



City of Denton

City Hall
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Denton, Texas
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AGENDA INFORMATION SHEET

DEPARTMENT: Utilities – Environmental Services

CM/ DCM/ ACM: Mario Canizares

DATE: September 11, 2018

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding gas well setback distances, including the history of setbacks in Denton and current setback requirements in other area cities.

BACKGROUND

Denton's Setback history

Gas well setback distances in the City of Denton have a long history that predates the Denton Development Code. The various changes throughout these years reflect debates among gas well developers, land developers, citizens, and Council members as Denton continued to experience rapid increases in the number of gas wells within the City limits. Later modifications were influenced by these same variables as well as the legal and policy implications of the approval of House Bill 40 in the 84th session of the Texas Legislature in 2015.

The sections below briefly outline the history of how gas well setback distances have been changed over time in different versions of the gas well ordinance leading up to the most recent 2015 ordinance.

Ordinance 2001-465

The first gas well setbacks were outlined in Section 35-503 of the Code of Ordinances. These setbacks were adopted in December 2001 via ordinance 2001-465 which stated:

A. The drilling and production of gas within the corporate limits of the City shall be permitted by right within Agricultural and Industrial Zoning Districts provided that no residential structure or place of assembly, institution or school exists no closer than 500' from the wellhead or within a previously platted residential subdivision where one or more lots have structures and provided that the drilling and production of gas meets the following requirements:

- 1) All applicable standards forth in Sec 35-505 of this Article*
- 2) An approved Gas Well Development Plat and a Road Repair Agreement are on file with the Director, and*
- 3) A Gas Well Permit has been issued by the Fire Marshal*

b) The drilling and production of gas within the corporate limits of the City shall be permitted by right within Agricultural and Industrial Zoning Districts if the property owner of a residential structure within 250' to 500' of the wellhead agrees in writing and provided that the drilling and production of gas meets the requirements of Sec 35-503(a)(1) through (3) and other requirements of this article.

Ordinance 2002-040

Ordinance 2002-040, approved February 5, 2002, reflected the first adoption of gas well regulations within the then newly drafted Denton Development Code (DDC). Numerous oil and gas well regulations and standards were added to the DDC during this timeframe, and setback distances were specifically addressed in section 35.22.3.a-b of the DDC, which states:

A. The drilling and production of gas within the corporate limits of the City shall be permitted by right within the RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts provided that no residential structure or place of assembly, institution, or school exists no closer than 500' from the wellhead or within a previously platted residential subdivision where one or more lots have structures and provided that the drilling and production of gas meets the following requirements:

1. All applicable standards forth in Section 35.22.5, Standard Conditions for Gas Well Drilling and Production.

2. An approved Gas Well Development Plat and a Road Repair Agreement are on file with the Director.

3. A Gas Well Permit has been issued by the Fire Marshal.

B. The drilling and production of gas within the corporate limits of the City shall be permitted by right within the RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts if the property owner of a residential structure within 250' to 500' of the wellhead agrees in writing and provided that the drilling and production of gas meets the requirements of Section 35.22.3.A.1 through 3 and other requirements of this subchapter.

Ordinance 2004-059

Ordinance 2004-059 was approved on March 3, 2004 and added language to the setback section of the DDC to address Watershed Protection Permits (WPP). Additional language was also added to the DDC outlining the requirements and standards for obtaining a WPP. WPPs allow gas well developments within the floodplain fringe portion of floodplains and addressed environmentally sensitive areas requirements for gas wells. This new language was added to address concerns from property owners and developers that otherwise developable land was being rendered undevelopable due to gas well setback distance requirements. By allowing the gas well development in the flood fringe under certain conditions, more of the non-floodplain portion of the property could be developed for other uses. Section 35.22.3.a-b was modified to reflect the WPP language as follows:

A. The drilling and production of gas within the corporate limits of the City shall be permitted by right within the RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts provided that no residential structure or place of assembly, institution, or school exists no closer than 500' from the wellhead or within a previously platted residential subdivision where one or more lots have structures and provided that the drilling and production of gas meets the following requirements:

