

ORDINANCE NUMBER 1316

AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, AMENDING CHAPTER 8.36 - "GAS DRILLING AND PRODUCTION" OF THE BENBROOK MUNICIPAL CODE, BY REVISING THE REGULATIONS RELATED TO THE DRILLING AND PRODUCTION OF NATURAL GAS WITHIN THE CITY, INCLUDING REVISED REGULATIONS REGARDING APPLICATION REQUIREMENTS AND PRODEDURE, ON-SITE AND TECHNICAL REGULATIONS, AND APPEALS PROCESS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Benbrook City Council finds that the regulation of the development of natural gas and other hydrocarbon substances within and under the City of Benbrook ("City") is necessary to protect the surface property rights, to protect the owners of mineral rights, and to provide for the orderly exploration, development, and production of gas; and

WHEREAS, the City Council has previously adopted Chapter 8.36 of the Benbrook Municipal Code regulating natural gas drilling and production, as amended by Ordinance 1286; and

WHEREAS, the City Council now deems it necessary to amend the current regulations for the drilling, production, and re-drilling of natural gas so that these activities may be conducted in a manner that protects the health, safety, and welfare of the citizens of Benbrook, and conforms with established codes and regulations, while minimizing potential negative impacts of surface property and the rights of mineral owners; and

WHEREAS, the provisions set forth in Chapter 8.36 shall be considered the minimum requirement for the development of gas and other hydrocarbon substances within and under the City and shall not relieve any person from any duty imposed by law to use reasonable care and precautions for the safeguarding of people and the protection of and non-interference of property rights.

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

SECTION 1

That Section 8.36.060 GAS WELL PERMIT APPLICATION REQUIREMENTS of Chapter 8.36 of the Benbrook Municipal Code (1985, as amended) is hereby amended by revising paragraph C.15 to read as follows:

15. Signage: As part of the Gas Well Permit application, the Operator shall submit plans for the required sign, including dimensions and content, for City Engineer or designee approval. Within 24 hours of approval of the sign plan by the City Engineer or designee, the Operator, at his expense, shall erect at least one sign, approved by the City Engineer or designee, no less than three feet by three feet (3'X3'), upon the premises for which a Gas Well Permit has been requested.

Where possible, the sign or signs shall be located in a conspicuous place or places upon the property at the point or points nearest any right-of-way, street, roadway or public thoroughfare adjacent to such property. The City Engineer or designee may require additional signage if the premise fronts more than one right-of-way, street, roadway, or public thoroughfare.

- a. The sign shall indicate that a Gas Well Permit to drill for gas has been requested, and provide an Applicant/Operator telephone number for public inquiries.
- b. The continued maintenance of any such sign(s) shall not be deemed a condition precedent to the holding of any public hearing or to any other official action concerning this Ordinance.
- c. The sign shall remain posted at the pad site. Upon approval of the Gas Well Permit by the City, the Operator shall modify or replace the sign to indicate that a Gas Well Permit has been approved for the site.

SECTION 2

That Section 8.36.070-GAS WELL PERMITTING PROCEDURE of Chapter 8.36 of the Benbrook Municipal Code (1985, as amended) is hereby amended by revising Paragraph A.1 to read as follows:

1. Application Review: It is the responsibility of the City Engineer or designee to review and approve or disapprove all applications for gas well drilling permits based on the criteria established by this Ordinance. The City Engineer or designee, upon receipt of a completed application and remittance of all fees, insurance and security requirements of this Ordinance for a Gas Well Permit, shall determine, within 60 days of receiving a complete application, whether the application complies in all respects with the provisions of this Ordinance, including distance requirements, and approve or disapprove of said application.

That Section 8.36.070 is further amended by revising paragraph B.2 to read as follows:

2. Neighborhood Association Notice: The City shall send notice to all registered neighborhood associations within one-half mile of the proposed drill site within seven days of receipt of the completed application.

That Section 8.36.070 is further amended by revising paragraph C.6.d to read as follows:

- d. Neighborhood Association Notice: The City shall send notice to all neighborhood associations within one-half mile of the proposed drill site within seven days of receipt of the completed application.

That Section 8.36.070 is further amended by revising paragraph C.7.c to read as follows:

- c. Neighborhood Association Notice: The City shall send notice to all registered neighborhood associations within one-half mile of the proposed drill site within seven days of receipt of the completed application.

SECTION 3

That Section 8.36.120 - ON-SITE AND TECHNICAL REGULATIONS of Chapter 8.36 of the Benbrook Municipal Code (1985, as amended) is hereby amended by revising Paragraph A.5 to read as follows:

5. 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 body of water or any private property in the City, public right-of-way, alleys, streets, lots, storm drain, ditch or sewer, or sanitary drain. The practice of spreading drilling waste or 'mud' over a large land area, or land farming, is strictly prohibited within the City of Benbrook.

That Section 8.36.120 is further amended by revising Paragraph A.31 STORAGE TANKS to read as follows:

31. Storage Tanks: All tanks and permanent structures shall conform to the American Petroleum Institute (A.P.I.) specifications. The top of the tanks shall be no higher than nine (9) feet above the terrain surrounding the tanks. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1.5) times the contents of the largest tank, in accordance with the Fire Code, and buried at least one (1) foot below grade and lined with a leak-proof barrier. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks.

That Section 8.36.120 is further amended by revising Paragraph A.31.e to read as follows:

- e. Tank Setbacks: Tanks batteries, separators, and equipment shall be set back at least 100 feet from a Protected Use, 50 feet from a Public Building or Habitable Structure, or 25 feet from the property or right-of-way line, whichever is greater. The setback shall apply for any Protected Use, Public Building or Habitable Structure for which a building permit has been issued on the date of the application for a drilling permit. The distance shall be calculated from the closest tank batteries, well facilities and/or equipment, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

That Section 8.36.120 is further amended by adding a new subparagraph A.31.f to read as follows:

- f. Tank Screening: Additional fencing/landscaping may be required around storage tanks to protect the view of surrounding property, as determined by the City Engineer or designee.

SECTION 4

That Section 8.36.190 – APPEALS of Chapter 8.36 of the Benbrook Municipal Code (1985, as amended) is hereby amended by revising paragraph A to read as follows:

- A. The Appeals Commission shall have and exercise the power to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the issuance of a Gas Well Permit or the revocation or suspension of any Gas Well Permit issued hereunder as provided by this Ordinance. Any person or entity whose application is denied by the City Engineer or designee (other than for distance requirements set out in this Ordinance) or whose Gas Well Permit is suspended or revoked or whose well or equipment is deemed by the City Engineer or designee to be abandoned, may, within thirty (30) days of the date of the written decision of the City Engineer or designee, file an appeal to the Appeals Commission in accordance with the following procedure:
1. An appeal shall be in writing and shall be filed in triplicate with the City Secretary. The grounds for appeal must be set forth specifically, and the error described, by the appellant.
 2. Within forty-five (45) days of receipt of the records, the City Secretary shall transmit all papers involved in the proceeding, place the matter on the Appeals Commission agenda for hearing and give notice by mail of the date, time, place and purpose thereof to appellant and any other party who has requested in writing to be so notified. No other notice need be given.
 3. Appeal fees shall be required for every appeal in the amount established in Chapter 1.12 of the Benbrook Municipal Code.

The Appeals Commission shall not have the authority to review a decision by the City Council that denies a permit for a well on public property or denies a waiver for a well within 600 feet of a Protected Use.

SECTION 5 CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances of the City of Benbrook, Texas, except when the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 6 SAVINGS CLAUSE

All rights and remedies of the City of Benbrook, Texas, are expressly saved as to any and all violations of the provisions of any ordinances affecting gas drilling and exploration which accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil or criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7
SEVERABILITY CLAUSE**

If any article, section, sub-section, sentence or phrase of this Ordinance should be held to be invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this Ordinance which shall remain in 'full force and effect' and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 8
PENALTY CLAUSE**

Any person, firm, association of persons, company, corporation, or their agents, servants or employees violating or failing to comply with any of the provisions of this article shall be fined, upon conviction, not more than two thousand (\$2,000) dollars, and each day a violation or noncompliance continues shall constitute a separate and distinct offense. The penalty provided herein shall be cumulative of other remedies provided by State Law, and the power of injunction as provided in Texas Local Government Code 954.012 and as may be amended, may be exercised in enforcing this article whether or not there has been a complaint filed.

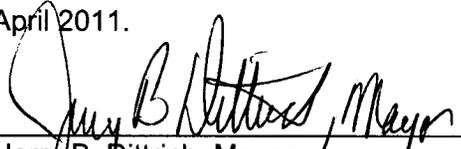
**SECTION 9
PUBLICATION CLAUSE**

The City Secretary of the City of Benbrook, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Benbrook, Texas, as authorized by Texas Local Government Code 952.013.

**SECTION 10
EFFECTIVE DATE**

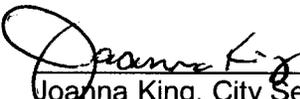
That this ordinance shall take effect after adoption and publication as required by Law.

PASSED AND APPROVED the 21st day of April 2011.



Jerry B. Dittrich, Mayor

ATTEST



Joanna King, City Secretary