

ORDINANCE NO. 2008-23

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY DELETING ARTICLE II. OIL AND GAS WELLS AND PIPELINES OF CHAPTER 30 THEREOF, AND PROVIDING THEREFOR A NEW ARTICLE II OF CHAPTER 30, ESTABLISHING RULES AND REGULATIONS FOR THE REGISTRATION, PERMITTING, AND OPERATION OF WELLS AND PIPELINES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR EACH DAY OF VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting Article II. Oil and Gas Wells and Pipelines of Chapter 30 thereof, and providing therefor a new Article II of Chapter 30, to provide as follows:

“ARTICLE II. OIL AND GAS WELLS AND PIPELINES

DIVISION 1. GENERALLY

Sec. 30-26. Short title.

An article regulating the drilling, production, and operation of oil and gas wells, the exploration associated with such operations, and the transport of hydrocarbons or wastes associated with these operations, within the regulated area of the city.

Sec. 30-27. Definitions.

The following words, terms, and phrases shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

All technical or oil and gas industry words or phrases used in this article and not specifically defined herein or in the Texas Railroad Commission Rules for Oil, Gas and Geothermal Operations or Pipeline Safety Rules shall have the meaning customarily attributable thereto by prudent operators in the oil and gas industry.

Abandoned well shall mean a well no longer in use, whether dry, inoperable or no longer producing.

Permittee shall mean the person to whom a permit or supplemental permit is issued for the drilling, deepening, or operation of a well or pipeline, or seismic activities, under this article, and the person's administrators, executors, heirs, successors and assigns.

Pipeline or pipeline system shall mean all parts of a pipeline or physical facilities through which gas, oil, waste, or hazardous liquid moves in transportation, including, but not limited to, pipes, valves, or other appurtenances connected to the pipeline.

Producing shall mean the extraction of an amount of oil and gas from a well of such quantity and quality as to warrant from a commercial and economic standpoint the operation of the well, but in any event not less than thirty-six barrels within the preceding thirty-six month period.

Regulated area shall mean all land within the corporate boundaries of the city.

Seismic activities shall mean any geophysical or seismic testing or exploration, including any activity, operation or work using acoustic energy to evaluate subsurface strata. Seismic activities shall include all operations incident to and associated with that activity or construction.

Well includes and shall mean any hole or bore, to any sand, formation, strata or depth, which is drilled, bored, sunk, dug, or put down for the purpose of either exploring for or ascertaining the existence of any oil, gas, liquid hydrocarbon, or any of them, or for the purpose of producing and recovering any oil, gas, liquid hydrocarbon, or well bores for disposal of salt water or other oil and gas waste.

Sec. 30-28. Penalties.

Any violation of any of the terms of this article, whether denominated as unlawful or not, shall be deemed a misdemeanor. Any person convicted of any such violation shall be subject to punishment as provided in section 1-14 of this Code, in an amount not to exceed \$2,000.00 per day, and any person, agent or employee engaged in any such violation shall, upon conviction, be so punished therefore.

Sec. 30-29. Nonconforming wells; registration.

All of the terms and provisions of this article shall be applicable to the operation of any well located within the regulated area of the city. Nonconforming wells shall be defined herein as wells which have been fully drilled prior to the effective date of this article. If such wells are still producing, or if a request is submitted for a supplemental permit in accordance with section 30-47 and section 30-68 hereof, registration of such well shall be required in full conformity with this article. All such nonconforming wells shall be registered with the city within one year from the effective date of this article. The information required to register such pre-existing well shall include all of the information required under section 30-47 and/or section 30-68, whichever is applicable. A filing fee in the amount of \$100.00 shall be required for each well registration. Failure to register an existing well, or to apply for a supplemental permit, shall constitute a violation of this article. No provision of this article may be construed as altering, abating, or superseding any provision of any lease, contract, unit agreement, or any other agreement which affects any land within the regulated area of the city.

Sec. 30-30. Necessity of contract with surface owner.

Neither this article nor any permit or supplemental permit issued under this article shall be interpreted to grant any right or license to the permittee to enter upon, use, or occupy in any respect for the drilling or operation of any well or pipeline on any surface land, except by the written consent of the surface owner, unless the permittee obtained such right through an oil or gas lease, or other contract; nor shall this article limit or prevent the free right of the owner to contract for the amount of damages, rights or privileges with respect to his own land and property.

