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ORDINANCE NO. 2015

AN ORDINANCE OF THE CITY OF ROCKDALE, TEXAS, REGULATING THE SURFACE ACTIVITY RELATED TO OIL AND GAS WELLS INCLUDING DRILLING AND PRODUCTION WITHIN THE CITY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rockdale, Texas is a Home Rule municipality located in Milam County, and created in accordance to State Law; and

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

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

WHEREAS, there is a need to allow for the development of these natural resources in a manner that protects the health, safety and welfare of the public, in particular, the protection of the City's water supply; and

WHEREAS, during the legislative hearings prior to adoption of HB 40, the Texas Oil & Gas Association touted Fort Worth's drilling Ordinance as a model to be followed; and

WHEREAS, the vast majority of the City of Rockdale's Ordinance follows Fort Worth's Ordinance with minor exceptions dealing with unique local concerns; and

WHEREAS, HB 40 explicitly allows municipalities to:

1. regulate above ground activity related to oil and gas operation that occurs at or above the surface of the ground, including regulations governing fire, emergency response, traffic, lights, noise, notice and reasonable setbacks;
2. enact commercially reasonable regulations that do not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and
3. adopt regulations that are not otherwise preempted by State or Federal law; and

WHEREAS, the City Council deems it necessary to adopt comprehensive regulations for above ground activity related to oil and gas operations associated with the drilling and production and transportation of oil and gas within the City Limits; and

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

SECTION 1.

That Chapter 4 of the Code of Ordinances, City of Rockdale, Texas, is hereby amended by adding a new Article 4.06 “Above ground Regulation of Surface Activity Related to Drilling and Production,” which shall read as follows:

ARTICLE 4.06 ABOVE GROUND REGULATION OF SURFACE ACTIVITY RELATED TO OIL AND GAS WELL DRILLING AND PRODUCTION

Sec. 4.06.001 Purpose.

The exploration, development, and production of oil and gas in the City are activities that necessitate reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to peaceably enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this Ordinance to establish reasonable and uniform limitations, safeguards and regulations for present and future above ground activity related to oil and gas operation including the exploring, drilling, developing, producing, transporting and storing of oil and gas and other substances produced in association with oil and gas within the City to protect the health, safety and general welfare of the public; minimize the potential impact to property and mineral rights owners, protect the quality of the environment and encourage the orderly production of available mineral resources.

Sec. 4.06.002 Definitions.

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

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

Above Ground Activity means oil and gas operations that occur at or above the surface of the ground, as defined by HB 40.

Agent means a person designated or appointed by an Operator to sign the application for a permit and other documents on behalf the Operator.

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

Building or habitable building means any structure used or intended for supporting or sheltering any use or occupancy. The term "building" shall be construed as if followed by the words "or portions thereof."

City means the City of Rockdale.

City Code means the Code of Ordinances of the City of Rockdale.

City Attorney means the City Attorney of the City of Rockdale.

Closed Loop Mud System means a system utilized while drilling so that reserve pits are not used and instead steel bins are used to collect all drilling waste.

Commission means the Texas Railroad Commission.

Daylight means the period from sunup to sundown as established for the Rockdale, Texas area by the NOAA Solar Calculator, adjusted for daylight savings as necessary.

Decible (dB) means a unit of measuring the intensity of a sound/noise and is equal to 10 times the logarithm to the base 10 of the ratio of the measured sound pressure squared to a reference pressure, which is 20 micropascals.

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

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

Drilling Operations means drilling with drill pipe and pit, running casing, circulating mud and fluids, tripping tools and setting production casing/tubing.

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

Drought Contingency Plan means the City of Rockdale Drought Contingency Plan.

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

Extraterritorial Jurisdiction (ETJ) means the extraterritorial jurisdiction of the City of Rockdale as defined by State Law.

Fee Schedule means the list of Fees found in Appendix A of the Code of Ordinances of the City of Rockdale.

Federal Motor Carrier Safety Administration (FMCSA) means a separate administration within the United States Department of Transportation (USDOT), established on January 1, 2000 pursuant to the Motor Carrier Safety Improvement Act of 1999, dedicated to improving the safety of commercial motor vehicles (CMV) and saving lives.

Fire department means the Volunteer Fire Department of the City of Rockdale.

Firewall, berm and/or secondary containment means the rules and regulations of the Commission and other State or Federal agencies describing the methods used to contain spills from storage tanks.

Flowback means the process of flowing a completed/fractured well for the purpose of recovering water and residual sand from the gas stream prior to sending gas down a sales line.

Fracture or Fracturing means the process of breaking up/fracture stimulation fracture of a rock formation.

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

Inspector means the City Inspector or Inspectors designated by the City Manager of Rockdale, including City staff or technical advisory consultants.

Night time means the period between sundown to sunup as established for the Rockdale, Texas area by the NOAA Solar Calendar, adjusted for daylight savings as necessary.

Oil and Gas Well means any well drilled, to be drilled, or used for the intended or actual production of oil or natural gas. The terms “Oil” or “Gas” used in this Ordinance shall be interchangeable and shall mean either an oil well or gas well operation.

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

Operator means, for each well, the person listed on the railroad commission form W-1 or form P-4 for an oil or gas well that is, or will be, actually in charge and in control of drilling, maintaining, operating, pumping or controlling any well, including, without limitation, a unit Operator. If the Operator, as herein defined, is not the lessee under an oil or gas lease of any premises affected by the provisions of this Ordinance, then such lessee shall also be deemed to be an Operator. In the event that there is no oil or gas lease relating to any premises affected by this Ordinance, the owner of the fee mineral estate in the premises shall be deemed an Operator.

Pad Site means the operations area containing the well or wells and accessory building and equipment.

Permit means the Surface Permit required by the City of Rockdale for any proposed drill site.

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

Protected use means a habitable building, including but not limited to, a residence, religious institution, public building, hospital building, school or public park. Structures such as equipment buildings, pump houses and agricultural barns that are occupied on a daily basis for less than four (4) hours each day shall not be considered a protected use.

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

Public park means any land area dedicated to and/or maintained by the City for traditional park-like recreational purposes.

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

Residence means a house, duplex, apartment, townhouse, condominium, manufactured home or other building designed for dwelling purposes, including those for which a building Permit has been issued on the date the application for an Surface Permit is filed with the City Secretary.

Rights-of-way means public rights-of-way including streets, easements and other property within the City and which is dedicated to the use and benefit of the public.

Safety Data Sheet (SDS) formerly known as MSDS or Material Safety Data Sheets to communicate the hazards of hazardous chemical products.

School means any public and private, primary and secondary educational facilities providing education up through and including the twelfth grade level and any licensed day care centers, meaning a facility licensed by the State of Texas or by the City of Rockdale that provides care, training, education, custody, treatment or supervision for more than six children under 14 years of age, and for less than 24 hours per day.

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

Surface Permit means the Permit required by the City of Rockdale signifying the City regulation of the above ground activity related to an approved Commission permit to drill an oil or gas well.

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

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

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

Sec. 4.06.003 City inspector.

- (a) *Authority to issue orders.* The City Inspector shall have the authority to issue any orders or directives required to carry out the intent and purpose of this Ordinance and its particular provisions. Failure of any person to comply with any such order or directive shall constitute a violation of this Ordinance. The City Inspector may be a City staff member or may be a third party consultant retained by the City.
- (b) *Authority to enter and inspect.* The City Inspector shall have the authority to enter and inspect any premises covered by the provisions of this Ordinance to determine compliance with the provisions of this Ordinance and all applicable laws, rules, regulations, standards or directives of the State. Failure of any person to permit access to the City Inspector shall constitute a violation of this Ordinance. The City Inspector shall conduct periodic inspections at least once a year of all permitted drill sites in the City to determine that the drill sites are operating in accordance with proper safety parameters as set out in this Ordinance and all regulations of the Commission.
- (c) *Authority to request records.* The City Inspector shall have the authority to request and receive any records, including any records sent to the Commission, logs, reports and the like, relating to the status or condition of any permitted well necessary to establish and determine compliance with the applicable Surface Permit. Failure of any person to provide any such requested material shall be deemed a violation of this Ordinance.
- (d) *Report violations.* The City Inspector will report any perceived violation of Commission rules and regulations (i.e. spillage) to the Commission within twenty four (24) hours after observation or after confirming a report from a citizen.

Sec. 4.06.004 Operator's agent.

Every Operator of any well shall designate an agent, who is a resident of the State of Texas, upon whom all orders and notices provided in this Ordinance may be served in person or by registered or certified mail. Every Operator so designating such agent shall within one business week notify the City Inspector in writing of any change in such agent or such mailing address unless operations within the City are discontinued.

Sec. 4.06.005 Surface permit required.

- (a) *Permit required.* A person wanting to engage in and operate in oil or gas production activities shall apply for and obtain a Surface Permit from the City after receiving the approved Commission permit to drill. The Permit shall be for all above ground activity related to oil and gas operation. It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to drill any well, assist in any way in the site preparation, reworking, fracturing or operation of any such well or to conduct any activity related to the production of oil or gas without first obtaining a Surface Permit issued by the City in accordance with this Ordinance. Such activities include, but are not limited to reworking, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing and pressurizing.
- (b) *No blanket permits.* The Operator must apply for and obtain a Surface Permit for each drill site. Each proposed drill site shall require a separate permit and shall not be permitted on a “blanket” basis.
- (c) *Permit required to re-enter abandoned well.* A Surface Permit shall not constitute authority for the re-entering and drilling of an abandoned well. An Operator shall obtain a new Surface Permit in accordance with the provisions of this Ordinance if the Operator is re-entering and/or drilling an abandoned well.
- (d) *Permit expiration date.* A Surface Permit shall automatically terminate, unless extended for one additional period, if drilling is not commenced within one hundred eighty (180) calendar days from the date of the issuance of the Surface Permit. Drilling must commence within one hundred eighty (180) calendar days from the date of the issuance of the Surface Permit in order to maintain the validity of the Surface Permit. The City Inspector may extend a Surface Permit for an additional one hundred eighty (180) calendar days upon request by the Operator and proof that the engineering site plan for the requested Surface Permit for such location has not changed.
- (e) *Other permits may be necessary.* The Surface Permits required by this Ordinance are in addition to and are not in lieu of any permit, which may be required by any other provision of this Code or by any other governmental agency.
- (f) *No additional Permits or Fees.* No additional Surface Permit or filing fees shall be required for:
 - (1) *Existing wells.* Any wells, existing, previously permitted or approved by the City, within the corporate limits of the City on the effective date of this Ordinance; or
 - (2) *Drilling commenced on effective date of Ordinance.* Any wells which drilling has commenced on the effective date of this Ordinance; or

- (3) *Land annexed after effective date of Ordinance.* Any wells in existence or on any wells on which drilling has commenced on land annexed into the City after the effective date of this Ordinance; or
- (4) *Application filed prior to annexation.* Any well that was planned for the land before the ninetieth (90th) calendar day before the effective date of its annexation and one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for such well and the completed application for the initial authorization was filed before the date the annexation proceedings were instituted.
- (g) *No Permit issued in floodway.* No Surface Permit shall be issued for any well to be drilled within any floodway as defined by the most current FEMA map.
- (h) *Permits in flood plains.* Surface Permits may be issued on property located in a flood plain, provided that all water and drilling materials must be in steel containers except for the concrete pad. An engineer's certificate shall be provided showing no negative impact on water flow in the flood plain.
- (i) *City owned property.* No Surface Permit shall be issued for any well to be drilled on City owned property without the prior consent of the City Council.
- (j) *Operator agrees to comply with Ordinance.* By acceptance of any Surface Permit issued pursuant to this Ordinance, the Operator expressly stipulates and agrees to be bound by and comply with the provisions of this Ordinance. The terms of this article shall be deemed to be incorporated in any Surface Permit issued pursuant to this Ordinance with the same force and effect as if this Ordinance was set forth verbatim in such Surface Permit.

Sec. 4.06.006 Surface permit application and filing fees.

- (a) The Surface Permit may only be issued subsequent to a Commission approved permit associated with exploration, drilling, production and transportation.
- (b) *Application in writing.* Every application for a Surface Permit issued pursuant to this Ordinance shall be in writing signed by the Operator, or an appointed agent duly authorized to sign on his behalf, and filed with the City Secretary of the City. As soon as practical, City Secretary shall have the application delivered to the City Inspector.
- (c) *Application accompanied by permit fee.* Every application shall be accompanied by a permit fee for each drill site as set forth in the Fee Schedule.
- (d) *Application shall include.* An application for a Surface Permit shall include all the requirements of this section of this Ordinance as well as impacted vegetation, creeks and other topographic features, adjacent building and other structures and the measured

distance from the well site to these buildings and structures, temporary and permanent fencing and landscaping. The application shall include the following information:

- (1) *Date.* The date of the application for a Surface Permit.
- (2) *Legal description.* An accurate legal description of the lease property to be used for the oil or gas operation. Property recorded by plat should reference subdivision, block and lot numbers.
- (3) *Map.* Map showing proposed transportation route and road for equipment, chemicals or waste products used or produced by the oil or gas operation and the number of truck trips, truck types and weight, loaded and unloaded, turning movements associated with truck and vehicle traffic, proposed access points and proposed traffic control devices.
- (4) *Well name.* Proposed well name.
- (5) *Surface owner name.* Surface owner names(s) and address(es) of the lease property.
- (6) *Name mineral lessee.* Mineral Lessee name and address.
- (7) *Name Operator.* Operator/Applicant name and address and if the Operator is a corporation, the state of incorporation, and if the Operator is a partnership, the names and addresses of the general partners.
- (8) *Person to Receive reports.* Name and address of individual designated to receive notice.
- (9) *Supervisory authority.* Name of representative with supervisory authority over all oil or gas operation site activities and a 24-hour phone number.
- (10) *Location of improvements.* Location and description of all improvements and structures within three hundred (300') feet of the well.
- (11) *Owners.* Owner and address of each parcel of property within three hundred (300') feet of the proposed drill site.
- (12) *Site plan.* A site plan of the proposed operation site showing the location of all improvements and equipment, including the location of the proposed well(s) and other facilities, including, but not limited to, tanks, pipelines, compressors, separators and storage sheds. The site plan shall include all existing utilities, public roadways, driveways, alleys, all public access points, floodways and flood plains.

- (13) *Emergency contact person.* The name, address and 24-hour phone number of the person to be notified in case of an emergency.
- (14) *Road maintenance agreement.* An original executed city-wide road maintenance agreement signed and approved by city must be filed with the city secretary that provides that the operator shall repair, at his own expense, damage to roads or streets caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, transportation and operation of oil and or gas wells, in accordance with the rights of the City to regulate above ground activity. City shall determine degree of damage and dollar amount owed. Failure of operator to reimburse city within 30 days of billing may result in forfeiture of security bond.
- (15) *Public utilities.* A description of public utilities required during drilling and operation.
- (16) *Water source.* A description of the water source to be used during drilling.
- (17) *Fees.* All required application and Surface Permit fees.
- (18) *Noise management plan.* A noise management plan complying with all requirements of the city. The noise management plan shall address the following:
 - a. Description of proposed equipment and potential noise impacts. This analysis must include a comparison of the potential noise generation with the applicable noise standards;
 - b. Identify all noise mitigation techniques that will be implemented on the site including blankets/curtains, sound walls, and mufflers for generators and motors, if any;
 - c. Best management practices used to reduce the impact of noisier operations such as pipe deliveries and use of horns for communication; and
 - d. Maximum noise levels anticipated at the drill site.
- (19) *Screening.* A screening, fencing and landscape plan detailing compliance with all landscape and screening requirements required by this Ordinance, including a proposed schedule detailing the timing of all landscaping, screening and fencing to be installed.
- (20) *Irrigation plan.* A landscape irrigation plan as designed by a State of Texas licensed professional detailing the appropriate type of irrigation for the site; measures to be taken to adequately irrigate all landscaping, including indicating the water source for irrigation and the proposed efforts to replace dead or dying screening vegetation. All trees on site shall be irrigated by a bubbler system.

- (21) *Encroachment agreements.* A copy of all applicable right of way encroachment agreements.
- (22) *Dust mitigation plan.* A dust mitigation plan detailing measures to be implemented to mitigate and suppress dust generated at the drill site and the private vehicle access route, including a mud shaker for vehicles exiting the site.
- (23) *Waste.* A waste management plan that addresses human, solid and drilling production waste.
- (24) *Third party contracts.* Copies of all third party contracts related to:
 - a. Emergency services, including firefighting and control of well;
 - b. Site operations and maintenance; and
 - c. Well monitoring and testing.
- (25) *Commission Permit required.* A copy of the approved Commission permit to drill together with attachments and survey plats which are applicable to the drill and operation sites.
- (26) *Stormwater pollution.* A copy of the Stormwater Pollution Prevention Plan as required by the Environmental Protection Agency. A copy of the notice of intent shall be submitted to the City five (5) calendar days prior to the commencement of any onsite activity.
- (27) *Depth of usable water.* A copy of the determination by the Texas Commission on Environmental Quality (TCEQ) of the depth of useable quality ground water.
- (28) *Insurance and security.* Evidence of insurance and security requirements under this Ordinance.
- (29) *Sworn statement.* A statement, under oath, signed by the Operator, or designated representative, that the information submitted with the application is, to the best knowledge and belief of the Operator or designated representative, true and correct.

Sec. 4.06.007 Surface permits; procedure.

- (a) *Permit Required.* A Surface Permit shall be required for all proposed drill sites.
- (b) *Setback.* Any application that has proposed a drill site that is three hundred feet (300') or less from a protected use shall be rejected. This provision applies to any existing building, including but not limited to, a residence, religious institution, public building,

hospital building, school or public park or for which a building permit has been issued on the date the application for a permit is filed with the City Secretary. Drill sites located more than three hundred (300') feet from such properties, may be approved by the City Inspector. For the purpose of such Surface Permit, the measurement of the three hundred (300') feet distance shall be made from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

- (c) *Submit to Post Oak Savannah Groundwater Conservation District.* Upon determination by the City Inspector that the permit application is complete, City Inspector shall submit a duplicate copy of the permit application to the Post Oak Savannah Groundwater Conservation District within ten (10) calendar days.
- (d) *Notice and sign.* Upon notification by the City Inspector that the permit application is complete, within ten (10) days, Operator/Applicant shall publish notice in local newspaper for two consecutive weeks that a permit application has been submitted to the City. Notice shall contain location of proposed well, name of Operator/Applicant, mineral lessee name and contact information for Operator/Applicant and City Inspector. Notice shall direct questions to Operator/Applicant and concerns to City Inspector. In addition, within the ten (10) days, a sign will be erected on the drill site or the nearest public right-of-way, if the sign would not be visible from the drill site. Sign shall indicate that an oil or gas well is proposed for the site, name of Operator/Applicant and contact information for Operator/applicant and the City Inspector.
- (e) *Permitting Procedure.* After a complete permit application is submitted, the City Inspector shall evaluate the public impact of the proposed activity, including any comments that may be provided by the Post Oak Savannah Groundwater Conservation District. The City Inspector shall consider the proposed site and the proposed above ground activity related to oil and gas operation or drilling program and shall identify restrictions or conditions, including minimum separation distance for drilling or other operations, special safety equipment and procedures, noise reduction levels, screening and any other requirements the City Inspector deems appropriate. If the proposed drill site are located more than three hundred (300') feet from a protected use for which a building permit has been issued on the date the application for a permit is filed with the City Secretary, the Inspector may, consistent with State law, accept or reject the application in the interest of securing compliance with this Ordinance, the City Code of Ordinances and/or to protect the health, safety and welfare of the community. An applicant may appeal a decision of the City Inspector through the City Manager to the City Council.
- (f) Well and Tank Battery Setbacks for Surface Permit.
 - (1) *Setback from parks.* Tank batteries, storage tanks, facilities and equipment, other than the well itself, shall be located at least three hundred (300') feet from any public park or from any protected use (unless prior consent is obtained through the City Manager). The distance shall be calculated from the closest tank batteries, facilities and/or equipment, in a straight line, without regard to

intervening structures or objects, to the closest exterior point of the building, or to the closest property line of the park.

- (2) *Landscape buffer.* There will be a minimum twenty five (25') feet landscape buffer on all sides of the area adjacent to and outside of the fencing on any pad site.
- (g) *Fencing for Surface Permit.*
- (1) *Fences.* Fences shall not be required on drill sites during initial drilling, completion or re-working operations as long as 24-hour on-site supervision is provided. Within thirty (30) calendar days after production has been established, the operation site shall be completely enclosed by an opaque fence or separate opaque fences may be installed to enclose individual facilities on drill site, such as pump jack, storage tanks or other production related facilities. The fences shall be a minimum height of five (5') feet and not higher than eight (8') feet. All shall be built in a manner that is safe enough to protect children in accordance with the attractive nuisance doctrine. In addition to fences, a secured entrance gate shall be required. All gates are to be kept locked when the Operator or his employees are not within the enclosure.
 - (2) *Gate Specifications.* The gate shall meet the following specifications:
 - a. Each gate shall be not less than twelve (12') feet wide and the height of the fence and be composed of two (2) gates, each of which is not less than six (6') feet wide, or one sliding gate not less than twelve (12') feet wide. If two gates are used, gates shall latch and lock in the center of the span. If fencing is intended to protect pump jack, storage tanks or other production related facilities and no trucks will be inside enclosure, City Inspector may specify a reasonable sized walk through gate;
 - b. The gates shall be of metal frame construction that meets the applicable specifications, or of other approved material;
 - c. The gates shall be provided with a combination catch and locking attachment device for a combination padlock, and shall be kept locked except when being used for access to the site;
 - d. Operator must provide the Fire Department Chief and the City Inspector with a "Knox Padlock" or "Knox Box with a key" to access the drill site to be used only in case of an emergency. The Fire Chief shall determine the type. In the event a key is not provided or the lock is inoperable, the fire department shall be authorized to cut a lock or chain to gain access.
- (h) *Landscaping.* A plan for landscaping and irrigation shall be provided with the Surface Permit application. Landscaping and irrigation shall be required as determined by City

Manager or designee along all sides of the drill site with suitable screening done via a combination of trees and shrubs that complement the natural character of the surrounding neighborhood. A three (3') feet separation should be maintained between the fence and vegetative screening. Care should be taken when selecting trees and shrubs to anticipate the ultimate size of the plant so that the tree or shrub maintains a three (3') feet separation from the fence at maturity. Measures should be in place to cease irrigation once the trees and shrubs are established and shall not be less than two (2) years, unless the City implements the Drought Contingency Plan, in which case the irrigation will be in accordance with said plan. The landscaping within ten years should characterize a natural screening of the pad site within one hundred (100') feet from all sides. The site should be well kept and mowed at all times. The following tree preservation and planting measures are required:

- (1) *Tree spacing.* A minimum twenty five (25') feet landscape buffer outside the operation site shall contain a tree for every forty (40') linear feet with no more than ten percent (10%) of the trees of a small canopy and no more than fifteen percent (15%) of the trees of a medium canopy as identified on the following table. Existing trees within the buffer may be counted as part of the required plantings. The following requirements apply to all Surface Permits.
 - a. A minimum retention of twenty five percent (25%) of the existing trees will be required as with other land uses unless removal is necessary for location of equipment as determined by the City Inspector.
 - b. No more than twenty five percent (25%) of the same species may be planted at one (1) site.
 - c. A minimum of twenty five percent (25%) of the planted trees must be an evergreen species.
 - d. The minimum size of tree planted will be three (3") inches in diameter measured one foot above ground level. If the tree is multi trunk, the main stem will be given full credit for its diameter and all other stems will receive one-half (1/2) credit. The total of all must be three (3") inches or greater.
 - e. All trees that die within two years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same two-year replacement requirement. A replacement tree that dies within two years of planting will be replaced by the Operator or agent, and a new two-year guarantee will begin at the time of replacement.
 - f. All other interpretations of the regulations will be made by the City.
- (2) *Desirable trees.* The following list of trees is considered desirable and adapted for the Rockdale area. Planting of trees from this list is acceptable. Other trees

will be considered by the City and granted on a case-by-case basis. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Common Name	Scientific Name	Canopy Size
Redbud	Cercis Canadensis	Small
Mexican Plum	Prunus Mexicana	Small
Cherry Laurel	Prunus Caroliniana	Medium
Eve's Necklace	Sophora Affinis	Medium
Crab Apple	Malus Angustifolia	Medium
Golden Raintree	Koelrueteria Paniculata	Medium
Cado Maple	Acer Saccharum	Large
Red Maple	Acer Rubrum	Large
Bigtooth Maple	Acer Grandidentatum	Large
Bur Oak	Quercus Macrocarpa	Large
Chinquapin Oak	Quercus Muhlenbergii	Large
Live Oak	Quercus Virginiana	Large
Shumard Red Oak	Quercus Shumardii	Large
Texas Red Oak	Quercus Texana	Large
Post Oak	Quercus Stallata	Large
Blackjack Oak	Quercus Marilandica	Large
Pecan	Carya Illinoensis	Large
Lacebark Elm	Ulmus Parvifolia	Large
Cedar Elm	Ulmus Crassifolia	Large
American Elm	Ulmus Americana	Large
Bald Cypress	Taxodium Distichum	Large
Black Walnut	Jugluns Nigra/J. Microcarpa	Large
Green Ash	Fraxinus Pennsylvanica	Large
Texas Ash	Fraxinus Texensis	Large
Southern Magnolia	Magnolia Grandiflora	Large

- (3) *Clear cut prohibition.* The clear cutting of trees is prohibited within the City of Rockdale. Cutting of trees, grading and land clearing may be done, for oil or gas well drilling pad sites, in accordance with the approved site plan. The remainder of the site beyond the pad and the landscape buffer shall not be disturbed without approval in the permit.
- (i) *Vehicle Routes for Surface Permit.*
 - (1) *Routes.* Vehicles associated with drilling and/or production in excess of three tons shall be restricted to such streets designated as either State Highway, Farm to Market, or truck routes or commercial delivery routes by the City wherever capable of being used. The vehicles shall be operated on a commercial delivery route only when it is not possible to use a State Highway, Farm to Market, or truck route to fulfill the purpose for which such vehicle is then being operated. Commercial delivery route means any street or highway so designated by the City Council for the use by any commercial motor vehicle, truck-tractor, trailer, semi-trailer, or any combination thereof. All vehicles shall comply with Federal Motor Carrier Safety Administration (FMCSA) regulations.
 - (2) *Road maintenance agreement.* A city-wide road maintenance agreement will be required for the above ground activity associated with any gas or oil well drilling operation that uses City maintained streets for access to their well site, whether the wells are within the city limits or outside the city limits. City shall determine degree of damage, the amount owed and shall bill the operator annually. Failure of the Operator to pay the amount owed within thirty days may result in forfeiture of bond or letter of credit.
 - (3) *Streets free from debris.* The Operator shall keep thoroughfares throughout the City free from dirt, dust, mud or other debris deposited by vehicles involved in the well drilling or servicing or pipeline installation process. The Operator shall eliminate dirt, dust, mud or other debris accumulations within two (2) hours of notification by the City. If for safety or other reasons, the City elects to perform the removal, the cost of such removal shall be paid by the Operator.
 - (j) *Work Hours for Surface Permit.* Site development, other than drilling, shall be conducted only during daylight hours. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation and other related work conducted on the drill site shall be limited to daylight hours except in cases of fires, blowouts, explosions and any other emergencies or where the delivery of equipment is necessary to prevent the cessation of drilling or production. All formation fracture stimulation operations shall be conducted during daylight hours as defined by this Ordinance. “Flowback” operations to recover fluids used during fracture stimulation shall be exempt from work hour restrictions, subject to compliance with noise restrictions contained in this Ordinance. All Workover Operations shall be restricted to daylight hours.

(k) *Noise Restrictions for Surface Permit.* In no case shall any drilling, producing or other operations produce a sound level greater than 78 decibels (dB) when measured at a distance of three hundred (300') feet from the production equipment in question. If ambient noise level exceeds 78 dB, that ambient level will be the maximum allowable noise level under all circumstances.

(1) *Noise management plan.* Prior to the issuance of a Surface Permit and the commencement of operations, the Operator shall submit a noise management plan, approved by the City, detailing how the equipment used in the drilling, completion, transportation, or production of a well complies with the maximum permissible noise levels of this section. The noise management plan must:

- a. Identify operation noise impacts;
- b. Provide documentation establishing the ambient noise level prior to construction of any wellhead, compressor or compression facility; and
- c. Detail how the impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 - i. Nature and proximity of adjacent development, location, and type;
 - ii. Seasonal and prevailing weather patterns, including wind directions;
 - iii. Vegetative cover on or adjacent to the site; and
 - iv. Topography

The Operator shall be responsible for verifying compliance with this section and the noise management plan after the installation of the noise generation equipment.

(2) *Noise level.* No well shall be drilled, re-drilled or any equipment operated at any location within the City in such a manner so as to create any noise which causes the exterior noise level when measured at the protected use receiver's/receptor's property line or from the closest exterior point of the protected use structure or inside the protected use structure if access to the property is granted by the receiver/receptor, that:

- a. Exceeds the ambient noise level by more than five (5) dB during daytime hours and more than three (3) dB during night time hours;
- b. Exceeds the ambient noise level by more than ten (10) dB over the daytime average ambient noise level during fracturing operations during

daytime hours. No fracturing shall be allowed during night time hours except for Flowback operations related to fracturing as provided in c. below;

- c. Exceeds the ambient noise level by more than three (3) dB during Flowback operations during night time hours.

(3) *Pre-drilling noise level.* The Operator shall be responsible for establishing and reporting to the City a continuous seventy-two (72) hour pre-drilling ambient noise level prior to the issuance of a Surface Permit. The seventy-two (72) hour time span shall include at least twenty-four (24) hour reading during either a Saturday or Sunday. The Operator shall use the prior established ambient noise level as the base for the installation of any new noise generation equipment unless the Operator can demonstrate that the increase in the ambient noise level is not associated with drilling and production activities locate either on or off-site.

(4) *Citation for violation.* A citation may be issued immediately for failure to comply with the provisions of this section. However, if the Operator is in compliance with approved noise management plan, and a violation occurs, the Operator will be given twenty-four (24) hours from notice of non-compliance to correct the violation from an identified source before a citation is issued. Additional extensions of twenty-four (24) hour periods may be granted in the event that the source of the violation cannot be identified after reasonable diligence by the Operator.

(l) *Tank Specifications for a Surface Permit.* The construction and installation of all tanks and permanent structures shall conform to the requirements of the Commission and any other local, State or Federal agency. The top of the tanks shall be no higher than fifteen feet (15'). All tanks shall be set back pursuant to the standards of the Commission and the National Fire Protection Association, but in all cases, shall be at least twenty five (25') feet from any public right-of-way or property line. All transport trucks shall be filled on site, not on public rights-of-way or streets.

(m) *Inclusive of all provisions.* All other provisions outlined in this Article shall be required.

Sec. 4.06.008 Issuance of surface permits.

(a) *Permit approval or denial.* It is the responsibility of the City Inspector to review and approve or disapprove based on the criteria established by this article all applications for Surface Permits for drill sites located more than three hundred (300') feet from a protected use for which a building permit has been issued on the date the application for a permit is filed with the City Inspector. City Inspector, within thirty (30) calendar days of the receipt of a complete application, and remittance of all fees, insurance and security per the requirements of this Ordinance for a Surface Permit, shall issue a Surface Permit for the drill site, including the installation of the facilities.

- (b) *Building permits issued on date of filing application.* The provisions of this Ordinance shall apply to any dwellings or buildings for which an application for a building permit has been submitted on the date the application for a Surface Permit is filed with the City Inspector.
- (c) *Notice of denial.* If the City Inspector denies a Surface Permit application, he shall notify the Operator in writing of such denial stating the reasons for the denial. Within thirty (30) calendar days of the date of the written decision of the City Inspector to deny the Surface Permit, the Operator may:
 - (1) *Cure the reason(s) for denial.* Cure those conditions that caused the denial and resubmit the application to the City Inspector for approval and issuance of the Surface Permit; or
 - (2) *Appeal.* File an appeal through the City Manager to the City Council under the provisions outlined in this Ordinance.

Sec. 4.06.09 Amended surface permits.

An Operator may request to amend a Surface Permit, to relocate a drill site or operation site that was shown on the application, provided the distance from a protected use is not less than three hundred feet (300’).

Sec. 4.06.010 Transfer of Surface Permit.

- (a) *Written request.* A Surface Permit may be transferred upon written request by the Operator with the consent of the City:
 - (1) *Transferee Agreement.* If the transferee agrees to be bound by the terms and conditions of the current Surface Permit and city-wide road maintenance agreement;
 - (2) *Update information.* If all information previously provided to the City as part of the current Surface Permit application is updated to reflect any changes; and
 - (3) *Insurance and security.* If the transferee provides the insurance and security required by this Ordinance.
- (b) *Insurance and security.* The insurance and security provided by the transferor shall be released if a copy of the written transfer is provided to the City. The transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer.
- (c) *Transfer fee.* Applications for the transfer of Surface Permits shall be filed with the City Inspector. The application fee for the transfer as set forth in the Fee Schedule and shall accompany each Surface Permit transfer application.

Sec. 4.06.011 Suspension or revocation of surface permit; effect.

- (a) *Suspension or revocation.* If an Operator (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of a Surface Permit (including any requirement incorporated by reference as part of the Surface Permit), the City Inspector shall give written notice to the Operator specifying the nature of the failure and giving the Operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community. In no event, however, shall the cure period be less than thirty (30) calendar days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the Operator's failure to provide periodic reports as required by this Ordinance.
- (b) *Failure to correct.* If the Operator fails to correct the noncompliance within thirty (30) calendar days from the date of the notice, the City Inspector may suspend or revoke the Surface Permit pursuant to the provisions of this Ordinance.
- (c) *Appeal.* Operator may, within thirty (30) calendar days of the date of the decision of the City Inspector in writing to suspend or revoke a Surface Permit, file an appeal through the City Manager to the City Council under the provisions outlined in this Ordinance.
- (d) *No work performed during suspension or revocation.* No person shall carry on any operations performed under the terms of the Surface Permit issued under this Ordinance during any period of any Surface Permit suspension or revocation or pending a review of the decision or order of the City in suspending or revoking the Surface Permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the Surface Permit was ordered for the safety of persons or as required by the City Council.

Sec. 4.06.012 Periodic reports.

- (a) *Report timing.* The Operator shall notify the City Inspector of any changes to the following information within one business week after the change occurs:
 - (1) *Name.* The name, address, and phone number of the Operator;
 - (2) *Name of person to receive notice.* The name, address, and phone number of the person designated to receive notices from the City (which person must be a resident of Texas that can be served in person or by registered or certified mail); and
 - (3) *Emergency action response plan.* The Operator's Emergency Action Response Plan (including "drive-to-maps" from public rights-of-way to each drill site).

- (b) *Contact information for person with supervisory authority.* The Operator shall notify the City Inspector of any change to the name, address, and 24-hour phone number of the person(s) with supervisory authority over drilling or operations activities within one business day.
- (c) *Incident reports.* The Operator shall provide a copy to the City of any "incident reports" or written complaints submitted to the Commission within thirty (30) calendar days after the Operator has notice of the existence of such reports or complaints.
- (d) *Annual report.* Beginning on December 31st after each well is completed, and continuing on each December 31st thereafter, until the Operator notifies the City Inspector that the well has been abandoned and the site restored, the Operator shall submit a written report to the City Inspector identifying any changes to the information that was included in the application for the applicable Surface Permit that have not been previously reported to the City.
- (e) *Annual site inspection.* The City Inspector shall perform an annual site inspection to insure that the Operator is conducting operations in compliance with the Surface Permit and the provisions of this Ordinance and to verify the accuracy of the information reported pursuant to this section. The Operator shall pay an Annual Inspection Fee in an amount that as set forth in the Fee Schedule. The annual inspection fee shall be paid no later than May 30th of each year.
- (f) *Follow up inspection.* Incidents requiring notification to the Commission shall require a follow up inspection by the City Inspector. The fee for said follow up inspection as set forth in the Fee Schedule. Fee shall be paid within thirty (30) calendar days of being notified of the need for a follow up inspection.

Sec. 4.06.013 Bond, irrevocable letter of credit, indemnity, insurance.

- (a) *General Requirements.* The Operator shall be required to perform the items listed below.
 - (1) *Comply with terms of Ordinance.* Comply with the terms and conditions of this Ordinance and the Surface Permit issued hereunder.
 - (2) *Restore to conditions existing prior to operation.* Promptly clear drill and operation sites of all litter, trash, waste and other substances used, allowed, or occurring in the operations, and after abandonment or completion grade, level and restore such property to the same surface conditions as nearly as possible as existed before operations.
 - (3) *Indemnify and hold harmless.* Indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or

for damage to any property arising out of or in connection with the work done by Operator under a Surface Permit:

- a. Where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of Operator and any other person or entity; and
 - b. Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of Operator.
- (4) *Pay fines.* Promptly pay all fines, penalties and other assessments, including but not limited to road damage, imposed due to breach of any terms of the Surface Permit; and
 - (5) *Restore to former condition.* Promptly restore to its former condition any public property damaged by the oil or gas operation.
- (b) *Bond.* Prior to the issuance of a Surface Permit the Operator shall provide the City Inspector with a security instrument in the form of a bond. The bond shall be executed by a reliable bonding or insurance institution authorized to do business in Texas, acceptable to the City. The bond shall become effective on or before the date the Surface Permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the Surface Permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The Operator shall be listed as principal and the instrument shall run to the City, as obligee, and shall be conditioned that the Operator will comply with the terms and regulations of this Ordinance and the City. The City shall be authorized to draw upon such bond to recover any fines, penalties or road damages assessed under this Ordinance. The original bond shall be submitted to the City Secretary with a copy of the same provided to the City Inspector.
 - (c) *Letter of Credit.* In lieu of a bond, the Operator may choose to provide, an irrevocable letter of credit which shall be issued by a reliable bank authorized to do business in Texas and shall become effective on or before the date the Surface Permit is issued. The letter of credit shall remain in force and effect for at least a period of six (6) months after the expiration of the Surface Permit term. The City shall be authorized to draw upon such letter of credit to recover any fines or penalties or road damages assessed under this Ordinance. Evidence of the execution of a letter of credit shall be submitted to the City Secretary by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the Inspector.
 - (d) *Security amount.* The principal amount of any security instrument shall be Fifty Thousand Dollars (\$50,000.00) for any single well. If, after completion of a well, the Applicant/Operator, who initially posted a Fifty Thousand Dollar (\$50,000.00) bond or irrevocable letter of credit has complied with all of the provisions of this Ordinance and whose well is in the producing stage and all drilling operations have ceased, may submit a request to the City Inspector to reduce the existing bond or irrevocable letter of credit

to Ten Thousand Dollars (\$10,000.00) for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond or irrevocable letter of credit shall be maintained at Fifty Thousand Dollars (\$50,000.00). An Operator drilling or reworking between one and five wells at any given time may elect to provide a blanket bond or irrevocable letter of credit in the principal minimum amount of One Hundred Fifty Thousand Dollars (\$150,000.00). If the Operator drills or reworks more than five Wells at a time, the blanket bond or irrevocable letter of credit shall be increased in increments of Fifty Thousand Dollars (\$50,000.00) per each additional well. Once the wells are in the producing stage and all drilling operations have ceased, the Operator may elect to provide a blanket bond or irrevocable letter of credit for the remainder of the time the Well produces, without reworking, as follows:

Number of Producing Wells	Blanket Bond or irrevocable letter of credit Amount Required
Up to 10 Wells	\$100,000.00
10 to 50 Wells	\$150,000.00
More than 50 Wells	\$200,000.00

- (e) *City Council to determine sufficiency of security.* If at any time after no less than a fifteen (15) day written notice to the Operator and a public hearing, the City Council shall deem any Operator's bond or irrevocable letter of credit to be insufficient, it may require the Operator to increase the amount of the bond or irrevocable letter of credit up to a maximum of Two Hundred Fifty Thousand Dollars (\$250,000.00) per well.

- (f) *Written notice of default.* Whenever the City Inspector finds that a default has occurred in the performance of any requirement or condition imposed by this Ordinance, a written notice shall be given to the Operator. Such notice shall specify the work to be done and the period of time deemed by the City Inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the Operator shall provide the estimated cost and, within the time therein specified, either cause or require the work to be performed, or failing to do so, shall pay over to the City One Hundred Twenty Five (125%) percent of the estimated cost of doing the work. In no event, however, shall the cure period be less than thirty (30) calendar days, unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the Operator's failure to provide periodic reports as required by this Ordinance. The maximum cure period shall not exceed forty-five (45) calendar days. The City shall be authorized to draw against any bond or irrevocable letter of credit to recover such amount due from the Operator. Upon receipt of such monies, the City shall proceed by such mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the Commission and/or this Ordinance, such additional money may be demanded from the Operator as is necessary to properly plug and abandon the well and restore the drill site in conformity with the regulations of this Ordinance.

- (g) *Other legal action.* In the event the Operator does not cause the work to be performed and fails or refuses to pay over to the City the estimated cost of the work to be done, or the issuer of the security instrument refuses to honor any draft by the City against the bond or irrevocable letter of credit, the City may proceed to obtain compliance and abate the default by way of civil action against the Operator, or by criminal action against the Operator, or by both such methods.
- (h) *Termination of securities.* When the well or wells covered by said bond or irrevocable letter of credit have been properly abandoned in conformity with all regulations of this article, and in conformity with all regulations of the Commission and notice to that effect has been received by the City, or upon receipt of a satisfactory substitute, the bond or irrevocable letter of credit issued in compliance with these regulations shall be terminated and cancelled.
- (i) *Insurance.* In addition to the bond or irrevocable letter of credit required pursuant to this Ordinance, the Operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are cancelled, the Surface Permit shall be suspended on such date of cancellation and the Operator's right to operate under such Surface Permit shall immediately cease until the Operator files additional insurance as provided herein.
 - (1) *General Requirements Applicable to all Policies.*
 - a. The City, its officials, employees, agents and officers shall be endorsed as an "Additional Insured" to all policies except employer's liability coverage under the Operator's workers compensation policy.
 - b. All policies shall be written on an occurrence basis except for Environmental Pollution Liability (Seepage and Pollution Coverage) and Excess or Umbrella Liability, which may be on a claims-made basis.
 - c. All policies shall be written by an insurer with an A-: VIII or better rating by the most current version of the A. M. Best Key Rating Guide or with such other financially sound insurance carriers acceptable to the City.
 - d. Deductibles shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - e. Certificates of insurance shall be delivered to the City of Rockdale, City Secretary, 505 West Cameron Avenue, Rockdale, Texas 76567, evidencing all the required coverage's, including endorsements, prior to the issuance of a Surface Permit.
 - f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.

- g. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
 - h. Each policy shall be endorsed to provide the City a minimum thirty (30) calendar day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) calendar days notice shall be acceptable in the event of nonpayment of premium.
 - i. During the term of the Surface Permit, the Operator shall report, in a timely manner, to the City Inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
 - j. Upon request, certified copies of all insurance policies shall be furnished to the City.
- (2) *Standard Commercial General Liability Policy.* This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors' protective liability and personal injury. This coverage shall be a minimum Combined Single Limit of One Million Dollars (\$1,000,000.00) per occurrence for Bodily Injury and Property Damage.
- (3) *Excess or Umbrella Liability.*
- a. Five Million Dollars (\$5,000,000.00) Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy. Ten Million Dollars (\$10,000,000.00) Excess, if the Operator does not have a stand-alone EPL policy.
 - b. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution Coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period Insurance when necessary.
- (4) *Environmental Pollution Liability Coverage.*
- a. Operator shall purchase and maintain in force for the duration of the Surface Permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged

property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least One Million Dollars (\$1,000,000.00) per loss, with an annual aggregate of at least Five Million Dollars (\$5,000,000).

- b. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.
- c. The Operator shall maintain continuous coverage and shall purchase Extended Coverage Period Insurance when necessary. The Extended Coverage Period Insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the City.

(5) *Control of Well.*

- a. The policy shall cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the Operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents.
- b. One Million Dollars (\$1,000,000) per occurrence/no aggregate, if available, otherwise an aggregate of Five Million Dollars (\$5,000,000). Five Hundred Thousand Dollars (\$500,000.00) sub-limit endorsement may be added for damage to property for which the Operator has care, custody and control.

(6) *Workers Compensation and Employers Liability Insurance.*

- a. Workers compensation benefits shall be Texas Statutory Limits.
- b. Employers liability shall be a minimum of Five Hundred Thousand Dollars (\$500,000.00) per accident.
- c. Such coverage shall include a waiver of subrogation in favor of the City and provide coverage in accordance with applicable State and Federal laws.

(7) *Automobile Liability Insurance.*

- a. Combined single limit of One Million Dollars (\$1,000,000.00) per occurrence for Bodily Injury and Property Damage.

- b. Coverage must include all owned, hired and not-owned automobiles.

(8) *Certificates of Insurance.*

- a. The company must be admitted or approved to do business in the State of Texas, unless a Surplus Lines insurer writes the coverage.
- b. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO, or an equivalent policy form acceptable to the City, with the exception of Environmental Pollution Liability and Control of Well coverage.
- c. Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read:

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

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

(j) *Indemnification and Express Negligence Provisions.*

Each Surface Permit issued by the City Inspector shall include the following language:

"Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or assigns may have, or claim to have, against the City of Rockdale, Texas, and/or its departments, agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the performance of the work performed by the Operator under a Surface Permit. The Operator shall fully defend, protect, indemnify, and hold harmless

the City of Rockdale, Texas, its departments, agents, officers, servants, employees, successors, assigns, sponsors, or volunteers from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and expenses incurred in defense of the City of Rockdale, Texas, its departments, agents, officers, servants, or employees, including, without limitation, personal injuries and death in connection therewith which may be made or asserted by Operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the Operator under a Surface Permit. The Operator agrees to indemnify and hold harmless the City of Rockdale, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the City, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the City of Rockdale occurring on the drill site or operation site in the course and scope of inspecting and permitting the surface of the Oil or Gas Wells INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF ROCKDALE OCCURRING ON THE DRILL SITE OR OPERATION SITE IN THE COURSE AND SCOPE OF INSPECTING AND PERMITTING THE ABOVE GROUND ACTIVITY RELATED TO OPERATIONS OF THE OIL OR GAS WELLS. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE OPERATOR TO INDEMNIFY AND PROTECT THE CITY OF ROCKDALE, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF ROCKDALE, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE."

- (k) *Notice.* The individual designated to receive notice shall be a resident of Texas upon whom all orders and notices provided in this article may be served in person or by registered or certified mail. Every Operator shall within one business week notify the City Inspector in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Sec. 4.06.014 Technical regulations.

(a) *Onsite Requirements.*

- (1) *Abandoned Wells.* All wells shall be abandoned in accordance with the rules of the Commission. No structures shall be built over an abandoned well.
- (2) *Compliance.* Operator shall comply at all times with all applicable Federal, State and City requirements.
- (3) *Discharge.* No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including wastewater or brine from any oil or gas operation or the contents of any container used in connection with any oil or gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, pit, ditch or sewer, sanitary drain or any body of water or water course that may ultimately enter into waters of the City, State or United States.
- (4) *Dust, Vibration, Odors.* All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.
- (5) *Electric Lines.* All electric lines to production facilities shall be located underground. When electric utility lines are located within three hundred (300') feet of the pad site and are determined to be sufficient for operations, the Operator may use fuel-powered generators only as a backup in the event of a power failure.
- (6) *Emergency Response Plan.* Prior to the commencement of any oil, gas or other hydrocarbons production activities, Operator shall submit to the City Inspector an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil or gas wells. Said plan shall use existing guidelines established by the Commission, and any other local, State or Federal agency.

- (7) *Fire Prevention; Sources of Ignition.* Firefighting apparatus and supplies as approved by the Fire Department and required by any applicable Federal, State, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. Operators must identify sites with Hydrogen Sulfide (H₂S) producing wells and provide wind direction socks for those sites at the Operator's sole cost. The Operator shall be responsible for the maintenance and upkeep of equipment required herein. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All wellheads shall contain an emergency shut off valve to the well distribution line as required by the Commission.
- (8) *Fresh Water Wells.* It shall be unlawful to drill any oil or gas well, the center of which, at the surface of the ground, is located within one thousand (1,000') feet to any fresh water well, except for fresh water wells used solely for operation of the oil or gas well operation. The measurement shall be in a direct line from the closest well bore to the fresh water well bore.
- (9) *Oil or Gas Emission or Burning Restricted.* At no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank. Venting operations shall be required to comply with the noise regulations contained in this Ordinance.
- (10) *Grass, Weeds, Trash.* All drill and operation sites shall be kept clear of high grass, weeds, and trash. All landscaping shall be continuously maintained in an acceptable manner.
- (11) *Hazardous Plan.* Hazardous Materials Management Plan shall be on file with the Fire Marshal and the City Inspector. A Safety Data Sheet (SDS) will be maintained at each location and shall be readily available for fire personnel to review in the event of an emergency. Additionally, any hazardous materials protected as "trade secret" shall be disclosed to fire personnel in the event of an emergency, in accordance with Commission rules.
- (12) *Lights.* No person shall permit any lights located on any drill or operation site to be directed in such a manner so that they shine directly on public roads, adjacent property or property in the general vicinity of the operation site. To the extent practicable, and taking into account safety considerations, site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300') feet.
- (13) *Closed Loop Mud Systems.* A closed loop mud system shall be used in conjunction with all drilling and reworking operations for all Surface Permits, unless specifically waived by the City Council.

(14) *Private Roads and Drill Sites.* Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site itself shall be at least ten (10') feet wide, have an overhead clearance of fourteen (14') feet and shall be surfaced with crushed rock, gravel or ore and maintained to prevent dust and mud. Further, an ample supply of dust suppressant shall be maintained on any private road used for access to the drill site so as to prevent dust during the lifetime use of the road. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the City Inspector after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from adjoining and nearby property owners whose surface rights are not leased by the operation; the purpose for which the property of such owners is or may be used; topographical features; nature of the soil; and exposure to wind.

(15) *Signs.*

- a. A sign shall be immediately and prominently displayed adjacent to the public right-of-way at the gate on the temporary and permanent site fencing erected pursuant to this Ordinance. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Commission, shall have a surface area of not less than two (2) square feet nor more than four (4) square feet and shall be lettered with the following:
 - i. Well name and number;
 - ii. Name of Operator;
 - iii. The emergency 911 number; and
 - iv. Telephone numbers of two (2) persons responsible for the well who may be contacted in case of emergency.
- b. Permanent weatherproof signs reading "DANGER NO SMOKING ALLOWED" shall be posted immediately upon completion of the drill site fencing at the entrance of each drill site and tank battery or in any other location approved or designated by the Fire Marshall of the City. Sign lettering shall be four (4") inches in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Commission.

(16) *Storage of Equipment.*

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

- b. No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The Fire Department shall be the entity that determines whether equipment on the site shall constitute a fire hazard. Vehicles containing hazardous materials shall be placarded according to National Fire Protection Association requirements.

(17) *Storage Tanks.*

- a. All storage tanks shall be equipped with firewalls, berms or secondary containment system including lining with an impervious material. The firewall, berms or secondary containment system shall be in accordance with the rules of the Commission and any other local, State or Federal agency. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank.
- b. All tanks shall be set back pursuant to the standards of the Commission and the National Fire Protection Association, but in all cases, shall be at least twenty-five (25') feet from any public right-of-way or property line. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.
- c. No meters, storage tanks, separation facilities, or other above ground facilities, other than the wellhead and flow lines, shall be placed within any floodway as defined by the most current FEMA map, without the prior consent of the City Council.
- d. To the extent that it is technically feasible, all storage tanks, separators and compressors serving multiple wells shall be kept as a group on a single site.

(18) *Tank Battery Facilities.* Tank battery facilities and/or storage tanks shall be equipped with a remote foam line and a lightning arrestor system.

(19) *Valves.* Each well must have a shutoff valve to terminate the well's production. The Fire Department shall have access to the drill site to enable it to close the shut-off valve in an emergency.

(20) *Waste Disposal.* Unless otherwise directed by the Commission, all tanks used for storage shall conform to the following:

- a. Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve. A fence applicable to the issued permit classification must enclose all tanks. No tank battery/storage tank shall be within three hundred (300') feet of any dwelling or other combustible structure.
 - b. Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, reworking or deepening of any well shall be processed through a closed loop mud system. All disposals must be in accordance with the rules of the Commission and any other appropriate local, State or Federal agency.
 - c. Unless otherwise directed by the Commission, waste materials shall be removed from the site and transported to an offsite disposal facility not less often than every thirty (30) calendar days. Water stored in onsite tanks shall be removed as necessary.
 - d. All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the State, and any other appropriate local, State or Federal agency.
- (21) *Watchman.* The Operator must keep a watchman or security personnel on-site during the drilling or reworking of a well when other workmen are not on the premises.
- (22) *Painting.* All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks and secondary containment. When requiring painting of such facilities, the City Inspector shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue, black and brown, or other neutral colors approved by the City Inspector. The color of all tanks, fixed equipment and painted surfaces, including fences, shall be the same throughout the pad site.
- (23) *Hydrogen sulfide.* If a gas or oil field is identified as a hydrogen sulfide (H₂S) field under RRC, TCEQ, or EPA regulations, or if a well is producing hydrogen sulfide (H₂S) gas over applicable Commission, and any other appropriate, State or Federal agency standards, the Operator shall immediately stabilize and cease any additional oil or gas operations of that well or facility.
- (24) *Salt Water Wells.* No salt-water wells, or disposal wells shall be located within the City of Rockdale.

- (b) *Well Setbacks.* Except as otherwise provided in this section, it shall be unlawful to drill any well, the center of which, at the surface of the ground, is located:
- (1) *Boundary of drill site.* Within twenty-five (25') feet from the boundary of the drill/operation site; or
 - (2) *Storage tank.* Within twenty-five (25') feet from any storage tank, or source of ignition; or
 - (3) *Public street.* Within seventy-five (75') feet of any public street, road, highway or future street, right-of-way or property line, or railroad right-of-way; or
 - (4) *Protected use.* Within three hundred (300') feet from any protected use; or
 - (5) *Accessory building.* Within one hundred (100') feet of any building accessory to, but not necessary to the operation of the well; or
 - (6) *Fresh water well.* Within one thousand (1,000') feet to any fresh water well. The measurement shall be in a direct line from the closest well bore to the fresh water well bore.
- (c) *General Information.* The distance shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any object listed in subsections (1) thru (6) above.
- (1) There will be a minimum of twenty five (25') feet landscape buffer on all sides of the area adjacent to and outside of the fence of the operation site.
 - (2) The distances set out in subsection (1), (3) or (6) of this section may be reduced at the discretion of the City Council. The reduction of the distance requirement for fresh water wells is subject to the Commission regulations and any other appropriate local, State or Federal agency.
- (d) *Installation of Pipelines on, under or across Public Property.*
- (1) *Franchise.* The Operator shall apply to the City for a franchise agreement on, over, under, along or across the City streets, sidewalks, alleys and other City property for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines so long as production or operations may be continued under a Surface Permit issued pursuant to this Ordinance. Operator 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 to the City Inspector of the City a plat showing the location of such pipelines.
 - c. Construct such lines out of pipe in accordance with the City Codes and regulations properly cased and vented if under a street;
 - d. Grade, level and restore such property to the same surface condition, as nearly as practicable, as existed when operations for the drilling of the well were first commenced.
- (2) *Drilling in streets prohibited.* No Surface Permit shall be issued for any well to be drilled within any of the streets or alleys of the City and/or projected streets or alleys shown by the current Master/Thoroughfare Plan of the City, and no street or alley shall be blocked or encumbered or closed due to any exploration, drilling or production operations unless prior consent is obtained from the City Council. Any consent shall be temporary in nature and state the number of hours and/or days that any street or alley may be blocked, encumbered or closed. The decision to authorize a license agreement in accordance with this section shall be in the sole discretion of the City Council.

Sec. 4.06.015 Cleanup and maintenance.

This section applies to new Surface Permits as well as oil and gas wells that are in existence at the time of adoption of this Ordinance. All drill sites shall be maintained to this cleanup and maintenance standard.

- (a) *Cleanup After Well Servicing.* After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within sixty (60) calendar days.
- (b) *Cleanup After Spills, Leaks and Malfunctions.* After any spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Inspector all waste materials from any public or private property affected by such spill, leak or malfunction. Cleanup operations must begin immediately. If the owner fails to begin site cleanup within twenty-four (24) hours, the City shall have the right to contact the Commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.
- (c) *Free From Debris.* The property on which a drill site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material.
- (d) *Painting.* All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the City Inspector shall consider the deterioration of the quality

of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue, black and brown, or other neutral colors approved by the City Inspector.

- (e) *Blowouts.* In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this Ordinance and shall notify the City Inspector as soon as practicable. The City Inspector shall certify in writing, briefly describing the same, to the City Manager. If the City Inspector, in his opinion, believes that danger to persons and property exists because of such loss of well control and that the Operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the City Inspector may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Inspector deems necessary to regain control of such well. The City shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the City pursuant to such action of the City Inspector in gaining control of said well.
- (f) *Secondary Containment.* All storage tanks shall be equipped with a firewall, berm or secondary containment system including lining with an impervious material. The firewall, berm or secondary containment system shall be in accordance with the rules of the Commission and any other local, State or Federal agency. Drip pots shall be provided at the pump out connection to contain liquids from the storage tank.

Sec. 4.06.016 Plugged and abandoned wells.

- (a) *Surface Requirements for Plugged and Abandoned Well.* Whenever abandonment occurs pursuant to the requirements of the Commission, the Operator so abandoning shall be responsible for the restoration of the drill site to its original condition as nearly as practicable, in conformity with the regulations of this Ordinance.
- (b) *Abandonment.* Abandonment shall be approved by the City Inspector after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the City Inspector:
 - (1) *Derrick.* The derrick and all appurtenant equipment thereto shall be removed from drill site;
 - (2) *Tanks.* All tanks, towers, and other surface installations shall be removed from the drill site;
 - (3) *Concrete foundations.* All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Commission;

- (4) *Holes and depressions.* All holes and depressions shall be filled with clean, compactable soil; and
 - (5) *Waste.* All waste, refuse or waste material shall be removed from the drill site; and
 - (6) *Compliance.* During abandonment, Operator shall comply with all applicable sections in this Ordinance.
 - (7) *Permanent marker.* A permanent abandonment marker pipe, with well identity and location permanently inscribed shall be welded to casing and shall be at least four inches (4") in diameter with a length of four feet (4') visible above ground level.
- (c) *Abandoned Well Requirement.* The Operator shall furnish the following at the discretion of the City Inspector:
- (1) *Commission approval.* A copy of the approval of the Commission confirming compliance with all abandonment proceedings under the State law; and
 - (2) *Notice.* A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.
- (d) *Abandonment Requirements Prior to New Construction.* All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

Sec. 4.06.017 Technical advisor.

The City may from time to time employ a technical advisor or advisors who are experienced and educated in the oil or gas industry or the law as it pertains to oil or gas matters. The function of such advisor(s) shall be to advise, counsel or represent the City on such matters relating to oil or gas operations within the City as the City may want or require and the effect thereof, both present and future, on the health, welfare, comfort and safety of the citizens of the City. In the event such technical advisor(s) is employed for the purpose of advising, counseling or representing the City relative to an Operator's unique and particular set of circumstances, case or request relating to this article, then the cost for such services of such technical advisor(s) shall be assessed against and paid for by such Operator in addition to any fees or charges assessed pursuant to this Ordinance. Prior to the employment of a technical advisor, the City shall inform the Operator of the intended scope of work and the estimated costs and expenses. The employment of a technical advisor shall be approved by the City Manager.

Sec. 4.06.018 Extraterritorial jurisdiction (ETJ).

- (a) *Site plan required.* All wells drilled, re-drilled/reworked after the passage of this Ordinance that are located within the ETJ of the City of Rockdale shall file a site plan with the City Secretary showing the property boundaries and location of said well and associated equipment. No fee shall be charged by the City for said filing.
- (b) *Road maintenance agreement.* Any Oil or Gas Well to be drilled or being drilled in the ETJ on the effective date of this Ordinance, using trucks larger than 3 tons, that will be traveling on City maintained streets during drilling, production, transportation or any other related activity must sign a city-wide road maintenance agreement. The Agreement shall provide that the operator shall repair, at his own expense, damage to roads or streets caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, transportation and operation of oil and or gas wells. City shall determine degree of damage, dollar amount owed and bill annually. Operator shall provide the number of truck trips, truck types and weights, loaded and unloaded. Agreement may also contain provisions to protect the health, welfare and safety of the citizens along the streets being used, such as, speed limits, other traffic control devices, days and times of usage, turning movements, noise limitations, etc. Failure to sign and abide by the city-wide road maintenance agreement will result in the loss of the privilege to use City streets.

Sec. 4.06.019 Platting requirements for certain residential developments adjacent to oil or gas wells.

- (a) The provisions of this section shall apply to land in the City:
 - (1) *Zoning.* that is subject to any zoning designation which allows for a single family dwelling;
 - (2) *Distance.* where any portion of the boundary of the land is located within three hundred (300') feet of the boundary of an existing drill site ; and
 - (3) *Plat.* whose developer is required to have a final plat prepared and approved pursuant to the Subdivision Ordinance of the City of Rockdale, Texas.
- (b) *Plat Note.* The owner of land meeting the criteria set forth in this section shall, at the time of platting, include on the face of the plat, framed in a bold line so as to be distinctly visible, in capital letters and in a minimum type font size of fourteen (14) point, the following note: “LOTS _____ ARE LOCATED WITHIN 300 FEET OF AN APPROVED OIL AND GAS WELL SITE.” The owner of the property shall complete the blank in the plat note to indicate the lots subject to this section.
- (c) *Final plat.* For the purposes of this section the terms “developer” and “final plat” shall have the meanings ascribed to them by the Subdivision Ordinance of the City of Rockdale, Texas.

Sec. 4.06.020 Appeals.

- (a) Failure to cure. If the Operator does not cure the noncompliance within the time specified in this Ordinance, the Inspector, upon written notice to the Operator, may suspend or revoke the Surface Permit.
- (b) *File appeal.* Operator may, within thirty (30) calendar days of the date of the decision of the Inspector in writing to suspend or revoke a Surface Permit, file an appeal through the City Manager to the City Council under the provisions outlined in this section.
- (c) *Council appeal.* The City Council shall have and exercise the power to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the revocation or suspension of any Surface Permit issued by the Inspector of a Surface Well Permit as provided by this Ordinance. Any person or entity whose Permit is suspended or revoked or whose well or equipment is deemed by the Inspector to be abandoned may, within thirty (30) calendar days of the date of the written decision of the Inspector file an appeal to the City Council in accordance with the following procedure.
 - (1) *Appeal in writing.* An appeal shall be in writing and shall be filed in triplicate with the City Secretary. The grounds for appeal must be set forth specifically, and the error described, by the appellant.
 - (2) *City Council agenda.* Within forty-five (45) calendar days of receipt of the records, the City Secretary shall transmit all papers involved in the proceeding, place the matter on the City Council agenda for hearing and give notice by mail of the time, place and purpose thereof to appellant and any other party who has requested in writing to be so notified. No other notice need to be given.
- (d) *Fee.* Appeal fees shall be required for every appeal and as set forth in the Fee Schedule.
- (e) *Decision final.* The decision of the City Council shall be final.

Sec. 4.06.021 Takings Determination.

- (a) *Taking application.* Any aggrieved person who believes that an action taken pursuant to this Ordinance by the City Council or any officer, employee or agent of the City would legally constitute a taking of property without just compensation under the Texas or United States Constitution, must file an application with the City Council to request a takings determination.
- (b) *File with City Secretary.* The applicant seeking a takings determination from the City Council shall file its application with the office of the City Secretary at least thirty (30) days prior to the next regularly scheduled City Council Meeting. The City Secretary shall then forward the takings determination application to the City Council for

consideration. The application fee as set forth in the Fee Schedule and shall accompany each filing.

- (c) *Evidence of takings.* The application shall state the reasons the applicant believes would support a finding that the City's application of the provisions of this Article to the applicant's property would legally constitute a taking under the Texas or United States Constitution and shall include evidence substantiating the purported diminution in value of the applicant's property.
- (d) *Burden of proof.* At the takings determination hearing conducted by the City Council, the applicant must present detailed economic information and other evidence necessary to establish that the City's application of the provisions of this Article to the applicant's property would legally constitute a taking of the property without just compensation. The applicant has the burden of proof in establishing that the City's application of the provisions of this Article to the applicant's property legally constitutes a taking of property without just compensation under the Texas or United States Constitution.
- (e) *Council powers.* The City Council may administer oaths, compel the attendance of witnesses and require the disclosure of financial information from the applicant that the City Council determines is necessary to make a determination regarding whether the City's application of the provisions of this Article to the applicant's property legally constitutes a taking of property without just compensation under the Texas or United States Constitution.
- (f) *Council finding.* If the Council finds in favor of the applicant it may: (1) grant the relief requested, (2) direct the City Manager to rescind action taken by City staff or agent that formed the basis of the takings determination application, or (3) direct the City Manager to reconsider action taken by City staff or agent that formed the basis of the takings determination application. If the Council denies the application, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) calendar days of the date that the Council issues its final decision.

Sec. 4.06.022 Penalty.

- (a) *Unlawful.* It shall be unlawful and an offense for any person to do the following:
 - (1) *Activities not permitted.* Engage in any activity not permitted by the terms of a Surface Permit issued under this Ordinance;
 - (2) *Failure to comply.* Failure to comply with any condition set forth in a Surface Permit issued under this Ordinance; or
 - (3) *Violate provision.* Violate any provision or requirement set forth under this Ordinance.

- (b) *Punishment.* Any violation of this Ordinance shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00) per day, subject to applicable State law. Each day that a violation exists shall constitute a separate offense. No notice of default required by this Ordinance shall be a precondition to immediate criminal enforcement due to a violation of this Ordinance.

**SECTION 2.
PROVISIONS CUMULATIVE**

This Ordinance shall be cumulative of all provisions of the Ordinances of the City of Rockdale, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such Ordinances, in which event the conflicting provisions of such Ordinances are hereby repealed.

**SECTION 3
PROVISIONS SEVERABLE**

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.
SAVINGS CLAUSE**

That all rights or remedies of the City of Rockdale, Texas, are expressly saved as to any and all violations that have accrued at the time of the effective date of this Ordinance of the provisions of any Ordinances affecting land surfaces for oil or gas exploration, production and development that have accrued at the time of the effective date of this Ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 5.
PUBLICATION IN OFFICIAL NEWSPAPER**

The City Secretary of the City of Rockdale is hereby directed to publish the caption and penalty clause of this Ordinance at least once in the official newspaper of the City of Rockdale.

**SECTION 6.
PUBLICATION IN PAMPHLET FORM**

The City Secretary of the City of Rockdale is hereby authorized to publish this Ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this Ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

**SECTION 7.
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

PASSED AND APPROVED ON THIS _____ DAY OF _____, 2015.

MAYOR: JOHN KING

ATTEST:

CITY SECRETARY: TERRY BLANCHARD

EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY