2. Standards Related to Centralized Natural Gas Facilities Included in Pipeline Ordinance, but only After a Zoning Amendment is Applied For and Adopted, and then a Specific Use Permit is Applied For and Approved**

Current: To construct a centralized natural gas facility, a specific use permit is required [§ 34-455(b)(1)]. Detailed application requirements, including proposed transportation route, detailed site plan, tree survey, road maintenance agreement, storm water pollution prevention plan, erosion control plan, hazardous materials management plan, emergency response plan and evidence of insurance, are referenced in § 34-455(b)(2); compliance with the provisions of the Town’s oil and gas ordinance is referenced in § 34-455(b)(3); walls, gates and vehicular drive requirements are referenced in § 34-455(b)(4); landscaping requirements are referenced in § 34-455(b)(5); and additional standards—painting,

compliance with applicable setbacks, lighting and setback variance procedures—are referenced in § 34-455(b)(6) through (b)(9).

Proposed: Due to the repeal of the zoning-related provisions referenced above, § 34-473(a)(1) of the proposed ordinance provides that “[i]f at the time of application, section 98-2 of the town’s code of ordinances, as amended, does not define a “centralized natural gas facility” or the town’s land development regulations do not permit any such uses, then a zoning amendment shall be required, pursuant to the provisions of article IV of chapter 78 of the town’s code of ordinances, as amended. The use of any property in the town as a centralized natural gas facility is otherwise strictly prohibited.”

Even though no centralized natural gas facilities are permitted in the Town [§ 34-473(a)(1)], in the event a court order or other action by a state or federal administrative regulatory agency requires the construction of such facility, the following items are mandated: payment of application fees and detailed application requirements [§ 34-473(a)(2)], including the proposed transportation route [§ 34-473(a)(2)(c)], detailed site plan [§ 34-473(a)(2)(j)], tree survey [§ 34-473(a)(2)(k)], road maintenance agreement [§ 34-473(a)(2)(m)], storm water pollution prevention plan [§ 34-473(a)(2)(n)], erosion control plan [§ 34-473(a)(2)(o)], hazardous materials management plan [§ 34-473(a)(2)(p)], emergency response plan [§ 34-473(a)(2)(q)] evidence of insurance [§ 34-473(a)(2)(r)] and noise management plan [§ 34-473(a)(2)(s)]. Compliance with the provisions of the Town’s oil and gas ordinance is referenced in § 34-473(a)(3); walls, gates and vehicular drive requirements are referenced in § 34-473(a)(4); landscaping requirements are referenced in § 34-473(a)(5); and additional site standards, including painting [§ 34-473(a)(6)], compliance with applicable setbacks [§ 34-473(b)], lighting [§ 34-473(c)] and setback variance procedures [§ 34-473(d)].

### **3. Definitions**

Current: The following definitions are not included in the current pipeline ordinance: centralized natural gas compression facility; centralized natural gas lift facility; centralized natural gas produced water storage facility; gas lift facility; and produced water.

Proposed: All of the foregoing terms are included as definitions [§ 34-453].

#### **4. Vapor Recovery/Emissions Control**

Current: Best management practices for vapor recovery equipment required for centralized natural gas production facilities [§ 34-455(b)(3)].

Proposed: Vapor recovery or emissions control systems for compressors, gas lift facilities and surface equipment are required [§ 34-454(a)(3)]. Compression and gas lift facilities must comply with all state and federal regulations relative to emissions standards and air permitting compliance requirements for exhaust emissions, fugitive emissions, greenhouse gas emissions and all other applicable air quality standards. Best management practices to meet all permitting requirements and to control emissions must be submitted to Town for approval. Compression facilities are to be equipped with gas and flame detection equipment, high/low pressure automatic cutoff switch and sound control enclosures [§ 34-454(j)].

#### **5. Vested Rights/Preemption Determination**

Current: There are no provisions for a vested rights/preemption determination by the Town.

Proposed: Article IX of Chapter 34 of the Code of Ordinances provides a method by which a person can assert/determine whether that person has recognized vested rights under Chapter 245 of the Texas Local Government Code, as that chapter pertains to oil and gas ordinance and pipeline ordinance requirements and obligations.

If an operator believes that it has vested rights, the operator must submit to the Town Secretary a letter explaining the legal and factual bases for such contention, which letter must include applicant identification information, identification of the property involved, identification of the "project" for vested rights determination purposes, applicable permits involved, chronology of the project, description of applicable Town regulations in effect at the time of the original permit application, regulations proposed for the project, and for preemption claims, a description of the requirements in question [§ 34-500(b)].

After an application for a vested rights/preemption determination is filed, a copy is sent by the Town Secretary to the Town Manager and Town Attorney for review. The Town Manager issues a final administrative determination. The Town Manager may request a pre-determination conference with the applicant to discuss the

pertinent issues [§ 34-500(c)]. Any person aggrieved by the decision of the Town Manager may appeal such decision to the Zoning Board of Adjustment, pursuant to established procedures [§ 34-500(d)]. If the person does not agree with the Zoning Board of Adjustment's decision, an action in court may be filed [§ 34-500(e)]. If there is no appeal, the decision of the Town Manager is binding and final [§ 34-500(f)].

## 2011 Oil and Gas Ordinance/Pipeline Ordinance Modifications

As a result of Town Council and citizen input at the June 20, 2011, Town Council meeting, modifications were suggested to both the proposed Oil and Natural Gas Well Drilling and Operations Ordinance and Oil and Gas Pipeline Standards Ordinance. Please note that minor non-substantive wording/formatting changes were made in both Ordinances.

### Oil and Natural Gas Well Drilling and Operations Ordinance

1. Section 34-417: Addition of a definition of "best management practices." "Best management practices" are defined as "state-of-the-art mitigation measures applied on a site-specific basis to reduce, prevent or avoid adverse environmental or social impacts, and for purposes of this article, best management practices include those practices recommended by the American Petroleum Institute (A.P.I.), the United States Environmental Protection Agency's Natural Gas STAR Program, and/or other similarly recognized program, acceptable to and approved by the town."

2. Section 34-422(h): Two notices of violation in a twelve-month period trigger an emissions compliance plan, instead of two notices of violation in a six-month period.

3. Section 34-426((B)(1)(c): Clarification of bonding amounts for single wells and pad sites. The bond amount for a single well remains at \$50,000 and shall never be less than \$200,000 per pad site. After all drilling operations have ceased on a pad site, and there is no re-working of the well, the bond may be reduced to \$10,000 per well. If there is any re-working of the well, bond amounts increase to back to \$50,000 per single well/\$200,000 per pad site.

4. Section 34-427(a)(19): Water analysis required for any fresh water well within 1,500 feet of a gas well (instead of within 1,000 feet a gas well).

5. Section 34-427(a)(27): Clarification of the "muffling exhaust" requirement by adding provisions that if there are two or more notices of violation during any twelve-month period, an emissions compliance plan pursuant to Section 34-422(h) is required. Additionally, this section was made applicable to any drilling completion or production equipment, which would include any hydraulic fracturing operations.

6. Section 34-427(a)(39): The following wording was added to the requirements for tank battery facilities: "An operator shall eliminate, capture or destroy any and all emissions emanating from any tanks." This addresses concerns about vapor recovery issues expressed at the June 20 Town Council meeting.

7. Section 34-428(a)(1) and (a)(1)(b): A landscape plan is required for pad site perimeter vegetation and at least 50% of the vegetation must be evergreen.



### Oil and Gas Pipeline Standards Ordinance

1. Section 34-470(a)(2): Public liability insurance increased from \$1,000,000 to \$2,000,000 for one person.

2. Section 34-470(b): Town may adjust minimum limits of liability insurance limits every two years instead of every five years.