1. All applicable standards forth in Section 35.22.5, Standard Conditions for Gas Well Drilling and Production.

2. An approved Gas Well Development Plat and a Road Repair Agreement are on file with the Director.

3. A Gas Well Permit has been issued by the Fire Marshal.

4. A Watershed Protection Permit for wells located in the Flood Fringe or other ESA's.

B. The drilling and production of gas within the corporate limits of the City shall be permitted by right within the RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts if the property owner of a residential structure within 250' to 500' of the wellhead agrees in writing and provided that the drilling and production of gas meets the requirements of Section 35.22.3.A.1 through 3 and other requirements of this subchapter.

Ordinance 2005-223

During this timeframe, there was a substantial amount of policy debate concerning damage to roads due to the amount of heavy equipment traffic associated with gas well drilling and production. A methodology was developed to determine the consumptive use of roads using equipment routing and trip estimates that were normalized to a standard single axle vehicle load. This calculation produced the consumptive impact of the equipment and trips associated with drilling and developing a gas well in terms of equivalent single axle loads (ESALs). Ordinance 2005-223 added these requirements to the Denton Development Code, and the setback distance section was modified to replace the requirement of “road repair” agreement with a “road damage remediation” agreement.

Ordinance 2010-181

A span of five years passed before the next change regarding setbacks occurred within the DDC. On July 21, 2010, ordinance 2010-181 was approved, and added extensive language to the DDC regarding setbacks, including a 1,000 foot separation from the newly defined “Protected Uses” and previously platted residential subdivisions, a 500 foot setback for all other habitable structures, a variance procedure via the Zoning Board of Adjustment, setbacks for freshwater wells, and a much more developed consent process for reducing distances (note that in the ordinance, paragraph “d” is not present in the ordinance text, and appears to be a simple omission error). The ordinance also established that measurements were to be made from the boundary of the drilling and production areas identified on the Gas Well Development Plat or Gas Well Development Site Plan to the closest exterior point of any structure occupied by a Protected Use. These changes were outlined in 35.22.5.A.1.a-f as follows:

A.1. Separation standards. The following requirements apply only within City limits.

a. No gas well drilling or production area may be located within 1,000’ of any Protected Use, or freshwater well currently in use at the time a complete application for a Gas Well Development Plat or Gas Well Development Site Plan is filed or within 1,000’ of any lot within a previously platted residential subdivision where 1 or more lots have 1 or more structures.

b. Except where more stringent separation distances are specified, the minimum separation distance between gas drilling or production, and all other uses or features other than those listed in 35.22.5.A.1.a, shall be 500’.

c. The minimum separation requirement established in 35.22.5.A.1.a above may be reduced via the granting of a variance by the Zoning Board of Adjustment. Except that the ZBA shall not reduce the minimum separation distance any less than 500’.

e. In lieu of 35.22.5.A.1.c above, the standards established in 35.22.5.A.1.a and b may be reduced if all the property owners of the Protected Uses, all owners of property with a freshwater well currently in use at the time a complete application for a Gas Well Development Site Plan is filed, and all owner of lots in a previously platted residential subdivision where 1 or more lots have 1 or more structures within the reduced separation area, consent to the reduction via a notarized waiver, and the notarized waiver is attached to the permit application. However, the minimum separation distance shall not be reduced to less than 250’ via the notarized waiver.

f. Separation distances shall be measured from the boundary of the drilling and production areas identified on the Gas Well Development Plat or Gas Well Development Site Plan, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any structure occupied by a Protected Use, or freshwater well currently in use at the time a complete application for a gas well development site plan is filed, or the closest lot line of any undeveloped lot within a previously platted residential subdivision where 1 or more lots have 1 or more structures.