Sec. 30-31. Location and setback requirements.

(a) A person commits an offense if the person causes or permits the drilling or deepening of any well, or the conducting of any seismic activities, within the regulated area that is nearer than 1,000 feet from any residence, building, or other structure intended for human occupancy; or nearer than 1,000 feet from the location of any proposed residence, building, or other structure intended for human occupancy for which a valid construction permit has been issued and is in effect.

(b) A person commits an offense if the person causes or permits the drilling or deepening of any well, or the conducting of any seismic activities, that is nearer than 500 feet from any barn, building, cabana, garage, shack, shed, or other enclosed structure, or any public park, public athletic field, or any other publicly dedicated right-of-way.

(c) The provisions of this section shall not apply to a permittee seeking to deepen an existing well, provided such well has been registered and has received a supplemental permit as required by this article.

(d) The provisions of this section shall not prevent a person from seeking a renewal permit for a producing well, in accordance with Section 30-50(c).

(e) No well shall be drilled, deepened or operated, or seismic activities conducted, within any existing or proposed roadway right-of-way. As used herein, the term "roadway right-of-way" shall mean that area within the boundaries of any easement or right-of-way for any highway, street or alley; the term "proposed roadway right-of-way" shall mean any roadway right-of-way for which the city council and/or the city planning commission has designated, by official action, as a projected highway, street, alley, or other thoroughfare in the master development plan of the city, whether or not such roadway right-of-way has actually been platted or dedicated for public use at such time.

Sec. 30-32. Appeal from setback requirements.

(a) Whenever, owing to exceptional and extraordinary conditions, the literal enforcement of the setback requirements set forth in section 30-31 will result in a legal hardship or the inability to access or explore a mineral interest, the permittee asserting such legal hardship or inability to access or explore a mineral interest, may request a variance from such setback requirements.

(b) A request for such hearing must be made in writing and received by City Secretary. The City Council shall conduct such hearing within thirty (30) days from the date the

request is received. The permittee seeking a variance under this section shall have the burden of showing that enforcement of the standards set forth in section 30-31 will result in a legal hardship or the inability to access or explore a mineral interest.

(c) If the City Council finds that compliance with this Article would prevent a permittee from accessing or exploring a mineral interest, then the City Council may reduce the setback requirements as necessary to allow the permittee to access or explore such mineral interest.

Sec. 30-33. Substitute wells.

(a) Except as provided in subsection (b) of this section, no well shall be drilled or deepened within the regulated area of the city without first securing a permit or supplemental permit from the city.

(b) If a permitted drilling well or actively producing registered well is abandoned due to mechanical failure, a substitute well may at any time be drilled, completed, operated and produced, in accordance with the regulations set forth in division 1 and division 2 of this article. No substitute well provided for in this subsection shall be drilled to a deeper reservoir than the deepest productive reservoir of the well for which such substitute well is drilled, without the permittee first securing a supplemental permit as provided in section 30-47 and section 30-68 hereof.

(c) The provisions of this section shall not prevent a well from being completed in more than one producing horizon; multiple completions in the same well bore are expressly authorized.

DIVISION 2. WELL AND SEISMIC ACTIVITIES PERMITS

Sec. 30-46. Permit required to drill or deepen a well, or conduct seismic activities.

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 drill or deepen a well, or conduct seismic activities within the regulated area of the city, or to work upon or assist in any way in the prosecution or operation of any well, without a permit for the drilling of a well, a supplemental permit for the deepening of an existing well, or a permit for seismic activities, having first been issued in accordance with the provisions of this article, except as provided in subsections (b) through (c) of section 30-32 hereof.

Sec. 30-47. Application and filing fee.

(a) Any person seeking to obtain a permit or supplemental permit to drill, deepen, operate a well, or conduct seismic activities, within the regulated area of the city shall present an application therefor, in duplicate, to the city council, which application shall be in writing, addressed to the mayor, signed by the applicant or a person duly authorized to sign for the applicant, and shall state:

(1) The date of the application;

- (2) The name and address of the applicant and if the applicant is a corporation, the state of incorporation, and if applicant is a partnership, the names and addresses of the general partners;
- (3) The particular lot and block number or tract in the city on which the proposed well or seismic activities is to be located and the exact location of such proposed well or seismic activities;
- (4) The proposed depth of the well or seismic activities;
- (5) The proposed complete casing program of the well or seismic activities (if applicable); and
- (6) The specific number of acres allocated to the proposed well or seismic activities, as required by the Texas Railroad Commission.

(b) Attached to the application for a permit shall be:

- (1) A plat prepared by a duly registered surveyor showing the exact location of the proposed well or seismic activities with respect to the boundaries of the lot, block, or tract for which applicant has secured the rights from the owner to drill, deepen, or conduct seismic activities; a designation of the area owned or controlled by the applicant, and allocated to the proposed well or seismic activities, and the distances from the well location, or seismic activities, to all residences, commercial buildings and structures situated within the leased boundaries;
- (2) A map showing the drill site(s) in relation to the nearest public roadways and the proposed route of ingress and egress by applicant to such proposed drill site(s);
- (3) A copy of Texas Railroad Commission Form W-1 (Application to Drill, Deepen, Plug Back or Re-enter) or a copy of the applicable Texas Railroad Commission Form for conducting seismic activities;
- (4) Copies of RRC Form H-15, A Test on an Inactive Well More Than 25 Years Old, from all wells within the regulated area which are operated by applicant (if applicable); and
- (5) A copy of TNRCC-0051, "Depth of Usable Groundwater to be Protected."

(c) Each application for a permit or supplemental permit shall be accompanied a cashier's check in the amount of \$10,000.00, made payable to the city, which shall be a filing fee to cover administrative, legal and consulting expenses incurred when considering such application. Each application shall be maintained by the city secretary as a part of the public records of the city.

(d) The applicant or a personal representative of any applicant shall be present and appear before the city council at such time as the city council considers the application or any amendment thereto.

Sec. 30-48. Filing of application and notice.

(a) An application for a permit or supplemental permit shall be filed with the city council for action in issuing or refusing to issue a permit.

(b) Notice of the filing of each application shall be given by the applicant in the manner herein set out. Such notice shall be in words and figures, as follows:

Notice is hereby given that _____, acting under and pursuant to the terms and provisions of AN ORDINANCE REGULATING THE DRILLING, COMPLETION AND OPERATION OF OIL AND GAS WELLS, AS WELL AS ANY SEISMIC ACTIVITIES CONDUCTED WITHIN THE REGULATORY LIMITS OF THE CITY OF TOMBALL, TEXAS, being Ordinance No. _____, as amended, did on the _____ day of _____, 19_____, file with the City Secretary of the City of Tomball an application to drill, complete and operate a well at Lot No. _____, Block No. _____, (or other appropriate description). City of Tomball, Texas, as per map filed of record in Volume _____, Page _____, Plat Records of Harris County, Texas (here the exact location of the proposed well/seismic activities shall be set out).

(c) The applicant shall cause such notice to be published, at the applicant's own expense, in every issue of the official newspaper of the city for ten days prior to the date of city council's consideration of such application. Proof of such publication shall be made by the printer or publisher of the newspaper by affidavit filed with the city council and shall be prima facie evidence of such publication.

(d) Notice of the time and place of the public hearing on an oil and gas or seismic activities permit shall be published in an official newspaper, or a newspaper of general circulation within the municipality, at least 15 days prior to the date of the hearing. Additionally, before the 10th day before the date of the hearing, written notice of such public hearing shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property immediately adjacent to the property for which the oil and gas or seismic activities permit is requested.

(e) The city council, at a regular or special called meeting, may, upon written application of applicant, waive all or any part of such ten-day publication requirement and issue such permit in accordance with section 30-49 hereof, upon the showing of compliance with the following:

- (1) Demonstration by applicant that such requirement would work an economic hardship upon applicant to delay the spudding-in of the well applied for in its application (when applicable); or
- (2) That it would be to the best interest of the city, under its police powers, to issue a permit without awaiting publication; and
- (3) Proof of filing and approval of a bond in the amount of \$1,000,000.00;
- (4) Demonstration by applicant that the drilling of such well or conducting of seismic activities will not constitute a danger to the health, safety, morals, or welfare of the city and its inhabitants; and

(5) Payment of a fee in the amount of \$15,000.00 into the general revenue fund of the city to cover the cost of expediting such application, including early docketing by the city secretary, investigation by the city attorney and city staff, the calling of a special meeting of city council for a hearing on such written application of applicant to waive publication, and an affirmative finding by city council that the requirements therein set forth have been met.

