

**MINUTES of a MEETING
of the
DALWORTHINGTON GARDENS
CITY COUNCIL**

Regular Session: Thursday, November 16, 2006 7:00 P.M.

EXECUTIVE SESSION

An executive session of the City Council was held at **6:30 o'clock p.m.** on **Thursday, November 16, 2006, in the Council Chambers of the Dalworthington Gardens City Hall, 2600 Roosevelt Drive, Dalworthington Gardens, Texas.** The City Council met in closed, executive session pursuant to the provision of the Open Meetings Law, Chapter 551 of the Government Code, in accordance with the authority contained in Section 551.071. The following items of business were considered, discussed and acted upon, as deemed appropriate by the Council:

- a. Personnel

REGULAR SESSION

A regular meeting was held at **7:00 o'clock p.m.** on **Thursday, November 16, 2006 in the Council Chambers of the Dalworthington Gardens City Hall, 2600 Roosevelt Drive, Dalworthington Gardens, Texas.** The following items of business were considered, discussed and acted upon, as deemed appropriate by the Council:

MEMBERS PRESENT:

Michael Tedder, Mayor
Guy Snodgrass, Mayor Pro-tem
Mike Pettke, Councilman
Steve Loe, Councilman
Jim Piland, Councilman

MEMBERS ABSENT:

Ken Wallace, Councilman

STAFF PRESENT:

Melinda Brittain, City Secretary
Bill Waybourn, Chief of Public Safety
Stan Wilkes, City Attorney
Greg Saunders, City Engineer
Krysten Jeter, Dep. City Secretary

CALL TO ORDER- Mayor Tedder called the meeting to order at 7:05pm

1. Citizen comments
Kathy Price, 2820 Whisperwood Trail
Cathy Stein, 2622 Clover Lane.
Pam Dunbar, Montessori Academy
Trace Ledbetter, Courtney Court
2. Mayor and Council comments
None
3. Departmental Reports and October Financial Report
On motion by Councilman Pettke, seconded by Councilman Loe, it was:

RESOLVED, that the Departmental Reports and October Financial Report be approved and placed in the records of the city

Motion passed by a vote of 4 ayes and 0 nays.
4. Minutes of October 19, 2006 Meeting
On motion by Councilman Pettke, seconded by Councilman Piland, it was:

RESOLVED, that the Minutes of the October 19, 2006 Meeting be approved and placed in the records of the city.

Motion passed by a vote of 4 ayes and 0 nays.
5. Executive session action:
 - a. Personnel
On motion by Councilman Loe, seconded by Mayor Pro-tem Snodgrass, it was:

Resolution 06-76

RESOLVED, that there is hereby created under the office of City Secretary the position of Deputy City Secretary, such officer having all of the powers and duties of the City Secretary in the absence of the City Secretary, otherwise to act under the direction and supervision of the City Secretary.

Motion passed by a vote of 4 ayes and 0 nays.

Mayor Tedder asked the Council to next take up agenda item 11, pertaining to the gas franchise ordinance. Mr. Wilkes informed the council that Atmos Energy is moving away from company participation in the cost of gas service line extensions. Mary Jean Moloney of Atmos Energy was present to answer council questions. The council took no action on the matter.

6. (Tabled from 10-19-06 meeting) **Ordinance 06-09**, An ordinance regulating exploration and production of natural gas.
On motion by Councilman Pettke, seconded by Councilman Piland, by a vote of 4 ayes and 0 nays, this item was removed from the table.

On motion by Councilman Pettke, seconded by Mayor Pro-tem Snodgrass, it was moved that the following ordinance be adopted:

ORDINANCE NO. 06 - 09

AN ORDINANCE AMENDING TITLE 16, LAND DEVELOPMENT, OF THE CODE OF THE CITY OF DALWORTHINGTON GARDENS BY THE ADDITION THERETO OF A NEW CHAPTER, DESIGNATED CHAPTER 16.3 – GAS WELL DRILLING; REGULATING GAS DRILLING AND PRODUCTION IN THE CITY; REQUIRING A PERMIT THEREFOR; PRESCRIBING PERMIT FEES; DEFINING TERMS; PRESCRIBING MINIMUM DISTANCES FROM WELL SITES TO BUILDINGS AND PROPERTY LINES; REQUIRING INSURANCE, BONDS AND/OR LETTERS OF CREDIT TO INSURE COMPLIANCE WITH PERMIT CONDITIONS AND ORDINANCE STANDARDS; PROVIDING ON-SITE AND TECHNICAL REGULATIONS FOR THE PROTECTION OF CITIZENS AND PROPERTY; PROVIDING MEANS FOR THE ADMINISTRATION OF PERMITS; PRESCRIBING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION; AND, NAMING AN EFFECTIVE DATE.

BE IT ORDAINED:

1.

That Title 16, LAND DEVELOPMENT, of the Code of the City of Dalworthington Gardens shall be amended by the addition thereto of Chapter 16.2, GAS WELL DRILLING AND PRODUCTION, which shall be and read as follows:

Chapter 16.3 - GAS WELL DRILLING AND PRODUCTION

- 16.3.01 Purpose The exploration, development and production of gas in the city are activities which necessitate reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this chapter to establish reasonable and uniform limitations, safeguards and regulations for operations related to the exploring, drilling, developing, producing, transporting and storing of gas and other substances produced in association with gas within the city to protect the

health, safety and general welfare of the public, minimize the potential impact to property and mineral rights owners, protect the quality of the environment and encourage the orderly production of available mineral, and gas resources. The exploration, development and production of hydrocarbons other than gas are prohibited within the city.

16.3.02

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

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

All-weather hard surface means a permanent surface that as a minimum is a base course constructed such that it meets the requirements of the International Fire Code, be at least 20 feet wide, have an overhead clearance of 14 feet, drains appropriately, remains water resistant, is free of litter, debris, weeds, grass or other objectionable materials or objects and is visibly dust free.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Berm means a mound of soil, either natural or man made, used to obstruct a view. The side slope shall not exceed a three foot horizontal and a one foot vertical slope.

Blowout preventer means a mechanical, hydraulic, pneumatic 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.

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

Cathodic protection means an electrochemical corrosion control technique accomplished by applying a direct current to the structure that causes the structure potential to change from the corrosion potential to a protective potential in the immunity region. The required cathodic protection current is supplied by sacrificial anode materials or by an impressed current system.

City means the City of Dalworthington Gardens, Tarrant County, Texas.

City Code means the Code of Ordinances of the City.

Commission means the Texas Railroad Commission.

Completion means the date the work is completed for the drilling, re-drilling or re-working of a well and the crew is released by completing its work or contract or by its employer.

Day means a calendar day.

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

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

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.

Drill site means the immediate area used during the drilling, re-drilling or re-working of a well.

Emergency response plan means a plan put in place to deal with emergency situations that may occur at the site during all stages of the drilling and production process.

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

Fire department means the Department of Public Safety of the City.

Fracturing means the injecting of a fluid into a well to cause pressure that "cracks" or opens up fractures already present in the formation.

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

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

Gas inspector means an individual designated or entity so designated as an inspector by the city council.

Thoroughfare plan means the thoroughfare plan approved by the City.

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

complete.

Operator means, for each well, the person listed on the Railroad Commission's Form W-1 or Form P-4 for a 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 a gas lease of any premises affected by the provisions of the chapter, then such lessee shall also be deemed to be an operator. In the event that there is no gas lease relating to any premises affected by this chapter, the owner of the fee mineral estate in the premises shall be deemed an operator.

Permit means any written license granted by the city for the exploration, development, and production of gas wells issued pursuant to rules and regulations of this chapter.

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

Planning and zoning commission means the Planning and Zoning Commission of the City.

Production means the period between completion of drilling and the abandonment of the well.

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

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

Re-drill means re-completion of an existing well by deepening or sidetrack operations extending more than 150 feet from the existing well bore.

Reworking means re-completion or re-entry of an existing well within the existing bore hole or by deepening or sidetrack operations which do not extend more than 150 feet from the existing well bore, or replacement of well liners or casings.

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 public roadway, 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.

Right-of-way maintenance agreement means a written agreement obligating the operator to repair damage, excluding ordinary wear and tear, if any, including but not limited to, public streets, sidewalks, pathways, trails, and bridges, caused by the operator or its employees, agents, contractors, subcontractors, or representatives in the performance of drilling or production of gas wells authorized by the city.

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

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

Structure means any building for which a building permit is required by the Building Code of the city.

Well means any single hole or bore to any horizon, formation, or strata, for the purpose of producing gas, liquid hydrocarbon, brine water or sulphur water, or for use as an injection well for secondary recovery, disposal or production of gas, or other hydrocarbons from the earth. For each separate new hole a gas well permit is required.

16.3.03 City oversight The gas inspector shall have the authority to enter and inspect any premises covered by the provisions of this chapter to determine compliance with the provisions of this chapter and all applicable laws, rules, regulations, standards or directives of the city or state. Failure of any person to permit access to the gas inspector shall constitute a violation of this chapter. Additionally, the gas inspector and other city officials shall have the authority to issue any orders or directives required to carry the intent and purpose of this chapter and its provisions. The gas inspector shall have the authority to request and receive any records, including any records sent to the commission, logs, reports and the like, relating to the status or condition of any permitted well necessary to establish and determine compliance with the applicable permit. Failure of any person to provide any such requested material shall be deemed a violation of this chapter.