Ordinance 2010-196

Ordinance 2010-181 was only in place for approximately 1 month before it was replaced by Ordinance 2010-196, which became effective on August 31, 2010 and introduced in Section 35.22.5.A.1.e a minimum 250-foot setback for protected uses associated with a pre-existing drilling and production areas. Although

not referred to as such in this Ordinance, over time this type of setback became referred to as a “reverse setback” (note that in the ordinance, paragraph “c” and f are not present in the ordinance text and presumably remained in the same form as they appear in Ordinance 2010-181). These changes were outlined in 35.22.5.A.1.a-f as follows:

A.1. Separation standards. The following requirements apply only within City limits.

a. No gas well drilling or production area may be located within 1,000’ of any Protected Use, or freshwater well currently in use at the time a complete application for a Gas Well Development Plat or Gas Well Development Site Plan is filed, or within 1,000’ of any lot within a previously platted residential subdivision where 1 or more lots have 1 or more habitable structures.

b. Except where more stringent separation distances are specified, the minimum separation distance between a gas drilling or production area and all other habitable structures other than those listed in 35.22.5.A.1.a, shall be 500’.

d. In lieu of 35.22.5.A.1.c above, the standards established in 35.22.5.A.1.a and b may be reduced if all the property owners of the Protected Uses, all owners of property with a freshwater well currently in use at the time a complete application for a Gas Well Development Site Plan is filed, and all owner of lots in a previously platted residential subdivision where 1 or more lots have 1 or more habitable structures within the reduced separation area, consent to the reduction via a notarized waiver, and the notarized waiver is attached to the permit application. However, the minimum separation distance shall not be reduced to less than 250’ via the notarized waiver.

e. Notwithstanding any other provision of this subsection, a Protected Use or lot within a previously platted residential subdivision where 1 or more lots have 1 or more habitable structures may be located as close as 250’ of a pre-existing drilling and production area, provided that the lots or Protected Use is not served by a freshwater well that is located within 1,000’ of the drilling and production area.

Ordinance 2013-014

The next modification of the setback distance component of the DDC occurred via Ordinance 2013-014, which was approved on January 15th, 2013. The changes introduced by these code revisions included increasing the setback standard to 1,200 feet from any protected use or freshwater well, and within 1,200 feet of a previously platted residential subdivision as stated.

A. 1. Separation standards. The following requirements apply only within City limits.

a. No Drilling and Production Site may be located within 1,200’ of any Protected Use, or freshwater well currently in use at the time a complete application for a Gas Well Development Site Plan is filed, or within 1,200’ feet of any lot within a previously platted residential subdivision where 1 or more lots have 1 or more habitable structures.

b. Except where more stringent separation distances are specified, the minimum separation distance between a Drilling and Production Site and all other habitable structures other than those listed in 35.22.5.A.1.a, shall be 500’.

c. The minimum separation requirement established in 35.22.5.A.1.a above may be reduced via the granting of a variance by the Zoning Board of Adjustment. Except that the ZBA shall not reduce the minimum separation distance any less than 500’.

d. Notwithstanding any other provision of this subsection, a Protected Use or lot within a previously platted residential subdivision where 1 or more lots have 1 or more habitable structures may be located as close as 250’ from a pre-existing Drilling and Production Site, provided that the lots or Protected Use is not served by a freshwater well that is located within 1,200’ of the drilling and production area.

e. Separation distances shall be measured from the boundary of the Drilling and Production Site identified on the Gas Well Development Site Plan, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any structure occupied by a Protected Use, or freshwater well

currently in use at the time a complete application for a gas well development site plan is filed, or the closest lot line of any undeveloped lot within a previously platted residential subdivision where 1 or more lots have 1 or more structures.

f. The separation standards of this section apply to a site containing a compressor station.

Ordinance 2015-133

The last DDC revisions related to setbacks were adopted via Ordinance 2015-133. This ordinance was approved on August 4, 2015 and appears to be the first time the term “reverse setback” was codified. The language addressing setbacks was moved from Subchapter 22 of the DDC to a newly created section of the DDC (Section 35.5.10) entitled "Gas Well Development", which helped strengthen enforceability by making the setbacks a component of the zoning regulations.

Another important change to setbacks under ordinance 2015-133 was an expansion in applicability of the 300 foot separation required under the Fire Code between gas wells and building classified as “Group A, E, or I” (Education, Assembly, and Institutional). Section 35.5.10.E – F expanded the applicability of this requirement to all Protected Uses and to any equipment on a Drilling and Production Site, not just the wellhead.

During the approximately two and a half years between the adoption of ordinance 2013-014 and ordinance 2015-133, several notable events occurred. For example, the City Council adopted a gas well moratorium, Ordinance No. 2014 -137, which was subsequently amended three times to extend the term and was set to expire on August 18, 2015. In addition, an initiative ordinance to ban hydraulic fracturing was also enacted by votes of the citizens of Denton on November 4, 2014 and was ultimately amended by the City Council on June 16, 2015 to repeal the ban. On May 18, 2015, House Bill 40 (Texas Natural Resources Code, Sec. 81.0523) was enacted, which provides the State of Texas with exclusive jurisdiction over Gas Well Drilling and Production Activities and substantially curtailed municipal regulatory authority for oil and gas operations. Setbacks are summarized in Section 35.5.10.2 as follows:

Required Authorization for Gas Well Development in City Limits.

A. Zoning District Classifications for Gas Well Development

- 1. Gas well development is classified as an industrial land use in all zoning districts.*
- 2. Gas well development is permitted as set forth in Sections 35. 5. 1 through 35. 5. 7 of the DDC, subject to the Limitations in Section 35. 5. 8 of the DDC and the standards in this section and in Subchapter 22. Gas well development also is permitted if authorized by a Master Planned Community ("MPC ") or Planned Development ("PD ") District.*
- 3. In order to foster compatible land use within zoning districts, Gas Well Development within the corporate limits of the City will be subject to reasonable setbacks from Protected Uses and Residential Subdivisions, which vary according to the types of uses authorized in each district. Because many gas wells are already in close proximity to existing Protected Uses or Residential Subdivisions, setbacks standards within districts will vary according to whether the proposed Gas Well Development takes place on an Existing Site or a new site.*
- 4. A Drilling and Production Site Setback is the distance that the site must be separated by an Operator from an existing Protected Use or Residential Subdivision. A Reverse Setback is the minimum distance that a Protected Use or Residential Subdivision must be separated by a surface owner from an approved Drilling and Production Site. A Minimum Setback is the minimum distance a Drilling and Production Site must be separated by an Operator from a Protected Use or Residential Subdivision after a waiver or variance is granted to reduce the setback requirement.*

B. Setbacks by Zoning District Classification: New Gas Well Drilling and Production Sites Setbacks from Protected Uses and Residential Subdivisions for new Drilling and Production Sites, Reverse Setbacks and Minimum Setbacks shall be as follows. In order to reduce Drilling and Production Site Setbacks, the procedures outlined in Section 35. 5. 10.3 must be followed.

1. *For new Drilling and Production Sites in Rural Districts established by Section 35. 5. 1, in Neighborhood /Residential Districts authorized by Section 35. 5. 2, in Downtown University Core Districts authorized by Section 35.5.3, in Community Mixed Use Center Districts authorized by Section 35.5. 4, in Regional Mixed-Use Center Districts established by Section 35.5.5 and in Employment Center Districts authorized by Section 35.5.6:*
 - a. *Drilling and Production Site Setbacks: 1000 feet*
 - b. *Minimum Setbacks: 500 feet*
 - c. *Reverse Setbacks: 250 feet*
2. *For new Drilling and Production Sites in Industrial Center Districts established by Section 35.5.7:*
 - a. *Drilling and Production Site Setbacks: 250 feet*
 - b. *Minimum Setbacks: 250 feet*
 - c. *Reverse Setbacks: 250 feet*

Where a proposed Drilling and Production Site in an Industrial Center District is contiguous to the boundary of a district subject to the setbacks in subsection (1), the Drilling and Production Site Setback shall be 500 feet from Protected Uses or Residential Subdivisions within the adjacent district and the Reverse and Minimum Setbacks shall be 250 feet.

