

## ORDINANCE NO. 13-002

**AN ORDINANCE OF THE CITY OF SOMERVILLE, TEXAS; ADOPTING REGULATIONS REGARDING DRILLING OPERATIONS AND THE PRODUCTION OF OIL AND GAS; MAKING FINDINGS OF FACT; PROVIDING DEFINITIONS; REQUIRING PERMITS; DEFINING LOCATION LIMITS AND RESTRICTIONS; PROVIDING A PENALTY; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.**

**Note: This contains the only the text of the ordinance. Copies of the complete ordinance may be obtained at city hall.**

### Oil and Gas Drilling and Production Regulations

#### **Section 1. Definitions.**

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. All technical or oil and gas industry words and phrases used in this Ordinance and not specifically defined in this section shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.

*Abandonment* includes wells, either oil or gas, that have been plugged and/or are no longer pumping or producing. Further definitions and procedures involving abandoned wells are set out by the Texas Railroad Commission. Also included as part of abandonment is the restoration of any well site as required by this ordinance or any other state or federal regulation.

*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 except for those sources related to oil and gas drilling, production, and compression, constituting the normal or existing level of environmental noise at a given location.

*City* means the City of Somerville.

*Commission* means the Texas Railroad Commission or any successor state agency that has regulatory authority over oil or gas wells and drilling for oil and gas.

*Completion of Drilling, Re-drilling, or Re-working* means the date the work is completed for the drilling, re-drilling or re-working a well or site.

*Daytime* means the period from 7:00 AM to 7:00 PM

*Drilling* means digging or boring a new well for the purpose of 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 to develop, produce or improve the production of oil and/or natural gas or other hydrocarbons.

*Drilling Equipment* means the derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery or equipment used or erected or maintained for use in connection to drilling

*Drill site, Operations Site* means the area used for drilling development, production and all operational activities associated with oil or gas production.

*Fracturing (Frac, Fracking)* means the application of hydraulic pressure to the reservoir formation to create fractures through which gas or oil may move to the well bore.

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

*Inspector* means the oil and gas inspector appointed by the City Council who may be an independent contractor, the City engineer, or another City employee.

*Lease* means any tract of land subject to an oil, gas and mineral lease or other oil and gas development contract, or any unit composed of several tracts and leases but operated as one lease, and any tract of land in which the minerals are owned by an Operator or someone holding under it or him, but which, due to the fee royalty ownership is developed and operated as a separate tract.

*New well* means a new well bore or new hole established at the ground surface and shall not include re-working of an existing well which is not abandoned.

*Oil or gas operation* includes but is not limited to exploration, construction, site preparation, operation, maintenance, or use of any installation, facility or structure, directly or indirectly, to carry out or facilitate one or more of the following functions: repair, development, drilling, re-working, re-drilling, production, storage, processing, plugging, extraction, enhanced recovery, fracturing, pressurizing, stimulation, abandonment or shipping of oil or gas from the subsurface of the earth, including site development.

*Oil Well* means any well drilled or to be drilled or used for the intended or actual production of liquid petroleum or petroleum products or enhanced recovery.

*Operator* means any person drilling, maintaining, operating, pumping, or in control of a well. If the Operator is not the lessee under an oil or gas lease of any premises affected by the provisions of this article, then such lessee shall also be deemed to be an Operator. If no oil or gas lease exists relating to any premises affected by this Ordinance, the owner of the fee estate in the premises shall be deemed the Operator. Operator is the person to whom the

permit authorizing oil or gas operations is issued and shall include heirs, assigns, administrators and successors.

*Permit* means any written license granted by the City allowing for oil or gas operations issued pursuant to the terms of this Ordinance. Three types of permits may be issued: an oil permit, a gas permit and an oil and gas combo permit. A permit may be new, renewed, supplemental or reactivation.

*Residence* means a house, duplex, apartment, townhouse, condominium, mobile home, manufactured home, or other building used or intended for dwelling purposes, excluding such structure that has been condemned by the City.

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

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

*Well servicing* means maintenance work performed in any existing well bore that has not been abandoned, and which does not involve re-drilling or re-working.

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

*Well location* means the surface location of a well.

## **Section 2. Inspector; Enforcement of Ordinance.**

(a) The City Council may appoint an Oil and Gas Inspector. The Oil and Gas Inspector shall report to the City Administrator. It shall be the duty of the Oil and Gas Inspector to enforce the provisions of this Ordinance.

(b) The City, at its sole discretion, may find it necessary to hire a qualified third party consultant to assist with any professional consulting, field testing, sampling activities or other matters that may arise as a result of an oil or gas well. Any fee charged by such third party consultant shall be the responsibility of the Operator and shall be paid to the City prior to approval of the permit or the renewal of any permit.

(c) The 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 Inspector shall constitute a violation of this Ordinance.

(d) The Inspector may conduct periodic operational inspections of any wells located within the City to determine that the wells are operating in accordance with all laws and within proper safety standards.

