



Oil and Gas in the City

Keeping an eye on the issues associated with drilling in an urban space.

BY KEVIN B. LAUGHLIN

THE BANKING COLLAPSE OF 2008-2009 RESULTED IN AN EXTREME SLOWDOWN OF REAL ESTATE DEVELOPMENT, reductions in property values and local ad valorem tax revenues, slower retail sales resulting in less sales tax revenue, and reductions in available federal and state funds. All of these sources have historically funded cities' public facilities and services. To avoid making deep cuts into critical city services, particularly police and fire protection, cities actively sought alternative revenue sources to make up reductions in traditional revenue streams. However, in an effort to avoid raising taxes on residents and businesses already strapped for cash during the economy of the past few years, many Texas cities have sought to replace lost tax revenues by any means other than increasing property tax rates.

For municipalities with significant oil and gas reserves in their city limits, the search for alternative revenue sources and the boost to the local economy that comes with exploration and production activities create a dilemma for city councils and residents. On the one hand, cities and school districts often own large parcels used for public parks, school campuses, stadiums with adjacent parking lots and practice fields, landfills, and other public purposes. Frequently, the mineral interests were never severed from the surface when the city or school district acquired title to the land, thus making them significant mineral interest owners. The possibility of royalty and other income from oil and gas leases can be attractive to a city council, especially considering the jobs created, sales taxes generated, hotel rooms and apart-



ments leased, and homes built or purchased as a result of drilling activities in or near a city.

However, the events associated with oil and gas exploration, the longer-term activities related to production of oil and gas, and the permanent presence of pumps, compressor stations, pipelines, storage tanks, truck traffic, and so forth are often incompatible with existing or planned urban or suburban land uses close to the well site. Historically, to prevent or reduce the occurrence of incompatible adjacent land uses, protect the health and safety of its citizens, and preserve property values, cities have enacted zoning and other land use regulations. However, because of the intense industrial-type activities at a well site, along

ordinances will provide for specific maximum decibel levels, measured at the property lines. These go well beyond the general nuisance noise ordinances used to deal with the neighbor's garage band playing too loud. With the increase in gas production in recent years, particularly in cities within the Barnett Shale formation, ordinances aimed specifically at regulating noise associated with compressor station operations have also been adopted.

Aesthetics. To make well sites more aesthetically pleasing, especially those near major thoroughfares, parks, residential neighborhoods, and newer commercial development, cities are requiring well sites to have 8- to 10-foot masonry screening walls (stucco frequently not allowed) with

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with a recognition that a prohibition of drilling and production within a city's incorporated limits may raise a legitimate regulatory takings claim by mineral owners, cities have enacted ordinances that attempt to create at least a tolerable, if not compatible, transition between exploration and production activities and adjacent land uses.

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Without attempting to survey all local oil and gas drilling regulations across the state, following are the primary (but by no means exclusive) issues often addressed in city well site and drilling ordinances:

Noise. Because of the 24/7 nature of drilling operations and the significant noise generated, most well regulation

gates of opaque materials, irrigated or low maintenance landscaping along street frontages, and hard surface areas around the well site (as opposed to crushed rock or gravel). If installation of site improvements is to be delayed until a later stage of well development, some cities may require a performance bond or letter of credit in favor of the city to secure the cost of installing the required site improvements in case the permit holder fails to do so.

Buffer Zones. Cities universally require that a well site boundary be located a minimum distance from properties zoned for residential use, schools, and other properties that are, or may be in the future, developed for uses that would otherwise be incompatible with an operating well site. The distances vary from city to city and may be measured from the area of active site development or from property lines. Those seeking to develop a well site should read these setback provisions carefully.

Insurance. Most ordinances will require the holder of the city drill site permit to carry certain levels of general liability and environmental pollution liability insurance (both usually at least \$1 million combined single limit) with excess umbrella coverage beyond those levels.

Access to the Well Site. A major concern to cities is



the additional wear and tear on public streets as well as disruption of normal traffic patterns through the introduction of increased truck and heavy equipment traffic in areas where such traffic was never intended or anticipated. During the permitting process, cities may designate specific routes to be traveled to and from a well site. Cities may also require permit holders enter an agreement requiring the permit holder to repair streets damaged by truck and heavy equipment traffic traveling to and from the well site.

Pipeline Routing. Gas produced from an urban well site must frequently be piped to an off-site compressor station for insertion into a transmission line. When a pipeline must cross or be located within a city street or alley, the pipeline company must obtain city consent.¹ While what a city may require in order to obtain its consent to install a pipeline on, across, or under a public street is often the subject of dispute because of state and federal preemption of pipeline safety regulations, such preemption does not generally override a city's authority in the first instance to control the use of its public rights-of-way. Working closely with city officials on pipeline routes, satisfying requirements to repair or replace street sections affected by gas pipeline crossings, and working to avoid conflicts with existing public utilities is a must in expediting any city consent for a pipeline in city rights-of-way.

With the extensive development of the Barnett Shale in recent years, Fort Worth city attorney Sarah Fullenwider has been at the center of much of the recent evolution of municipal well drilling regulations and the author of ordinances that many North Texas cities use as a model for their own regulations. When asked for this article about some of the major issues she sees on the horizon regarding drilling in the city, Fullenwider offered the following:

- The use of groundwater and surface water resources in the fracking process in light of reduced water availability for public water systems during drought conditions.
- The location of salt water disposal wells and their potential impact on streets, land, and groundwater formations in proximity to private and municipal water well sites, and the location of disposal wells in a city's extraterritorial jurisdiction that may be annexed into the city in the future.
- The impact of abandoned and plugged well sites and the requirements for long-term maintenance or reclamation so the property can be used for other purposes or, at least, not become a blight on or a safety issue for adjacent properties.
- Issues relating to long-term maintenance and reclamation of frac ponds.

Given the current nature of the economy, the ongoing push for national energy independence, and the continued expansion of urban areas into areas where known oil and gas reserves exist, conflict between oil and gas production and urban life will only increase. With the present lull in gas drilling activity because of the low price of natural gas, now would be a good time for industry and local governments to discuss seriously the issues that must be resolved to allow the two to live together in the city for the long term. **TBJ**

NOTES

1. Tex. Util. Code Anno. §181.006 (West 2007); Tex. Nat. Res. Code Anno. §111.022 (West 2011).



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