3. *For new Drilling and Production Sites in PD Districts and MPC Districts, Drilling and Production Site Setbacks and Reverse Setbacks shall be as provided in the PD District or MPC District regulations or as provided in subsequent site - specific applications approved prior to August 4, 2015. The Drilling and Production Site Setbacks and Reverse Setbacks in subsection (1) shall apply to any setback not specified in the MPC or PD District regulations or in subsequent site - specific applications approved prior to August 4, 2015.*

Setbacks for Existing Gas Well Sites

1. *For Existing Drilling and Production Sites in Industrial Center Districts:*
 - a. *Drilling and Production Site Setbacks: 250 feet*
 - b. *Minimum Setbacks: 250 feet*
 - c. *Reverse Setbacks: 250 feet*
2. *For Existing Drilling and Production Sites in all other districts, except in MPC or PD Districts:*
 - a. *Drilling and Production Site Setbacks: 500 feet*
 - b. *Minimum Setbacks: 250 feet*
 - c. *Reverse Setbacks: 250 feet*
3. *For Existing Drilling and Production Sites in MPC or PD Districts, setbacks shall be as provided in the MPC or PD District regulations, or as provided in subsequent site - specific applications approved prior to August 4, 2015. The Drilling and Production Site Setbacks and Reverse Setbacks in subsection (2) shall apply to any setback not specified in the MPC or PD District regulations, or in subsequent site - specific applications approved prior to August 4, 2015.*

Measurement of Setbacks

1. *A Drilling and Production Site Setback shall be measured from the actual or proposed boundaries of the Drilling and Production Site in a straight line, without regard to intervening structures or objects, to the closest exterior point of any structure occupied by a Protected Use or any residential*

lot boundary line on an approved Residential Subdivision plat when not currently occupied by a Protected Use.

2. *The Reverse Setback shall be measured from the closest exterior point of the proposed structure to be occupied by a Protected Use, in a straight line, without regard to intervening structures or objects, to the closest boundary designated for the approved Gas Well Development Site Plan, or, if no Gas Well Development Site Plan has been approved for the site, from the closest boundary of the Existing Drilling and Production Site. For a proposed Residential Subdivision plat, the Reverse Setback shall be measured from any undeveloped residential lot boundary to the closest boundary designated for the approved Gas Well Development Site Plan, or, if no Gas Well Development Site Plan has been approved for the site, from the closest boundary of the Existing Drilling and Production Site.*
3. *The Reverse Setback for all other proposed Habitable Structures shall be the distance prescribed by the Fire Code. No permanent Habitable Structure, however, shall be located within the boundaries of a Drilling and Production Site.*

Compliance with Fire Code Setbacks

In the event of any conflict between the setback provisions established by this Subchapter and any setback provisions established by the Fire Code, as now adopted or hereafter amended by the City of Denton, whichever provision provides for the larger setback shall control.

After the effective date of this amendatory ordinance, a property owner who constructs a Protected Use must maintain a distance of three hundred (300) feet between the closest exterior point of the proposed structure to be occupied by the Protected Use and any equipment on a Drilling and Production Site that produces or stores flammable or combustible liquid or gas, to assure efficient emergency response operations. After such date, an Operator who locates any equipment that produces or stores flammable or combustible liquid or gas on a Drilling and Production Site must maintain a distance of three hundred (300) feet between such equipment and the closest exterior point of a structure occupied by a Protected Use.

The following table summarizes the major components of the gas well setback distances through the years

Ordinance	Restrictions for drilling and production by right*	Protected Use Setback*	Reverse Setback
2001-465	Agriculture and Industrial Zoning Districts	500 ft.	Not applicable
2002-040	RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts	500 ft.	Not applicable
2004-059	RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts	500 ft.	Not applicable
2005-223	RD-5, RC, NR-1, NR-2, RCC-N, RCC-D, EC-C, EC-I, IC-E, and IC-G Zoning Districts	500 ft.	Not applicable
2010-181	Protected Uses	1,000 ft.	Not applicable
2010-196	Protected Uses	1,000 ft.	250 ft.
2013-014	Protected Uses	1,200 ft.	250 ft.**
2015-133	Protected Uses	1,000 ft.	250 ft.

* The term “protected use” was introduced in the 2010-181 ordinance. Prior to this, protections for similar uses was based on fire code definitions of residential structure, place of assembly, institution, or school. A protected use was defined in 2010-181 as “Any residence, church, public park, public library, hospital, or school”, and 2010-181 defined a “residence” as “a home, abode, or place where an individual is actually

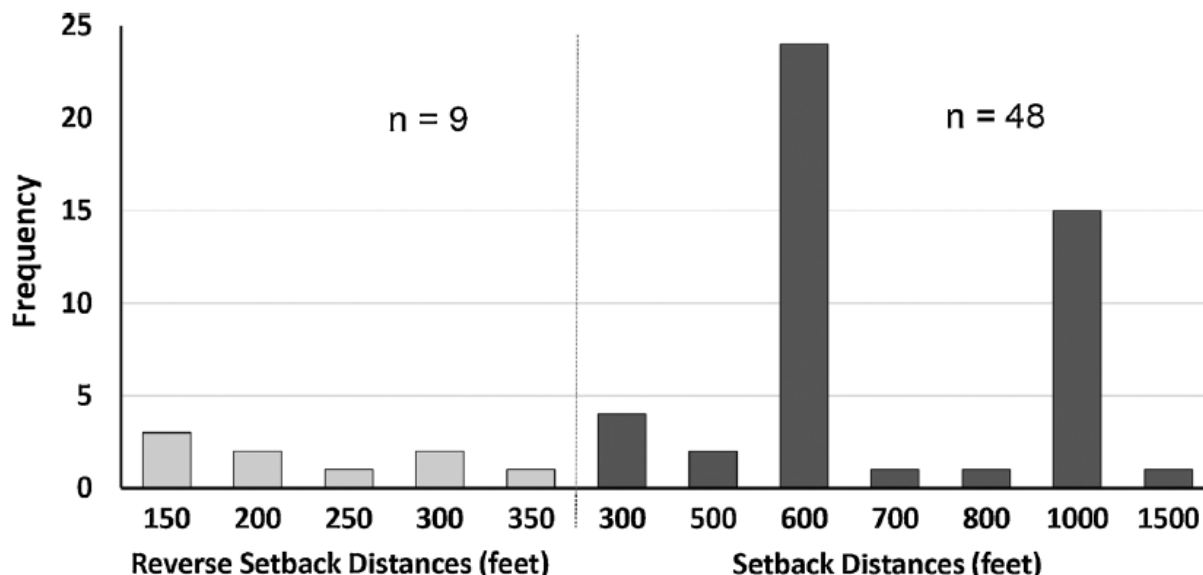
living at a specific point in time. A structure or part of a structure containing dwelling units or rooming units, including single-family or two-family houses, multi-family dwellings, boarding or rooming houses, elderly living facilities, apartments, or dormitories”.

**Measurements for reverse setbacks were modified to include both measurements of gas well site plan boundary to closest exterior point of any structure occupied by a protected use or, in the case of a proposed residential subdivision plat, the distance from the boundary of the gas well development site plan / boundary of the site to the closest lot line of any undeveloped lot within a previously platted residential subdivision where 1 or more lots have 1 or more structures.

Setback distances for municipalities in Tarrant and Denton County

In 2017, Fry, Brannstrom, and Sakinejad published an article entitled “Suburbanization and shale gas wells: Patterns, planning perspectives, and reverse setback policies” in *Landscape and Urban Planning* **168**:9-21. The article summarizes their research on setbacks and reverse setbacks in Tarrant and Denton County for 48 municipalities. Figure 1. below summarizes the setback and reverse setback requirements from their research.

Figure 1. Reverse setback distances (gray bars) and setback distances (black bars) in municipalities in Denton and Tarrant counties (as of February 2015).



From Fry et. al., (2017). Suburbanization and shale gas wells: Patterns, planning perspectives, and reverse setback policies. *Landscape and Urban Planning* 168:9–21.

Of the 48 municipalities surveyed by Fry et al., 9 use reverse setbacks to regulate how close new residential homes can be built to existing gas well facilities. Five municipalities (approximately 56%) of the reverse setback distances are 250 feet or less, and four municipalities (approximately 44%) have distances that are greater than 250 feet. However, it is important to note that direct comparisons of setback distances can be complicated by the methods used to measure the distance. Some municipalities, for example, measure the setback distances from the wellhead to the wall of the protected structure on the adjacent land. Others may measure from the nearest piece of equipment to the wall of the structure, and others may measure from the site boundary of the gas well site. Denton currently measures from the site boundary of the gas well site, which is the most conservative approach. Additional distance is provided for the reverse setback in cases where a plat for a proposed residential subdivision exists, as the measurement in this case will be from the boundary of the gas well development site plan to the closest lot line of any undeveloped lot. Taking this measurement method into consideration, Denton has one of the more stringent reverse setbacks in the area

for this particular type of reverse setback. Denton is also one of the two municipalities in the survey that require developers to note the location of existing wells within a specified distance on the deed, plat, or site plan.

In terms of standard setback distances, 30 (approximately 62.5%) of the 48 municipalities surveyed have setback distances that are 600 feet or less, while 18 (37.5%) have setback distances that are greater than 600 feet. Of those that are greater than 600 feet, the most common setback distance is 1,000 feet. As outlined above, the method of measuring the setback distance can have an influence on the true separation distance.

City of Denton Staff conducted a survey of setback distances as a part of development of this Agenda Information Sheet, and were able to collect information from 38 municipalities in the Dallas Fort-Worth metroplex. On a per city basis, 27 (approximately 81%) of the municipalities in the staff survey have setback distances that are 600 feet or less, while 11 (approximately 19%) have setbacks greater than 600 feet. The most common setback distance for cities in the “greater than 600 feet” category is 1,000 feet (73%), and one city within this group has a setback distance exceeding 1,000 feet (Flower Mound; 1,500 feet).

Legal perspectives on gas well setbacks

At a previous Council meeting, Mr. Ed Soph spoke during Public Comment regarding the Gas Well Ordinance’s setback and reverse setback provisions. He inquired as to why the distances in the original draft Gas Well Ordinance amendments were decreased shortly before the Ordinance amendments were adopted. Mr. Soph is correct that this occurred, and the reasons why these setbacks were decreased are discussed below.

House Bill 40

The first draft of the proposed Gas Well Ordinance amendments was revealed before the Texas Legislature passed House Bill 40 (“HB 40”). HB 40 was adopted in reaction to the Frack Ban Ordinance that Denton citizens approved at a November, 2014 election. The Legislature reacted to the Frack Ban Ordinance by adopting HB 40. HB 40 was the Legislature’s pronouncement that the State of Texas, and not Texas cities, has exclusive jurisdiction over the regulation of oil and gas operations. Most of the regulatory authority exercised by Texas cities, including Denton, was stripped away. Despite this, the Texas Municipal League was able to successfully lobby the Legislature to provide cities with limited regulatory authority, provided that such city regulations meet a strict four-part test. In summary, (1) municipalities can only regulate surface activities of oil and gas operations; (2) regulations must not effectively prohibit any operations; (3) regulations must not be otherwise preempted by state or federal law; and (4) regulations must be “commercially reasonable”.

Setbacks

City Staff, together with in-house City attorneys and outside legal counsel, compared the initial draft of the Gas Well Ordinance amendments with HB 40’s four-part test. Many ordinance provisions were recommended for deletion or revision to satisfy HB 40. One of the provisions were the setbacks to Protected Uses that new and existing oil and gas well pad sites were required to meet. HB 40 allows a city to impose “reasonable setbacks”, but this term is not defined in the bill. During one of the 2015 Legislative Committee meetings concerning HB 40, there was one legislator from a West Texas city who believed that 1,000 feet was a reasonable setback for cities to use. Aside from this Legislator’s statement, no one else proffered a reasonable setback distance.

City Staff and the City’s attorneys analyzed a 1,000-foot setback based on the number and location of existing gas well pad sites, together with the residential housing growth trends within the City. Then they analyzed the proposed 1,000-foot setback against HB 40’s four-part test. Finally, they analyzed the legal risk of a federal and state constitutional “Takings Claim”. The recommendation was for new gas well pad sites to meet a 1,000-foot setback from Protected Uses. Existing gas well pad sites were recommended to meet lower setbacks distances for each new well they drilled on the existing site. A majority of Council agreed with these recommendations and adopted them as part of the 2015 Gas Well Ordinance amendments.