(f) Upon the affirmative finding by the city council that the requirements of this section have been met, the city secretary shall be authorized to issue the applicant a permit in accordance with section 30-50 hereof.

Sec. 30-49. Granting or refusal of permit.

If, after such application is filed pursuant to this article, it be found by the city council to comply in all respects with terms hereof, and the drilling, deepening or operation of such well, or conducting of seismic activities, is not prohibited by the terms of this article, then the city council shall issue a permit for the drilling, deepening or operation of the well, or conducting of seismic activities; provided, however, the city council shall have the power, and reserves the authority, to refuse any application for a permit when by reason of the location of the proposed well or seismic activities, and the character and value of the improvements located on the lot or tract in question or adjacent thereto, and the use to which the land and surroundings are adapted for civic purpose, or for sanitary reasons, the drilling, deepening or operation of such well, or conducting of seismic activities, would constitute a danger to either the health, safety, morals or welfare of the city and its inhabitants.

Sec. 30-50. Form and issuance of permit.

(a) Each permit issued under this article shall:

- (1) By reference, have incorporated all provisions of this article with the same force and effect as if this article were copied verbatim in such permit;
- (2) Specify definitely the location of the well or seismic activities;
- (3) Specify that drilling or seismic activities shall begin within 90 days from the date of the permit or such permit shall be forfeited; provided, however, such forfeiture shall not affect the right of applicant to apply for another permit; and
- (4) Specify that such permit shall remain in full force and effect until said well is abandoned or seismic activities are completed, or one year, whichever is earlier. If applicable, specify the date for required renewal.

(b) Such permit shall not be issued until the provisions of section 30-51 hereof have been met. Such permit, in duplicate originals, shall be signed by the city secretary and prior to delivery to the permittee shall be signed by the permittee. One original of the permit, duly executed, shall be delivered to the permittee and one original of the permit, duly executed, shall be retained by the city secretary and, when so filed, shall constitute the permittee's drilling, seismic, and operating license and the contractual obligations of the permittee to comply with the terms of such permit, the bond hereafter mentioned, and this article.

(c) Any permit issued for a well or seismic activities under any ordinance of the city such permit shall continue until said well permitted activity is concluded and/or such seismic activities are completed, or one year, whichever is earlier. Upon application of renewal of permit showing compliance with the terms of the original permit and the payment of a renewal fee of \$500.00, the City Council may renew for a one-year period any permit granted hereunder.

Sec. 30-51. Bond requirements.

(a) If the issuance of a permit is authorized, same shall not be issued until the applicant shall file with the city secretary a bond, executed by and between the permittee, as principal, and a corporate surety company licensed to do business in the State of Texas, as surety, and on the condition that the principal obligator shall drill, deepen and/or operate such well, or perform seismic activities, in accordance with the terms of this article and that the principal shall remedy any and all damages to all public utilities, roadways, drainage structures, and any other public property, including ground water supply, and/or surface and subsurface pollution, occasioned in any manner by the drilling or operations of such well, or by the performance of seismic activities. Such bond shall run to the city for the benefit of the city and all persons concerned, shall be in a form to comply herewith, shall be in the amount of \$1,000,000.00 for each well for which a permit is requested, or for each seismic activity for which a permit is requested, and shall be approved by the city attorney.

(b) Failure to keep such bond in full force and effect, in accordance with the terms hereof, shall be unlawful and shall be punishable in accordance herewith.

(c) The city council, with the approval of the city attorney, may waive the requirement for the surety bond described by this section, as to any permittee, when it is found and determined that such permittee is financially responsible and capable of meeting obligations for amounts in excess of \$1,000,000.00. Upon such determination, the city council may allow the permittee to file, in lieu of any surety bond, a letter of acceptance binding and obligating such permittee to abide by the conditions prescribed in this section for surety bonds.