16.3.04 Operator's agent Every operator of any well shall designate an agent, who is a resident of the State of Texas, upon whom all orders and notices provided in this chapter may be served in person or by registered or certified mail. Every operator designating such agent, within ten days after such designation, shall notify the City Administrator in writing of any change in such agent or such mailing address unless operations within the

city are discontinued. Failure to do so shall be deemed a violation of this chapter.

16.3.05

Seismic survey permit requirements A permit shall be required for seismic surveys. No seismic survey permit shall be granted unless the applicant shows proof of lease of mineral property within 200 feet of the right-of-way on which the survey is to be conducted. All seismic survey permit applications shall be submitted to the City for approval. The seismic survey shall not begin prior to the issuance of a seismic survey permit from the city. A permit shall include, but is not limited to, the following information:

- (1) Operator/applicant name, phone number, fax number, physical address, and, if possible, email address; if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners.
- (2) Detailed mapping of location and extent of seismic survey.
- (3) Date and time the seismic survey will be conducted.
- (4) Detailed explanation of the seismic survey method to be used on-site.
- (5) Date and time the seismic survey will be completed.
- (6) If the seismic survey is conducted in any right-of-way then the operator must reimburse all costs to the city for any damages associated with the seismic survey.
- (7) The permit fee for a seismic survey on public property shall be 25 cents per linear foot, plus the costs of barricade rental and personnel required to direct and divert traffic if city forces and materials are used.
- (8) An operator must submit a traffic safety and management plan as required by the public works department with all seismic surveys that are conducted within the right-of- way.
- (9) Under no circumstances may explosive charges, including, but not limited to, the use of dynamite, be used in any way related to the preparation and/or operation of conducting a seismic survey.

16.3.06

Gas well permit requirements.

(a) A person wanting to engage in and/or operate in gas production activities shall apply for and obtain: (1) a developmental permit as provided in 17.8.03 of the City Code; and (2) a gas well permit under this chapter and shall indicate what type of well permit is requested. It shall be unlawful for any person acting either for himself or acting as an agent, employee, independent contractor, or servant for any person to drill any well, assist in any way in the site preparation, re-working, fracturing or

operation of any such well or to conduct any activity related to the production of gas without first obtaining a gas well permit issued by the city in accordance with this chapter. Such activities include, but are not limited to, re-working, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing and pressurizing.

(b) The operator must apply for and obtain a gas well permit for the drilling of each well. The operator shall neither apply for nor obtain a "blanket" permit for more than one well if multiple wells are located on the same tract of land. A separate gas well permit is required for each new well proposed to be established at the ground surface.

(c) An existing gas well permit shall not constitute authority for the re-entering and drilling of an abandoned well. An operator shall obtain a new well permit in accordance with the provisions of this chapter if the operator is re-entering and drilling an abandoned well.

(d) When a gas well permit has been issued to the operator for the drilling, re-entering, activating or converting of a well, such gas well permit shall constitute sufficient authority for drilling, operation, production gathering or production maintenance, repair, re-working, testing, plugging and abandonment of the well and/or any other activity associated with mineral exploration at the site of such well. An amended gas well permit shall be obtained before such well may be modified for purposes of re-drilling, deepening or converting such well to a depth or use other than that set forth in the then current permit for such well.

(e) Any person who intends to re-work a permitted well using a drilling rig, to fracture stimulate (fracturing) a permitted well after initial completion shall give written notice to the gas inspector no less than ten days before the activities begin. The notice must identify where the activities will be conducted and must describe the activities in detail, including, but not limited to, whether explosive charges will be used, the duration of the activities and the time the activities will be conducted. The notice must also provide the address and 24 hour telephone number of the person conducting the activities. The person conducting the activities shall post a sign on the property giving the public notice 48 hours in advance of the fracturing activities. The sign shall comply with the requirements of 16.3.13, "on-site and technical regulations," (y)(1).

(f) Minimum setbacks for gas well permits:

- (1) The minimum distance of: a well for the purpose of drilling, re-drilling, deepening, re-entering, activating, or converting any well; or any tank battery, separator or compressor accessory to drilling and production operations shall be:
 - a. Not less than 600 feet from any building or other structure; provided, that such minimum distance may be reduced in

accordance with (3) of this paragraph (f); and

- b. Not less than 300 feet from any property line; provided, that such minimum distance may be reduced in accordance with (3) of this paragraph (f).
 - c. Not less than 50 feet of any public street, road, highway, or right-of-way line; and
 - d. Not less than 100 feet of any existing potable water well.
- (2) The measurement of all distances shall be calculated from the proposed well bore or from the closest tank batteries, separators or compressors, as the case may be, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object listed in items a through d, above. The above calculations shall be prepared by a registered professional land surveyor.
- (3) The distances set out in subsection (f)(1) a. and b. above may be reduced at the discretion of the city council, after public hearing with notice having been given to the owners of all property within the minimum distances, as follows:
- a. The minimum distance from buildings and structures required by (f) (1) a. may be reduced to 300 feet by council action; or, to 200 feet with the written consent of all of the owners of surface interests in property located within such 300 feet.
 - b. The minimum distance from property lines required by (f) (1) b. may be reduced by council action [DELETED BY AMENDMENT: “with the written consent of all of the owners of surface interests in property located within such 300 feet.”]

In no event shall a minimum distance from a residence be reduced to less than 200 feet.

- (4) Notwithstanding the provisions of this section, new residences may be built no closer than 200 feet from an existing well.
- (5) The City Council may require an increase in the minimum distances provided in this paragraph (f) or require a change in the operation, plan, design, layout, or in the on-site and technical regulations contained in this chapter, including fencing, screening, lighting, delivery times, noise levels, tank height, or any other matters required to mitigate the impact of the onsite operations on adjacent property or as such increase may otherwise be required by the public interest.

(g) A gas well permit shall automatically terminate, unless extended, if drilling is not commenced within 90 days from the date of the issuance of the permit. A well permit may be extended by the gas inspector for an additional 90 days upon written request by the operator and proof that the regulatory standards of the requested permit for such location have not changed.

(h) Permits required by this chapter are in addition to and are not in lieu of any permit which may be required by any other provision of the City Code or by any other governmental agency.

(i) No gas well permit shall be issued for any well to be drilled within the floodway identified by the Federal Emergency Management Agency (FEMA) on the most current Federal Insurance Rate Map (FIRM). Gas wells proposed in the floodplain outside of the floodway shall comply with the requirements for development in Title 15 of the City Code, having particular reference to Chapter 15.5 thereof.

(j) No gas well permit shall be issued for any well to be drilled that is not in compliance with any standard, provision, procedure, and/or regulation for development in the City.

(k) By acceptance of any permit issued pursuant to this chapter, the operator expressly stipulates and agrees to be bound by and comply with the provisions of this chapter. The terms of this chapter shall be deemed to be incorporated in any permit issued pursuant to this chapter with the same force and effect as if this chapter was set forth verbatim in such permit.

16.3.07. Gas well permit application and filing fees

(a) Every application for a gas well permit issued pursuant to this chapter shall be in writing signed by the operator, or some person duly authorized to sign on his behalf, and filed with the City Administrator.

(b) Every application shall be accompanied by a permit fee of \$5,000.00. The application shall include the following information:

- (1) The date of the application and type of permit requested.
- (2) An accurate legal description of the lease property to be used for the operation site, the parcel and the production unit and name of the geologic formation as used by the commission. Property recorded by plat shall reference subdivision, block and lot numbers.
- (3) Map showing proposed transportation route and road(s) for equipment, chemicals or waste products used or produced by the gas operation.
- (4) Proposed well name and well depth.
- (5) Surface owner names(s), telephone number(s), fax number(s),

physical addresses, and, if possible, e-mail addresses, of the lease property.

- (6) Mineral lessee name, telephone number, fax number, physical address, and, if possible, e-mail address.
- (7) Operator/applicant name, telephone number, fax number, physical address, and if possible, e-mail address and if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners.
- (8) Name, telephone number, fax number physical address of individual designated to receive notice, and, if possible, e-mail address.
- (9) Names and address of representatives or operator's agent with supervisory authority over all gas operation site activities and a 24 hour telephone number.
- (10) Location and description of all improvements and structures within 800 feet of the well. Such locations and descriptions shall be prepared by a registered professional land surveyor.
- (11) A site plan of the proposed operation site showing the location of all improvements and equipment, including the location of the proposed well(s) and other facilities including, but not limited to, tanks, pipelines, compressors, separators and storage tanks or storage sheds. All site plans must include the following criteria:
 - a. Property boundaries with dimensions and setback lines.
 - b. Location of proposed buildings and structures indicating sizes in square feet.
 - c. The location and intensity of exterior lighting fixtures.
 - d. The location of mechanical equipment.
 - e. Outside storage areas.
 - f. Curb cut locations.
 - g. Parking, loading, and maneuvering areas.
 - h. The location, materials and dimensions of screening improvements as required by 16.3.14, Screening (a)(1).
 - i. A separate plan sheet showing the location, materials and dimensions of all screening improvements as required by section 16.3.14, Screening, (a)(2).

- j. Waste disposal locations with screening.
 - k. Adjacent property lines, streets, easements immediately adjacent to the operation site.
 - l. Names of owners of property immediately adjacent to the operation site.
 - m. Names of subdivisions immediately adjacent to the operation.
 - n. Site plans shall be submitted on a sheet size of 24 inch x 36 inch minimum.
 - o. City boundaries where applicable.
 - p. Date the drawing was prepared with name, address, and phone number of preparer.
 - q. Location, width, purpose of all existing easements. North arrow, at a maximum scale of 1:50 immediately adjacent to the operation site.
 - r. All existing street names immediately adjacent to the operation site.
 - s. Dimensions of all existing rights-of-way as specified on the city's thoroughfare plan.
 - t. Title block identifying gas well site location.
 - u. Vicinity location map at 1 inch = 2,000 feet.
 - v. Zoning classifications of all properties shown on the site plan.
 - w. Location of 100-year flood limits where applicable.
 - x. Texas NAD83 State Plane Coordinates for at least two corners.
 - y. As a minimum, a preliminary drainage study as provided in Chapter 16.2 of the City Code.
- (12) Copies of all reports required by the commission, specifically including a copy of approved railroad commission form W-1 and/or P-4.
- (13) A signed right-of-way maintenance agreement supplied by the city that provides that the operator shall repair, at his own expense, any damage caused by any activity associated with the preparation, drilling, production, and operation of wells.
- (14) A description of public utilities required during drilling and site operations.

- (15) A description of the water source to be used during drilling.
- (16) A copy of the storm water pollution prevention plan (SWPPP) as required by the commission, the Texas Commission on Environmental Quality (TCEQ), the United States Environmental Protection Agency (USEPA) and/or the city. A copy of the notice of intent (NOI) shall be submitted to the City at least three days prior to the commencement of any on-site activity.
- (17) A copy of the determination by the TCEQ of the depth of useable quality ground water.
- (18) Evidence of insurance and security requirements under this chapter.
- (19) A statement, under oath, signed by the operator or designated representative, that the information submitted with the application is, to the best knowledge and belief of the operator or designated representative, true and correct.
- (20) All required application and permit fees.
- (21) A landscape plan that conforms to the provisions of Chapter 17.11 of the City Code, whether the property is located in a residential or commercial zoning district.
- (22) A copy of a hazardous materials management plan and additionally, all material safety data sheets (MSDSs) for all hazardous materials that will be located, stored, transported and/or temporarily used on the drilling site shall be provided to the gas inspector and the fire department.

(c) Building permit required.

- (1) No building or structure regulated by the current code adopted by the city shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the planning and development department.
- (2) It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by the current code adopted by the city, to register as a general contractor with the city. Work regulated includes, but is not limited to, construction of gates, fencing, plumbing, irrigation, electricity, roadways, entrances, compressors, flow lines, pipelines, gathering lines, tank batteries, and buildings. Such registration shall be upon forms supplied by the City Administrator and shall become null and void on December 31 of each year. An appropriate fee for registration shall be assessed in accordance with the city fee schedule.

16.3.08

Permitting procedure

- (a) All gas well permits will be filed through the City Administrator, who will then convene a meeting of city staff and consultants having expertise

relevant to permit application review.

(b) The City Council shall review and approve or disapprove all applications for gas well drilling permits based on the criteria established by this chapter.

(c) The City, within 45 days after the filing of a completed application and remittance of all fees, insurance, and security per the requirements of this chapter for a gas well permit, shall determine whether the permit application shall be approved or denied.

(d) The provisions of this chapter shall apply to any dwellings or buildings for which an application for a building permit has been submitted on the date the application for a gas well permit is filed with the City Administrator.

(1) All new and/or proposed construction of any buildings, structures, streets, roads, and/or applicable improvements to the property upon which any gas well is located must be in compliance with all applicable setback requirements enumerated in this chapter.

(2) If all the requirements of this chapter are met, the City Council may issue a permit for the drilling of the well or the installation of the facilities for which the permit application was made.

(3) If the City denies a permit application for cause as set out in this chapter for the requested gas well permit, the City Administrator shall notify the operator in writing of such denial stating the reasons for the denial. Within 45 days of the date of the written decision of the City Council to deny the permit, the operator may cure those conditions that caused the denial and resubmit the application to the City for approval and issuance of the permit.

(4) The failure of the City Council to review and issue a permit within the time limits specified above shall not cause the application to be deemed approved. The failure of the City Council to act within the time limit shall be deemed a disapproval.

(e) If an application for a permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City for the same well.

16.3.09

Amended gas well permits.

(a) An amended permit may be issued for, but not limited to, the following changes in drill and/or operational site activities:

(1) Re-drilling;

(2) Deepening beyond 150 feet of the permitted depth;

- (3) Site access;
- (4) Locations and/or quantities of equipment as determined by the gas inspector;
- (5) Locations and/or number of drilling fluid or other types of pits; and
- (6) Locations and/or number of buildings and structures.

(b) Applications for amended permits shall be in writing, shall be signed by the operator, and shall include the following:

- (1) An application fee of \$500.00;
- (2) A description of the proposed amendments;
- (3) Any changes to the information submitted with the application for existing permit (if such information has not previously been provided to the city);
- (4) Such additional information as is reasonably required by the gas inspector to demonstrate compliance with the applicable permit;
- (5) Such additional information as is reasonably required by the gas inspector to prevent imminent destruction of property or injury to persons; and
- (6) An amended site plan will be required.

(c) All applications for amended permits shall be filed with the City Administrator for review by the City Council. Incomplete applications may be returned to the applicant, in which case the city shall provide a written explanation of the deficiencies; however, the city shall retain the application fee. The city may return any application as incomplete if there is a dispute pending before the commission regarding the determination of the operator.

(d) If the activities proposed by the amendment are not materially different from the activities covered by the existing permit then the City Council shall approve or disapprove the amendment within 45 days after the application is filed.

(e) If the activities proposed by the amendment are materially different from the activities covered by the existing permit, and do not create a risk of destruction of property or injury to persons, then the City Council shall approve or disapprove the amendment within 45 days after the applications filed. If, however, the activities proposed by the amendment are materially different and, in the judgment of the gas inspector or the City Council, might create a risk of destruction of property or injury to persons that were not associated with the activities covered by the existing

permit or that were not otherwise taken into consideration by the existing permit, the City Council may require the amendment to be processed as a new permit application.

(f) The failure of the City Council to review and issue an amended permit within the time limits specified above shall not cause the application for the amended permit to be deemed approved. Further, the decision of the City Council to deny an amendment to a permit shall be provided to the operator in writing within the time period indicated in (d) and (e) above, including an explanation of the basis for the decision.

16.3.10 Suspension or revocation of gas well permits.

(a) If an operator (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of a permit (including any requirement incorporated by reference as part of the permit), the city shall give written notice to the operator specifying the nature of the failure and giving the operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the community. In no event, however, shall the cure period be less than ten days unless the failure presents a risk of imminent danger of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this chapter.

(b) If the operator fails to correct the noncompliance, the city may suspend or revoke the permit pursuant to the provisions of this chapter.

(c) No person shall carry on any operations performed under the terms of the permit issued under this chapter during any period of any permit suspension or revocation or pending a review of the decision or order of the city in suspending or revoking the permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the permit was ordered for the safety of persons or as required by the commission.

(d) If the operator does not cure the noncompliance within the time specified in this chapter, the city, upon written notice to the operator, may notify the commission and request that the commission take any appropriate action.

16.3.11 Periodic reports.

(a) The operator shall notify the gas inspector of any changes to the following information within ten days after the change occurs:

(1) The name, physical address, telephone number, and fax number, of the operator;

(2) The name, address, and telephone number of the person designated to receive notices from the city (which person must be a resident of Texas that can be served in person or by registered or certified mail); and

(3) The operator's emergency action response plan (including "drive-to-maps" from public rights-of-way to each drill site).

(b) The operator shall notify in writing the gas inspector and the City Administrator of any change to the name, address, and 24 hour phone number of the person(s) with supervisory authority over drilling or operations activities within one business day.

(c) The operator shall provide a copy of any "incident reports" or written complaints submitted to the commission and a copy to the city within 30 days after the operator has notice of the existence of such reports or complaints.

(d) Beginning on December 31 after each well is completed, and continuing on each December 31 thereafter until the operator notifies the gas inspector and the planning and development department that the well has been abandoned and the site restored, the operator shall submit a written report to the gas inspector identifying any changes to the information that was included in the application for the applicable permit that have not been previously reported to the city.

16.3.12 Bond, letters of credit, indemnity, insurance.

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

(1) Comply with the terms and conditions of this chapter and the permit issued hereunder.

(2) Promptly clear drill and operation sites of all litter, trash, waste and other substances used, allowed, or occurring in the operations, and after abandonment or completion grade, level and restore such property to the same surface conditions as nearly as possible as existed before operations as determined by the gas inspector.

(3) *Indemnification and express negligence provisions.* Operators shall sign each permit and the city shall retain a signed original. Each such permit issued by the city shall include the following language: Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or assigns may have, or claim to have, against the City and/or its departments, agents, officers, servants, successors, assigns, sponsors, volunteers, or employees, created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the performance of the work performed by the operator under a permit. The operator shall fully defend,

protect, indemnify, and hold harmless the City, its departments, agents, officers, servants, employees, successors, assigns, sponsors, or volunteers from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and expenses incurred in defense of the City, its departments, agents, officers, servants, or employees, including, without limitation, personal injuries and death in connection therewith which may be made or asserted by operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the operator under a permit. The operator agrees to indemnify and hold harmless the City, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the city, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the City occurring on the drill site or operation site in the course and scope of inspecting and permitting the wells including, but not limited to, claims and damages arising in whole or in part from the negligence of the City occurring on the drill site or operation site in the course and scope of inspecting and permitting gas wells.

IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE OPERATOR TO INDEMNIFY AND PROTECT THE CITY OF DALWORTHINGTON GARDENS, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF DALWORTHINGTON GARDENS, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WITHOUT REGARD TO WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE.

(4) Promptly pay all fines, penalties and other assessments imposed due to breach of any terms of the permit.

(5) Promptly restore to its former condition any public property damaged by the gas operation.

(b) *Bond, irrevocable letter of credit.* Prior to the issuance of a gas well permit the operator shall provide the City with a security instrument in the form of a bond or an irrevocable letter of credit, as determined by the City Council, as follows:

(1) *Bond.* A bond shall be executed by a reliable bonding or insurance institution authorized to do business in Texas, acceptable to the City. The bond shall become effective on or before the date the gas well permit is issued and shall remain in force and effect for at least a period of six months after the expiration of the permit term or until the well is plugged and abandoned and the site is restored, whichever occurs last. The operator shall be listed as principal and the instrument shall run to the City, as obligee, and shall be conditioned that the operator will comply with the terms and regulations of this chapter and the City. The original bond shall be submitted to the gas inspector with a copy of the same provided to the city secretary.

(2) *Letter of credit.* A letter of credit shall be issued by a reliable bank authorized to do business in Texas and shall become effective on or before the date the permit is issued. The letter of credit shall remain in force and effect for at least a period of six months after the expiration of the permit term or until the well is plugged and abandoned and the site is restored, whichever occurs last. The City shall be authorized to draw upon such letter of credit from time to time during the term of the letter to recover any fines or penalties or costs to remedy assessed under this chapter. In the event the City draws on the letter prior to the expiration of the term of the letter, the City may require the renewal of the letter in order to restore thereto the original amount of the letter after any intermediate draw. Evidence of the execution of a letter of credit shall be submitted to the City by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the city secretary.

(3) The principal amount of any security instrument shall be \$150,000.00 for any single well. During reworking operations, the amount of the bond or letter of credit shall be maintained at \$150,000.00. If at any time after not less than a 15-day written notice to the operator and a public hearing, the city council shall deem any operator's bond or letter of credit to be insufficient, it may require the operator to increase the amount of the bond or letter of credit up to a maximum of \$250,000.00 per well.

(4) The security instrument shall require that the City be notified at least thirty (30) days prior to any expiration or termination of the effectiveness of the instrument. If any security instrument is to expire or terminate within ten (10) days and has not been replaced, the City may, at its option, draw the entire principal amount of the security instrument and hold said amount (without interest thereon being payable) as security.

(5) The security instrument shall be provided in a form

satisfactory to the City.

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

(5) In the event the operator does not cause the work to be performed and fails or refuses to pay over to the City the estimated cost of the work to be done as set forth in the notice, or the issuer of the security instrument refuses to honor any draft by the City against the applicable irrevocable letter of credit or bond the City may proceed to obtain compliance and abate the default by way of civil action against the operator, or by criminal action against the operator, or by both such methods.

(6) When the well or wells covered by said irrevocable letters of credit or bond have been properly abandoned in conformity with all regulations of this chapter, and in conformity with all regulations of the commission and notice to that effect has been received by the City, or upon receipt of a satisfactory substitute, the irrevocable letter of credit or bond issued in compliance with these regulations shall be terminated and cancelled.

(c) *Insurance.* In addition to the bond or letter of credit required pursuant to this chapter, the operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in Texas. In the event such insurance policy or policies are cancelled, the

permit shall be suspended on such date of cancellation and the operator's right to operate under such permit shall immediately cease until the operator files additional insurance as provided herein.

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

- a. The City, its officials, employees, agents and officers shall be endorsed as an "additional insured" to all policies except employer's liability coverage under the operator's workers compensation policy.
- b. All policies shall be written on an occurrence basis except for environmental pollution liability (seepage and pollution coverage) and excess or umbrella liability, which may be on a claims-made basis.
- c. All policies shall be written by an insurer with an A-VIII or better rating by the most current version of the A.M. Best Key Rating Guide or with such other financially sound insurance carriers acceptable to the City.
- d. Deductibles in amounts acceptable to the City shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
- e. Certificates of insurance shall be delivered to the City Secretary, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, Texas 76016, evidencing all the required coverages, including endorsements, prior to the issuance of a permit.
- f. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
- g. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- h. Each policy shall be endorsed to provide the City a minimum 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. Ten days' notice shall be acceptable in the event of non-payment of premium.
- i. During the term of the permit, the operator shall report to the City in a timely manner any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- j. Upon request, certified copies of all insurance policies shall be furnished to the City.

(2) *Standard commercial general liability policy.* This coverage must include premises, operations, blowout or explosion, products, completed operation, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability and personal injury. This coverage shall be a minimum combined single limit of \$10,000,000.00 per occurrence location for bodily injury and property damage.

(3) *Excess or umbrella liability.* Five million dollars excess, if the operator has a stand-alone environmental pollution liability (EPL) policy. Ten million dollars 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.

(4) *Environmental pollution liability coverage.* Operator shall purchase and maintain in force for the duration of the permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$10,000,000.00 per loss.

- a. 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.
- b. The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the city.

(5) *Control of well.* The policy shall cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents with limits of five million dollars per occurrence/no aggregate, if available, otherwise an aggregate of \$10,000,000.00. Five hundred thousand

dollars sub-limit endorsement may be added for damage to property for which the operator has care, custody and control.

(6) *Workers compensation and employers liability insurance.* Workers compensation benefits shall be Texas statutory limits. Employers' liability shall be a minimum of \$500,000.00 per accident. Such coverage shall include a waiver of subrogation in favor of the city and provide coverage in accordance with applicable state and federal laws.

(7) *Automobile liability insurance.* Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage. Coverage must include all owned, hired and not-owned automobiles.

(8) *Certificates of insurance.* The company must be admitted or approved to do business in the State of Texas, unless the coverage is written by a surplus lines insurer. 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 (insurance services office), or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage; and, must set forth all endorsements and insurance coverage according to requirements and instructions contained herein; 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 ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED." Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

(9) *Notice.* The individual designated to receive notice shall be a resident of Texas upon whom all orders and notices provided in this chapter may be served in person or by registered or certified mail. Every operator shall within ten days notify the gas inspector in writing of any change in such agent or mailing address unless operations in the city are discontinued and abandonment is complete.

16.3.13

On-site and technical regulations.

(a) *Abandoned wells.* All wells shall be abandoned in accordance with the rules of the railroad commission; however, all well casings shall be cut and removed to a depth of at least ten feet below the surface unless the

surface owner submits a written agreement otherwise. No structures shall be built over an abandoned well.

(b) *Blowout prevention.* In all cases, blowout prevention equipment shall be used on all wells being drilled, worked-over or in which tubing is being changed. Protection shall be provided to prevent blowout during gas operations as required by and in conformance with the requirements of the commission and the recommendations of the American Petroleum Institute (API). The operator must equip all drilling wells with adequate blowout preventers, flow lines and valves commensurate with the working pressures involved as required by the commission. The operator must conduct daily testing of the operation and pressure providing a copy to the city weekly.

(c) *Chemical and materials storage.* All chemicals and/or hazardous materials shall be stored in such a manner as to prevent, contain, and facilitate rapid remediation and cleanup of any accidental spill, leak, or discharge of a hazardous material. Operator shall have all material safety data sheets (MSDSs) for all hazardous materials on-site. All applicable federal and state regulatory requirements for the proper labeling of containers shall be followed. Appropriate pollution prevention actions shall be required and include, but are not limited to, chemical and materials raised from the ground (e.g., wooden pallets), bulk storage, installation and maintenance of secondary containment systems, and protection from stormwater and weather elements.

(d) *Fracturing operations* The following requirements shall apply to all fracture stimulation (fracturing) operations performed on a well:

(1) At least 48 hours before operations are commenced, the operator shall post a sign, which complies with (y)(1) of this section, at the entrance of the well site advising the public of the date the operations will commence and an anticipated completion date;

(2) "Flowback" operations to recover fluids used during fracture stimulation shall be performed during daylight hours only unless the gas inspector approves in writing such operations during non-daylight hours;

(3) A watch person shall be required at all times during such operations; and

(4) At no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank.

(e) *Compliance.* Operator shall comply at all times with all applicable federal, state and city requirements.

(f) *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 gas operation or the contents of any container used in connection with any gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, sanitary drain or any body of water or any private or public property in the city.

(g) *Drilling fluids.* Low toxicity glycols, synthetic hydrocarbons, polymers, and esters shall be substituted for conventional oil-based drilling fluids.

(h) *Drill stem testing.* All open hole formation or drill stem testing shall be done during daylight hours. Drill stem tests may be conducted only if the well effluent during the test is produced through an adequate gas separator to storage tanks and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

(i) *Drip pans and other containment devices.* Drip pans and other containment devices shall be placed or installed underneath all tanks, containers, pumps, lubricating oil systems, engines, fuel and chemical storage tanks, system valves, connections, and any other areas or structures that could potential leak, discharge, or spill hazardous liquids, semi-liquids, or solid waste materials.

(j) *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 gas and other hydrocarbon substances. 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 as identified by the gas inspector in industry standards of drilling and production in this area may be adopted as they become available if capable of reducing factors of dust, vibration and odor.

(k) *Electric lines.* All electric lines to production facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision.

(l) *Electric motors.* Except with the prior written approval of the gas inspector, 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's ordinances and the appropriate national codes.

(m) *Emergency response plan.* Prior to the commencement of any gas or other hydrocarbons production activities, operator shall submit to the City for the approval of the Department of Public Safety and the gas inspector an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of gas wells. Said plan shall use existing guidelines established by the commission, TCEQ, Texas Department of Transportation and/or the USEPA. The emergency response plan shall be kept current with any additions, modifications, and/or amendments concerning all construction-related activities, natural gas operations and, and/or natural gas production. Updated plans shall be submitted to the gas inspector within two business days. A copy of the emergency response plan shall be kept on-site.

(n) *Explosive charges.* Under no circumstances shall explosives of any type be used during any phase of drilling, re-drilling, deepening, re-entering, activating, converting, fracturing, or completing a gas well without the prior consent of the fire department after the operator has provided the fire department with information sufficient for an informed consent thereon. The operator shall provide notice to the gas inspector at least ten days prior to such activities. The notice shall identify the date that the explosive charges will be used, the date and means of transporting the explosive charges, and the transportation route to and from the drill and/or operation site that will be used for the delivery of the explosive charges.

(o) *Fire prevention; sources of ignition.* Firefighting apparatus and supplies as approved by the fire department and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. The operator shall be responsible for the maintenance and upkeep of such equipment. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All well heads shall contain an emergency shut off valve to the well distribution line.

(p) *Gas emission or burning restricted.* No person shall 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 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 commission, then such vent or open flame shall not be located closer than 500 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.

(q) *Grass, weeds, trash.* All drill and operation sites shall be kept clear of high grass, weeds, and combustible trash.

(r) *Lights.* No person shall permit any lights located on any drill or operation site to be directed in such a manner so that they shine directly on

public roads, adjacent property or property in the general vicinity of the operation site. To the extent practicable, and taking into account safety considerations, site lighting shall be directed downward and shielded so as to both prevent direct illumination of and minimize glare on public roads and adjacent dwellings and buildings within 600 feet.

(s) *Muffling exhaust.* Exhaust from any internal combustion engine, 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 prevent the escape of obnoxious gases, fumes or ignited carbon or soot. All formation fracturing operations shall be conducted during daylight hours unless the operator has notified the gas inspector that fracturing will occur before or after daylight hours to meet safety requirements and the gas inspector has given approval therefor.

(t) *Organic solvents.* Organic solvents, such as trichloroethylene and carbon tetrachloride, shall not be used for cleaning any element, structure, or component of the drilling rig, platform, and/or associated equipment, tools, or pipes. To the maximum extent practicable, high flash point Varsol shall be used.

(u) *Pipe dope.* Lead-free, biodegradable pipe dope shall be substituted for API specified pipe dope.

(v) *Pits.* All reserve pits, completion/workover pits, drilling fluid disposal pits, fresh makeup water pits, gas plant evaporation/retention pits, mud circulation pits, or water condensate pits shall be lined with plastic or stored above ground in tanks. The water surface elevation of the pit may not exceed 12 inches above the existing ground elevation prior to any on-site construction of the pit. One foot of freeboard is required between the surface elevation and on top of berm. Such pits and contents shall be removed from the premises and the drilling site within 40 days after completion of the well, unless otherwise authorized by the gas inspector. No washout pits shall be located within the City, unless all fluid, sludge, solid waste materials, drilling fluids, waste oil, spent completion fluids, all other liquids, semi-liquids, mud, including hazardous waste inseparable by simple mechanical removal processes, and is made up primarily of natural material is immediately captured within a fully enclosed, above ground containment tank.

(w) *Private roads and drill sites.* Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site itself shall be at least 20 feet wide, have an overhead clearance of 14 feet and shall be an all-weather hard surface and maintained to prevent dust, mud and rutting. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the public works department after consideration of all

circumstances including, but not limited to, the following: distances from public streets and highways; distances from adjoining and nearby property owners whose surface rights are not leased by the operation; the purpose for which the property of such owners is or may be used; topographical features; nature of the soil; and exposure to wind.

(x) *Salt water wells.* No salt water disposal wells shall be located within the city.

(y) *Signs.*

(1) A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to this chapter. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the commission, shall have a surface area of not less than 16 square feet with contrasting lettering not less than four inches tall and shall be lettered with the following:

- a. Well name and number;
- b. Name of operator;
- c. The emergency 911 number; and
- d. Twenty-four hour telephone numbers of two persons responsible for the well who may be contacted in case of emergency.

(2) Permanent weatherproof signs reading "DANGER NO SMOKING ALLOWED" in both English and Spanish shall be posted immediately upon completion of the well site fencing at the entrance of each well site and tank battery or in any other location approved or designated by the fire department of the city. Sign lettering shall be four inches in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the fire department and the operator, well and lease designations required by the commission.

(z) *Storage of equipment.* On-site storage is prohibited on the operation site. No equipment shall be stored on the drilling or production operation site, unless it is necessary to the everyday operation of the well. Lumber, pipes, tubing and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site. No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The fire department shall be the entity that determines whether equipment on the site shall constitute a

fire hazard. No refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises. This shall not be deemed to exclude a conventional gas separator or dehydrator.

(aa) *Storage tanks.* All tanks and permanent structures shall conform to the API specifications unless other or additional specifications are approved by the fire department. All storage tanks shall be equipped with a secondary containment system including lining with an impervious material. The secondary containment system shall be a minimum of three feet in height and one and one-half times the contents of the largest tank in accordance with the Fire Code, and buried at least one foot below the surface. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank. All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank. 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. Meters, storage tanks, separation facilities, or other above ground facilities proposed in the floodplain shall be outside of the floodway and shall comply with the requirements for development in the City Code, Chapter 15.5: "Flood Damage Prevention".

(bb) *Tank battery facilities.* Tank battery facilities shall be equipped with a remote foam line and a lightning arrestor system.

(cc) *Surface casing.* Surface casing shall be run and set in full compliance with the applicable rules and regulations of the commission.

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

(ee) *Waste disposal.* Unless otherwise directed by the commission, all tanks used for storage shall conform to the following: Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet the API standards. All tanks must have a vent line, flame arrester and pressure relief valve. All tanks must be enclosed by a fence applicable to the issued permit classification. 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 an above-ground self-contained tank, or, after authorization by the City Council, a lined pit. All disposals must be in accordance with the rules of the commission and any other appropriate local, state or federal agency. Unless otherwise directed by the commission and approved by the gas inspector waste materials shall be removed from the site and transported to an off-site disposal facility not

less often than every 30 days. 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 air and water pollution control regulations of the state, this chapter and any other applicable ordinance of the city.

(ff) *Watchperson.* The operator must keep a watchman or security personnel on-site during the drilling or re-working of a well when other workmen are not on the premises.

(gg) *Installation of pipelines on, under or across public property.* The operator shall apply to the City for a right-of-way use agreement on, over, under, along or across the city streets, sidewalks, alleys and other city property for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines. Operator shall:

(1) Not interfere with or damage existing water, sewer or gas lines or the facilities of public utilities located on, under or across the course of such rights-of way.

(2) Furnish to the public works department a site plan showing the location of such pipelines.

(3) Construct such lines out of pipe in accordance with the city codes and regulations.

(4) Grade, level and restore such property to the same surface condition, as nearly as practicable, as existed prior to the laying of the pipeline.

(hh) *Public streets.* No permit shall be issued for any well to be drilled within any of the streets or alleys of the city and/or projected streets or alleys shown by the current comprehensive plan of the city, and no street or alley shall be blocked or encumbered or closed due to any exploration, drilling or production operations unless prior consent is obtained from the City. Any consent from the City shall be temporary in nature and state the number of hours and/or days that any street or alley may be blocked, encumbered or closed. The site must not conflict with the city's thoroughfare plan.

(ii) *Vehicle routes for gas well permits.* Vehicles associated with drilling and/or production in excess of three tons shall be restricted to state arterials, and where local access is required, to those arterials, collectors or commercial routes designated on the city's thoroughfare plan.

(jj) *Work hours for gas well permits.* Site development, other than drilling and fracturing, shall be conducted only between 7:00 a.m. and 7:00 p.m. Monday through Saturday. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation and other related work conducted on the well site shall be limited to between the above same work hour restrictions except in cases of fires, blowouts, explosions, and any other emergencies or where the

delivery of equipment is necessary to prevent the cessation of drilling or production.

(kk) Noise restrictions for gas well permits.

(1) During drilling, re-drilling or re-working, no on-site activity shall produce a sound level greater than 78 dBs when measured at a distance of 300 feet from the drilling equipment in question.

(2) During fracturing, no on-site activity shall produce a sound level greater than 85 dBs when measured at a distance of 300 feet from the drilling equipment in question.

(3) During production, no on-site activity shall produce a sound level greater than 65 dBs when measured at a distance of 300 feet from any on-site equipment in question.

(4) Sound level measurements shall be made with a sound level meter conforming as a minimum to the requirements of the American National Standards Institute (ANSI).

(5) If sound levels exceed the dBs levels referenced in this subsection, the gas inspector may require additional sound reducing techniques and devices including, but not limited to, sound reducing mufflers. The gas inspector may order the cessation of all operations under the permit unless and until the noise restrictions of this paragraph have been complied with.

(ll) *Tank specifications for gas well permit.* All tanks and permanent structures shall conform to the API specifications unless other specifications are approved by the fire department. The top of the tanks shall be no higher than eight (8) feet above the terrain surrounding the tanks.

16.3.14

Screening.

(a) Throughout the entire exploration, drilling, and production process there shall be screening improvements (fences, walls, berms and landscaping) required during each phase of the process.

(1) *Exploration through completion (drilling phase).* A temporary chain link fence with all weather screening fabric at least six feet in height shall be established around the entire operation site to obscure view of the gas drilling activities. A secured entrance gate shall be required. All gates are to be kept locked when the operator or his or her employees are not within the enclosure. A "Knox Padlock" or "Knox Box with a key" shall be provided to access the well site to be used only in case of an emergency.

(2) *Completion through abandonment (production phase).* A masonry wall with landscaping shall be required to enclose and visually screen the well and all associated equipment. An earthen

berm may also be required. The masonry walls, berms, and landscaping shall be in compliance with standard engineering and design practices and shall meet the following minimum requirements:

- a. The masonry wall material and design shall be generally compatible with the design of similar facilities, buildings and structures on and/or adjacent to the site; and
- b. Masonry walls shall be at least eight feet in height.
- c. Masonry walls shall be placed upon earthen berms in order to prevent viewing of the well and associated equipment from a public street, playground, competition athletic field or picnic area within a public park, existing residences and residentially zoned undeveloped property contiguous to the well site where practicable as determined by the City Council. However, the above mentioned berms shall not be required unless needed to augment the height of an eight foot masonry wall in order to prevent the viewing of the well or any associated equipment from the above items.
- d. All landscape improvements shall be maintained in an attractive and healthy state by the applicant and/or operator as to ensure the effective visual screening of the site throughout its use for gas production and associated activities.
- e. Screening shrubs and trees shall be evergreen species and shall be installed in conjunction with the required masonry walls and or berms in order to supplement both the visual screening and noise mitigation of the well site and associated equipment. Screening shrubs shall be a minimum of five feet in height at planting, having the potential to grow to a mature height of at least eight feet, be planted on four foot centers and must have an irrigation system that provides total water coverage to all plant materials. Screening trees shall be planted on 20 foot centers. Trees must be a minimum of three inch caliper at time of planting and be irrigated as above. All screening shrubs and trees will comply with the evergreen species listed within the general plant list as part of the city's landscape regulations. Plans for landscape and irrigation shall be submitted to the planning and development department for approval.

(b) *Gate specifications.* All temporary fences and masonry walls shall be equipped with at least one gate. The gate shall meet the following specifications:

- (1) Each gate shall be not less than 12 feet wide and be composed of two gates, each of which is not less than six feet wide, or one sliding gate not less than 12 feet wide. If two gates are used, gates shall latch and lock in the center of the span;
- (2) The gates shall be of chain link construction, with all-weather screening fabric, that meets the applicable specifications, or of other approved material that, for safety reasons, shall be at least as secure as a chain link fence;
- (3) The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when being used for access to the site; and
- (4) Operator must provide the fire department with a "Knox Padlock" or "Knox Box with a key" to access the well site to be used only in case of an emergency.

16.3.15 Cleanup and maintenance.

- (a) *Cleanup after well servicing.* After the well has been completed or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within 60 days.
- (b) *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 fire department and the gas inspector all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. If the owner or operator fails to begin site clean-up within 24 hours, the city shall have the right to contact the commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.
- (c) *Painting.* All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the gas inspector shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue and brown, or other neutral colors approved by the City Council.
- (d) *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 chapter and shall notify the gas inspector and fire department as soon as practicable. The gas inspector shall certify in writing, briefly describing the same, to the mayor of the city. If the mayor,

in his opinion, believes that danger to persons and property exists because of such loss of well control and that the operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the City may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City deems necessary to regain control of such well. The City shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the City pursuant to such action of the gas inspector in gaining control of said well.

16.3.16 Plugged and abandoned wells.

(a) *Surface requirements for plugged and abandoned well.* Whenever abandonment occurs pursuant to the requirements of the commission, the operator so abandoning shall be responsible for the restoration of the well site to its original condition as nearly as practicable, in conformity with the regulations of this chapter.

(b) *Restoration requirements.* Abandonment shall be approved by the gas inspector after restoration of the drill and/or operation site has been accomplished in conformity with the following requirements:

- (1) The derrick and all appurtenant equipment thereto shall be removed from the site;
- (2) All tanks, towers, and other surface installations shall be removed from the site;
- (3) All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the commission;
- (4) If any soil was contaminated, it shall be removed from the site in accordance with city, state and federal regulations.
- (5) All holes and depressions shall be filled with clean, compactable soil;
- (6) All waste, refuse or waste material shall be removed from the site; and
- (7) During abandonment, operator shall comply with all applicable sections in this chapter.

(c) *Abandoned well requirement.* The operator shall furnish the following to the gas inspector:

- (1) A copy of the approval of the commission confirming compliance with all abandonment proceedings under the state law;

and

(2) A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced.

Abandonment may then be commenced on or subsequent to the dates so stated.

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

(e) The operator can only abandon a well if the gas inspector has reviewed and approved the abandonment.

16.3.17

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

16.3.18

Penalty.

(a) It shall be unlawful and an offense for any person to do the following:

(1) Engage in any activity not permitted by the terms of a gas well permit issued under this chapter.

(2) Fail to comply with any condition set forth in a gas well permit issued under this chapter; or

(3) Violate any provision or requirement set forth under this chapter.

(b) Any violation of this chapter shall be punished by a fine of not more than \$500.00 per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.

(c) Any violation of this chapter that governs fire safety, public health, and/or sanitation, including dumping, refuse, or discharge, shall be

punished by a fine not exceeding \$2,000.00 per violation per day, subject to applicable state law. Each day that a violation exists shall constitute a separate offense.

(d) The penalty provided herein shall be cumulative of other remedies provided by state law, including but not limited to, the recovery of civil penalties under Subchapter 8, Chapter 54, of the Texas Local Government Code. The city may institute any appropriate action or proceeding in a court of competent jurisdiction to enjoin the violation of this chapter. The power of injunction may be exercised in enforcing this chapter whether or not there has been a criminal complaint filed.

2.

That this ordinance shall be cumulative of other ordinances of the city governing the development of land and interests in land.

3.

That the caption and penalty clause of this ordinance shall be published in the Commercial Recorder, a newspaper of general circulation in the community.

4.

That this ordinance shall be in full force and effect from and after its adoption and publication as herein provided.

Councilman Snodgrass then made a motion to amend the ordinance so that 16.3.06 (f)(3)b. thereof shall read in its entirety as follows: “The minimum distance from property lines required by (f)(1)b. may be reduced by council action.”

The amendment passed by a vote of 4 ayes and 0 nays.

The mayor then called for a vote on the main motion, to approve the ordinance as amended, which motion passed by a vote of 4 ayes and 0 nays.

7. **Ordinance 06-10**, authorizing and allowing, under the act governing the Texas Municipal Retirement System, “Updated Service Credits” in said system on an annual basis for service performed by qualifying members of such system who at the effective date of the allowance are in the employment of the City of Dalworthington Gardens; providing for increased prior and current service annuities for retirees and beneficiaries of deceased retirees of the City; and establishing an effective date for the ordinance.

On motion by Councilman Pettke, seconded by Councilman Piland, the item was removed from the table.

On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the following ordinance was adopted:

ORDINANCE 06-10

ORDINANCE AUTHORIZING AND ALLOWING, UNDER THE ACT OF GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM, “UPDATED SERVICE CREDITS” IN SADI SYSTEM ON AN ANNUAL BASIS FOR SERVICE PERFORMED BY QUALIFYING MEMBERS OF SUCH SYSTEM WHO AT THE EFFECTIVE DATE OF THE ALLOWANCE ARE IN THE EMPLOYMENT OF THE CITY OF DALWORTHINGTON GARDENS; PROVIDING FOR INCREASED PRIOR AND CURRENT SERVICE ANNUITIES FOR RETIREES AND BENEFICIARIES OF DECEASED RETIREES OF THE CITY; AND ESTABLISHING AN EFFECTIVE DATE FOR THE ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALWORTHINGTON GARDENS, TEXAS:

Authorization of Updated Service Credits.

- (a) On the terms and conditions set out in Sections 853.401 through 853.404 of Subtitle G of Title 8, Government code, as amended (hereinafter referred to as the “TMRS ACT”), each member of the Texas Municipal Retirement System (hereinafter referred to as the “System”) who has current service credit or prior service credit in the System in force and effect on the 1st day of January of the calendar year preceding such allowance, by reason of service in the employment of the City, and on such date had at least 36 months of credited service with the System, shall be and is hereby allowed “Updated Service Credit” (as that term is defined in subsection (d) of Section 853.402 of the TMRS Act).
- (b) On the terms and conditions set out in Section 853.601 of the TMRS Act, any member of the System who is eligible for Updated Service Credits on the basis of service with this City, who has unforfeited
- (c) credit for prior service and /or current service with another participating municipality or municipalities by reason of previous service, and was a contributing member on the 1st day of January of the calendar year preceding such allowance, shall be credited with Updated Service Credits pursuant to, calculated in accordance with, and subject to adjustment as set forth in said Section 853.601, both as to

initial grant hereunder and all future grants under this ordinance.

- (d) The Updated Service Credit hereby allowed and provided for shall be 100% of the “base Updated Service Credit “ of the member (calculated as provided in subsection ©of Section 853.402 of the TMRS Act).
- (e) Each Updated Service Credit allowed hereunder shall replace any Updated Service Credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.
- (f) In accordance with the provisions of subsection (d) of Section 853.401 of the TMRS Act, the deposits required to be made to the System by employees of the several participating departments on account of current service shall be calculated from and after the effective date of this ordinance on the full amount of such person’s compensation as an employee of the City.

Increase in Retirement Annuities.

- (a) On terms and conditions set out in Section 854.203 of the TMRS Act, the City hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the System to retired employees and to beneficiaries of deceased employees of the City under current service annuities and prior service annuities arising from service by such employees to the City. An annuity increased under this Section replaces any annuity or increased annuity previously granted to the same person.
- (b) The amount of annuity increase under this Section is computed as the sum of the prior service and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by **70%** of the percentage change in Consumer Price Index for All Urban Consumers, from December of the year immediately preceding the effective date of the person’s retirement to the December that is 13 months before the effective date of this Section.
- (c) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.
- (d) If a computation hereunder does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed hereunder.
- (e) The amount by which an increase under this Section exceeds all previously granted increases to an annuitant is an

obligation of the City and of its account in the municipality accumulation fund of the System.

Dates of Allowances and Increases. The initial allowance of Updated Service Credit and increase in retirement annuities hereunder shall be effective on **January 1, 2007**, subject to approval by the Board of Trustees of the System. An allowance of Updated Service Credits and an increase in retirement annuities shall be made hereunder on January 1 of each subsequent year until this ordinance ceases to be in effect under subsection (e) of Section 853.404 of the TMRS Act, provided that, as to such subsequent year, the actuary for the System has made the determination set forth in subsection (d) of Section 853.404 of the TMRS Act.

8. Review of proposal for traffic signal system.
On motion by Councilman Pettke, seconded by Councilman Loe, the item was taken off the table.

- a. **Ordinance 06-11**, Amendment to Chapter 10.5 of the City Code providing for signal enforcement system.

On motion by Mayor Pro-tem Snodgrass, seconded by Councilman Pettke, by a vote of 4 ayes and 0 nays, the following ordinance was adopted:

Ordinance 06 - 11

AN ORDINANCE OF THE CITY OF DALWORTHINGTON GARDENS AMENDING THE CITY CODE, TITLE 10: "VEHICLES AND TRAFFIC": CHAPTER 10.5 THEREOF, TRAFFIC CONTROL DEVICES, BY THE ADDITION THERETO OF 10.5.04, "AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; DEFINING TERMS; PROVIDING FOR A SYSTEM OF AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; IMPOSING CIVIL PENALTIES FOR VIOLATIONS; PROVIDING FOR ADMINISTRATIVE ADJUDICATION OF VIOLATIONS; AND DESIGNATING THE TRAFFIC SAFETY FUND AS THE DEPOSITORY FOR CIVIL PENALTIES COLLECTED; MAKING THIS ORDINANCE CUMULATIVE OF OTHER ORDINANCES ON THE SUBJECT; REPEALING ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND, NAMING AN EFFECTIVE DATE.

BE IT ORDAINED:

1.

That Chapter 10.5, TRAFFIC CONTROL DEVICES, of Title 10, VEHICLES AND TRAFFIC, of the Code of the City of Dalworthington Gardens, be amended by the addition thereto of a new section, designated 10.5.04, that hereafter shall be and read as follows:

10.5.04 Automated traffic signal enforcement

A. Definitions In this section:

Department means the Department of Public Safety of the City.

Intersection means the place or area where two or more streets intersect.

Owner means the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.

Photographic traffic signal enforcement system means a system that:

- (1) Consists of a camera system installed to work in conjunction with an electrically operated traffic control signal; and
- (2) Is capable of producing at least two recorded images that depict the license plat attached to the rear of a motor vehicle that is operated in violation of the instructions of the traffic control signal.

Recorded image means an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on photograph or digital image.

System location means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

Traffic control signal means a traffic control device that displays alternating red, amber and green lights that direct traffic when to stop at or proceed through an intersection.

This section means any of the provisions of Section 10.5.04 of this chapter.

B. Imposition of civil penalties for violations

1. The city council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts and by increasing the number of vehicle accidents to which public safety agencies must respond at the expense of the taxpayers.

2. Except as provided in subsections 3 and 4 next following, the owner of a motor vehicle is liable for a civil penalty of \$75.00 if the motor vehicle proceeds into an intersection at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

3. For a third or subsequent violation committed by the owner of the same vehicle during any 12-month period, the amount of the civil penalty shall be \$150.00.

4. An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of \$25.00.

C. Enforcement; procedures.

1. The department is responsible for the enforcement and administration of this section.

2. In order to impose a civil penalty under this section, the department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30th day after the violation is alleged to have occurred, such notice being sent to:

- a. The owner's address as shown on the registration records of the Texas Department of Transportation; or
- b. If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of such other state or country analogous to the Texas Department of Transportation.

3. A notice of violation issued under this section shall contain the following:

- a. A description of the violation alleged;

- b. The date, time and location of the violation;
- c. A copy of the recorded image of the vehicle involved in the violation;
- d. The amount of the civil penalty imposed for the violation;
- e. The date by which the civil penalty must be paid;
- f. A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing;
- g. Information that informs the person named in the notice of violation:
 - (1) Of the right to contest the imposition of the civil penalty in an administrative adjudication;
 - (2) Of the manner and time in which to contest the imposition of the civil penalty; and
 - (3) That failure to pay the civil penalty or to contest liability is an admission of liability.
- h. A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty.
- i. A statement that a failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty of \$25.00.
- j. Any other information deemed necessary by the department.

4. A notice of violation under this section is presumed to have been received on the tenth day after the date the notice of violation is mailed.

5. In lieu of issuing a notice of violation, the department may mail a warning notice to the owner.

D. Administrative adjudication hearing

1. A person who receives a notice of violation may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within 15 days after receipt of the notice of violation. Upon receipt of a timely request, the department shall notify the person of the date and time of the administrative adjudication hearing. The hearing shall be held before a hearing officer appointed by the mayor.

2. Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the assessed civil penalty stated in the notice of violation and is a

waiver of the right to appear under subparagraph 9 of this subsection D.

3. The civil penalty shall not be assessed if, after a hearing, the hearing officer enters a finding of no liability.

4. In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the city or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the city that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this sub-section and is evidence of the facts contained in the affidavit.

5. A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within ten days after the hearing.

6. It shall be an affirmative defense to the imposition of a civil penalty under this section, to be proven by a preponderance of the evidence, that:

- a. The traffic control signal was not in proper position and sufficiently legible to an ordinarily observant person;
- b. The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
- c. The operator of the motor vehicle violated the instructions of the traffic control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
- d. The motor vehicle was being operated as an authorized emergency vehicle under V.T.C.A. Transportation Code Chapter 546 and the operator was acting in compliance with that chapter;
- e. The motor vehicle was a stolen vehicle and was being operated by a person other than the owner of the vehicle without the effective consent of the owner;

- f. The license plate depicted in the recorded image of the violation was a stolen plate and was being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued; or
- g. The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed making compliance with this section more dangerous under the circumstances than noncompliance.
- h. The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

7. To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

8. Notwithstanding anything in this section to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

- a. The person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person; and
- b. Within the same period required by Subsection C.3.(g)(1) for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under a. above, the person requests an administrative adjudication hearing.

9. A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability to the municipal court by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 31st day after the date on which the hearing officer entered the finding of civil liability. Unless the person, on or before the filing of a notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil liability. An appeal shall be determined by the municipal court in a trial de novo and the issues must be proved by a preponderance of the evidence. A person found liable by the municipal court shall pay an appellate filing fee of \$50.00 in addition to the civil penalty and any other fees due to the city.

E. Order

1. The hearing officer at any administrative adjudication hearing under this section shall issue an order stating:
 - a. Whether the person charged with the violation is liable for the violation; and
 - b. The amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person.
2. The orders issued under sub-paragraph 1. may be filed with the hearing officer, who shall keep the orders in a separate index and file. The orders may be recorded using microfilm, microfiche or data processing techniques.

F. Effect of liability; exclusion of civil remedy.

1. The imposition of a civil penalty under this section is not a criminal conviction for any purpose.
2. A civil penalty may not be imposed under this section on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for the same violation of V.T.C.A. Transportation Code Section 544.007(d), recorded by the photographic traffic signal enforcement system.
3. An owner who fails to pay the civil penalty or to timely contest liability for the penalty is deemed to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.
4. The city attorney is authorized to file suit to enforce collection of a civil penalty imposed under this section.

G. Traffic safety fund. The penalties and fees collected from the imposition of civil liability under this section shall be deposited in the traffic safety fund account of the city, which funds may be expended only for the costs of automated signal enforcement under this section, public traffic or pedestrian safety programs, traffic enforcement and intersection improvements.

2.

That this ordinance shall repeal any provision of prior ordinances in conflict herewith.

3.

That this ordinance is hereby made cumulative of all other ordinances of the City not in conflict herewith.

4.

That if any section, subsection, sentence, clause or phrase of this ordinance or the code provisions hereby amended is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this title and each section, subsection, sentence, clause and phrases hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared or had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

5.

That the caption and penalty clause of this ordinance shall be published in the Commercial Recorder, a newspaper of general circulation in the City.

6.

That this ordinance shall be in full force and effect from and after the date of its passage and publication.

b. **Resolution 06-77**, Authorize contract for traffic signal system.

On motion by Mayor Pro-tem Snodgrass, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the following resolution was adopted:

A RESOLUTION AUTHORIZING A CONTRACT WITH REDFLEX TRAFFIC SYSTEMS, INC. FOR THE INSTALLATION AND OPERATION OF AN AUTOMATED RED LIGHT ENFORCEMENT SYSTEM.

WHEREAS, the City Council desires to acquire and operate, either itself or through others, an automated red light enforcement system; and

WHEREAS, the City is a contract participant (“end user”) in the competitive bidding activities of the Houston-Galveston Area Council of Governments (the “H-GAC”); and

WHEREAS, the H-GAC, in compliance with all applicable municipal contracting requirements, has heretofore entered into a contract with Redflex

Traffic Systems, Inc. (“Redflex”) incorporating specifications for the purchase of Traffic Control and Signal Preemption Equipment identified as Bid Specification No. PE05-05; and

WHEREAS, the City desires to avail itself of the benefits of the H-GAC bid process and contract with Redflex: NOW THEREFORE

BE IT RESOLVED:

1.

That the Mayor is hereby authorized to execute on behalf of the City a contract with Redflex Traffic Systems, Inc. for the purchase and operation of a system for automated traffic control and signal preemption.

2.

That the City Secretary is hereby authorized to attest to the execution of the said contract and to affix the seal of the city thereto.

3.

That a copy of the contract hereby authorized shall be appended to this resolution.

9. Report from the Planning and Zoning Commission in reference to site plan approval for all commercial development.
The Council received the Commission resolution recommending that no action be taken in this matter.

No action was taken.

10. **RESOLUTION # 06-78**, Referral of request for plat amendment in the Sandefer Acres Addition to the Planning and Zoning Commission.
On motion by Mayor Pro-tem Snodgrass, seconded by Councilman Piland, it was:

RESOLVED, that the request for plat amendment in the Sandefer Acres Addition be referred to the Planning and Zoning Commission for review.

Motion passed by a vote of 4 ayes and 0 nays.

11. Report on gas franchise agreement with reference to gas line extensions.
This item was addressed earlier in the minutes of the meeting.

12. **Resolution 06-79**, Consideration of participation in the Arlington Veterans Memorial Fund.
On motion by Mayor Pro-tem Snodgrass, seconded by Councilman Pettke, by a vote of 4 ayes and 0 nays, the following resolution was adopted:

Resolution No. 06 –79

A RESOLUTION PROVIDING FOR RECOGNITION OF
VETERANS OF THE CITY OF DALWORTHINGTON GARDENS

WHEREAS, the City of Arlington owns and operates a public park known as “Veterans Park” located near the common boundary of the City of Arlington and the City of Dalworthington Gardens; and

WHEREAS, Veterans Park is used and enjoyed by citizens of the City of Dalworthington Gardens; and

WHEREAS, the City of Arlington has caused to be planned and developed in its Veterans Park a memorial recognizing those men and women from our local community who have served America in military service during war and peacetime as well as the families of those in military service; and

WHEREAS, there are now and have been many men and women residing in or otherwise related to the City of Dalworthington Gardens who have been in the military service of our country or who have family members who have thus served; and

WHEREAS, the City Council of the City of Dalworthington Gardens deems it fitting and proper that Dalworthington Gardens recognize in the Veterans Park those persons from our city who are now have been in the military service of our country and the families of such persons; NOW THEREFORE BE IT RESOLVED:

That an appropriate memorial honoring Dalworthington Gardens military veterans and their families be placed in Veterans Park at a cost not to exceed One Thousand Dollars (\$1,000.00).

13. **Resolution 06-80**, Appointment of Deputy City Secretary
On motion by Councilman Piland, seconded by Councilman Pettke, it was:

RESOLVED, that Krysten Jeter is appointed Deputy City Secretary.

Motion passed by a vote of 4 ayes and 0 nays.

14. **Ordinance 06-12**, Amend Chapter 16.2 regarding impact fees
On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the following ordinance was adopted:

ORDINANCE NO. 06 -12

AN ORDINANCE AMENDING APPENDIX B, WATER AND WASTEWATER IMPACT FEE ASSESSMENT SCHEDULE, OF CHAPTER 16.2, IMPACT FEES, OF TITLE 16, LAND DEVELOPMENT, OF THE CODE OF THE CITY OF DALWORTHINGTON GARDENS; REPEALING ORDINANCES IN CONFLICT HEREWITH; MAKING THIS ORDINANCE CUMULATIVE OF OTHER ORDINANCES OF THE CITY NOT IN CONFLICT HEREWITH; PRESCRIBING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION; AND, NAMING AN EFFECTIVE DATE.

BE IT ORDAINED:

1.

That APPENDIX B, "WATER AND WASTEWATER IMPACT FEE ASSESSMENT SCHEDULE, of Chapter 16.2, Impact Fees, of Title 16, LAND DEVELOPMENT, of the Code of the City of Dalworthington Gardens be amended so that hereafter it shall be and read as follows:

APPENDIX B
to
Chapter 16.2 - IMPACT FEES
(Effective January 1, 2008 to June 6, 2009)

WATER AND WASTEWATER IMPACT FEE ASSESSMENT SCHEDULE

<u>Meter Size</u>	<u>Equivalency Factor</u>	<u>*Water Impact Fee</u>	<u>*Wastewater Impact Fee</u>	<u>*Total Impact Fee</u>
5/8"	0.67	\$616	\$264	\$880
3/4"	1.00	\$920	\$394	\$1314
1"	1.67	\$1536	\$658	\$2194
1-1/2"	3.33	\$3064	\$1312	\$4376
2"	5.33	\$4904	\$2100	\$7004
3"	11.67	\$10736	\$4598	\$15334
4"	21.00	\$19320	\$8274	\$27594
6"	46.67	\$42936	\$18388	\$61324
8"	80.00	\$73600	\$31520	\$105120
10"	126.67	\$116536	\$49908	\$166444

*Water impact fee and Wastewater impact fee are calculated at 50% of the total maximum assessable amount.

2.

That this ordinance shall repeal any provision of prior ordinances in conflict herewith, but is hereby made cumulative of all other ordinances of the City not in conflict herewith.

3.

That any person violating any provision of this ordinance shall be guilty of a misdemeanor and shall, upon conviction, be fined in an amount not more than \$500.00.

4.

That the caption and penalty clause of this ordinance shall be published in the Commercial Recorder, a newspaper of general circulation in the community.

5.

That this ordinance shall be in full force and effect as of January 1, 2008.

15. **Resolution 06-81**, Consider alternative Council meeting date for December.
On motion by Councilman Pettke, seconded by Councilman Piland, it was:

RESOLVED, that the Council meeting date for December be set for December 14, 2006.

Motion passed by a vote of 4 ayes and 0 nays.

16. **Ordinance 06-13**, An ordinance authorizing and allowing, under the act governing the Texas Municipal Retirement System, restricted prior service credit to employees who are members of the system for service previously performed for various other public entities for which they have not received credited service; and establishing an effective date for the ordinance.

On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the following ordinance as adopted:

Ordinance No. 06 -13

AN ORDINANCE AUTHORIZING AND ALLOWING UNDER THE ACT GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM, RESTRICTED PRIOR SERVICE CREDIT TO EMPLOYEES WHO ARE MEMBERS OF THE SYSTEM FOR SERVICE PREVIOUSLY PERFORMED FOR VARIOUS OTHER PUBLIC ENTITIES FOR WHICH THEY HAVE NOT RECEIVED CREDITED SERVICE; AND ESTABLISHING

**AN EFFECTIVE DATE FOR THE ORDINANCE BE APPROVED
AND PLACED IN THE RECORDS OF THE CITY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF
DALWORTHINGTON GARDENS, TEXAS:**

Section 1. Authorization of Restricted Prior Service Credit

- (a) On the terms and conditions set out in Sections 853.305 of Subtitle G of Title 8, Texas Government Code, as amended (hereinafter referred to as the "TMRS Act"), each member of the Texas Municipal Retirement System (hereinafter referred to as the "System") who is now or who hereafter becomes an employee of this City shall receive restricted prior service credit for service previously performed as an employee of any of the entities described in said Section 853.305 provided that (1) the person does not otherwise have credited service in the System for that service, and (2) the service meets the requirements of said Section 853.305.
- (b) The service credit hereby granted may be used only to satisfy length-of-service requirements for retirement eligibility, has no monetary value in computing the annuity payments allowable to the member, and may not be used in other computations, including computation of Updated Service Credits.
- (c) A member seeking to establish restricted prior service credit under this ordinance must take action required under said Section 853.305 while still an employee of this City.

Section 2. This ordinance shall become effective on the first day of **January, 2007.**

17. **Resolution 06-82**, Review street improvement list for presentation to Tarrant County.

On motion by Councilman Pettke, seconded by Councilman Loe, it was:

RESOLVED, that the street improvements to be completed by Tarrant County include Corzine and Roosevelt from the north of Arkansas to the Town of Pantego.

Motion passed by a vote of 4 ayes and 0 nays.

18. **Resolution 06-83**, Inmate Telecommunications Vending Services Agreement
On motion by Mayor Pro-tem Snodgrass, seconded by Councilman Piland, by a vote of 4 ayes and 0 nays, the following resolution was adopted:

A RESOLUTION AUTHORIZING A CONTRACT FOR AN INMATE PHONE SYSTEM WITH JCW ELECTRONICS I LTD., L.L.P.

BE IT RESOLVED:

1.

That the Mayor is hereby authorized to execute on behalf of the City a contract with JCW Electronics I Ltd., L.L.C. for an inmate telecommunications service, subject to changes recommended by the staff and containing a 30-day cancellation provision.

2.

That the City Secretary is hereby authorized to attest to the execution of the said contract and to affix the seal of the city thereto.

3.

That a copy of the contract hereby authorized shall be appended to this resolution.

Discussion Only

- 19. Proposed plan for Pleasant Ridge (discussion only – no action)
 - 20. Future agenda items
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ADJOURN

On motion by Councilman Pettke, seconded by Councilman Loe, the meeting was adjourned by unanimous vote.