(e) The Inspector has the authority to review any records, including any records sent to any state agency, logs, or reports, relating to the status or condition of any well. Failure of any person to provide any such requested material shall be deemed a violation of this Ordinance.

### **Section 3. Compliance with Laws, Rules and Regulations.**

Any violation of valid law or of any rule, regulation or requirement of any state or federal regulatory body having jurisdiction with reference to drilling, completing, equipping, operating, producing, maintaining, or abandoning oil or gas wells or related appurtenances, equipment or facilities, or with reference to firewalls, fire protection, blow-out protection or safety of persons or property shall also be a violation of this Ordinance.

### **Section 4. Permit Required.**

(a) Any person proposing to engage in or operate any oil or gas operations shall apply for and obtain a permit as per this Ordinance, and shall indicate what type of activity the permit is intended to cover. It shall be unlawful to conduct any activities related to the production of oil, gas or other hydrocarbons without a permit.

b) A permit shall be required:

1. When a new well is to be drilled;
2. When any existing well is to be deepened;
3. To perform any activities at a well that has been abandoned or ceased production pursuant to the definition herein; and
4. When any wells is to be converted.

(c) A separate permit is required for each well. No permit, for any purpose related to the production of oil, gas or other hydrocarbons shall authorize such activities at more than one well location.

(d) When a permit under this section has been issued to the Operator for drilling, such permit shall constitute sufficient authority for performing the activity outlined in such permit at the site of such well, provided, however that a new or supplemental permit shall be obtained before such well may be re-worked for purposes of re-drilling, deepening or converting such well to a depth or use other than that set forth in the current or last permit for such well.

(e) Once a well is abandoned, a new permit shall be required for re-entry or re-drilling of any abandoned well.

(f) All permits shall require City Council approval which shall be based on a review of the application and any recommendation made by the Inspector or by any consultant hired by the City to review such application.

(g) The permit required by this section is in addition to and are not in lieu of any permit which may be required by another section of this or any other ordinance of the City or by any other governmental agency.

## **Section 5. Application, Filing and Permit Fee.**

(a) Every application for a permit required under this Ordinance, shall be in writing and submitted in duplicate to the City Secretary. The application will include a statement, to be signed by the Operator, under oath, that the information submitted with the application is, to the best knowledge and belief of the Operator, true and correct. The application shall contain the following information and be accompanied by the attachments required below:

1. Date of Application and type of well permit requested.
2. Legal description of the property to be used for the oil or gas operation, the parcel, the production unit, and the name of the geologic formation as used by the Commission. Descriptions of property shall be by metes and bounds or subdivision, block and lot numbers, as applicable.
3. Proposed well name.
4. Location and description of all proposed improvements and the proposed depth of the well.
5. Description of the casing program.
6. Ownership and contact information:
  - a. Operator name(s), address(es), and telephone number(s) including state of incorporation or names of general partners, as applicable
  - b. Name(s), address(es) and telephone number(s) of owner's agent or the individual designated to receive notices. Such individual must be a resident of Texas upon whom all orders and notices provided in this Ordinance may be served in person or by registered or certified mail.
  - c. Name(s) and contact information for representative with supervisory authority over the operation and site activities, including 24-hour phone number. If another contact should be named for emergencies, include the name and contact information for that person.
7. Other property owners:
  - a. Surface owner name(s), address(es) and telephone number(s).
  - b. Mineral Lessee name(s), address(es) and telephone number(s).
  - c. Owner name(s), address(es) (including Burleson County Appraisal District Parcel number (R number)) and telephone number(s), of each parcel of property within five hundred (500) feet of the well site without the approval of city council.
8. A description of any public utilities to be used during drilling or operations, if applicable.
9. A description of the water source(s) to be used during drilling.
10. A description of proposed waste disposal program.
11. Attachments:
  - a. Copies of all reports, forms and/or drilling permits, including attachments, required by the Commission, Texas Commission on Environmental Quality, the Environmental Protection Agency, Bureau of Land Management, or Army

Corp of Engineers. The Army Corp of Engineers will also need to verify that such drilling site is not located within three thousand (3,000) feet of any federal public work.

- b. Site plan of current and proposed operations area, including the acreage or area of the drilling unit, the location of the well within the operations area, any streets or boundary lines, all improvements and facilities at the site, including separators, compressors, tanks, secondary containment dikes, pipelines, storage tanks, fencing etc., and any existing structures within five hundred (500) feet of the well site along with a description of the use of such structure and the distance to the well. The site plan should also include the maximum number of potential wells expected to be drilled.
- c. Map showing proposed transportation routes in the City for equipment, chemicals or waste products used or produced by the oil or gas operation.
- d. A copy of the emergency response plan for the site and the emergency evacuation plan, detailing any persons to be notified in the event of an evacuation, including, without limitation, all persons residing within one-half (1/2) mile of the edge of construction or surface disturbance.
- e. Copies of any required permissions from the owners of surface property or improvements, if applicable
- f. A copy of the noise management plan prepared by a qualified person addressing any equipment used in the drilling, completion, and production of a well.
- g. A leak detection and compliance plan to ensure that all site activities and equipment are in compliance with applicable federal, state and local rules and regulations.
- h. Evidence of insurance and security which complies with the provisions in this Ordinance.

(b) Filing and Permit Fees.

1. Two cashier's checks totaling One Thousand Dollars (\$1,000.00) shall be submitted with the application to cover filing (Three Hundred Dollars (\$300.00) and permit fees (Seven Hundred Dollars (\$700.00)). Failure to include the cashier's checks shall render the application incomplete and no action will be taken on such application. The cashier's checks shall be retained by the City to cover the fees. If the permit is denied, the permit fee check shall be returned to the Operator within forty (40) days of the denial in the amount of Seven Hundred Dollars (\$700.00), with the City retaining the filing fee check in the amount of Three Hundred Dollars (\$300.00) for the initial review and filing fee, unless the Operator appeals the denial or re-applies.
2. Waiver. The City Council may, at its discretion, waive or reduce the filing and permit fees as provided herein for any permit application related to gas or oil operations.

(c) Incomplete Application. Any application that is submitted incomplete, the Operator will be notified of such incomplete information and the Operator will be given ten (10) days to submit such incomplete information. Thereafter, if the Operator fails to submit such incomplete information, the City will return the application, along with the cashier's checks.

## **Section 6. Approval, Denial or Withdrawal of Permit.**

(a) The City Council, within thirty five (35) days after the filing of a complete application with all attachments and fees, shall determine whether the application complies in all respects with the provisions of this Ordinance and other applicable state and federal laws. The City Council may request assistance from the Inspector to review the application and make a recommendation prior to their consideration of the application.

(b) If such finding is made, the City Council shall give notice of the amount of bond required, and shall authorize the Inspector to issue the permit upon receipt of the indemnity bond in the amount required by City Council. No oil or gas operations may be commenced until the indemnity bond has been properly posted by Operator.

(c) If the City Council makes a determination that the application does not comply with the provisions of this Ordinance, it may give the Operator a period of not more than thirty (30) days to cure or comply with the conditions specifically noted. Should the Operator fail to cure or comply with all conditions after such thirty-day period, the City shall return the application and its attachments to the Operator, along with the permit fee check in the amount of Seven Hundred Dollars (\$700.00)

(d) If the Operator notifies the City, in writing, that he does not accept the permit as approved by the City Council or that the bond requirements are not approved by a surety, the City shall, within ten (10) days return the application and its attachments, along with the cashier's check for the permit fee in the amount Seven Hundred Dollars (\$700.00).

## **Section 7. Content of Permit.**

(a) Each permit issued under this Ordinance shall:

1. By reference have incorporated therein all the provisions of this Ordinance with the same force and effect as if this Ordinance were copied verbatim in the permit.
2. Identify the specific well location and operations site for which the permit is issued by name and legal description.
3. Contain a date of issuance and the expiration date of the permit which shall be one year unless otherwise directed by City Council.
4. The permit shall clearly state the type of operation authorized, and the maximum depth to which the well may be drilled without a supplemental permit for re-drilling or deepening the well as per this ordinance.
5. Contain and specify such conditions and limitations for the oil or gas operation as are authorized herein, as applicable
6. Require that the Operator shall set casing at not less than 4000 (four thousand) foot depth and cement, by circulation from top to bottom, and exercise any other

necessary precautions to protect city water supply sources from contamination.

7. Additional requirements accepted with the permit:

a. The Operator shall notify the Inspector of any changes to any of the following information within seven (7) days:

1. Name, address and telephone number of Operator;
2. Name, address and telephone number of person designated to receive notices from the City (such person must be a resident of Texas);
3. The Emergency Response Plan, including any changes with transportation to and from the site.

b. The Operator shall notify the Inspector of any change in name, address and telephone number of emergency personnel (24-hour phone number) or person with supervisory responsibility (including 24-hour phone number) within one (1) day.

c. The Operator shall notify the City and the Inspector or Fire Chief immediately of any incident resulting on product loss from a hydrocarbon storage facility or pipeline facility; blowout; fire; explosion; incident resulting in injury, death or property damage; or any other significant incident as defined by the Commission. A follow-up report shall be submitted to the Inspector by 5:00 p.m. on the earliest business day following such incident. A final report shall be submitted to the Inspector within thirty (30) days following the incident. The final report will contain the following:

1. Operator name, address and phone number;
2. Description of the incident, including date, time, location and cause of the event;
3. Duration of the incident, when it ceased to be a hazard to the health, safety and welfare of persons or property;
4. How the incident was brought under control or remedied;
5. Full description of the investigative steps taken by the Operator or any subcontractors concerning the incident, the findings and any action taken as a result of the findings.

d. The Operator shall provide copies of all reports filed with the Commission, including incident reports within ten (10) days of such report being filed with the Commission.

e. The Operator shall notify the Inspector of any well that is to be abandoned at least three (3) days prior to abandonment, with a follow-up report also being filed with the Inspector within seven (7) days after the site is restored.

**Section 8. Issuance of permit**

(a) Upon approval of the application, the permit document shall be prepared in duplicate, signed by both the mayor and the Operator. One original shall be filed with the City Secretary



and the other shall be issued to the Operator, who shall keep a copy of said permit on-site during all construction and drilling operations. When so signed, the permit shall constitute the Operator's drilling and operating license and the contractual obligation of the Operator to comply with the terms of the permit, the bond, this Ordinance, and all applicable laws.

(b) The issuance of a permit pursuant to the provisions of this ordinance constitutes a contract between the City and the Operator that the Operator shall be liable and must pay reasonable attorney's fees and costs incurred by the City in a successful enforcement of the provisions of this Ordinance.

#### **Section 9. Termination of Permit**

(a) If the Operator has not begun drilling operations at the well site within One Hundred Twenty (120) days of the date on the permit, such permit shall expire and be voided without any action on the part of the Inspector or City Council.

(b) In the event that drilling operations, once commenced, cease for a period exceeding 90 days, or that production ceases, after having commenced, for a period exceeding 90 days, the permit shall also be terminated.

(c) If the permit is terminated subject to the above subsections, the well shall be considered abandoned, and it shall be a violation of this ordinance for the Operator or any person to continue drilling or production operations, or to re-enter the well for any reason other than to accomplish closure of the site in accordance with Commission requirements, unless a new permit is applied for and granted.

#### **Section 10. Renewal of permit**

(a) Permits shall be issued for a period of one (1) year. At the end of the initial term, such permit may be extended, by renewal, for one-year periods not to exceed a total of five (5) years from the date of the initial issuance, provided that the following conditions are met.

1. The Operator shall submit an application for renewal not less than thirty (30) days before the expiration of the permit, and shall indicate what changes, if any, at the oil or gas operation site are requested. The Operator shall only be required to submit documents regarding the proposed changes with the application for renewal.
2. The fee for renewal of a valid license shall be Two Hundred Dollars (\$200.00).
3. Prior to the expiration of the permit, the City shall cause an inspection of the oil or gas operations' site to be performed to verify compliance with the terms of this Ordinance and the permit issued for such oil or gas operations.
4. The City shall meet with the Operator to review the emergency response plan to ensure its adequacy.
5. If no change in oil or gas operations is proposed or has taken place, or the Operator is reworking the site, and the inspection indicates compliance with this Ordinance

during the previous permit period, a renewal permit shall be issued. Otherwise the renewal application shall be processed as a new permit with the appropriate fees.

(b) If a change in operations requiring a new or supplemental permit such as deepening or re-drilling of the well, is proposed during the original permit period or any renewal period, such permit shall be obtained in the manner set out below.

#### **Section 11. Suspension; Revocation of Permit**

(a) If an Operator violates any of the provisions of an issued permit, including bond or insurance requirements, or any applicable provision of this Ordinance, other City ordinance, or state or federal law or regulation, the City shall send written notice to such Operator outlining the violation(s) and providing a reasonable time to correct or cure such violation(s), taking into account the nature and extent of the violations, the extent of effort necessary to cure the violation(s) and the potential impact on the health, safety and welfare of the community or the surrounding environment. The minimum cure period shall be thirty (30) days.

(b) If the Operator fails to correct such violation(s), the Inspector and the City Administrator may suspend the permit until such violation(s) are corrected. No person shall carry on any oil or gas operations under the terms of a permit issued under this Ordinance during any period of time the permit is suspended or revoked.

(c) If the Operator still fails to correct such violation(s), the City Council, at any regular or called meeting, may confirm the suspension until the violation is corrected/cured or revoke the permit under this Ordinance.

(d) An Operator may seek to have any revocation reviewed and reconsidered by the City Council if it files such request within ten (10) days of the date the City Council revokes the permit. If a permit is revoked, nothing in this section shall prohibit an Operator from submitting a new permit application for the same well under the conditions outlined for a new submission.

#### **Section 12. Permits Required for Deepening or Re-Drilling**

(a) Once any well has been completed and is producing, it shall be unlawful for any person to drill such well to a deeper depth than permitted under the existing permit, without application for and approval of a supplemental permit for such oil or gas operations.

(b) If such supplemental permit is requested during the term of an existing permit, including any renewal period, no permit fee shall be required; a Two Hundred Dollar (\$200.00) processing fee, due at issuance of such permit will still be required.

(c) If a well is abandoned or not producing or the permit is expired, it shall be unlawful for any person to operate such well without obtaining a reactivation permit for the oil or gas operations.

(d) If an abandoned well is proposed to be re-activated by deepening or re-drilling, the Operator shall submit the following in duplicate to the City Secretary for a reactivation permit:

1. An original application together with all attachments as set forth above;
2. Information concerning the present condition of the well and the casing therein;
3. The proposed depth of the well after re-drilling operations;
4. The proposed casing program to be used in connection with such operation; and
5. Any required tests or reports necessary to verify that the existing casing strings are in compliance with this ordinance and state and federal regulations.

(e) In the event that City Council is satisfied that such well may be deepened with the same degree of safety as existed in the original well, a supplemental permit may be issued for the proposed re-drilling or deepening operation.

### **Section 13. Insurance and Bond Requirements.**

(a) Operator is required to obtain insurance in sufficient amounts to protect the property the oil or gas operations are being performed on, as well as the City and the persons and property adjoining such property. To that end, all applications shall be required to provide a copy of an insurance certificate that meets the requirements set forth in Exhibit "A." Exhibit A is adopted by resolution of the City Council and may be modified from time to time in the same manner.

(b) Operator is required to obtain a security instrument in the form of a bond or an irrevocable letter of credit which shall meet the requirements set forth in Exhibit A. Exhibit A is adopted by resolution of the City Council and may be modified from time to time in the same manner.

(c) The City Council may elect to make an exception to the requirements of this section when, in their opinion, the intent and purpose for the requirements of the bond and insurance can be assured by any of the following means:

1. Acceptance of a guaranty of indemnity to the City in lieu of bond and a plan of self insurance in the case of financially responsible Operators; or
2. Acceptance of a blanket bond and a single policy of insurance to cover all operations of the Operator within the City limits.

### **Section 14. Well and Operation Location Restrictions.**

(a) Streets and Alleys. No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within 75 (seventy five) feet of any public street, highway, alley, utility easement, or right-of-way. No street or alley shall be blocked, encumbered or closed in any drilling or production operation except temporarily by special permit issued by order of the City Council.

(b) Conduits on Streets or Alleys. No Operator shall make any excavation or construct any lines for the conveyance of fuel, water, or minerals on, under, or through the public streets, highways and alleys within the City without express permission of the appropriate governmental entity in writing, and then only in strict compliance with the applicable provisions of this Ordinance, state and federal law, or other City ordinances, rules and regulations.

(c) Should the Operator be granted any permission to excavate or construct on any portion of a public street, highway, alley, easement or right-of-way ("public ways"), Operator shall be required to return such public ways to the original or better condition upon completion of the work associated with the excavation.

(d) It shall be unlawful to drill, re-drill, deepen, re-enter, activate or convert any oil or gas well for which the closest edge of construction or surface is located:.

1. Within five hundred (500) feet from any residential structure, place of worship, cemetery, or city facility or water well, unless the Operator has secured the permission of the owner or owners of such property.
2. Within one hundred fifty (150) feet from any commercial building, unless the Operator has secured the permission of the owner or owners of such property.
3. Within seven hundred fifty (750) feet from any primary or secondary school, public parks, hospital campus or building, unless such building is for administrative uses only, or nursing home.
4. No permit shall be issued for any well to be drilled in any city park unless authorized by state law.
5. Within five hundred (500) feet of any storage tank or potential source of ignition without the approval of city council.

**Section 15. General Site Requirements.** All oil or gas operations sites shall conform to the following:

(a) All oil and gas operations shall be conducted in a careful and prudent manner and the premises shall, at all times be maintained in a neat, clean, and orderly manner. All property on which oil or gas operations occur shall be kept free of debris, pools of oil, water or other liquids, weeds, brush, tar, or other wastes. All discarded surplus materials, supplies and refuse shall be removed from the operations site as soon as possible, but in no event less often than once in thirty (30) days.

(b) Site development including deliveries of equipment and materials, servicing of the well, other than actual drilling, shall be conducted only between 7:00 a.m. and 7:00 p.m., Monday through Friday and between 9:00 a.m. and 5:00 p.m. on Saturday. The Operator may request a variance as part of his oil or gas application.

(c) Only electric prime motors shall be used on wells located within the city limits to maintain the ambient noise level. If the City Council by special condition allows gas, gasoline, or diesel engines to be used on a well permitted under this ordinance, mufflers, noise blankets, sound walls or other types of noise mitigation shall be used with such equipment. In the event

that the City receives complaints about noise, the effectiveness of such mufflers or other forms of equipment in maintaining the ambient noise level shall reviewed by the City and additional conditions may be placed on such use such engines or the City reserves the right to modify the permit to eliminate the use of such engines..

(d) Permanent weatherproof signs with shall be posted at the entrance to the well site. Such sign shall contain the following information:

1. Notice that no smoking is permitted at the site.
2. Well and lease designations as required by the Commission
3. Emergency contact numbers for the Operator, the fire department and local or county law enforcement agency with jurisdiction.

(e) All drilling and operations at any site under permit shall be conducted in accordance with the best practices of any reasonably prudent Operator in the central Texas area. All casing, valves, and blow-out preventers, drilling fluid, tubing, bradenhead, Christmas tree, and well head connections shall be of the type and quality consistent with the best practices of such reasonable and prudent operators. Setting and cementing casing and running drill-stem tests shall be performed in a manner and at a time consistent with the best practices of such reasonable prudent operation. The recommendations and/or regulations of the American Petroleum Institute, the Commission and the Texas Commission on Environmental Quality, or respective successor agencies shall be observed and followed at all times. All production equipment on site shall be painted and shall be maintained in good condition, including pumping units, storage tanks, and structures.

(f) Flaring and venting of gases shall be managed in accordance with the rules and regulations of the Commission.

(g) Drilling mud, cuttings, oil, or liquid hydrocarbons and all other oilfield waste derived from or connected with the drilling, reworking, or deepening of a well shall be discharged into a portable tank. Unless otherwise directed by the Commission, such waste materials shall be removed at least once every thirty (30) days in accordance with all rules and regulations pertaining to such waste materials.

(h) At the conclusion of any drilling or re-working operations, the drill site shall be cleaned within fifteen (15) days of any equipment and machinery that is not needed to operate the well, including drilling rigs or derricks, portable pulling masts and gin poles.

(i) A watchman shall be required to be on-site during any drilling or re-drilling or reworking operations at any unfenced well site, except at such times when the Operator's employees or agents are on site.

(j) Crude oil storage at the well site shall be limited to a maximum of two (2) vapor tight, steel storage tanks with capacities of no more than Five Hundred (500) barrels each. Such tanks, including pressure relief valves and other required appurtenances, shall be constructed and maintained in compliance with state regulations. Secondary containment dikes shall be

provided around such tanks and equipment as required by state or federal law. A conventional steel separator and other steel tanks and appurtenances as are necessary for separating oil and gas shall be installed and maintained in good condition at the site as applicable. Each oil and gas separator shall be equipped with both a regulation pressure relief safety valve and a bursting head. Proposed location of such tanks and equipment shall be provided in the application. The Operator may submit modification to such location under a supplemental approval at City Council's discretion.

(k) A four (4) inch header shall be laid over the top of the tanks and a two and one-half (2 1/2) inch line shall extend from the tank battery to a point no less than two hundred (200) feet from the battery. The manner and method provided for connection at that point shall be approved by the Fire Department so that foamite or other chemicals may be pumped through such line and header to such tanks to extinguish any fire in the tanks. Adequate firefighting apparatus and supplies, approved by the Fire Department, shall be maintained on the drilling site at all times during drilling and production operations. All machinery, equipment, and installations on all drilling sites within the City shall conform to such requirements as may from time to time be issued by the Fire Department or another regulatory agency with jurisdiction.

(l) Emergency Response Operations. No limitation or restriction on the use of equipment, noise or activities contained herein shall apply to any emergency response to an accident or condition that endangers life or property.

#### **Section 16. Fracture operations.**

(a) All fracture stimulation operations shall be conducted during daytime hours.

(b) 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

(c) If fracture tanks are utilized for the operation, such tanks may not be stacked on site.

(d) An Operator may request to construct a fracture pond if the distance to the nearest protected use is greater than 500 (five hundred) feet. Such Pond shall:

1. Be designed, managed, maintained and removed in accordance with all Commission and or TCEQ requirements, and Best Management Practices shall be utilized to ensure the integrity of the pond.

2. All ponds shall be fenced with a minimum 6 foot high chain link or opaque fence. Ponds located inside perimeter fences for operations sites or pads shall not require additional fencing.

3. All reasonable measures to prevent mosquito or other vector problems shall be taken. Persistent presence of mosquito larvae in such pond shall be a violation of this ordinance and may result in removal of the pond at the Operator's expense.

(e) Flowback operations to recover fluids used during fracture operations may be performed either during daylight, or at night, provided that notice of such operations has been given to the City.

(f) If water wells are drilled to assist with any fracture operations, such water wells shall be drilled in accordance with any state agency rules or regulations, rules or regulations pertaining to any groundwater management area or any regulations of any water service provider; and any water from such water well may not be used as potable water for such operator

**Section 17. Discharge or dumping prohibited.**

No person shall place, deposit, discharge, cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or additives, or any refuse, including wastewater or brine from any oil or gas operation, or the contents of any container, including transport vehicles, used in connection with any oil or gas operation in, into, or upon any public right-of-way, storm drain, ditch or sewer, sanitary drain or sewer, any body of water, or on any private property in the City. Any spill or accidental discharge of such substances shall be reported immediately to the City and any other state or federal agency having regulatory control, and cleanup shall be commenced promptly.

**Section 18. Fencing.** All wells and associate surface facilities located inside the city limits shall be enclosed with a fence of such height and construction to keep persons and animals out. All gates shall be closed and locked when the Operator or his employees or agents are not within the enclosure. The requirement for such fence may be waived or modified by the City Council if requested during the application or by the Inspector, at his discretion, in non-congested areas.

**Section 19. Explosives Prohibited.**

No geophysical work employing underground explosives will be permitted anywhere at any time within the City limits. Other geophysical systems employing the “thumper”, “vibroiseis”, or other techniques not employing explosives, and not associated with a drilling permit issued under the provisions of this ordinance may be permitted upon proper application and payment of a One Hundred Dollar (\$100.00) application fee. Such application shall include the following:

- (1) The date of the application.
- (2) The name of the Operator.
- (3) The address of the Operator.
- (4) A statement of the proposed commencement and completion dates.
- (5) A map or plat outlining the areas proposed to be covered by the survey.
- (6) Compliance with the indemnification bond and insurance coverage requirements herein or as established by City Council.

**Section 20. Abandonment and Plugging.**

Whenever any well is abandoned, it shall be the obligation of the Operator of the well to comply with the regulations of the Commission in connection with the abandonment and plugging of a well. The Operator shall also remove all equipment and machinery from the site, clean and remove any oil, waste oil, refuse or debris from the site, and shall restore the site insofar as possible to its previous contours and natural drainage condition. Operator shall not

be released from his surety until such site restoration has occurred and the Inspector has recommended approval of such restoration.



## **EXHIBIT "A"**

### **INSURANCE, BOND AND INDEMNITY**

#### **Bond, letters of credit, indemnity, insurance.**

(a) *General requirements.* The Operator shall be required to:

- (1) Comply with the terms and conditions of this article and the permit issued hereunder.
- (2) Promptly clear drill sites and operation sites of all litter, trash, waste, materials, and/or 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 any oil and gas drilling, exploration and production operations were commenced.
- (3) 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 an oil, gas, or combined well permit:
  - a. Where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of Operator and any other person or entity; and
  - b. Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of Operator.
- (4) Promptly pay all fines, penalties and other assessments imposed due to breach of any requirements and/or terms of the oil, gas, or combined permit.
- (5) Promptly restore to its former condition any public property damaged by the oil and gas drilling, exploration or production operation.

(b) *Bond, irrevocable letter of credit.*

- (1) Prior to the issuance of an oil, gas, or combined well permit the Operator shall provide the oil and gas inspector with a security instrument in the form of a bond or an irrevocable letter of credit as follows:
  - a. *Bond.* A bond shall be executed by a reliable bonding or insurance institution authorized to do business in Texas, acceptable to the City. The bond shall become effective on or before the date the oil, gas, or combined well permit is issued and shall remain in force and effect for at least a period of six months after the expiration of the permit term or until the well is plugged and abandoned and the site is fully 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 article and the City. The

original bond shall be submitted to the oil and gas inspector with a copy of the same provided to the City secretary.

b. *Letter of credit.* An irrevocable letter of credit shall be issued in favor of the City by a reliable bank or other financial institution, acceptable to the City, authorized to do business in Texas and shall become effective on or before the date the permit is issued and shall remain in force and effect for at least a period of six months after the expiration of the permit term. The City shall require a local banking association to be named as a confirming bank for purposes of presentment and collection in Bureson County, Texas. The City shall be authorized to draw upon such letter of credit to recover any fines or penalties assessed under this article. Evidence of the execution of a letter of credit shall be submitted to the oil and gas inspector by submitting an original signed letter of credit from the banking or financial institution, with a copy of the same provided to the City secretary.

c. The principal amount of any security instrument shall be \$50,000.00 for any single well. If, after completion of a well, the Operator has complied with all of the provisions of this article and such Operator's well(s) is (are) in production and all drilling operations have ceased, the Operator may submit a request to the oil and gas inspector to reduce the existing bond to \$10,000.00 per well for the remainder of the time the well produces without reworking. During any re-drilling or re-working, the amount of the bond or letter of credit shall be reinstated to and maintained at \$50,000.00. d. If at any time after no less than a 15-day written notice to the Operator, the oil and gas inspector shall deem any Operator's bond or letter of credit to be insufficient, the City may require the Operator to increase the amount of the bond or letter of credit up to a maximum of \$300,000.00 per well.

e. The Operator agrees to renew the bond or irrevocable letters of credit prior to expiration thereof so the bond or letters of credit shall remain in full force and effect during the entire permit term, including any extension. The Operator shall provide the City evidence that the bond or irrevocable letter of credit has been renewed at least 30 days prior to its scheduled expiration date. If an Operator fails to timely provide the City with such certification of renewal, the city shall notify the operator in writing of such failure and require that the Operator shall cure such failure within ten (10) days. If operator fails to provide renewal bonds or irrevocable letters of credit after notification of such failure to renew, the city reserves the right to suspend the oil or gas operation of such Operator.

f. Whenever the oil and gas inspector finds that a default has occurred in the performance of any requirement or condition imposed by this article, a written notice shall be given to the Operator. Such notice shall specify the work to be done, the estimated cost and the period of time deemed by the oil and gas inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the Operator shall, within the time therein specified, either cause or require the work so identified to be performed, or failing to do so, shall pay over to the City 125% (one hundred twenty five percent) of the estimated cost of doing the work as set forth in the notice. In no event, however, shall the cure period be less than 30 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 article.

g. In the event of Operator's failure or refusal to timely cure such a default, the City shall be authorized to draw against the irrevocable letter of credit or bond to recover such amount due from the Operator. Upon receipt of such monies, the City shall have the right but not the corresponding obligation to proceed by such mode as deemed convenient to cause the required work to be performed and completed.

h. In the event that the well has not been properly abandoned under the regulations of the commission, at the end of the permit term and the drill site and the operation site restored in conformity with the regulations of this article, the City shall have the right to assert a claim against the bond and/or make presentment of the irrevocable letters of credit accepted hereunder by the City by presenting the original thereof, together with an affidavit executed by the City manager stating that the Operator is in default under the terms of this article. If the Operator provides a bond, the Operator as principal, and the guarantor of surety on the bond or the Operator shall be liable to pay for the cost to properly plug and abandon the well and restore the drill site and operation site in conformity with the regulations of this article. The surety shall be liable in the amount of the bond. If, however, the Operator provides an irrevocable letter of credit, rather than a bond, then the Operator shall be solely liable to pay for the cost to properly plug and abandon the well and restore the drill site and operation site in conformity with the regulations of this article. Upon receipt of such monies, the City shall have the right but not the corresponding obligation to proceed by such mode as deemed convenient to cause the required work to be performed and completed.

i. When the well or wells covered by said irrevocable letters of credit or bond have been properly abandoned in conformity with all regulations of this 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 irrevocable letter of credit or bond issued in compliance with these regulations shall be terminated and canceled and returned to the Operator.

j. The only requirements for presentment of any bond or letter of credit accepted hereunder by the City shall be the presentation of the original thereof, together with an affidavit executed by the City manager stating that the Operator is in default under the terms of this article.

(c) *Insurance.* In addition to the bond or letter of credit required pursuant to this article, the Operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are canceled, the oil, gas, or combined well permit shall be suspended on such date of cancellation and the Operator's right to operate under such oil, gas, or combined well permit shall immediately cease until the Operator files additional insurance as provided herein.

(1) *General requirements applicable to all policies.*

a. The City, its officials, employees, agents and officers shall be endorsed as an

"additional insured" to all policies except employers' 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 written 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, evidencing all the required coverages, including endorsements, prior to the issuance of a 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 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten-days' notice shall be acceptable in the event of non-payment of premium.

i. During the term of the oil, gas, or combined well permit, the Operator shall report, in a timely manner, to the oil and gas inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

j. Upon request, certified copies of all insurance policies shall be furnished to the City.

(2) *Standard commercial general liability policy.* This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors' protective liability and personal injury. This coverage shall be a minimum combined single limit of \$1,000,000.00 per occurrence location for bodily injury and property damage.

(3) *Excess or umbrella liability.* \$5,000,000.00 excess or umbrella liability coverage, if the Operator has a stand-alone environmental pollution liability (EPL) policy. \$10,000,000.00 excess or umbrella liability coverage, if the Operator does not have a stand-alone EPL policy. This coverage must include an endorsement for sudden or accidental pollution. If excess or umbrella liability coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and 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.

(4) *Environmental pollution liability coverage.*

a. Operator shall purchase and maintain in force for the duration of the oil, gas, combined well permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with an loss arising from the insured site. Coverage shall be a minimum combined single limit of \$1,000,000.00 per occurrence.

b. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.

c. The Operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the City.

(5) *Control of well.* The policy 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.

a. \$5,000,000.00 per occurrence with no aggregate, if available, otherwise an aggregate of \$10,000,000.00.

b. \$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 \$100,000.00 for each employee and \$100,000 for each 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 \$100,000.00 per occurrence for bodily injury and property damage.

b. Coverage must include all owned, hired and non-owned automobiles.

(8) *Certificates of insurance.*

- a. The company must be admitted or approved to do business in the State of Texas, unless the coverage is written by a surplus lines insurer.
- b. The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas 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. Shall set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read:

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

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

(d) *Indemnification and express negligence provisions.*

(1) Each oil, gas, combined well permit issued by the oil and gas inspector shall include the following language: Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or its assigns may have, or claim to have, against the City of Somerville, 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 an oil, gas, or combined well permit. The Operator shall fully defend, protect, indemnify, and hold harmless the City of Somerville, Texas, its departments, agents, officers, servants, or employees, from and against any and all claims, suits, judgments and demands for and 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 permit. The Operator agrees to indemnify and hold harmless the City of Somerville, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from and against 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 Somerville occurring on the drill site or operation site in the course and scope of inspecting and permitting the oil and gas wells INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF SOMERVILLE OCCURRING ON THE DRILL SITE OR OPERATION-SITE IN THE COURSE AND SCOPE OF

INSPECTING AND PERMITTING THE OIL, GAS, OR COMBINED 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 SOMERVILLE, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF SOMERVILLE, 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.