Sec. 30-52. Release from bond.

When any permit shall terminate and become inoperative, as provided in this article, or if and when the permittee shall file with the city secretary written notice of his election to surrender his permit and abandon the premises covered thereby, then, if no claims under the bond or bonds are pending or have been filed within six months after such permit shall have terminated, become inoperative, or written notice of election to surrender has been filed, the city secretary shall return the bond filed by the permittee in connection with such permit. If claims are pending or are filed within such time, upon the satisfaction or defeat of such claims, such bond shall thereupon be returned to the permittee.

DIVISION 3. WELL OPERATION

Sec. 30-66. Unlawful to permit escape of mud, etc.

It shall be unlawful for any person to permit to escape any mud, water, oil, slush, saltwater or other waste matter related to the drilling, deepening or operating of any well, or seismic activities, onto any adjoining lots upon which permittee does not have leases or other contractual rights to use the surface, or upon leases not owned by permittee or into the alleys, streets, gutters, sewers, or ditches of the city. Within 60 days after the completion or abandonment of any well or seismic activities, the mud and other similar matter and materials used in connection with the drilling, deepening and operations thereon shall be removed from the premises, and all pits, holes, ruts, and depressions in and around such well or seismic activities locations shall be smoothed out, leveled, and filled.

Sec. 30-67. Remedial well work

Any person operating any well or wells within the regulated area of the city may perform any remedial well work operations in the original well bore, except drilling deeper, without a permit for such operations, provided the operator complies with all safety rules set forth in this article and no additional filing fees will be required for such work.

Sec. 30-68. Reworking a well, deeper drilling; supplemental permit required.

(a) Once any well has either been completed as an oil or gas producer or abandoned or the permit for such work has expired, it shall be unlawful for any person to enter such well for the purposes of reworking or to drill such well to a greater depth than that reached in prior drilling operations, or drill outside the scope of the original well bore, without the permittee of such well filing an application with the city secretary and obtaining a supplemental permit which shall contain, in addition to all the requirements heretofore set forth, additional information specifying:

- (1) The then condition of the well and the casing therein;
- (2) The depth to which it is proposed that such well will be deepened; and
- (3) The proposed casing program to be used in connection with such proposed deepening operations.

(b) In any deeper drilling or deepening operations, the permittee shall comply with all other provisions contained in this article and applicable to the drilling, completion, and operation of a well.

(c) A person commits an offense if the person intentional or knowingly reactivates a plugged or abandoned well or re-enters an existing well for purposes of deepening or reworking without a permit from the City.

Sec. 30-69. Rules for drilling and producing operations for permit holder.

All persons engaged in the drilling and operation of wells within the regulated area of the city shall comply with the following rules and regulations:

(1) In order to enable the holder of each permit to move or transport oil, gas, water, or other waste products within the city limits, the holder of each permit issued under this article for the drilling and operation of a well within the city is hereby granted rights-of-way and easements on, over, under, along or across city streets, sidewalks and alleys for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines so long as production or operations may be continued; provided, however, each permittee shall:

- a. Not interfere with or damage existing water, sewer or gas lines or the facilities of public utilities located on, under, or across the course of such rights-of-way;
- b. Furnish the city secretary with a plat showing the location of such pipelines at least ten days prior to installation;
- c. Provide construction plans and specifications to the city for approval;
- d. Provide pipeline markers at each and every public street crossing, indicating the owner's name, identifying the product in such pipeline, and a 24-hour telephone number;
- e. Construct such lines or cause same to be constructed out of new or reconditioned steel pipe buried to a minimum depth of 36 inches below the surface at each and every point;
- f. Ensure that if plastic pipe is used that the internal pressure of such line will not exceed 60 pounds per square inch and shall have at least 36 inches of cover. All plastic lines shall be encased under or crossing improved roadway surfaces from right-of-way line to right-of-way line. Where plastic pipe is installed longitudinally, a durable metal wire shall be concurrently installed or other means shall be provided for detection purposes;
- g. Ensure that public street crossings shall be either bored or tunneled. Pipeline installations across roadways may be encased or unencased. Bore hole or tunnel shall not exceed the diameter of the pipe by more than one inch, and shall extend from the top of the backslope to the top of the backslope or five feet beyond the face of the curb. Generally, underground line crossings should be encased in the interest of safety, protection for the pipeline and roadway, and for access to the pipeline. Casing shall consist of steel pipe with welded joints and seams and shall be designed to support the load of the roadway and superimposed loads thereon. All lines shall be enclosed in an adequately vented casing. For enclosed lines, the minimum total clear depth of cover for casing pipe shall be 30 inches;
- h. Ensure that casing shall consist of smooth wall pipe with welded joints and seams, and shall be continuous, provided, however, that welded steel pipeline crossings may be installed without encasement provided such pipelines conform with 49 CFR, Part 192, Transportation of Natural and Other Gas by Pipeline, or Part 195, Transportation of Liquids by Pipeline as Applicable.
 1. For unencased high-pressure gas or liquid petroleum lines, the minimum depth of cover shall be 60 inches under the pavement surface and a minimum of 48 inches under ditches. Exceptions may be authorized

by the city to reduce the specified depth of cover where the pipeline is protected by a reinforced concrete slab.

2. Where encasement is not employed, the welded steel carrier pipe shall provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures should include heavier wall thickness and/or higher factor of safety in design, adequate coating and wrapping, cathodic protection, and other measures as required by Title 49, CFR, Part 192, or Part 195.

3. The minimum length of the additional protection as set forth above shall be the same as that required by encasement.

i. Control traffic in work zones to conform to applicable specifications of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways;

j. Ensure that operations in city rights-of-way shall be performed in such a manner that all equipment and excavated material are kept off the pavement at all times;

k. Grade, level, and restore such property to same surface condition, as nearly as practicable, as existed prior to the beginning of operations;

l. After completion of pipeline, provide to the city for its files a copy of the "Record Drawings"; and

m. Ensure that any future adjustment or relocation of pipeline installations which become necessary because of utility or roadway construction shall be accomplished without cost to the city.

(2) Any violation of the laws, rules, regulations, or requirements of any state or federal regulatory body having jurisdiction in reference to drilling, completing, equipping, operating, producing, transporting product or abandoning a well or related appurtenances, shall be a violation of this article and shall be punishable in accordance with the provisions hereof.

(3) No person engaged in drilling or operating any well shall permit gas to escape or be vented into the air unless said gas is flared and burned. All gas flared or burned within the city must be done in such a manner so as not to constitute a fire hazard to any property.

(4) It shall be unlawful for any person to use, operate or maintain any drilling or reworking machinery on any location for a period longer than 60 days after the completion of any well or any reworking project. All engines shall be equipped with effective mufflers.

(5) Two dual-controlled, fluid-operated blowout preventers with working pressures equal to or greater than the maximum anticipated wellhead pressures shall be used for all drilling or completion operations involving the use of drill pipe or tubing after the surface casing has been set. The mechanical operation of the preventers shall be checked every 24 hours and shall be tested with pump pressures with enough frequency to ensure good working order at all times.

(6) Only portable steel slush, reserve and shale tanks for mud, water or shale shall be permitted in connection with the drilling and reworking operations of any well.

(7) Any person drilling or operating a well shall dispose of all saltwater or other waste produced by such well in a manner that will not contaminate or pollute surface and subsurface resources. No earthen-walled evaporation-type saltwater disposal pit shall be allowed within the city.

(8) No well shall be drilled or reworked within the city without the bore hole being filled at all times with a drilling fluid of a weight and viscosity that a reasonable, prudent operator would use to keep the well under control at all times.

(9) It shall be unlawful for any person in connection with the drilling or reworking operations of any well within the city to conduct any swabbing operations or to take or complete any drill stem test or tests, except during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate gas separator to storage tanks, and effluent remaining in the drill pipe at the time the tool is closed and flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

(10) Whenever any well within the city limits is abandoned, it shall be the obligation of the permittee to plug such well in accordance with the rules and regulations of the Texas Railroad Commission and to take any and all additional provisions or precautionary measures prescribed by the State of Texas or the Texas Railroad Commission in connection with abandonment and plugging of the well. The city shall be notified of any action in this regard.

