

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE VI, "POLICE REGULATIONS", CHAPTER 1, "GENERAL OFFENSES", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ADD A NEW SECTION 21, "OIL AND GAS WELL PERMITS ISSUED ON OR AFTER JANUARY 1, 2010"; SAID ORDINANCE SHALL REGULATE AND GOVERN THE GRANTING OR REJECTING OF APPLICATIONS FOR OIL AND GAS WELL PERMITS; SAID ORDINANCE PROVIDES FOR REVISED REGULATIONS REGARDING THE DRILLING OF OIL AND GAS WELLS AND EXPLORATION OF AND PRODUCTION FROM OIL AND GAS WELLS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE OF JANUARY 1, 2010; AND ORDERING PUBLICATION

WHEREAS, the exploration, development, and production of oil and gas in the City of Midland are activities which 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; and

WHEREAS, it is hereby declared to be the purpose of this Ordinance to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, the City Council finds that this Ordinance substantially advances a legitimate state interest; and

WHEREAS, the City Council finds that this Ordinance enhances the quality of life of the residents of Midland; and

WHEREAS, the Council finds that this Ordinance protects open-space property; and

WHEREAS, this Ordinance preserves desirable aesthetic features of the City of Midland; and

WHEREAS, this Ordinance preserves the character of Midland; and

WHEREAS, this Ordinance regulates the character of growth; and

WHEREAS, this Ordinance assures careful and orderly development of property; and

WHEREAS, this Ordinance applies to all persons or property similarly situated within the City limits; and

WHEREAS, the City Manager shall ensure enforcement of this Ordinance and shall coordinate the various City Departments to ensure compliance with this Ordinance; and

WHEREAS, the Chief of Police shall assist any third party employed by the City to enforce this Ordinance and the Chief of Police shall provide personnel and training for the effective enforcement of this Ordinance by the Police Department and third parties employed by the City Manager;

WHEREAS, third parties employed by the City Manager shall coordinate their efforts with the Railroad Commission of Texas and the Midland Police Department; and

WHEREAS, Title VI, Chapter 1, Section 21 of the Midland City Code only applies within the city limits;

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

SECTION ONE. That the preambles stated above are hereby adopted, approved, and incorporated into this Ordinance by reference and made applicable hereto with the same force and effect as if the same were copied fully in this Ordinance.

SECTION TWO. That Title VI, "Police Regulations", Chapter 1, "General Offenses", Section 21, "Reserved", shall hereby be amended to read as follows:

6-1-21 Oil and Gas Well Permits Issued on or After January 1, 2010

A. Purpose.

The purpose of this Section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations on private and public property within the City of Midland related to the exploring, drilling, developing, producing, transporting, and storing of oil, gas, and other substances produced in association with oil and gas, in order to protect the health, safety and general welfare of the public; to minimize the potential impact to private property and mineral rights owners; to protect the quality of the environment; and to encourage the orderly production of available mineral resources. This Section shall apply to all oil and gas well permits issued by the City Council on or after January 1, 2010.

B. Definitions.

For the purposes of this Section, the following words and terms wherever and whenever used or

appearing herein shall have the scope and meaning hereafter defined and set out in connection with each:

1. "Abandonment" means "abandonment" as defined by the Texas Railroad Commission and includes the plugging of the well and the restoration of any well site as required by this Section.
2. "Blowout Preventer" means a mechanical, hydraulic, or other device or combination of such devices secured to the top of a well casing, including valves, fittings and control mechanisms connected therewith, which can be closed around the drill pipe, or other tubular goods which completely close the top of the casing and are designed for preventing blowouts.
3. "Building" means any structure which is built for the support, shelter, or enclosure or partial enclosure of persons, animals, chattels, or movable property of any kind including pools.
4. "Building Official" means the Building Official of the City of Midland, or the Building Official's duly authorized representative.
5. "City" means the City of Midland, Texas.
6. "City Council" or "Council" means the City Council of the City of Midland, Texas.
7. "City Code" means the Midland City Code.
8. "City Attorney" means the City Attorney of the City of Midland.
9. "City Manager" means the City Manager of the City of Midland.
10. "Completion of Drilling, Re-drilling and Re-working" means the date the work is completed for the drilling, re-drilling or re-working and the crew is released by completing their work or contract or by their employer.
11. "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.
12. "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.
13. "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 with drilling.
14. "Drill site" means all of the land area 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.
15. "Exploration" means geologic or geophysical activities, including seismic surveys, related to the search for oil, gas or other subsurface hydrocarbons.
16. "Fire Department" means the Fire Department of the City of Midland.
17. "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.

18. "Occupied residence" means any single-family or multi-family dwelling occupied by an owner or lessee at the time an application for an oil and gas well permit is filed with the City of Midland. An occupied residence shall include a single-family or multi-family dwelling that has been occupied by the owner or lessee at any time during the six months prior to the application date of the oil and gas well permit. An occupied residence shall include a single family or multi-family structure for which a building permit has been issued by the City during the six months prior to the application date of the oil and gas well permit.
19. "Occupied commercial structure" means any commercial structure occupied by an owner or lessee at the time an application for an oil and gas well permit is filed with the City of Midland. An occupied commercial structure shall include a structure that has been occupied at any time during the six months prior to the application date of the oil and gas well permit. An occupied commercial structure shall include a structure for which a building permit has been issued by the City during the six months prior to the application date of the oil and gas permit.
20. "Oil and Gas Advisory Committee" or "Committee" means the three member committee appointed by the City Council to assist with the technical and administrative review of all Oil and Gas Well permits.
21. "Oil, Gas and Surface Commission" or "Commission" means the commission established by the City Council to preside over all Oil and Gas Well Permit applications and make a final report to the City Council.
22. "Oil and Gas well" means any well drilled, to be drilled, or used for the intended or actual production of oil or natural gas.
23. "Operation Site" means the area used for development and production and all operational activities associated with oil and gas after drilling activities are complete.
24. "Operator" means, for each well, the person listed on the appropriate City of Midland application forms for an oil and 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 and gas lease of any premises affected by the provisions of this Section, then such lessee shall also be deemed to be an Operator. In the event that there is no oil and gas lease relating to any premises affected by this Section, the owner of the fee mineral estate in the premises shall be deemed an Operator.
25. "Owner" means the fee simple title owner of the surface estate.
26. "Person" means an individual, natural person, firm, partnership, corporation, company, association, joint stock association, organization, agency, business trust, estate trust, and any other legal entity, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.
27. "Persons" means every person, firm, association, partnership, corporation or society; and shall include both singular and plural and the masculine shall include the feminine gender.
28. "Railroad Commission" means the Texas Railroad Commission.
29. "Residence" means a house, duplex, apartment, townhouse, condominium, mobile 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 Oil and Gas Well Permit is filed with the City.

30. "Re-working" means re-completion or re-entry of existing well within the existing bore hole or by deepening or sidetrack operations which extends less than one hundred fifty (150) feet from the existing well bore, or replacement of well liners or casings. Re-working does not mean entry in to the original bore hole if stimulation is only to the currently producing interval. Re-working does not mean repair or replacement of existing casing or tubing, rod repair or replacement of pumping equipment.
31. "Right-of-way" means any area of land within the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, by prescriptive right or other interest and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, street, sidewalk, alley, utility, drainage, or public access easement or used for the provision of governmental services or functions. The term includes the area on, below, and above the surface of the public right-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved.
32. "Street" means any public thoroughfare dedicated to the public use and not designated as an alley or private access easement.
33. "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.
34. "Well" means a hole or holes, bore or bores, to any sand, horizon, formation, strata, or depth, for the purpose of producing any oil, gas, liquid hydrocarbon, brine water or sulphur water, or for use as an injection well for the secondary recovery, disposal, or production of any oil, gas, liquid hydrocarbons, brine water or sulphur water.
35. "Well drill bore" means the open hole or uncased portion of an oil and gas well. A well drill bore may refer to the inside diameter of the well bore wall, the rock face that bounds the drilled hole.

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

C. Permits required.

It shall be unlawful and an offense for any person acting either for himself or acting as an agent, employee, or independent contractor to knowingly drill or participate in the drilling of any well or to re-enter any well which has previously been abandoned for any reason or to install any water and/or gas re-pressurizing or injection facility within the corporate limits of the City without a permit having first been issued by a resolution of the City Council of the City in accordance with the terms of this Section. A separate permit shall be required for each well and each water and/or gas re-pressurizing or injection facility. A permit issued by the City Council shall be valid for one year from the date it is approved by the City Council, and is subject to be renewed in accordance with this Section. An oil and gas well permit must be approved by a resolution of the Midland City Council.

D. Designation of Official; Enforcement; Inspections; Access to Records.

1. The City Manager, or his designated representative, shall enforce the provisions of this Section. The official (or officials) shall have the authority to issue any orders, directives, warnings, or citations, required to carry out the intent and purpose of this Section and its particular provisions. The City Manager may retain the services of an independent consultant to aid in the detection of violations and enforcement of this Section.
2. The designated official (or officials) shall have the authority, in accordance with applicable law, to enter and inspect any premises covered by the provisions of this Section to determine compliance with the provisions of this Section and all applicable laws, rules, regulations, standards or directives of the State. The

designated official (or officials) may conduct periodic inspections of all permitted wells within the City to determine that the wells are operating in accordance with the requirements as set out in this Section and with regulations promulgated by the Texas Railroad Commission.

3. The designated official (or officials) shall have the authority to request and receive any records, including records sent to the Texas Railroad Commission, reports and the like, relating to the status or condition of any permitted oil and gas well necessary to establish compliance with the applicable Oil and Gas Well Permit.
4. It is recommended that the designated official (or officials) contact the local office of the Texas Railroad Commission to seek their assistance in enforcing applicable oil and gas regulations.

E. Oil and Gas Advisory Committee; Oil, Gas and Surface Commission.

1. There is hereby created the Oil and Gas Advisory Committee of the City of Midland consisting of three (3) licensed petroleum engineers appointed by a majority vote of the City Council. Of the original members, one shall serve for one year, the second for two years and the third for three years. Subsequent members shall serve staggered terms of three years each. The role of the Committee will be to assist the Planning Division of the City of Midland with the administrative review of Oil and Gas Well Permit applications for: (1) technical compliance with this Section and (2) administrative completeness. The Committee shall also recommend a surface location where there is disagreement between the Operator and the surface owner.

The Oil and Gas Advisory Committee shall not be subject to the Texas Open Meetings Act and shall serve at the will of the City Council. All written findings and conclusions of the Committee shall be included as part of the City staff report accompanying each permit application, which shall be delivered to the Oil, Gas and Surface Commission and City Council.

The Committee shall not be classified as a department, agency or political subdivision of the City and shall have no authority to:

- (1) exercise judgment and discretion, except in an advisory capacity;
 - (2) make binding orders and judgments;
 - (3) affect the personal or property rights of private persons;
 - (4) examine witnesses, compel the attendance of witnesses, or to hear the litigation of issues on a hearing; or
 - (5) enforce decisions or impose penalties.
2. There is hereby created the Oil, Gas and Surface Commission of the City of Midland consisting of the members of the Planning and Zoning Commission of the City. The Commission shall serve in an advisory capacity, shall preside over all Oil and Gas Well Permit applications and shall make recommendations regarding all applications to the City Council in the form of a final report. The Commission shall be subject to the Texas Open Meetings Act and shall be required to hold a public hearing for Permits. Prior to the 15th day before the hearing date, notice of the time and place of the public hearing shall be published in the official newspaper of the City. Prior to the 10th day before the hearing date, written notice of the time and place of the public hearing shall be sent to each owner, as indicated by the most recently approved tax roll from the Midland Central Appraisal District, of real property within a direct line radius of one thousand three hundred and twenty (1320) feet from the proposed oil and gas well drill bore.

F. Operator's Agent.

Every Operator of any oil and gas well shall designate an agent, who is a resident of the City of

Midland, upon whom all orders and notices provided in this Section may be served in person or by registered or certified mail. Every Operator so designating such agent shall within ten (10) calendar days notify the City in writing of any change of agent or the mailing address of such agent. Every Operator shall attempt to maintain at all times during the term of an Oil and Gas Well Permit, an office address within the City of Midland.

G. No Vested Property Rights of Permit Holder.

An Oil and Gas Well Permit does not create a property interest or a vested right in the permittee. This Section of the Midland City Code creates no property interest or right of entitlement of any kind.

H. Application Procedure.

The procedure for applying for an Oil and Gas Well Permit from the City of Midland shall be initiated with the filing of an Application by the Operator with the Planning Division of the City of Midland. The Application form to be completed by the Operator, or its authorized agent, shall be in the form as described in Section (J) herein.

The Planning Division shall coordinate the review of the application with the Oil and Gas Advisory Committee. If the permit application is found to be administratively complete, the Director of Planning shall forward the application, together with the findings and recommendations of the Committee, to the Oil, Gas and Surface Commission for the preparation of a final report.

Once the Commission has rendered its final report, the City Council shall consider the application as set forth below. The City Council may not take action on a permit application until it receives the final report from the Oil, Gas and Surface Commission.

1. Oil and Gas Well Permit.

Prior to granting any permit to drill an oil and gas well, a public hearing shall be held before the City Council. Prior to the 15th day before the hearing date, notice of the time and place of the public hearing shall be published in the official newspaper of the City. Prior to the 10th day before the hearing date, written notice of the time and place of the public hearing shall be sent to each owner, as indicated by the most recently approved Municipal tax roll from the Midland Central Appraisal District, of real property within a direct line radius of one thousand three hundred and twenty (1320) feet from the proposed oil and gas well drill bore.

If a proposed oil and gas well permit is protested in accordance with this Subsection, the proposed oil and gas well permit must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the City Council. The protest must be written and signed by the owners of at least twenty percent (20%) of the area of the lots or land immediately adjoining the oil and gas drill bore and extending six hundred and sixty (660) feet from the well bore.

For the purposes of computing total land area described herein, streets and alleys shall be included.

The Council shall not vote on granting or denying the Permit at the Council meeting when the public hearing is held. The Council shall allow thirty (30) days for written input from the public and the operator, after the public hearing is concluded. All written material shall be submitted to the City Manager. The Council shall vote on the Permit at a regular meeting.

2. Prohibition; well spacing.

a. No oil and gas well drill bore shall be allowed within five hundred (500) feet of any occupied residence, occupied commercial structure or occupied public building, church, public or private school, hospital, nursing home, college or

university, or daycare center; three hundred and thirty (330) feet of any public athletic field; or one hundred and thirty-five (135) feet of any publicly dedicated street or alley right-of-way, within the City of Midland.

b. In the absence of agreement with the actual surface owner, identified pursuant to the most recently approved Municipal tax roll of the Midland Central Appraisal District, to a title opinion prepared by an attorney licensed by the State of Texas, or take-off by a certified petroleum landman or a title commitment by an abstract company, the City Council shall consider all the factors listed in Subsection I hereof, when determining whether to grant or deny a permit. If the application is denied, the Operator may appeal to the City Council under Subsection Z hereof, and the Operator shall have the burden of showing that the denial of the permit is likely to result in a compensable taking under the Texas or United States Constitutions. If the Operator and Surface Estate owner reach an agreement, the Council will not consider Subsection I (15-18) but will consider the remainder of Subsection I.

c. An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within five hundred (500) feet of any previously permitted oil and gas well. Any application for such a variance must be accompanied by a notarized petition signed by the owners of the residence or commercial structure that seeks to obtain a building permit within five hundred (500) feet of the previously permitted oil and gas well. In the event a variance is granted by the City Council, the Council may authorize the Building Official to issue a building permit to the applicant. Any building permit issued under this paragraph shall include the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred (500) feet of a previously permitted oil and gas well."

In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within one hundred and thirty-five (135) feet of a previously permitted oil and gas well or one hundred and fifty (150) feet of a previously permitted tank battery.

In no event shall a building permit be issued by the City of Midland for any church, public or private school, hospital, college or university, nursing home, or day care center, within three hundred (300) feet of a previously permitted oil and gas well or within three hundred and fifty (350) feet of a previously permitted tank battery.

For the purposes of this Section, a "previously permitted oil and gas well" shall mean any oil and gas well that has been issued an oil and gas well drill permit under the authority of the City Council, regardless of whether or not any oil and gas well drilling has commenced at the permitted location. In the event an oil and gas well drill permit has expired without drilling commencing at the permitted location, or in the event the oil and gas well is abandoned as described by the Texas Railroad Commission and this Section, the location of the proposed or abandoned oil and gas well drill site shall not trigger the requirements of this Subsection when requesting a building permit.

A request for a variance under this Subsection shall not require a public hearing held before the City Council. In order to grant the variance, the Council must determine that the granting of the permit would not present a health or safety risk to the applicant or subsequent occupants of the structure.

An owner of property may request the setback variance at any time, including at the time of platting; provided, however, any plat approved permitting the construction of a private residence or commercial structure within such proximity to an existing well shall contain a notation on the face of the plat reflecting the approval of the setback variance.

The Council shall vote on the variance at a regular meeting. A majority vote of the Council is required to pass a resolution authorizing a variance under this Subsection.

4. No property right; notices.
 - a. Issuance of any permit required by this Section shall bestow upon the Operator the privilege of conducting the operations detailed in the permit. In no event shall any such permit bestow a property right to an Operator to conduct the operations detailed in the permit.
 - b. The failure of the City to provide any notice required by this Section shall not give rise to a private cause of action by any aggrieved owner, operator, person or persons. It being the specific intent of the City Council that all City-initiated notices shall be for informational purposes only and not for the purposes of affording any owner, operator, person or persons with additional due process.

I. Authority of City Council; Considerations

The Midland City Council shall have the power and authority to grant or deny any oil and gas well permit within the city limits of the City of Midland. The City Council shall consider the following when determining whether to grant or deny a permit for an oil and gas well within the City of Midland:

1. The particular character and value of the improvements already erected on the property or in the vicinity.
2. Public health and safety issues concerning the particular location of the proposed oil and gas well.
3. Any special circumstances existing on the property on which the application is made related to the size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity.
4. Whether the particular location of the proposed oil and gas well would be injurious to the health and safety of the inhabitants in the immediate area of the City or to a substantial number of such inhabitants.
5. Whether an oil and gas well permit is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other properties in the vicinity.
6. Whether the granting of an oil and gas well permit on the specific property will adversely affect any other feature of the comprehensive master plan of the City of Midland.
7. Whether the permit, if granted, will have a material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity.
8. Whether the drilling of the proposed oil and gas well would conflict with the orderly growth and development of the City of Midland.
9. Whether there are alternative well site locations.
10. Whether the operations proposed are consistent with the health, safety and welfare of the public when and if conducted in accordance with oil and gas well permit conditions to be imposed.
11. Whether the operations proposed are consistent with protecting the ecological integrity and environmental quality, including protection of surface and ground water

sources, of potentially impacted environmentally sensitive areas.

12. Whether there is reasonable access for the City of Midland fire personnel and fire fighting equipment.
13. Whether the impact upon the adjacent property and the general public by operations conducted in compliance with the oil and gas well permit conditions are reasonable and justified, balancing the following factors:
 1. The reasonable use of the mineral estate by the mineral estate owner(s) to explore, develop, and produce the minerals; and
 2. The availability of alternative drill sites.
14. Whether the applicant is a reasonable and prudent operator. The Council shall consider the number of citations issued for previous violations, convictions in municipal court, notice from City officials for non-compliance, failure to promptly rectify violations, conditions of well sites previously permitted, condition of well sites in the City of Midland even if not permitted, condition of well sites in the City's extraterritorial jurisdiction, and input from citizens or the applicant; the Request for Inspection and Extension of Permit results; and infractions or violations submitted to or found by the Texas Railroad Commission on previous oil and gas wells permitted and drilled within the City of Midland.
15. Refuse to grant or deny the permit and request that the surface estate owners and the Operator continue negotiations.
16. Refuse to grant or deny the permit leaving the parties to seek a judicial remedy.
17. The City Council may propose a surface location for the drilling of an oil and gas well different than the location proposed by the Operator; and
18. The spacing density of previously permitted wells.

J. Permit application and filing fee.

Every application for a permit to drill or participate in the drilling of any oil and/or gas well, or to re-enter, re-drill or re-work any well for any reason, or to install any water and/or gas re-pressurizing or injection facility (hereinafter "oil and gas operations") within the corporate limits of the City shall be in writing; shall be signed by the Operator or some person duly authorized to sign on the Operator's behalf before a notary public; shall be filed with the city secretary; shall be accompanied by a non-refundable filing fee of \$4,000.00; and shall only be considered when complete. A separate complete application and permit shall be required for each well, as well as the re-entering, re-drilling or re-working of any existing well.

No application shall be accepted for filing until it is complete and all required fees have been paid. Each application shall include full information, and will be considered complete only when ALL of the following is included:

1. The date of the application.
2. The name and address of the Operator.
3. Name of Operator's registered agent.
4. The address within the City of Midland, Texas, of the office of Operator's registered agent, including telephone number and fax number. Operator's registered agent must have an office within the corporate limits of the City of Midland, Texas.
5. A title opinion prepared by an attorney licensed by the State of Texas, or a take-off

from a certified petroleum landman or a title commitment prepared by an abstract company indicating that applicant has an ownership interest in the mineral estate that is the subject of the Oil and Gas Well Permit Application.

6. The name and address of the mineral estate lessor.
7. A title opinion prepared by an attorney licensed by the State of Texas, or a take-off from a certified petroleum landman or a title commitment prepared by an abstract company, most recently approved municipal tax roll from the Midland Central Appraisal District listing the name(s) and address(es) of all surface owners within 1,320 feet of the proposed well bore (Rather than along any right-of-way, this distance shall be measured directly, in a straight line (hereinafter "measured directly")).
8. Description of the current surface use within 1,320 feet, measured directly, of the proposed location for the well drill bore.
9. An accurate legal description of the surface property to be used for any oil and gas operations. Any property recorded by plat should reference subdivision, block and lot numbers.
10. A location site plan, drawn to scale, and produced by a professional land surveyor licensed in the State of Texas, showing the following:
 - a. the proposed operation site,
 - b. the proposed location of the well drill bore,
 - c. the proposed routing of any gathering lines,
 - d. the location of all improvements and equipment, and other facilities, including, but not limited to, tanks, pipelines, separators, and storage sheds,
 - e. lot lines shown on any recorded subdivision plat for the area,
 - f. right-of-way or public easement boundaries,
 - g. city limit boundaries,
 - h. any residence, commercial structure, public building, or any publicly dedicated street or alley right-of-way or any permanent accessory structure used in connection with such residence, structure or building surrounding such proposed drill site, and the measured distance from the proposed well bore to each residence, structure or building, if within a distance of 1,320 feet (measured directly), including marking two circles on the site plan depicting a radius of 500 feet and a radius of 1320 feet,
 - i. impacted vegetation,
 - j. creeks and other topographic features, and
 - k. proposed fencing and landscaping.
11. The proposed depth of the well, the parcel and the production unit and name of the geologic formation, as used by the Railroad Commission.
12. Proposed hole size, casing program and cementing program. The surface and intermediate portions of the hole shall have cement circulated to the surface of the hole.
13. A map showing proposed transportation route and road for equipment, chemicals or waste products used or produced by the oil and gas operations. These are the only roads that may be used unless an amended route plan is filed and approved.
14. Proposed well name.
15. A description of public utilities required during drilling and operation.
16. A description of the water source to be used during drilling.

17. A copy of the approved Railroad Commission permit to drill together with attachments and survey plats which are applicable to the drill and operation sites.
18. A copy of the determination by the Texas Commission on Environmental Quality of the depth of usable quality ground water.
19. Irrevocable Letter of Credit or certificate of deposit in accordance with Subsection (K) 2 of this Section.
20. Insurance Certificate(s) in accordance with Subsection (K) 3 of this Section.
21. A copy of approved Railroad Commission Form 1, Permit to Drill, shall be furnished to the city secretary prior to commencement of drilling operations.
22. A drainage plan approved by the City Engineer.
23. An Emergency Action Response Plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use extensive guidelines as established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation, and/or the Environmental Protection Agency. Plan should include "drive-to-maps" from public rights-of-way to drill site.
24. A Hazardous Materials Management Plan shall be submitted and be on file with the Fire Department.
25. The names, local physical addresses (not P. O. Box numbers), and local telephone numbers of three (3) individuals who are responsible to ensure compliance with all conditions of the Oil and Gas Well Permit, along with any applicable ordinances. Each of said individuals must provide to the city secretary a notarized statement that the individual understands and agrees that he or she is responsible for ensuring compliance with all conditions of the Oil and Gas Well Permit, along with any applicable laws, regulations and ordinances by any and all employees, contractors or subcontractors of Operator at the oil and gas operation site. Further, each must state before a notary that, in the event said individual is for any reason relieved of his or her position regarding said responsibilities, that the name, local address and local telephone number of a responsible replacement will be provided to the city secretary.
26. The name and address, including a 24-hour phone number of the person or company to be notified in case of an emergency.
27. A list and location of each well the Operator has permitted in the City. The list and location shall include any well that the Operator owns a controlling interest in or is the operator of. The Operator shall certify that the well(s) comply with all applicable permits and ordinances. An application for a new permit may not be considered until all well(s) previously authorized by permit shall be brought into compliance with the applicable permit or ordinances.
28. If available, a list of alternative locations developed in consultation with the Oil and Gas Advisory Committee from which the Operator may reach the same mineral estate and potentially drill a producing oil and/or gas well.
29. A notarized statement 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.
30. Tax certificates. Tax certificates from the Midland Central Appraisal District (indicating that all taxes on personal and real property, including minerals, owned by the Applicant have been paid to the current year) must be submitted with the

application.

31. A fencing plan, as required by Subsection (M) 3 of this Section and an irrigation plan containing the detail set forth in Subsection (M) 4. d. of this Section.
32. A road repair agreement must be attached which has been approved by the Applicant. However, the approval of any road repair agreement is subject to Council approval by a separate resolution. The City Council may waive this requirement upon a showing by the Operator that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas well operations. The City Council shall require a letter of credit or certificate of deposit in the amount of not less than \$25,000.00 for every approved road repair agreement. If an operator has three or more road repair agreements in effect, that have been approved by the City Council, the operator may petition the Council to consolidate all repair agreements into one agreement. The Council may grant the request and require a letter of credit or certificate of deposit in an amount not less than \$75,000.00. This letter of credit or certificate of deposit is in addition to the security required in Subsection K (2) hereof.
33. A concept plan for future development of the property depicting the proposed well and pipeline routes and demonstrating that the future development will not be unreasonably restricted by the well and pipeline routes. The concept plan shall not constitute an application for development under the City's development ordinances or Chapter 245 of the Texas Local Government Code and is simply intended to demonstrate that the orderly growth and development of the City and its ETJ will not be unreasonably hindered by the proposed well and pipelines.
34. A certification from the Oil and Gas Advisory Committee that the application is complete and complies with the technical requirements of this Ordinance, subject to final approval of the Oil and Gas Surface Commission and City Council.
35. All electric lines to production facilities may be overhead service unless the surrounding neighborhood has developed with underground electric service. If the surrounding neighborhood has developed with underground electric service, then all electric lines to production facilities shall be buried underground.
36. A plan detailing the construction, location, and closure of pits used for drilling and completion operations.
37. A copy of the letter(s) sent to one hundred percent (100%) of the surface owners as shown in the most recently approved City municipal tax rolls as found in the Midland Central Appraisal District. The letter(s) must indicate that it was sent certified mail and that it included a copy of the proposed application. The application will not be forwarded to the Oil, Gas and Surface Commission for consideration until at least forty-five days have passed from the date of the letter(s).

In connection with its review of an application for an oil and gas well permit, the City Council may determine that it is necessary to hire an oil and gas specialist to assist the Council in reviewing the application. If such a determination is made, the City Council will provide the Operator with a written "scope of work" that the Council proposes for such specialist. The City Council and the Operator will attempt to agree upon the "scope of work"; however, the decision of the City Council shall control. The Operator shall be responsible to pay all fees, costs and expenses associated with the retention of and services rendered by the specialist. All work performed by the specialist shall be itemized (including a description of the work and the amount of time spent), and such itemization shall be provided to the Operator. The Council may request the Committee's assistance with its review of the application.

K. General Conditions of all Oil and Gas Well Permits.

1. General Obligations of Operator.

The Operator shall be required to:

- a. Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Texas Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.
 - b. Promptly clear drill and operation sites of 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 practicable as existed before operations.
 - c. Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any 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 and Gas Well Permit:
 - i. where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other person or entity; and
 - ii. regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of Operator.
 - d. Release the City from any and all demands, claims, damages, or causes of action of any kind, whatsoever, which Operator has or might have in the future, including any negligence or tort claims.
 - e. Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein.
 - f. Promptly restore to its former condition any public property damaged by the oil and gas operation.
 - g. Except as permitted by Section U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.
 - h. If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.
2. Irrevocable Letter of Credit or certificate of deposit.

Prior to the issuance of an Oil and Gas Well Permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit or certificate of deposit in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit or certificate of deposit must satisfy the following:

- a. The letter of credit or certificate of deposit shall be issued by a reliable bank authorized to do business in the State of Texas;
- b. The letter of credit or certificate of deposit shall be effective starting on or before the effective date of the Oil and Gas Well Permit;
- c. The letter of credit or certificate of deposit shall be in the amount of

twenty-five thousand dollars (\$25,000.00);

- d. The letter of credit or certificate of deposit shall remain in full force and effect for a period of three (3) years; and
- e. The letter of credit or certificate of deposit shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit or certificate of deposit on or before one hundred twenty (120) days prior to the expiration of the letter of credit or certificate of deposit.

The City of Midland may draw upon the letter of credit or certificate of deposit to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit or certificate of deposit. The City may draw upon the letter of credit or certificate of deposit in the event the City has not received a new letter of credit or certificate of deposit within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit or certificate of deposit at all times throughout the term of the permit. In the event such letter of credit or certificate of deposit is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit or certificate of deposit, the City may draw and receive the remaining balance of the letter of credit or certificate of deposit, and the oil and gas well permit shall be suspended on such date and the Operator's right to operate under the oil and gas well permit shall immediately cease until the Operator files the required letter of credit or certificate of deposit.

If an operator has three or more oil and gas well permits in effect which have been approved by the City Council, the operator may petition the Council to consolidate the letter of credits or certificate of deposits into one letter of credit or certificate of deposit that would cover all oil and gas wells in the city limits. The consolidated letter of credit or certificate of deposit shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3. Insurance.

In addition to the letter of credit or certificate of deposit required above, the Operator shall carry a policy or policies of insurance issued by an insurance company or companies licensed or authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any oil and gas well permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.

- iii. All policies shall be written by an insurer licensed or authorized to do business in the State of Texas.
- iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
- v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
- vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
- vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
- viii. Each policy shall be endorsed to provide the City a minimum thirty day (30) notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
- ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- x. Upon request, certified copies of all insurance policies shall be furnished to the City.

b. 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, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c. Excess or Umbrella Liability

\$1,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.

\$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. 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.

d. Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, 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 \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

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.

e. Workers Compensation and Employers Liability Insurance.

- i. Workers Compensation benefits shall be Texas Statutory Limits.
- ii. Employers Liability shall be a minimum of \$1,000,000 per accident.
- iii. Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f. Automobile Liability Insurance.

- i. Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage.
- ii. Coverage must include all owned, hired and not-owned automobiles.

g. Certificates of Insurance.

- i. The company must be licensed or authorized to do business in the State of Texas.
- ii. 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.
- iii. Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- iv. 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) DAYS ADVANCE 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".
- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

L. Specific Conditions of all Oil and Gas Well Permits; On-Site Requirements.

1. **Abandoned Wells.** All wells shall be abandoned in accordance with the rules of the Texas Railroad Commission and pursuant to Subsection (O) of this Section.
2. **Automated Audible Alarm System.** After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.
3. **Blowout Prevention.** In all cases, ram-type and annular blowout preventers shall be used on all wells being drilled and worked-over. In cases where tubing is being changed ram-type or annular blowout preventers shall be used. Protection shall be

provided to prevent blowout during drilling operations as required by and in conformance with the requirements of the Texas Railroad Commission and the recommendations of the American Petroleum Institute. The Operator must equip all drilling wells with annular blowout preventers, as well as flow lines and valves commensurate with the working pressures involved as required by the Texas Railroad Commission. Annular blowout preventers shall be rated at no less than three thousand pounds (3,000 lbs.) of working pressure. Each hydraulic-activated blowout preventer shall be a double-ram rotating head design with blinds and pipe rams. Prior to commencing drilling operations, each annular blowout preventer shall be tested and witnessed by company personnel and the results shall be provided to the City Manager. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test within fifteen (15) days of the test.

4. **Casing.** The surface and intermediate portions of the oil and gas drill hole shall have cement circulated to the surface of the hole. All surface and intermediate casing must comply with all applicable rules of the Texas Railroad Commission.
5. **Compliance.** Operator shall comply at all times with all applicable federal, state and City requirements.
6. **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 and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain without permits from the appropriate city departments, or any body of water or onto any private property in the City of Midland.
7. **Drilling Notice.** The Operator shall provide at least a 48-hour notice to the City Manager before the start of drilling operations. The Operator shall provide at least a 48-hour notice to all surface property owners within 1000 feet of the drill site before the start of drilling operations.
8. **Drill Stem testing.** No drill stem testing shall be allowed.
9. **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.
10. **Electric lines crossing City roadways.** All electric lines going under City roadways must be bored and encased pursuant to city standards.
11. **Electric motors.** Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.
12. **Emergency Response Plan.** Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan

establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Texas Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the operator's office.

13. **Equipment painted.** All production equipment on the site shall be painted beige and maintained at all times, including pumping units, storage tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager 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. Upon request of the Operator, a color other than beige may be approved by the City Council.
14. **Explosives.** Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.
15. **Fire notice.** In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the fire department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Texas Railroad Commission and not exceed any state or federal permitting limit.
16. **Fire prevention; sources of ignition.** Firefighting apparatus and supplies as approved by the Fire Marshal 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. The Operator shall be responsible for the maintenance and upkeep of such equipment.
17. **Fracing Operations.** No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.
18. **Fresh Water Wells.** The measurements required by this Subsection shall be in a direct line from the closest oil and gas well drill bore to the fresh water well drill bore.
 - a. Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis and flow rate from any existing fresh water wells within one-thousand (1000) feet of the permitted oil and gas well. If the owner of the adjoining property refuses entry for the purpose of testing any water well, the Operator shall certify such to the City Manager.
 - b. Operator shall conduct and fund biannual testing for water wells located within one-thousand (1000) feet of its oil and gas well. For those individuals wishing to participate in the program, Operator shall require an independent third party test of the applicable wells prior to drilling operations. This program shall continue for the production life of the well plus five (5) years for a producing well, or for a period of one (1) year for a dry hole.
 - c. A copy of the Texas Water Development Board permit shall be provided to the City Manager along with the geographic coordinates of every water well within one-thousand (1000) feet of the oil and gas bore.
 - d. A copy of all plugging and abandonment reports filed with the state and/or transfer of ownership notices shall be provided to the City Manager.
 - e. Any such well shall be drilled by a licensed driller certified by the Texas Department of Licensing and Regulation and in full compliance with Texas Occupations Code, Title 12, Chapters 1901 and 1902.
 - f. Operator shall ensure that the City receives a copy of the well log, as referred

to in Texas Occupations Code, Section 1901.251, within seventy-five (75) days of the date any such well is completed, deepened, or altered in any way.

19. **Compressors.** No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:
- a. The physical size of the compressor;
 - b. The power source of the compressor;
 - c. The horsepower of the compressor;
 - d. The noise of the compressor; and
 - e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20. **Gas emission or burning restricted.** Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Texas Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Texas Railroad Commission, then such vent or open flame shall not be located closer than three hundred (300) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in such a way as to minimize detrimental effects to adjacent property owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other property owners. If flaring gas, it shall not be burned as a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.
21. **Gas processing onsite.** Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.
22. **Grass, weeds, trash.** All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any tanks, production facilities, or producing wells.
23. **Hazardous Plan.** Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, stored, transported and/or temporarily used on the operations site shall be submitted to the City Manager.
24. **Lights.** Except under emergency circumstances, Operator shall not operate any lights located at the drill site. To the extent practicable, and taking into account safety considerations, emergency 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. This paragraph does not apply during initial drilling operations.
25. **Monitoring for H₂S gas.** If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during initial drilling. Upon completion, if there is a presence of H₂S gas, a permanent monitoring station shall be installed at the well-site and at the tank battery, and a thirty (30) day maintenance and inspection program shall be established to ensure that the monitoring equipment remains functional in accordance with the Railroad Commission rules and regulations.

26. **Muffling exhaust.** Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.
27. **Pits.** The following applies for pits used for drilling and completion operations:
- a. No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.
 - b. No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all city, state and federal regulations.
 - c. No flowback wastewater produced by frac operations shall be placed in any open pit without a copy of a valid state permit submitted to the City Manager.
 - d. The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Texas Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Texas Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;
 - (i) the maximum size of a reserve pit shall be no greater than 200' by 200';
 - (ii) the pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil string reinforced polyethylene;
 - (iii) reserve pits used in drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once drilling operations have ceased;
 - (iv) reserve pits shall be closed within 180 days of the cessation of drilling operations;
 - (v) drill cuttings may be disposed of on site using a deep burial method provided that the burial pit containing the cuttings is located entirely within the operation site perimeter, provided that all free water has been removed prior to burying the cuttings, provided that an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of 36" of clean, compactible soil.
28. **Salt Water Wells.** No salt-water disposal wells shall be located within the City of Midland.
29. **Signs.**
- a. A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Texas Railroad 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. A 24-hour phone number answered by an answering service.
 - b. Permanent weatherproof signs reading "DANGER NO SMOKING OR

OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief 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 Texas Railroad Commission.

- c. Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required on each tank and at the entrance to the site adjacent to the Operator's sign. A label must be located on each tank indicating exact chemicals that may be contained in the tank. Text shall be minimum 6 inches in height, contrasting with the background color.

- 30. **Storage of equipment.** On-site storage is prohibited on the operation site. No equipment shall be stored on the drilling or production operation site. Lumber, pipes, barrels, trucks, trailers, automobiles, tubing and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site.

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 any equipment on the site shall constitute a fire hazard.

- 31. **Storage Tanks.** All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications, unless other specifications are approved by the Fire Chief. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1 1/2) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen (16) feet in height. All storage tanks shall be built on an adequate foundation with a twelve (12) mil liner being placed beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Temporary flowback tanks shall be removed within ninety (90) days after completion of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days.

All tanks shall be set back pursuant to the standards of the Texas Railroad Commission and the National Fire Protection Association, but in all cases, shall be at least one hundred thirty-five (135) feet from any public street or alley right of way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from a occupied residence, occupied commercial structure, or occupied public building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily observation of tank integrity and fluid levels within each tank.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development Services.

- 32. **Tank Battery Facilities.** Tank battery facilities shall be equipped with a lightning arrestor system. At the tank battery for either oil and/or gas wells a sensor for fire

detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. This alarm should also activate an electrical device to shut down power to all wells producing into the battery.

33. **Valves.** Each flowing gas and/or flowing oil well must have an automated shut-off valve to shut-in the well's production at the wellsite for either a fire or abnormal change in pressure. The Fire Department shall have access to the well site and the shut-off valve in an emergency.

34. **Waste Disposal.** Unless otherwise directed by the Texas Railroad Commission, all tanks used for storage shall conform to the following:

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five-hundred (500) feet of any occupied residence or occupied commercial structure, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Texas Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All waste shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the State, the conditions of this permit, and any applicable ordinance of the City.

35. **Work hours for site development.** No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

36. **Wellhead status after fracing.** All wellheads between drilling and tank battery construction shall be:

- a. Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;
- b. The gate shall be locked at all times, except when the Operator is involved in active operations;
- c. The cellar shall be filled or closed; and
- d. The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

37. **Inspections.** In accordance within applicable law, the City Manager, or his designee, shall have a right of entry to the drill site and may, at his discretion, visit the drill site to make sure Operator is in compliance with the requirements of this Section.

38. **Violation.** In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

- a. The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any person participating in the drilling of the well. Such notice may include a citation to appear before the Midland Municipal Court.

- b. If the City Manager, or his designee, finds the Operator to be in violation of

any requirement of the applicable oil and gas well permit, then the City reserves the right after giving three (3) business days written notice to the Operator regarding such violation, to draw upon the letter of credit or certificate of deposit as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event the City makes a claim on the letter of credit or certificate of deposit pursuant to the terms hereof, reinstatement of the full amount of the letter of credit or certificate of deposit shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable oil and gas well permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within fourteen (14) day, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

- c. Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee persons cited a right to expedited consideration of their citation before the Midland Municipal Court.
- d. In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Texas Railroad Commission, may order the temporary cessation of operations. An operator may appeal the order to the Midland Municipal Court and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an operator retains all of its legal remedies.

M. Fencing and Landscaping.

1. Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with oil and gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the site. Operator must provide the City of Midland Fire Chief with a “Knox Padlock” or “Knox Box with a key” to access the well site to be used only in case of an emergency.

The City Council shall require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the wellbore or within one thousand three hundred and twenty (1,320) feet of the wellbore at the time the oil and gas well permit is issued.

Additionally, if at any time within thirty six (36) months following the issuance of an oil and gas well permit, a structure intended for permanent occupancy is constructed within one thousand three hundred and twenty (1,320) feet of the wellbore, the City Council may require the Operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such

structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

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.

2. **Landscaping.**

- a. The City of Midland will require tree preservation and/or planting measures.
 - i. A minimum number of eight (8) trees shall be required to be planted within twenty-five (25) feet from the outside perimeter of the wall or walls required herein.
 - ii. At least 75% of the trees shall be evergreen.
 - iii. The minimum size of each tree planted will be at least 4 inches in diameter measured one foot above ground level.
 - iv. All trees that die within three (3) years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three (3) year replacement requirement. A replacement of any tree that dies within three (3) years of planting will be replaced by the Operator or agent and a new three (3) year guarantee will begin at the time of replacement.
- b. The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
<i>Pinus eldarica</i>	Afghan Pine, Mondell Pine
<i>Pinus Sylvestris</i>	Russian Pine
<i>Ulmas Crassifolia</i>	Cedar Elm

- c. Operator may submit a plan in lieu of subparagraphs (a) and (b) above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the Midland City Council.
- d. Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation.

N. **Cleanup and Maintenance.**

- 1. **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) days.
- 2. **Clean-up 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 Fire Chief and the City Manager all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction.

The City shall then be able to collect from Operator the costs involved in the site clean-up. The City may collect from the posted letter of credit or certificate of deposit or any other legal means.

3. **Free from debris.** The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.
4. **Painting.** All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager 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.
5. **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 permit and shall notify the City Manager as soon as practicable.

O. Plugged and Abandoned Wells.

1. **Surface requirements for plugged and abandoned well.** Whenever abandonment occurs pursuant to the requirements of the Texas Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly as practicable, in conformity with the requirements of this permit.
2. **Restoration of Drill Site.** Abandonment shall be approved by the City Manager after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the City Manager:
 - a. The derrick and all appurtenant equipment thereto shall be removed from drill site;
 - b. All tanks, towers, and other surface installations shall be removed from the drill site;
 - c. 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 Texas Railroad Commission;
 - d. All holes and depressions shall be filled with clean, compactible soil;
 - e. All waste, refuse or waste material shall be removed from the drill site; and
 - f. During abandonment, Operator shall comply with all applicable sections in this Section; and
 - g. The drill site shall be restored, as close as practicable, to its original condition.
 - h. Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located.
3. **Abandoned well requirement.** The Operator shall furnish the following to the City Manager:
 - a. A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Texas Railroad Commission.
 - b. Prior 48-hour 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.
 - c. All wells shall be abandoned in accordance with the rules of the Texas Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three (3) feet below the surface. A permanent

abandonment marker pipe, with the well identity and location permanently inscribed, shall be welded to the casing and shall be at least four (4) inches in diameter with a length of four (4) feet visible above the ground level.

4. **Abandonment requirements prior to new construction.** All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Texas Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P. Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to the expiration of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection and Extension of Permit. The Certificate of Request for Inspection and Extension of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection and Extension of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable ordinances. The Certificate of Request for Inspection and Extension of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant an extension of one-year on the oil and gas well permit if the Operator is in compliance with the permit and all applicable ordinances. Prior to authorizing the extension, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil and gas well permit. The City Manager shall issue his decision in writing, within 30 days of receiving the Certificate for Request for Inspection and Extension of Permit, either granting or denying the extension of the oil and gas well permit.

The Operator may appeal the City Manager's denial of an oil and gas well permit extension by submitting, in writing, an appeal to the City Council within 30 days of the City Manager's written denial of the oil and gas well permit extension. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil and gas well permit extension. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the Council. A majority vote of the City Council shall be required to uphold the denial of the oil and gas well permit extension by the City Manager. An extension of the permit shall be for one year from the expiration date.

Q. Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed well bore and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

R. Effect of Denial of Oil and Gas Well Permit.

If an application for an oil and gas well permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed oil and gas well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant.

S. Amendment to Oil and Gas Well Permit.

1. **Amendment Required.** Within 180 days after an operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing oil and gas well permit to commence drilling from a new drill site that is not shown on (or incorporated by reference as part of) the existing oil and gas well permit.
2. **Application Requirement for Amendment to Permit.** An Application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in

writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
 - b. A description of the proposed amendments.
 - c. Any changes to the information previously submitted with the Application for the existing Oil/Gas Drilling Permit (if such information has not previously been provided to the City).
 - d. Such additional information as is reasonably required by the City to demonstrate compliance with the original Oil/Gas Drilling Permit.
 - e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.
3. Review of Application for Amendment to Permit. All applications for an amended oil and gas well permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil and gas well permit without the requirement of a public hearing.
 4. Standard of Review
 - a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
 - b. **Material change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.
- T. Independent Contractor.** Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.
- U. Assignability; Transfer Permit.**
1. The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.
 2. An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:
 - a. If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;
 - b. If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

- c. If the transferee provides the insurance and security required by this Section.
3. In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well permit.
 4. The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.
 5. Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's Planning Department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00) dollars.
- V. **Time Limit Requirements.** The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the Application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the Applicant may file a request with the City Council to re-consider the application. The Applicant may present any new evidence to the Council and may present any extenuating circumstances or other matters deemed relevant by the Applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.
- W. **Release.** The Oil and Gas Well Permit may contain the following language:
- NOTWITHSTANDING ANY OTHER PROVISIONS, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**
- X. **Incident Reports or Written Complaints.** The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Texas Railroad Commission or any other state or federal agency within thirty (30) days after operator has notice of the existence of such reports or complaints.
- Y. **Expiration of Permit.** Drilling must commence on the well covered by the Oil and Gas Well Permit within twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced.
- Z. **Takings Determination.**
1. Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other State law, may file an application with the City Council requesting a takings determination.
 2. The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred and fifty (\$250.00) dollars shall accompany each filing.

3. The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.
4. If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City staff that formed the basis of the takings determination appeal. If the Council denies the appeal, 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 30 days of the date that the Council issues its final decision.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict. This Ordinance does not repeal Article VI, "Police Regulations", Chapter 1, "General Offenses", Section 7, "Oil and Gas Wells" or Section 2 "Oil and Gas Well Permits issued on or after March 1, 2007" of the Midland City Code. This Ordinance shall apply to and govern all Oil and Gas Well Permits issued after January 1, 2010 and also all corresponding applications to drill oil and gas wells within the city limits received by the City on or after January 1, 2010.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00). Each day a violation occurs constitutes a separate violation.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2009; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2009, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2009.

W. Wesley Perry, Mayor

ATTEST:

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney