

TOWN OF FLOWER MOUND

ORDINANCE NO. 30-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING CHAPTER 34, "ENVIRONMENT," BY REPLACING ARTICLE VIII, ENTITLED "OIL AND GAS PIPELINE STANDARDS" IN ITS ENTIRETY AND ADOPTING A NEW ARTICLE VIII, "OIL AND GAS PIPELINE STANDARDS"; ADOPTING A NEW ARTICLE IX, "VESTED RIGHTS/PREEMPTION DETERMINATION"; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OR A FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

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

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

**WHEREAS**, in October 2007, the Town adopted its "Oil and Gas Pipeline Standards" and included same as Article VIII of Chapter 34 of the Town's Code of Ordinances; and

**WHEREAS**, in January 2010, the Town repealed Article VIII of Chapter 34 of the Town's Code of Ordinances and adopted new standards, including standards for centralized natural gas facilities; and

**WHEREAS**, on June 1, 2010, the Fifth Circuit Court of Appeals rendered a decision in the case styled *Texas Midstream Gas Services, L.L.C. v. City of Grand Prairie, et al.*, which decision necessitated further review of the Town's oil and gas pipeline standards in an effort to insure compliance with said decision, while recognizing that gas pipeline companies are granted the power of eminent domain by the State of Texas; and

**WHEREAS**, from July 2010 to June 2011, numerous meetings were held by or on behalf of the Town's Oil and Gas Advisory Board and/or the Town Council and at many of those meetings, issues were addressed relative to pipelines and pipeline standards; and

**WHEREAS**, the Town deems it prudent to adopt new oil and gas pipeline standards to replace the existing oil and gas pipeline standards; and

**WHEREAS**, there are unique aesthetic and community character issues that the Town must address relative to pipeline location in the Town; and

**WHEREAS**, it is the express intent of the Town Council to exclude from these regulations any pipeline otherwise regulated exclusively by the United States Government or the State of Texas, and has so provided a process by which to make such determination in this Ordinance; and

**WHEREAS**, the concepts of vested rights or “grandfathering” of rights, both of which are recognized by Texas statutory and case law, are integral to land use and related regulatory standards and regulatory schemes, and it is the intent of the Town Council to similarly recognize same; and

**WHEREAS**, the intent of Article IX of Chapter 34 of the Town’s Code of Ordinances, contained herein, is to provide a mechanism for the Town to determine the availability of vested rights or preemption, as more fully set out in Section 34-500 of this Ordinance; and

**WHEREAS**, the Town of Flower Mound, as a home-rule municipality, is authorized and empowered by the Texas Constitution to adopt such standards as are contained in this Ordinance.

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

**SECTION 1**

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

**SECTION 2**

From and after the effective date of this Ordinance, Article VIII, “Oil and Gas Pipeline Standards,” of Chapter 34, “Environment,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended to read in its entirety as follows, and Article IX, “Vested Rights/Preemption Determination,” of Chapter 34, “Environment,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby added to said Chapter to read in its entirety as follows:

**“ARTICLE VIII. OIL AND GAS PIPELINE STANDARDS**

**DIVISION 1. PURPOSE.**

**Sec. 34-452. Purpose.**

The exploration, development, and production of oil and gas in the town are activities that necessitate reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to enjoy their property and its benefits and revenues while at the same time protecting the town's citizens and others from risks associated with such activities. It is hereby declared to be the purpose of this article to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to transporting oil and gas and other substances which are produced in association with oil and gas, within the corporate limits of the town, and to the extent allowed or as may be allowed by state law, the extraterritorial jurisdiction, and to protect the health, safety and general welfare of the public; minimize the potential impact to property and persons; protect the quality of the environment; and encourage the safe and orderly transport of oil and gas resources.

## **DIVISION 2. DEFINITIONS.**

### **Sec. 34-453. Definitions.**

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

*Applicant* means any person applying to the town for a permit and/or certificate for an oil or gas pipeline permit.

*Best management practices* are 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.

*Building* includes, but is not limited to, all related site work and placement of construction materials on the site.

*Centralized Natural Gas Compression Facility* means any natural gas compression facilities and all related appurtenances and equipment that serve multiple gas well pad sites.

*Centralized Natural Gas Lift Facility* means any natural gas lift facilities and all related appurtenances and equipment that serve multiple gas well pad sites.

*Centralized Natural Gas Produced Water Storage Facility* means any produced water storage and collection facilities and all related appurtenances and equipment that serve multiple gas well pad sites.

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

*Construction* means causing or carrying out any building, bulk-heading, filling, clearing, excavation, or substantial improvement to land or the size of any structure.

*Dedication* includes but is not limited to a permanent easement or a fee simple acquisition of land for a specific purpose.

*Excavation* includes, but is not limited to, scraping or grading a site.

*Filling* includes, but is not limited to, disposal of excavated materials.

*Gas Lift* means a recovery method which lowers fluid in a well to allow natural gas to escape by injecting compressed gas down the well through tubing or through the tubing-casing annulus. Gas may be injected continuously or intermittently,

depending on the producing characteristics of the well and the arrangement of the gas-lift equipment.

*Gas Lift Facility* means those facilities that are used to artificially lift gas, oil, and/or water from the well when there is insufficient reservoir pressure to produce the well.

*Hazardous Liquid*, as defined by the Texas Railroad Commission at 16 Texas Administrative Code, section 7.80, Definitions, as amended, shall mean petroleum or any petroleum product, and any substance or material which is in a liquid state, when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities. The term shall be enlarged to include liquefied natural gas and anhydrous ammonia should such materials at any time be introduced into any pipeline subject to this article. It shall also include carbon dioxide, defined at 49 CFR § 192.2, as amended, as a fluid consisting of more than ninety percent (90%) carbon dioxide molecules compressed to a supercritical state.

*Idled Pipeline* means a pipeline that has been inactive for at least two (2) years even though there may be no specific plans to reactivate the pipeline.

*Inactive Pipeline* means a pipeline that has temporarily been taken out of service for a period of at least six (6) months for hazardous materials or hazardous liquids and one (1) year for natural gas with the expectation that the pipeline may be reactivated within two (2) years even though there may be no specific plans to reactivate the pipeline.

*New Pipelines* shall mean pipelines constructed after the effective date of this article but shall not include (a) the replacement or repair of any existing pipeline; (b) the realignment of a portion of an existing pipeline to a position that is not greater than fifty feet (50') from its original position; or (c) surface appurtenances added to existing pipelines.

*Oil and Gas Inspector* means the oil and gas inspector designated by the town manager of the town.

*Owner or Operator* shall mean any person owning, operating or responsible for operating an oil or gas pipeline for the purpose of transporting oil, gas, or other gasses, or liquids related to the production of oil, gas or other hydrocarbons.

*Permittee* shall mean any person authorized to act under a permit or a certificate issued by the town.

*Person* shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the United States government, a state, a municipality, commission, political subdivision or any international or interstate body or any other governmental entity.

*Pipeline* shall mean all parts of those physical facilities through which oil or gas move in transportation, including, but not limited to, pipe, valves and other appurtenances attached to pipe, compressor units, metering stations, pumping units, regulator stations, delivery stations, terminals, holders and fabricated assemblies and breakout tanks whether or not laid in a public or private easement or public or private right-of-way within the town or its extraterritorial jurisdiction.

*Pipeline Emergency* means a pipeline incident in which any of the following has occurred or is occurring:

- (1) Fire or explosion not initiated by the owner/operator as part of its operations (in accordance with accepted safety practices).
- (2) Release of a gas, hazardous liquid or chemical that could adversely impact the environment or health of individuals, livestock and/or domestic animals, and wildlife, within the town or its extraterritorial jurisdiction.

- (3) Death of any person or individual directly attributable to the operations of the pipeline.
- (4) Bodily harm of any person that results in loss of consciousness, the need to assist a person from the scene of the incident or the necessity of medical treatment in excess of first aid.
- (5) Damage to private or public property not owned by the pipeline owner or operator in excess of five thousand dollars (\$5,000.00) in combined values.
- (6) The rerouting of traffic or the evacuation of buildings.

*Practicable.* In determining what is practicable, the town council shall consider the effectiveness, scientific feasibility and commercial availability of the technology or technique. The town council may also consider the cost of the technology or technique.

*Produced water* means water found in the same formations as oil and gas and which may contain some of the chemical characteristics of the formation from which it was produced, associated hydrocarbons, and industrial chemical additives.

*Street* means the entire width between the boundary lines of the street right-of-way that is open to the use of the public for purposes of vehicular travel.

*Street Right-of-Way* means that land dedicated or acquired by easement or by fee simple, or qualifies as a prescriptive easement, or prescriptive right-of-way, for the use and construction of a street or roadway.

*Structure* means, without limitation, any building, or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to

land, including but not limited to partially enclosed structures, enclosed tanks, etc.

*Town* means the town of Flower Mound, Texas.

*Unregulated Pipeline* means those pipelines within the town or its extraterritorial jurisdiction that enjoy exemptions under federal and state rules that exclude such lines from construction standards, safety standards or reporting requirements of either or both federal and state governments.

### **DIVISION 3. GENERAL REQUIREMENTS AND MINIMUM DESIGN STANDARDS.**

#### **Sec. 34-454. General Requirements and Minimum Design Standards.**

- (a) An oil and gas pipeline permit is required as follows:
  - (1) It shall be unlawful for any person, acting either for himself or as an agent, employee, independent contractor or servant of any other person, to commence to construct, install, operate or reconstruct a pipeline or any section of a pipeline or to operate any pipeline or to assist in the construction, installation, operation or reconstruction of a pipeline if a lawful oil and gas pipeline permit has not been obtained.
  - (2) Any applications to construct, lay, rework, wrap or otherwise lower or replace existing pipelines or install monitoring or recovery wells shall be submitted to the town in a form prescribed by the town.
  - (3) Each application for an oil and gas pipeline permit shall be accompanied by five (5) sets of plans showing the dimensions and locations of the pipelines and related items or facilities within the subject right-of-way or easement, as well



as all proposed lift stations, compression or gas lift facilities, pumps or other service structures related to such pipeline and the location, type and size of all existing utilities, drainage, right-of-way and roadway improvements. Each application also shall contain plans for vapor recovery/emissions control systems for each compressor or gas lift facility, as well as other surface equipment, all as referenced herein.

- (4) Within fifteen (15) days after the date of filing of said application and plans, the town shall send notice to the applicant as to whether the application will be accepted for processing and the total charge due. If the application is rejected, reasons for rejection of the application shall be provided in writing.
  
- (b) No pipeline for the transportation of gas, oil, and hydrocarbons from wells drilled or to be drilled shall be constructed or laid except in rights-of-way or easements owned by the owners or operators of wells or third party pipeline companies, or upon designated drilling tracts and upon rights-of-way or easements necessary to connect future well sites to present lines.
  
- (c) In order to enable the holder of each permit to move gas or oil to or from the location of a well, the holder of each permit shall apply to the town for an easement on, over, under, along or across the town's streets, sidewalks, alleys and other town 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 permit issued pursuant to this article; provided, however, such permittee 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 right-of-way;

- (2) Furnish to the oil and gas inspector a plat showing the location of such pipelines for the transport of gas or oil. Said plat shall conform to the town's standards for site plans, pursuant to section 82-33 of this code, as amended.
  - (3) Construct such lines or cause same to be constructed out of new pipe.
  - (4) Grade, level and restore such property to the same surface condition, as nearly practicable, as existed before operations were first commenced.
  - (5) All required agreements pursuant to this division shall be completed, reviewed, and resolved by the town engineer, town attorney, town manager, and, if required, by town council, prior to the determination of any oil, gas, or combined permit as being administratively complete.
- (d) Pipeline trenches shall be double ditch backfilled and pipelines shall be constructed so as to maintain a minimum depth of thirty-six inches (36") below the finished grade except in public rights-of-way, where minimum cover to the top of the pipe shall be at least forty-eight inches (48") below the bottom of any adjacent roadside ditch. Public roads shall not be crossed by open cut. During the backfill of any pipeline excavations, detectable underground warning tape shall be buried one foot (1') above any such pipeline to warn future excavators of the presence of a buried pipeline. Said detectable underground warning tape shall be at least six inches (6") wide and 4 mils thick complying with APWA Uniform Color Code for marking of underground utilities.
- (e) In all cases in which one or more residential lots in a proposed subdivision are crossed or

come by or come within one hundred feet (100') of any existing oil or gas pipeline or pipeline easement, the subdivider shall, prior to and as a condition of town approval of the subdivision, execute the following waiver and hold harmless agreement, which shall be duly acknowledged in the manner provided by law, and which shall thereafter be recorded in the appropriate deed or other permanent county records:

"[Subdivider Name], by and through its duly undersigned and authorized officer, does hereby state that it fully realizes that it is applying for a permit from the Town of Flower Mound to build within one hundred feet (100') of an existing oil or gas pipeline or pipeline easement, and that the Town of Flower Mound considers building near such pipeline or pipeline easement to have certain inherent dangers, including, but not limited to, explosion and release of noxious, toxic and flammable substances. For the aforementioned reasons, [Subdivider Name], for itself and its successors and assigns, does hereby RELEASE and agrees to forever HOLD HARMLESS the Town of Flower Mound, Texas, its officers, officials, employees, successors and assigns from all liability in any way arising from the building, use or habitation of the structure(s) described in the said permit."

- (f) In all cases in which one or more residential lots in a proposed subdivision are crossed or come by or come within one hundred feet (100') of any existing oil or gas pipeline or pipeline easement, the subdivider shall provide a note on the face of the development plan and record plat stating that the subdivision is crossed or is located within one hundred feet (100') of an existing oil or gas pipeline or pipeline easement.

- (g) Construction, repair and/or maintenance of all pipelines, gathering lines, and production lines shall meet or exceed the minimum criteria established by the statutory or regulatory requirements of the state and federal governments for oil and gas pipelines.
- (h) Transmission pipelines, gathering lines and production lines within the town limits or extraterritorial jurisdiction shall be constructed in accordance with the Ordinances, utilize best management practices, and be designed and constructed to the latest standards mandated by the United States Department of Transportation (DOT) and Texas Railroad Commission for pipelines operating within a Class 3 location in accordance with 49 CFR § 192.111, as amended.
- (i) Pipelines subject to this article shall be constructed with an automated pressure monitoring system that detects leaks and shuts off any line or any section of line that develops a leak. In lieu of such system, the pipeline operator may have 24 hour pressure monitoring of the pipeline system which provides monitoring of the pipeline within the town limits and extraterritorial jurisdiction. Any monitoring system(s) shall be keyed to or required to notify the town's emergency response providers in order to provide them with immediate notice of any leak.
- (j) Compression and gas lift facilities and associated pipelines shall conform to the current code adopted by the town and set forth within the "Oil and Natural Gas Well Drilling and Operations" ordinance, as amended. Compression and gas lift facilities shall be required to comply with all state and/or 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 associated with

natural gas compression and gas lift facilities. Best management practices to meet all permitting requirements and control emissions generated at compression and gas lift facilities, and associated equipment, shall be required and submitted to the town for approval. Compression facilities shall be equipped with (i) gas and flame detection equipment designed to shut down the operations if a gas leak or flame is detected at the facility; (ii) high/low pressure automatic cutoff switch; and (iii) sound control enclosures to reduce compressor noise and vibrations.

- (k) Construction of the pipeline must commence within six (6) months of approval by the town or otherwise the permit expires. A one-year extension of time may be granted if existing conditions are the same, as determined by the oil and gas inspector. Once construction has commenced, the permit shall continue (i) until the pipeline covered by the permit is complete and the site restored, or (ii) one year has elapsed since the approval date of the permit by the town council, whichever occurs first.
- (l) Structures shall not be built over flow lines or gathering lines and within any pipeline easement.

**Sec. 34-455. Reserved.**

**Sec. 34-456. New Pipeline Permit Application.**

- (a) At least forty-five (45) days prior to the scheduled commencement of the construction of a new pipeline, the pipeline owner or operator shall submit an application and pay a fee, as established by the adopted fee schedule, for an oil and gas pipeline permit to the town pursuant to its intention to construct the pipeline and shall submit the following information in the application for a permit:

- (1) The name, business address and telephone numbers of the pipeline owner or operator.
- (2) The names, titles and telephone numbers of the following:
  - a. The person submitting the application for an oil and gas pipeline permit to construct the pipeline;
  - b. The person designated as the principal contact for the submittal;
  - c. The person designated as the twenty-four-hour emergency contact; and
  - d. The person or firm that will operate the pipeline.
- (3) The origin point and the destination of the segment of the pipeline to be constructed.
- (4) A text description of the general location of the planned pipeline.
- (5) A description of the substance to be transported through the pipeline.
- (6) A copy of the substance material safety data sheet (MSDS).
- (7) The maximum allowable operating pressure on the pipeline, along with the Specified Minimum Yield Strength (SMYS) of the pipe, its pressure class, and design calculations in accordance with 49 CFR § 192.105, as amended, assuming a Class 3 or better location.
- (8) The normal operating pressure range of the pipeline, not to exceed the maximum allowable operating pressure as designated above.

- (9) Engineering plans, drawings and/or maps with summarized specifications showing the horizontal pipeline location, pipeline covering depths, and location of shutoff valves (the location of shutoff valves must be known in order for emergency responders to clear area for access valves.) To the extent that information can be obtained, drawings shall show the location of other pipelines and utilities that will be crossed or paralleled within five feet (5') of the proposed pipeline.
- (10) A description of the consideration given to matters of public safety and the avoidance, as far as practicable, of existing inhabited structures and congregated areas.
- (11) Detailed cross section drawings for all public street right-of-way and easement crossings.
- (12) Methods to be used to prevent both internal and external corrosion.
- (13) A binder or certificates of all bonds and insurance as required under this article.
- (14) A tree survey of specimen trees prepared pursuant to chapter 94, "Vegetation," article II, "Trees," section 94-91, "Application," as amended. A tree survey of specimen trees shall be required from the outer edge of any improvements, construction areas, development, equipment, materials, temporary roads, access easements, and/or built structures, extending twenty-five feet (25'), without regard to intervening structures or objects.

**Sec. 34-457. Permit Approval.**

- (a) The applicant shall submit an application as described in section 34-456 and in accordance

with a submittal schedule as provided by the town. Any application submitted that is determined to be administratively incomplete shall be returned to the applicant within ten (10) business days of the submittal date along with a letter documenting the deficiencies of the application, if any.

- (b) After the submission of an administratively complete application, an administrative conference may be conducted to seek resolution of any substantive, non-resolvable technical issues. The conference shall be conducted with the Pipeline Review Committee, which shall consist of the town engineer, fire chief, oil and gas inspector and, if necessary, a third-party technical expert. The costs associated with the technical expert shall be borne by the applicant. A quorum of at least three (3) members must be present to conduct a conference with at least one (1) of the members present at the conference having emergency management expertise. Any decision by the Pipeline Review Committee is final.
- (c) From time to time the town may need to obtain an independent study or analysis of an application or petition to construct a new pipeline. The town, upon approval by the town council after recommendation by the Pipeline Review Committee, shall engage duly qualified independent consultant(s) or contractor(s) to conduct such special studies or analyses as required to fully evaluate and act upon an application for a new pipeline. Cost for said consultant or contractor shall be billed directly to the applicant for all direct expenses incurred by the town relative thereto. Failure to timely remit payment to the town shall result in the denial of an application.
- (d) The pipeline owner or operator shall give notice at least forty-eight (48) hours prior to the commencement of pipeline construction to all residents and business establishments that are



located within five hundred feet (500') of the proposed centerline of the pipeline.

- (e) Upon completion of pipeline construction the pipeline owner or operator shall provide the town with as-built or record drawings of the pipelines within one hundred twenty (120) calendar days. Accuracy of the as-built or record drawings shall meet a survey level of one foot (1') to fifty thousand feet (50,000'). The drawings shall also be supplied in a DXF digital file format with the location tied to one (1) nearby GPS (global positioning system) town monument. If the new pipeline length exceeds one thousand feet (1,000') within the town or its extraterritorial jurisdiction, the pipeline shall be tied to at least two (2) GPS town monuments.
- (f) Any change in service of a pipeline not previously addressed by this article must be reviewed in accordance with the new pipeline review procedure outlined herein, as if it were new pipeline construction.

**Sec. 34-458. Public Education.**

- (a) In keeping with the Natural Gas Pipeline Safety Act of 1968 and 49 CFR § 192.614, "Damage Prevention Program," 49 CFR § 192.615, "Emergency Plans," the Hazardous Liquids Safety Act of 1979, and 49 CFR § 195.408, "Communications," 49 CFR § 195.440, "Public Awareness," and the Community Right-to-Know Act, 40 CFR Parts 350-374, all as amended:
  - (1) Each pipeline owner or operator shall maintain a public education program that is communicated to residents and business establishments within one thousand feet (1,000') of the centerline of a pipeline.

(2) Pipeline information communicated per subsection (1) shall contain the following subjects:

- a. Pipeline location;
- b. Material transported within the pipeline;
- c. Pipeline markers;
- d. How to recognize a pipeline;
- e. How to report a pipeline emergency;
- f. Contact information regarding underground utility locations;
- g. Additional requirements for excavations near a home or business; and
- h. Response needs during a pipeline emergency, including instructions for sheltering in the event of an emergency.

(3) Public education information shall be communicated at least annually in both English and Spanish.

**Sec. 34-459. Pipeline Information Reporting Requirements.**

- (a) Each pipeline owner or operator shall provide to the oil and gas inspector, the fire department, and the town's law enforcement provider the names, mailing addresses and telephone numbers of at least two (2) primary persons, officers or contacts available on a twenty-four-hour basis and at least two (2) alternative persons, officers or contacts to be reached in the event that the primary contacts are unavailable who:

- (1) Can initiate appropriate actions to respond to an emergency;
- (2) Have access to information on the location of the closest shutoff valve to any specific point in the town or its jurisdiction; and
- (3) Can furnish the common name of the material then being carried by the pipeline.

Any change in the above information must be provided to the town by contacting the oil and gas inspector prior to such change.

- (b) Every owner or operator of a pipeline subject to this article shall be required to present to the town a safety report and file with the town an annual verified safety report in letter form on or before June 30 of each year to cover a reporting period of June 1 through May 31. Said written safety report shall contain the following information and said information shall be presented to the oil and gas inspector by every owner or operator of a pipeline subject to this article:

- (1) A statement that the pipeline has no outstanding safety violations as determined in an inspection or audit by either the Texas Railroad Commission and/or the U.S. Department of Transportation with regard to any pipeline operating within the town or its extraterritorial jurisdiction. Alternatively, if there are any safety violations as determined by the Texas Railroad Commission and/or the U.S. Department of Transportation that have not been corrected, these outstanding safety violations shall be described to the town with an action plan to correct the safety violations. Said action plan shall include a timeline for corrective action and the

individual or firm responsible for each action.

- (2) Evidence that the pipeline owner or operator has current liability insurance covering each respective pipeline in the minimum amount of five million dollars (\$5,000,000.00) or has a self-insured signed program, verified by an independent certified public accountant, which program and verification will be reviewed and judged to determine equivalency by the town. Insurance carriers must be licensed to conduct business in the State of Texas and possess at least an "A" rating by the A.M. Best Company.
- (3) A statement that the pipeline information specified in subsection (a) is correct. Alternatively, in the event that the required information on file with the town is no longer correct, updated or corrected information shall be submitted within five (5) calendar days of the change and the updated information shall be submitted with the annual safety report.
- (4) Owners or operators of any unregulated pipeline who have no reporting responsibility to the Texas Railroad Commission or the U.S. Department of Transportation and who may otherwise operate outside the safety regulations of either of these agencies shall additionally provide the following information pertaining to the preceding reporting period of June 1 through May 31:
  - a. Copies of internal reports of responses to pipeline emergencies, as pipeline emergency is defined in this article;

- b. Current operations and maintenance logs; and
  - c. Current emergency action plan.
- (5) A log of all the maintenance and monitoring activities conducted on all lines subject to this article for the reporting period shall be made available upon request by the town.
- (6) The designated owner or operator shall submit the annual safety report with respect to all pipelines subject to the ordinances of the town of Flower Mound. The safety report and verification shall be executed by an officer or a person who is authorized to sign such safety report letter and make verification. The prescribed form of verification on the safety report letter shall read:

Verification

I, [NAME], [TITLE], of [OWNER/OPERATOR], am authorized to make and have made the foregoing annual safety report letter to the Town for oil and gas pipelines. Any attachments submitted with this letter are true and correct copies of originals and the information provided in this letter is true and correct to the best of my knowledge and is information based on the standard of inquiry and investigation as would be made by a reasonably prudent pipeline owner or operator within the Town of Flower Mound or within the Town's extra-territorial jurisdiction.

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Signature of Officer or Person  
Authorized to Sign Letter

STATE OF TEXAS            §  
COUNTY OF [Place Where Safety  
Letter is Prepared]        §

The foregoing annual safety report letter was sworn to and subscribed before me by [signatory of letter] on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed:

\_\_\_\_\_  
Notary Public for the State of Texas

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

- (7) An annual fee in the amount of one hundred dollars (\$100.00) for administrative costs shall be remitted by each owner or operator for each pipeline on or before June 30 of each year with the annual safety report letter as required herein.
- (8) A copy of all initial or follow-up reports provided to the U.S. Department of Transportation or the Texas Railroad Commission on unsafe pipeline conditions, pipeline emergencies or pipeline incidents within the town's jurisdiction must be filed concurrently with the town. In addition, any initial or follow-up reports filed with state and federal environmental regulatory agencies pertaining to pipeline releases, emergencies or releases within the town's jurisdiction that threaten to impact the environment, public health or safety must be filed concurrently with the town.
- (9) Upon written request of the town the pipeline owner or operator shall make available to the town during normal business hours and at the pipeline owner or operator's local office documents for review that are required for submittal to or

to be maintained on file for the U.S. Department of Transportation and the Texas Railroad Commission such as:

- a. Operations and maintenance;
- b. Employee training;
- c. Annual inspection;
- d. Repair records;
- e. Operating records; and
- f. Insurance.

In the case of unregulated pipelines, the town may request any such additional information that the town deems may be necessary to the best interests of the town and to be necessary to protect the public health, safety and welfare.

**Sec. 34-460. Pipeline Markers.**

- (a) In accordance with U.S. Department of Transportation and Texas Railroad Commission requirements, pipeline owners or operators shall place and maintain permanent line markers as close as practical over the pipeline(s) at each crossing of a public street, utility easement or railroad. Marker(s) shall also be maintained by the pipeline owners or operators along each pipeline that is located above ground in an area accessible to the public. The markers shall be of permanent type construction and contain labeling identifying the:
  - (1) Pipeline owner or operator;
  - (2) Twenty-four-hour contact telephone number; and
  - (3) A general description of the product transported in the pipeline; i.e., natural gas, oil or petroleum.

- (b) No person shall tamper with, deface, damage or remove any pipeline marker, except the pipeline owner or operator.
- (c) Upon specific reasonable request of the owner of a residential property, the pipeline owner or operator shall install temporary pipeline markers or flagging to reduce the possibility of pipeline damage or interference, in accordance with this article.

**Sec. 34-461. One Call System.**

- (a) The owner or operator of any pipeline that transports gas, oil or hydrocarbons that is located in the town's jurisdiction shall be a member in good standing with the One Call system or other approved excavation monitoring system as required by state law. The owner or operator of any pipeline that transports gas, oil or hydrocarbons subject to this article shall contract for service with the selected underground utility coordinating system for a minimum of five (5) years unless there is an agreement to change to an alternate system between the town and the pipeline owners or operators. Said services shall be maintained without interruption for the life of the oil and gas pipeline permit. The selected underground utility coordinating system may be different than the one used by the town for other underground utility services.
- (b) Prior to beginning any excavation, trenching or digging using powered equipment or hand tools that may damage a pipeline, any person in the town's jurisdiction shall be required to contact the One Call System and any other appropriate underground utility coordinating systems and determine if there are any pipelines or public utilities in the vicinity of the proposed activities.
- (c) If physical contact is made with a pipeline during any excavation, trenching or digging,



the pipeline company must be notified by the person or agency making the physical contact with the pipeline for any necessary pipeline inspection or repair.

**Sec. 34-462. Inactive and Idled Pipelines.**

(a) Inactive Pipelines

- (1) All reporting records specified in section 34-457 shall be maintained and kept current on inactive pipelines.
- (2) Inactive pipelines shall be purged of gas, hazardous liquids, and chemicals, and physically isolated if such action does not adversely effect the pipeline owner or operators right-of-way easement and does not prevent the pipeline owner or operator from maintaining the physical integrity of the pipeline. These pipelines shall be maintained to prevent deterioration.
- (3) The means used to physically isolate, if such action is taken, the inactive pipeline shall be included in the information retained on file with the town for reporting as specified in section 34-457.

(b) Idled Pipelines

- (1) An entry shall be made to the required reporting records as required in section 34-457 that the pipeline has been idled.
- (2) Idled pipelines shall be purged, disconnected from all sources or supplies of gas, hazardous liquids and chemicals, and capped or sealed at the ends.
- (3) Reactivation of idled pipelines shall require notification of the town pursuant to the standards and requirements specified in section 34-457. Reactivation shall require pressure testing for integrity and

compliance with Texas Railroad Commission and/or United States Department of Transportation regulations.

**Sec. 34.463. Emergency Response Plans and Emergency Incident Reporting.**

- (a) Each pipeline owner or operator shall maintain written procedures to minimize the hazards resulting from an emergency. These procedures shall at a minimum provide for:
  - (1) Prompt and effective response to emergencies including by way of example and not limitation:
    - a. Leaks or releases that can impact public health, safety or welfare;
    - b. Fire or explosions at or in the vicinity of a pipeline or pipeline easement; or
    - c. Natural disasters;
  - (2) Effective means to notify and communicate required and pertinent information to local fire, police, and public officials during an emergency;
  - (3) The availability of personnel, equipment, tools and materials as necessary at the scene of an emergency;
  - (4) Measures to be taken to reduce public exposure to injury and probability of accidental death or dismemberment;
  - (5) Emergency shut down and pressure reduction of a pipeline;
  - (6) The safe restoration of service following an emergency or incident;
  - (7) A follow-up incident investigation to determine the cause of the incident; and

- (8) Require the implementation of corrective measures.
- (b) Each pipeline owner or operator shall meet annually with the oil and gas inspector to review emergency response plans. These reviews shall be in accord with U.S. Department of Transportation and Texas Railroad Commission requirements and the owner or operator will:
- (1) Furnish or update a copy of the emergency response plan described in subsection (a);
  - (2) Review the responsibilities of each governmental organization in response to an emergency or incident;
  - (3) Review the capabilities of the pipeline owner or operator to respond to an emergency or incident;
  - (4) Identify the types of emergencies or incidents that will result in or require contacting the town; and
  - (5) Plan mutual activities that the town and the pipeline owner or operator can engage in to minimize risks associated with pipeline operation.
  - (6) At this meeting, the town shall provide the pipeline owner or operator with a list of additional contacts that shall be made in the event of a pipeline emergency or incident. The town will inform the pipeline owner or operator of the emergency response groups that will be contacted through 911.
- (c) Upon discovery of a pipeline emergency or incident, the following communications are to be initiated immediately by the affected pipeline owners or operators:

- (1) A general description of the emergency or incident;
  - (2) The location of the emergency or incident;
  - (3) The name and telephone number of the person reporting the emergency or incident;
  - (4) The name of the pipeline owner or operator;
  - (5) Whether or not any hazardous material is involved and identification of the hazardous material so involved; and
  - (6) Any other information as requested by the emergency dispatcher or other such official at the time of reporting the emergency or incident.
- (d) The pipeline owner or operator shall contact any other emergency response groups that are necessary that may not be activated through the county 911 system.
- (e) The pipeline owner or operator shall contact the Flower Mound Fire Department no later than one (1) hour after the discovery of any incident.
- (f) Notwithstanding any provision in this article, each pipeline containing natural gas which contains hydrogen sulfide in concentrations of more than one hundred (100) parts per million, shall be constructed with an audible alarm system that will provide an alarm to the general public in the event of a leak from any pipeline, gathering or flow line subject to this article. Said audible alarm system shall be of a type and design approved by the town. The owner or operator shall place a warning sign for lines carrying H<sub>2</sub>S (hydrogen sulfide) gas as required by the Commission and all other applicable state or federal regulatory agencies.

- (g) Within two (2) years of the effective date of the pipeline permit and every two (2) years thereafter, the pipeline owner or operator shall conduct an on-site, emergency drill that includes, but shall not be limited to, the personnel operating the pipeline, local law enforcement personnel, and officials of the town.

**Sec. 34-464. Pipeline Repairs and Maintenance.**

- (a) All repairs and maintenance are to be performed in accordance with U.S. Department of Transportation and Texas Railroad Commission mechanical integrity requirements. This requirement applies to all pipelines covered by this article, unregulated as well as those operating under federal rules.
- (b) If non-emergency repairs necessitate excavation of the pipeline, prior notification is required to occupants of all business establishments and residential dwellings located within five hundred feet (500') from the centerline of the pipeline section to be excavated.
- (c) Above-ground non-emergency repairs that are not routine maintenance necessitate prior notification to occupants of all businesses and residential dwellings located within five hundred feet (500') from the centerline of the pipeline section to be repaired.
- (d) Without limitation on the methods of giving the notice required in subsections (b) and (c), the leaving of a written notice securely attached to the front door of a residence or business establishment or the posting of a written notice at the entry to any recreational area or place of public assembly to be noticed shall be deemed compliance with this section.
- (e) Inspection of the interior of all pipelines subject to these standards shall follow United States

Department of Transportation and Texas Railroad Commission rules.

**Sec. 34-465. No Grant of Town Easement; No Assumption of Responsibility by Town.**

- (a) Nothing in this article grants permission for the use of any street, right-of-way or property of the town, and any such use shall be subject to the town at its sole discretion.
- (b) Nothing in this article shall be construed as an assumption by the town of any responsibility of an owner or operator of a pipeline not owned by the town, and no town officer, employee or agent shall have authority to relieve an owner or operator of a pipeline from their responsibility under this article or by any other law, ordinance or resolution.

**Sec. 34-466. Protection and Painting of Structures.**

All pipeline risers and all appurtenances related to pipeline construction and operations composed of materials generally protected or painted shall be protected and painted and shall be repainted at sufficiently frequent intervals to maintain same in good condition. It shall be a violation of this article for any pipeline riser and/or appurtenances related to pipeline construction and operations to be in a state of disrepair or to have chipped, peeling or unpainted portions thereof.

**Sec. 34-467. Waiver/Hold Harmless Agreement Required for Issuance of Building Permit.**

Any person, firm or corporation wishing to obtain a building permit for the erection, construction, reconstruction or expansion of any structure, of which any portion of such erection, construction, reconstruction or expansion would occur within one hundred feet (100') of an existing oil or gas pipeline or pipeline easement, shall, prior to and as a condition of the issuance of such building permit, execute the following waiver and hold harmless agreement, which shall be duly acknowledged in the manner provided

by law, and which shall thereafter be notarized and recorded in the appropriate deed or other permanent county records:

"I, [Applicant's Name], do hereby state, on my oath, that I fully realize I am applying for a permit from the Town of Flower Mound to build within one hundred feet (100') of an existing oil or gas pipeline or pipeline easement; that I am fully aware of the dangers inherent in building near such pipeline or easement, including, but not limited to, explosion and release of noxious, toxic and flammable substances; and, further, that I do hereby RELEASE and agree to forever HOLD HARMLESS the Town of Flower Mound, Texas, its officers, officials, employees, successors and assigns from all liability in any way arising from the building, use or habitation of the structure described in the said permit."

**Sec. 34-468. Street and Right-of-Way Use.**

- (a) In the event an oil or gas pipeline is placed within any public right-of-way under the jurisdiction of the town, the owner/operator shall comply with the right-of-way use regulations as provided in the town of Flower Mound code of ordinances and obtain an appropriate franchise, permit or authorization for the use of such right-of-way.
- (b) To the extent that the provisions of this article conflict with the town's right-of-way use ordinance, this article shall apply.

**Sec. 34-469. Violations.**

- (a) Any pipeline owner or operator subject to this article, who shall have failed to comply with this article, shall be deemed to maintain a nuisance and the town may take such measures to remedy such nuisance as may be necessary.
- (b) It shall be a violation of this article for a person to knowingly make a misrepresentation of any

information to be reported pursuant to this article. It shall also be a violation of this article if the person makes such misrepresentation as a result of failure to exercise such due diligence of investigation or inquiry, as would a reasonably prudent pipeline owner or operator conducting business in the jurisdiction of the town.

- (c) Each violation of any section, subsection or part of this article shall be a separate offense. Each day of ongoing violation shall be a separate offense, and shall carry with it a fine of not more than two thousand dollars (\$2,000.00) per day.
- (d) The town shall be entitled to injunctive relief or any other appropriate relief in a court of appropriate jurisdiction to prevent violation of or to compel compliance with this article.

**Sec. 34-470. Bond and Insurance Required.**

- (a) In the event that a permit is issued for a pipeline or other operation under this article, no actual operation shall be commenced until the permittee shall file with the town secretary a bond and a certificate of insurance as follows:
  - (1) No person shall begin the construction or operation of any pipeline until he has filed with the town secretary a duly executed bond executed by the applicant as principal with an AM Best "A" rated surety company that is acceptable to the town and is licensed to conduct business in the state as surety, payable to the town and the policy shall name the town as an additional insured and such surety company shall maintain an A.M. Best "A" rating for the policy period. Said bond shall include conditions that the applicant, its heirs, assigns and successors will do the following:



- a. Comply with the terms and conditions of the application and this article in the construction, operation and maintenance of the pipeline and related structure(s).
  - b. That all streets and sidewalks and all other public places and all public utilities that may be injured or damaged in the operation will be restored to their former condition.
  - c. That all litter, machinery, buildings, trash, and waste used, accumulated or allowed in the construction of any pipeline will be removed within thirty (30) days of the completion of said construction.
  - d. That all litter, machinery, buildings, trash, and waste used, accumulated or allowed in the operation of any pipeline will be removed within thirty (30) days of the completion of said operations.
  - e. Such bond shall be in the sum of \$1,000,000.00 and before the permit shall be issued, the bond shall be approved by the town and filed with the town secretary. Such bond shall become effective upon the granting of the permit and shall remain in full force and effect until all work under the terms of such permit has been completed. Such bond may later be amended to include other pipelines, under provisions of other applications, or other permits.
- (2) In addition to the bond required in subsection (a)(1) above, each person desiring to construct a pipeline or to conduct any other work under the provisions of this article shall be required to carry public liability insurance with a carrier rated "A" or better by A.M. Best in a minimum

amount of \$2,000,000.00 for one person and \$5,000,000.00 for one accident and property damage insurance in the amount of \$10,000,000.00 for one accident, all of which insurance coverages shall remain in full force and effect and be carried so long as such pipeline is operated. A certificate of insurance shall be furnished annually by the permittee or the subsequent owner and operator of such pipeline showing that such insurance is and continues to be in effect.

- (3) Permittee shall provide and maintain in full force and effect during the term of its permit insurance with the following minimum limits:
  - a. Worker's compensation at statutory limits;
  - b. Employer's liability, including bodily injury by accident and by disease, for \$500,000.00 combined single limit per occurrence and a twelve-month (12-month) aggregate policy limit of \$1,000,000.00;
  - c. Commercial general liability coverage, including blanket contractual liability, products and completed operations, personal injury, bodily injury, broad form property damage, operations hazard, pollution, explosion, collapse and underground hazards for \$5,000,000.00 per occurrence and a twelve-month (12-month) aggregate policy limit of \$25,000,000.00; and
  - d. Automobile liability insurance (for automobiles used by the permittee in the course of its performance under the permit, including employer's non-ownership and hired auto coverage) for \$2,000,000.00 combined single limit per occurrence.

- (b) The town shall adjust the above minimum liability limits every two (2) years during the term of the permit to compensate for the effects of inflation and with the objective to reestablish the value of coverage required as of the effective date of this article.
- (c) Each policy or an endorsement thereto, except those for worker's compensation and employer's liability, shall name the town and its officers, officials, employees, successors and assigns as additional insured parties, but limited to risks indemnified pursuant to this article. If any such policy is written as "claims made" coverage and the town is required to be carried as an additional insured, then the permittee shall purchase policy period extensions so as to provide coverage to the town for a period of at least two (2) years after the last date that the permit is in effect. No deductible shall exceed ten percent (10%) of the minimum limits of liability or one percent (1%) of the consolidated net worth of the permittee and its permitted affiliates, whichever is greater.
- (d) Permittee shall assume and bear the risk of any and all claims or losses to the extent of deductible amounts and waives any claim it may ever have for the same against the town and its officers, officials, employees, successors and assigns in respect of any covered event.
- (e) All such policies and certificates shall contain an agreement that the insurer shall notify the town in writing not less than thirty (30) days before any material change, reduction in coverage or cancellation of any policy. Permittee shall give written notice to the town within five (5) days of the date upon which total claims by any party against permittee reduce the aggregate amount of coverage below the amounts required by the oil and gas pipeline permit.

- (f) Each policy must contain an endorsement to the effect that the insurer waives any claim or right in the nature of subrogation to recover against the town, its officers, officials, employees, successors and assigns.
- (g) Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the town as an additional insured with respect to claims arising thereunder.

**Sec. 34-471. Termination of Permit.**

Any violation of the provisions of any or all sections of this article shall be grounds for the termination of any oil and gas pipeline permit. The termination of any oil and gas pipeline permit shall require the immediate cessation of all operations authorized by the permit and shall require the pipeline owner or operator to reapply for a new oil and gas pipeline permit in full accordance with the provisions of this article.

**Sec. 34-472. Production Fluid Pipeline General Requirements and Minimum Design Standards.**

- (a) For purposes of this section, the term "production fluid" means and includes produced water, drilling fluid, and other fluids associated with the exploration or production of natural gas or oil.
- (b) General Requirements and Minimum Design Standards.
  - (1) A permit for a production fluid or produced water pipeline shall conform to all of the requirements of section 34-454 of this article.
  - (2) *General pipeline design requirements.* All production fluid pipelines shall be constructed using a double-wall containment pipe system including, but not limited to, fiberglass reinforced

plastic (FRP) materials or other materials that are "as-equal" or better than FRP suitable for the pressures, temperatures, and internal and external corrosion, and environmental conditions. Pipeline design, materials of construction, and related construction work shall be approved by the Town's Oil and Gas Inspector.

- (3) Production fluid pipelines shall be constructed with an automated leak detection monitoring system that detects leaks and shuts off any line or any section of line that develops a leak. This system shall consist of a pressure monitoring system capable of detecting large leaks that cause a pressure drop as well as an alarm system to detect small leaks caught by the secondary containment pipeline. The system shall provide for shutdown via automatic valves spaced at each well head, major pipeline junctions, and at the influent and effluent of the storage and disposal tanks. Valve placements shall be indicated on submitted plans and are subject to town approval. In lieu of such system, the pipeline operator may have 24-hour pressure monitoring of the pipeline system which provides monitoring of the pipeline within the town limits and extraterritorial jurisdiction. Any monitoring system(s) shall be keyed to or required to notify the town's emergency response providers in order to provide them with immediate notice of any leak.
- (4) When crossing existing utilities, production fluid pipelines shall be installed beneath all utilities; no seams, splices or joint connections shall be allowed within town right-of-way and minimum cover to the top of the pipe shall be at the discretion of the town

based on existing or planned utilities and existing conditions or planned alterations to roadways. The production fluid at such pipeline crossings must pass through an additional casing of a design and constructed in accordance with the United States Department of Transportation standards set forth in 49 CFR § 192.323 (Casing), as amended.

**Sec. 34-473. Centralized Natural Gas Facilities and Minimum Design Standards.**

- (a) For purposes of this section, the term “centralized natural gas facility” shall mean any centralized natural gas compression facility, centralized natural gas lift facility and/or centralized natural gas produced water facility, and all related appurtenances and equipment.
  - (1) A person desiring to construct and/or operate a centralized natural gas facility shall apply for and obtain a Specific Use Permit (SUP) for such use. If 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 regulations, as amended. The use of any property in the town as a centralized natural gas facility is otherwise strictly prohibited.
  - (2) A person desiring to construct and/or operate a centralized natural gas facility shall submit an application accompanied by permit fees in accordance with Appendix A and shall include the following information:
    - (a) The date of the application.

- (b) An accurate legal description of the property to be used for the centralized natural gas facility. Property recorded by plat should reference subdivision, block, and lot numbers, as applicable.
- (c) Map showing the proposed transportation route and road for the conveyance of equipment, chemicals or waste products used or produced by and stored at the centralized natural gas facility.
- (d) Surface owner name(s), phone number(s), physical address(es), and, if possible, email address(es), of the surface owner.
- (e) Operator/applicant name, phone number, physical address, and, if possible, email address; if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners shall be provided.
- (f) Name, phone number, physical address, and, if possible, email address of the individual designated to receive notice.
- (g) Name of representative with supervisory authority over all centralized natural gas facility site activities and a twenty-four-hour phone number for such representative.
- (h) Location and description of all improvements and structures within one thousand feet (1,000') of the proposed centralized natural gas facility site.

- (i) Name and address of the owner(s) of each parcel of property within one thousand feet (1,000') of the proposed centralized natural gas facility site.
- (j) A site plan, drawn to scale, of the proposed centralized natural gas facility site showing the location of all improvements and equipment, including but not limited to the location of tanks, pipelines, compressors, separators, and storage tanks. In addition, the site plan must conform to all relevant standards and requirements described in subpart B, "Land Development Regulations," chapter 82, "Development Standards," article II, "Site Plans."
- (k) A tree survey prepared pursuant to chapter 94, "Trees." A tree survey shall be required from the outer edge of any improvements, construction areas, development, equipment, materials, temporary roads, access easements, and/or built structures, extending outward five hundred feet (500'), without regard to intervening structures or objects.
- (l) The name, address and twenty-four-hour phone number of the person to be notified in case of an emergency.
- (m) A signed road maintenance agreement supplied by the town that provides that the operator shall repair, at his or her own expense, any damage to public roads, streets, or highways caused by the use of heavy vehicles for any activity associated with the preparation and operation of the centralized natural gas facility.



- (n) A copy of the storm water pollution prevention plan as required by the Texas Commission on Environmental Quality, and/or the United States Environmental Protection Agency. A copy of the "notice of intent" shall be submitted to the town of Flower Mound, Environmental Resources Division at least seven (7) business days prior to the commencement of any onsite activity.
- (o) A copy of the erosion control plan pursuant to the town's Design Criteria and Construction Standards Manual, as amended, and approved by the town engineer.
- (p) A copy of the hazardous materials management plan as required by the town's fire chief. In addition to the hazardous materials management plan, material safety data sheets (MSDSs) for all hazardous materials that will be located, stored, transported, and/or temporarily used on the centralized natural gas facility site shall be provided to the oil and gas inspector and fire chief.
- (q) A copy of the emergency response plan as required by the town's fire chief's office and a copy of the spill prevention and control plan.
- (r) Evidence of insurance and security requirements required by this article or article VII of this chapter, whichever coverage amounts are greater.
- (s) A copy of the Noise Management Plan, prepared by a noise control engineer or other qualified person

approved by the oil and gas inspector, for any equipment used in drilling, completion, or production of a well, as required in section 34-422(h)(6) of this code.

(t) 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 and/or understanding of the operator or designated representative, true and correct.

(u) All required application and permit fees.

(3) Any centralized natural gas facility shall conform to all provisions contained in article VII of this chapter, as amended. Any reference to a well, well site, drilling site, operation site or production site, or similar term, in article VII of this chapter shall apply to any centralized natural gas facility. In addition to the provisions contained in article VII of this chapter, best management practices for vapor recovery equipment shall be required for any centralized natural gas facility.

(4) *Walls, Gates, and Vehicular Drives for any Centralized Natural Gas Facility.* In addition to the surface equipment requirements set forth in article VII of this chapter, as amended, the following requirements for any centralized natural gas facility shall apply.

a. Walls shall be installed completely around all permanent structures and equipment associated with and including the centralized natural gas facility and shall be sufficient to screen from view the structures and equipment sought to be screened.

Screening options for masonry walls shall adhere to a combination of the following:

1. The wall shall be constructed of hand-laid brick or stone, shall have columns spaced no more than fifty feet (50') apart on center, shall be of a design compatible with the facilities, buildings, and structures on and adjacent to the site, if any; and
  2. The wall shall be at least eight feet (8') in height.
- b. Any gate to a centralized natural gas facility shall be at least twelve feet (12') wide and shall be constructed in a manner as to screen from view the interior of said facility; and
  - c. Any vehicular drives designed to access any centralized natural gas facility shall be constructed of asphalt or concrete, at least twenty-six feet (26') wide with an overhead clearance of at least fourteen feet (14').
- (5) Landscaping requirements in addition to the requirements set forth in article VII of this chapter, as amended, shall adhere to the following requirements. Landscaping may also include construction of vegetative berms upon approval by the town. Landscape plans shall be submitted to the oil and gas inspector for approval. Required landscaping shall be installed and approved by the town prior to commencing operations.
- a. All centralized natural gas facility sites must be landscaped along the

entire perimeter of the required screening wall.

- b. Vegetation shall include a combination of large canopy trees and small to medium canopy trees which are native or adaptive drought tolerant species, complimentary with the surrounding landscape.
- c. Trees shall be a minimum of three inch (3") caliper at the time of planting. A minimum of six (6) trees per one hundred (100) linear feet is required. Vegetation must have an installed and operable irrigation system that provides total water coverage to all plant materials. All vegetation shall be planted and spaced to provide maximum screening, growth, and overall health.
- d. At least seventy-five percent (75%) of the trees utilized for landscaping shall be evergreen.
- e. Vegetation used to satisfy screening standards shall include the following species and such other species as may be approved by the oil and gas inspector:
  - 1. Juniperus species
  - 2. Live Oak
  - 3. Bur Oak
  - 4. Shumard Oak
  - 5. Water Oak
  - 6. Pinus species
  - 7. Ilex species
  - 8. Wax Myrtle
  - 9. Leyland Cypress
  - 10. Cedar Elm
- f. Protected trees and specimen trees removed from the site shall be

mitigated for and shall conform to the tree removal requirements in chapter 94 "Trees."

- (6) All equipment shall be painted and maintained at all times. Paint shall be of a neutral color, compatible with the surrounding uses, and shall include unobtrusive shades of green, sand, brown, or other neutral colors approved by the town.
  
- (b) Any centralized natural gas facility shall be located in accordance with any and all well setback distances referenced in article VII of this chapter. All minimum setback requirements shall be measured from the nearest exterior face of the wall surrounding the centralized natural gas facility.
  
- (c) All lighting at a centralized natural gas facility shall be in accordance with the provisions of division 6, article IV of chapter 98 of this code of ordinances, as amended.
  
- (d) Any variance to the setback requirements for any centralized natural gas facility shall be heard by the oil and gas board of appeals, in accordance with the provisions of division 9, article VII of chapter 34 of this code of ordinances. Any other requested waiver, exception or variance to any of the provisions of this article related to centralized natural gas facilities shall be heard by the board of adjustment, in accordance with the provisions of division 3, article II of chapter 78 of this code of ordinances.

**Sec. 34-474. Conflict between Articles.**

In the event of any conflict between the provisions of this article and article VII of this chapter, the provisions of this article shall control, unless otherwise provided.

**Secs. 34-475—34-499. Reserved.**

## ARTICLE IX. VESTED RIGHTS/PREEMPTION DETERMINATION

### Sec. 34-500. Vested Rights/Preemption Determination.

- (a) *Introduction and Purpose.* Chapter 245 of the Texas Local Government Code ("chapter 245"), commonly referred to as the state's "vested rights law," provides an opportunity for persons to "freeze" or "vest" governmental regulations by filing a permit application. Other laws, such as section 211.016 of the Texas Local Government Code, also provide certain vesting or "grandfathered" rights. To (1) ensure that the town recognizes and protects all vested rights created by chapter 245 and other applicable laws, (2) ensure that all vested rights and/or state or federal law preemption determinations are made by the town only after the town is in receipt of all information necessary to allow the town to determine whether vested rights are present or whether state or federal law preempts certain areas of town regulatory authority, and (3) provide a method of administrative review of vested rights or preemption determinations, the town has established the following administrative procedure for consideration of any claim of a vested right under chapter 245 or other applicable vesting laws, and/or state or federal preemption.
- (b) *Vested Rights/Preemption Submission.* For purposes of article VII or article VIII of this chapter only, any person who believes that he has obtained a vested right under chapter 245 or other applicable vesting law, or that state or federal law preempts certain areas of town regulatory authority, and pursuant to chapter 34 of the town's code of ordinances, shall submit to the town secretary a letter explaining the factual and legal bases upon which the person relies to support his contention that he has a particular vested right and/or claim of preemption and, consequently, is exempt or not subject to a particular town order, regulation, ordinance, rule, expiration date, or

other properly adopted requirement (hereinafter referred to collectively as "regulations"). Such written submission shall include, at a minimum, the following:

- (1) The name, mailing address, phone number and fax number of the person (or the person's duly authorized agent);
- (2) Identification of the property for which the person claims a vested right or a claim of preemption;
- (3) For a vested rights claim, identification of the "project," as that term is defined in chapter 245 at § 245.001(3);
- (4) For a vested rights claim, identification of the original application for the first permit in the series of permits required for the project, as described in chapter 245 at § 245.001(1) and § 245.002(a) and (b);
- (5) The date that the first permit in the series of permits required for the project was filed with the town;
- (6) A chronology of the history of the project;
- (7) For a vested rights claim, identification of all pertinent town regulations in effect at the time the original application for the permit was filed that (a) the person contends are vested and (b) the person contends controls the approval, disapproval, or conditional approval of an application for a permit, pursuant to chapter 245 at § 245.002(a) and (b); and
- (8) For a vested rights claim, identification of all pertinent town regulations that the person contends do not apply to the project due to the vested rights provided

the person by chapter 245 or other applicable vesting laws.

- (9) For a vested rights claim or a claim that the town's regulatory authority is preempted under state or federal law, and if a person contends that certain town regulations do not apply to the project, the person is expected to identify, with particularity, all requirements that the person contends do not apply. Global references to a particular ordinance, statute or set of criteria, may be deemed insufficient and the town may consider the request for a vested rights or preemption determination to be incomplete and, hence, not subject to a staff determination at that time.

- (c) *Vested Rights/Preemption Determination.* The town secretary shall promptly forward the person's vested rights or preemption determination request, along with any supporting information or documentation provided along with the request, to the town manager and town attorney for their respective reviews. The town manager, after consultation with the town attorney, shall issue a final administrative determination of whether a vested right exists in relation to the project or whether the town's regulatory authority has been preempted under state or federal law, and shall identify, with particularity, all claims for vested rights that have been granted and all claims for vested rights that have been denied, or identify areas where the town's regulatory authority has been preempted under state or federal law. Prior to rendering his final determination, the town manager may request a pre-determination conference with the person to discuss the person's vested rights or preemption claim and to ensure that the nature of the claim is fully and completely understood by the town manager. The town manager shall act as the building official, pursuant to section



78-84 of the town's code of ordinances, as amended, for the limited purpose of determining vested rights or preemption claims under this article.

- (d) *Board of Adjustment Appeal.* Any person who is aggrieved by or believes that the town manager's vested rights or preemption determination is in error, the person shall have the right to appeal such determination to the town's board of adjustment pursuant to section 78-84 of the town's code of ordinances, which board shall have jurisdiction to hear and decide the appeal pursuant to chapter 34 of the town's code of ordinances and chapter 211 of the Texas Local Government Code.
- (e) *Judicial Review.* Should the town or any person be aggrieved by or dissatisfied with the actions of the board of adjustment, either the town or the person may pursue all legal remedies to review the decision, pursuant to chapter 34 of the town's code of ordinances, as amended.
- (f) *Binding Determination.* The town manager's final determination, if not timely appealed to the board of adjustment pursuant to section 78-84 of the town's code of ordinances, shall be immediately filed in the town's files related to the project and the determination shall be considered binding upon the town and the person for the duration of the project. Similarly, any decision by the board of adjustment, regarding a vested right or preemption claim, if not timely appealed pursuant to chapter 34 of the town's code of ordinances, shall be filed in the town's files related to the project and the determination shall be considered binding upon the town and the person for the duration of the project. Notwithstanding the binding nature of the town manager's final determination and any ruling by the board of adjustment, the town and the person may, at any time, enter into an agreement that, to the extent authorized by

law, modifies the final determination and the applicable regulations to be applied to the project.

- (g) *Filing Date.* The board's decision shall be deemed filed in the board's office on the first business day following the date on which action was taken by the board."

### **SECTION 3**

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

### **SECTION 4**

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

### **SECTION 5**

An offense committed before the effective date of this ordinance is governed by prior law and the Code of Ordinances of the Town of Flower Mound, as previously amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

### **SECTION 6**

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the Town of Flower Mound, Texas, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 7**

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 4 TO 1, THIS 18<sup>th</sup> DAY OF JULY, 2011.**

  
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**Melissa D. Northern, MAYOR**

**ATTEST:**

  
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**Theresa Scott, TOWN SECRETARY**

**APPROVED AS TO FORM AND CONTENT:**

  
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**Terrence S. Welch, TOWN ATTORNEY**