It shall be the further obligation of the permittee or the operator of the well to cut the surface casing off at least six feet below the surface of the ground and to place at least a 25-foot cement plug in the top of the casing and to weld the top of the casing completely shut. The resulting hole in the ground must be completely filled to the surface of the ground and duly tamped. A copy of RRC Form W-3 (Plugging Record) and Form W-15 (Cementing Report) shall be filed with the city secretary.

(11) It shall be unlawful for any person to use, construct, or operate, in connection with each producing well within the city, any storage tanks, except to the extent of two steel tanks for the storage of liquid hydrocarbon not exceeding 500-barrel capacity each, and so constructed and maintained as to be vapor tight and each surrounded with an earthen fire wall at such distance from the tanks as will, under any circumstances, hold and retain at least the maximum capacity of such tank or tanks. A permittee may use, construct and operate a steel conventional separator, and such other steel tanks and appurtenances as are necessary for treating oil with each of such facilities to be so constructed and maintained as to be vapor tight. Each gas separator shall be equipped with both a regulation pressure relief safety valve and a bursting head.

(12) Any person may install equipment for the purpose of secondary recovery, pressure maintenance operations, or automatic lease operations, provided such person complies with all the safety requirements of this article and the Texas Railroad Commission.

(13) It shall be unlawful for any person within the regulated are of the city to install any fired vessel or open flame within 300 feet of any well or storage tank.

(14) All wellheads, tank batteries, pumping units and equipment appurtenant thereto within the city, which are located within a densely populated area so designated by the city council or within 200 feet of a public street, shall be adequately protected with an

intruder-proof fence; provided, however, any wellhead, tank battery, pumping unit, or equipment appurtenant thereto, which is located on any lease tract or farm and is fenced in its entirety will require no additional protection other than that commonly used by prudent operators. Fences to prevent entry shall be approved by a representative designated by the city council.

(15) The premises shall be kept in a clean and sanitary condition, free from rubbish of every character, at all times during drilling operations and as long thereafter as the well is being produced therefrom. All permittees' premises shall be kept clear of high grass, weeds, and combustible trash or any other rubbish or debris that might constitute a fire hazard within a radius of 300 feet around any oil tank or tanks, producing wells, or to the limits of the premises, whichever is the lesser.

(16) No prime movers shall be permitted within the corporate limits of the city for the purpose of pumping wells, except electric motors.

(17) Printed signs reading "DANGER NO SMOKING ALLOWED" or similar words shall be posted in conspicuous places on each well, storage tank or battery of tanks within the regulated area of the city.

(18) Material, equipment, tools or pipe used for either drilling or producing operations at the well shall not be delivered to or removed from the well site, except between the hours of 7:00 a.m. and 7:00 p.m. on any day, except in case of an emergency.

(19) It shall be unlawful to block, encumber, or close any street or alley in any pipeline, drilling or production operation, except by an ordinance duly passed by the city council permitting the temporary blocking or closing of a street or alley.

DIVISION 4. PIPELINE PERMITS

Sec. 30-91. Application and filing fee.

All persons engaged in the movement or transport of oil, gas, water, or other waste products within the city limits, and who are not holders of a valid permit, may be granted a permit by the city council for pipeline crossings or parallel installation within public right-of-way or easements for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines; provided, however, each applicant shall:

- (1) File with the city secretary for city approval a permit application with a location plan and construction details and specifications;
- (2) Provide copies of RRC Form H-15 "Test on an Inactive Well More Than 25 Years Old" from all wells within the regulated area operated by the applicant;
- (3) File and obtain approval of a bond in the amount of \$500,000.00;
- (4) Provide with each application a cashier's check in the amount of \$1,000.00 made payable to the city, which shall be a filing fee. Each application shall be maintained by the city secretary as a part of the public records of the city;
- (5) Ensure that the applicant or a representative of applicant shall be present and appear before the city council at such time as the city council considers the application or any amendment thereto.

Sec. 30-92. Granting or refusal of permit.

If, after such application is filed pursuant to this article, it be found by the city council to comply in all respects with terms of this article, the city council finds that such applicant has complied in all respects with the terms of this article, then the city council shall issue a permit for the construction and operation of the pipeline applied for; provided, however, the city council shall have the power, and reserves the authority, to refuse any application for a permit when by reason of the location of the proposed pipeline and the character and value of the improvements located on the property in question or adjacent thereto, and the use to which the land and surroundings are adapted for civic purpose, or for other reasons, the pipeline would constitute a danger to either the health, safety, morals or welfare of the city and its inhabitants.

Sec. 30-93. Form and issuance of permit.

(a) Each permit issued under this article shall:

- (1) By reference, have incorporated all provisions of this article with the same force and effect as if this article were copied verbatim in such permit;
- (2) Specify definitely the location of the pipeline;
- (3) Specify that construction shall begin within 90 days from the date of the permit or such permit shall be forfeited; provided, however, such forfeiture shall not affect the right of applicant to apply for another permit; and
- (4) Specify that such permit shall remain in full force and effect until said pipeline is abandoned.

(b) Such permit shall not be issued until the provisions of section 30-94 hereof are complied with. Such permit, in duplicate originals, shall be signed by the city secretary and, prior to delivery to the permittee, shall be signed by the permittee. One original of the permit, duly executed, shall be delivered to the permittee and one duly executed original of the permit shall be retained by the city secretary and shall constitute the permittee's license and the contractual obligations of the permittee to comply with the terms of such permit, the bond hereafter mentioned, and this article.

Sec. 30-94. Bond requirements.

(a) If the issuance of a permit is authorized, same shall not be issued until the applicant shall file with the city secretary a bond, executed by and between the permittee, as principal, and a corporate surety company licensed to do business in the State of Texas, as surety, conditioned that the principal obligator shall construct and operate such pipeline in accordance with the terms of this article; that the principal shall remedy any and all damages to all public utilities, roadways, drainage structures, and any other public property, including ground water supply, and/or surface and subsurface pollution, occasioned in any manner by applicant's operation of such pipeline. Such bond shall run to the city, for the benefit of the city and all persons concerned, shall be in a form to comply herewith, and shall be in the amount of \$500,000.00 for each pipeline upon which a permit is applied for, and shall be approved by the city attorney.

(b) Failure to keep such bond in full force and effect, in accordance with the terms hereof, shall be unlawful and shall be punishable in accordance herewith.

(c) The city council, with the approval of the city attorney, may waive the requirement for the surety bond described in this section, as to any permittee, if it is found and determined that such permittee is financially responsible and capable of meeting obligations for amounts in excess of \$500,000.00, and may allow the permittee to file, in lieu of any surety bond, a letter of acceptance which binds and obligates such permittee to abide by the conditions prescribed in this section for surety bonds.

Sec. 30-95. Release from bond.

When any permit shall terminate and become inoperative, as provided in this article, or if and when the permittee shall file with the city secretary written notice of his election to surrender his permit and abandon the premises covered thereby, then if no claims under the bond or bonds are pending or have been filed within six months after such permit shall have terminated, have become inoperative, or a written notice of election to surrender has been filed, the city secretary shall return the bond furnished by the permittee in connection with such permit. If claims are pending or are filed within such time, upon the satisfaction or defeat of such claims, such bond shall thereupon be returned to the permittee.

Sec. 30-96. Rules for pipeline operations.

All persons engaged in pipeline maintenance and operations within the corporate limits of the city shall comply with all rules and regulations as provided under section 30-69 of this Code and any violation of any of the terms of this Code whether denominated as unlawful or not, shall be deemed a misdemeanor and subject to penalties and punishment as provided in section 1-14 of the general provisions of this Code.

DIVISION 5. ASSIGNMENTS

Sec. 30-100. Sale, transfer or conveyance of assets.

A sale, transfer or conveyance of properties owned by an operator is not complete unless the acquiring person has on file with the city an approved form of financial security covering the requirements of this Code. The existing bond or alternate form of financial security remains in effect and the prior operator of the property remains responsible for compliance with all ordinances, rules, and regulations of the city covering the transferred assets until the city determines that the assets are covered by proper financial security and the acquiring person has assumed full responsibility for the properties, in accordance with all ordinances, rules and regulations of the city.”

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF AUGUST 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF SEPTEMBER 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary