

CITY OF RICHLAND HILLS ORDINANCE NO. 1159-10

AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS DELETING SECTIONS 90-373 AND 90-373.1 AND ADOPTING A NEW SECTION AND ADOPTING A NEW DIVISION 5 OF ARTICLE II OF CHAPTER 70, THEREBY MOVING THE PROVISIONS RELATING TO GAS DRILLING ROAD REPAIR OBLIGATIONS AND AMENDING SUCH PROVISIONS TO CREATE A PROCEDURE TO AUTHORIZE AN EXCEPTION ALLOWING A LOWER MINIMUM ROAD REPAIR FEE; AMENDING THE CITY FEE SCHEDULE ACCORDINGLY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Richland Hills is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council has previously adopted Article IX, Division 12, of Chapter 90 of the Richland Hills City Code, the City's Comprehensive Zoning Ordinance, regulating gas drilling activities in the City; and

WHEREAS, Section 90-373 of Article IX, Division 12, of Chapter 90 requires a Gas Well Operator to pay a road damage remediation fee prior to commencing drilling activities as part of the process for applying for a gas well permit, so that the citizens of the City will not have to incur repair costs prior to payment by the Gas Well Operator under the road repair agreement; and

WHEREAS, Section 90-373.1 of Article IX, Division 12, of Chapter 90 requires a Gas Well Operator to pay a road damage remediation fee when such site is located outside the city limits of the City but is serviced by trucks traversing city streets; and

WHEREAS, the Fee Schedule provides for a minimum fee in both such instances; and

WHEREAS, the City Council has now determined that the provisions regarding road repair agreements and road damage remediation fees relating to gas drilling activities should be moved to Chapter 70 of the City Code, which regulates streets, and that such provisions should also be amended to provide an exception procedure to permit a lower minimum fee in special circumstances;

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

**SECTION 1)
ADDITION OF DIVISION 5, ARTICLE II, OF CHAPTER 70
TO AMEND OIL AND GAS DRILLING ROAD REPAIR REGULATIONS**

A new Division 5 of Article II of Chapter 70 of the Richland Hills City Code is hereby added, and shall provide as follows:

Division 5. Gas Drilling Operation Road Repair Obligations.

Sec. 70-100. Road repair agreement and road damage remediation fee for gas or oil wells located within the City.

Prior to issuance of a gas well special use permit or a gas well permit, a gas or oil well operator, as defined in Chapter 90 of the City Code, shall pay a road damage remediation fee for each well included in a gas or oil well permit application, such fee to be in the amount of the estimated costs to repair and/or replace all streets, roads, curbs, utilities, and other public infrastructure damaged by the operator's drilling activities, as determined by the city, which amount is set forth in the fee schedule in appendix A of this Code. In addition, prior to issuance of a gas or oil well special use permit or a gas or oil well permit, in conjunction with the application for a gas or oil well permit, the operator shall submit a road repair agreement in form and substance approved by the city manager or the city manager's designee, fully executed by the operator obligating the operator to pay for all repairs and/or replacement of all streets, roads, curbs, utilities, and other public infrastructure damaged by the operator's drilling activities in excess of the road damage remediation fee described above, as determined by the city. The city manager shall have the authority to execute the road repair agreement on behalf of the city.

Sec. 70-101. Road damage remediation fee for gas wells located outside of the City.

Prior to the commencement of drilling activities, the operator of an oil or gas well located outside the city limits of the city which well is serviced by trucks which traverse city streets shall pay a road damage remediation fee for each well serviced by trucks which traverse city streets, such fee to be in the amount of the estimated costs to repair and/or replace all streets, roads, curbs, utilities, and other public infrastructure damaged by the operator's drilling activities, as determined by the city, which amount is set forth in the fee schedule in appendix A of this Code.

Sec. 70-102. Procedure for requesting exception from minimum fee.

(a) An operator submitting an exception from the minimum fee as otherwise provided in this Division may apply for such an exception by submitting a written request for exception with the Director of Public Works or the Director's designee. The request must include the following, where applicable:

(1) A description of the amount the operator believes is appropriate and an explanation setting forth all facts supporting a reduction in the minimum fee, including a route map showing the truck route(s) to be followed and an estimate of the annual truck traffic along such route expected to be generated by the well and an estimate of the total truck traffic expected to be generated by the well during the life of the well; and

(2) A fully executed road repair agreement.

(b) The Director of Public Works or the Director's designee shall review the application for completeness, and if the Director or the Director's designee determines that the application is incomplete, the Director or the Director's designee shall return the application within 14 calendar days of receipt to the applicant unfiled with a written description of the deficiencies in the application.

(c) If the Director of Public Works or the Director's designee determines that the application is complete, the Director or the Director's designee shall request the City Manager place the exception request on the City Council agenda for consideration with any recommendations and notations the Director or the Director's designee deems appropriate. In considering the exception, the City Council may take into account only whether the exception proposed is reasonable under the circumstances, considering the location of the well, the length, construction, and condition of the streets to be used by the operator within the City to service the well, and the estimated life of the well operations.

(d) In order to be approved, a proposed exception must receive the affirmative vote of a majority of the members of the City Council then present. The City Council may grant the requested exception in whole or in part. The City Secretary shall record the vote, including any conditions for granting the exception, and notify the operator as to whether the city council has approved or denied the exception request in whole or in part, and identify any conditions placed upon an approval.

(e) If the city council does not act upon any exception application accepted for filing as complete within 45 calendar days of such filing, the exception request shall be deemed denied.

(f) The decision of the City Council shall be final.

SECTION 2) DELETION OF SECTIONS 90-373 AND 90-373.1

Sections 90-373 90-373.1 of Article IX, Division 12, of Chapter 90 of the Richland Hills City Code are hereby deleted in their entirety.

SECTION 3) AMENDMENT OF FEE SCHEDULE

The Fee Schedule included in the City Code as Appendix A is hereby amended by the adoption of the following changes:

“Section 70-100 Road Damage Remediation Fee for wells drilled within the City:

The road damage remediation fee for each permitted Oil or Gas Well to be drilled by the Operator shall be based on the following formula:

Road Damage Remediation Fee if Operator Using Piped Water

Road Type	Construction Cost Cost/Lane Mile 2008	AASHTO Design Life (EASL's)	Consumptive Use (EASL's)	Consumptive Use (%)	Assessment Per Lane Mile
8" Concrete	\$934,560.00	2,500,000	488.35	0.020%	\$187
7" Concrete	\$902,880.00	1,200,000	488.35	0.041%	\$370
6" Concrete	\$871,200.00	550,000	488.35	0.089%	\$775
6" HMAC	\$343,200.00	375,000	488.35	0.130%	\$446
2" HMAC over flex base	\$93,400.00	37,500	488.35	1.302%	\$1,216
6" Flex base with chip seal	\$63,360.00	600	488.35	81.40%	\$51,575

Minimum Charge \$5,000.00 per well regardless of whether the Operator executes and files with the City a road damage repair agreement, or such lesser amount of \$1,500.00 per well or greater as determined by the City Council provided the City Council grants an exception as provided in Chapter 70 of the City Code.

Road Damage Remediation Fee if Operator Using Hauled Water

Road Type	Construction Cost Cost/Lane Mile 2008	AASHTO Design Life (EASL's)	Consumptive Use (EASL's)	Consumptive Use (%)	Assessment Per Lane Mile
8" Concrete	\$934,560.00	2,500,000	1336.05	0.053%	\$499
7" Concrete	\$902,880.00	1,200,000	1336.05	0.111%	\$1,002
6" Concrete	\$871,200.00	550,000	1336.05	0.243%	\$2,117

6" HMAC	\$343,200.00	375,000	1336.05	0.356%	\$1,222
2" HMAC over flex base	\$93,400.00	37,500	1336.05	3.563%	\$3,328
6" Flex base with chip seal	\$63,360.00	600	1336.05	222.675%	\$141,087

Minimum Charge \$5,000.00 per well, or such lesser amount of \$1,500.00 per well or greater as determined by the City Council provided the City Council grants an exception as provided in Chapter 70 of the City Code.

Section 70-101 Road Damage Remediation Fee for wells drilled outside the City:

The road damage remediation fee for each Oil or Gas Well drilled by the Operator shall be based on the following formula:

Road Damage Remediation Fee if Operator Using Piped Water

Road Type	Construction Cost Cost/Lane Mile 2008	AASHTO Design Life (EASL's)	Consumptive Use (EASL's)	Consumptive Use (%)	Assessment Per Lane Mile
8" Concrete	\$934,560.00	2,500,000	488.35	0.020%	\$187
7" Concrete	\$902,880.00	1,200,000	488.35	0.041%	\$370
6" Concrete	\$871,200.00	550,000	488.35	0.089%	\$775
6" HMAC	\$343,200.00	375,000	488.35	0.130%	\$446
2" HMAC over flex base	\$93,400.00	37,500	488.35	1.302%	\$1,216
6" Flex base with chip seal	\$63,360.00	600	488.35	81.40%	\$51,575

Minimum Charge \$5,000.00 per well regardless of whether the Operator executes and files with the City a road damage repair agreement, or such lesser amount of \$1,500.00 per well or greater as determined by the City Council provided the City Council grants an exception as provided in Chapter 70 of the City Code.

Road Damage Remediation Fee if Operator Using Hauled Water

Road Type	Construction Cost Cost/Lane	AASHTO Design Life	Consumptive Use (EASL's)	Consumptive Use (%)	Assessment Per Lane Mile
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	Mile 2008	(EASL's)			
8" Concrete	\$934,560.00	2,500,000	1336.05	0.053%	\$499
7" Concrete	\$902,880.00	1,200,000	1336.05	0.111%	\$1,002
6" Concrete	\$871,200.00	550,000	1336.05	0.243%	\$2,117
6" HMAc	\$343,200.00	375,000	1336.05	0.356%	\$1,222
2" HMAc over flex base	\$93,400.00	37,500	1336.05	3.563%	\$3,328
6" Flex base with chip seal	\$63,360.00	600	1336.05	222.675%	\$141,087

Minimum Charge \$5,000.00 per well regardless of whether the Operator executes and files with the City a road damage repair agreement, or such lesser amount of \$1,500.00 per well or greater as determined by the City Council provided the City Council grants an exception as provided in Chapter 70 of the City Code."

In all other respects, the Fee Schedule shall remain unchanged.

SECTION 4) PROVISIONS CUMULATIVE

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Richland Hills, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 5) PROVISIONS SEVERABLE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6) RIGHTS AND REMEDIES SAVED

All rights and remedies of the City are expressly saved as to any and all violations of the

provisions of the City Code amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and 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) PUBLICATION

The City Secretary of the City of Richland Hills is directed to publish the caption, penalty clause, publication clause and effective date of this Ordinance to the extent required by law.

SECTION 8) PUBLICATION IN BOOK OR PAMPHLET FORM

The City Secretary of the City of Richland Hills is hereby authorized to publish this ordinance and the exhibits to this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance and the exhibits to this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

SECTION 9) PENALTY FOR VIOLATION

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined no more than Five Hundred Dollars and no cents (\$500.00) for each violation of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 10) EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 9th DAY OF February, 2010.

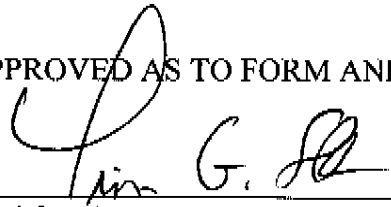
THE HONORABLE DAVID L. RAGAN, MAYOR

ATTEST:


LINDA CANTU, TRMC, CITY SECRETARY

EFFECTIVE DATE: 2-9-2010

APPROVED AS TO FORM AND LEGALITY:


TIM G. SRALLA, CITY ATTORNEY