Reverse Setbacks

Reverse setbacks only apply to Protected Uses when they encroach upon existing gas well pad sites. In the last few years, there has been very little drilling activity within the City, but much growth in new residential subdivision construction. In several cases, these new residential subdivisions have encroached upon existing gas well pad sites. HB 40 did not address residential subdivisions encroaching upon existing gas well pad sites. Thus, some Denton citizens called for increasing the current reverse setback distance to 1,000 feet or greater.

Even though HB 40 did not address, and does not apply to, reverse setbacks, there are still legal risks associated with increasing the reverse setback distance higher than 250 feet. Currently, a 250-foot ring is measured around the boundary of an existing gas well pad site. A surface developer cannot develop any residential lots or homes within the 250-foot ring. Increasing the ring outward to 1,000 feet yields a higher acreage amount of unbuildable land. As a result, property owners of large tracts of land, real estate professionals, and builders voiced their oppositions during public hearings and via emails to increasing the reverse setback distance beyond 250 feet. They claimed that large reverse setbacks would prevent them from developing their land to construct residential subdivisions. Several claimed in public that increasing the reverse setback would make a greater case for a federal and state constitutional “Takings” claims against the City. After further legal analysis, the City’s attorneys recommended that the reverse setback remain at 250 feet. A majority of Council agreed and adopted a 250-foot reverse setback as part of the 2015 Gas Well Ordinance amendments. The risks associated with mandating a larger distances for reverse setbacks include litigation and risks for legislative preemption, which would likely be driven by real estate, development, land owner, and mineral interests.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

Gas well ordinances have had many actions over the years. Staff believes that the most thorough accounting of these actions is found in the Agenda Information Sheet associated with the adoption of the 2015 gas well ordinance (Ordinance 2015-233) on August 4, 2015. The “Prior Action / Review” section of that AIS is included herein for reference.

On December 16, 2014, the City Council and P&Z held a joint Public Hearing concerning ordinance amendments to Subchapters 5, 7, 16, and 22 of the Denton Development Code. City Council continued the public hearing to their January 6, 2015 meeting and P&Z closed their public hearing, but delayed action as an Item for Individual Consideration.

On January 6, 2015, City Council voted 6-0 to continue the public hearing for DCA14-0009 to their next meeting.

On January 7, 2015, P&Z voted 7-0 to delay action on the Item for Individual Consideration of DCA14-0009 until their next meeting.

On January 13, 2015, City Council voted 7-0 to continue the public hearing for DCA14-0009 to an event certain, which is the meeting following receipt of a recommendation report from P&Z.

On January 21, 2015, P&Z voted 7-0 to delay action on the Item for Individual Consideration of DCA14-0009 until their next meeting.

On February 4, 2015, P&Z voted 4-3 to recommend DENIAL of DCA14-0009, as presented.

On February 17, 2015, City Council voted 7-0 to continue the public hearing for DCA14-0009 to March 3, 2015.

On March 3, 2015, City Council voted 7-0 to continue the public hearing for DCA14-0009 to March 24, 2015.

On March 24, 2015, City Council voted 7-0 to continue the public hearing for DCA14-0009 to April 7, 2015.

On April 7, 2015, City Council voted 7-0 to continue the public hearing for DCA14-0009 to April 14, 2015.

On April 14, 2015, City Council voted 7-0 to continue the public hearing for DCA14-0009 to June 16, 2015.

On June 16, 2015, City Council voted 6-1 to remand DCA14-0009 back to P&Z for a public hearing on July 22, 2015.

On July 22, 2015, P&Z voted 7-0 to recommend APPROVAL of DCA14-0009, with amendments.

On July 28, 2015, City Council voted (7-0) to close the public hearing for DCA14-0009 and continued action to August 4, 2015.

On August 4, 2015, City Council approved Ordinance 2015-233.

RECOMMENDATION

None. This AIS is being presented for informational purposes

FISCAL INFORMATION

None

STRATEGIC PLAN RELATIONSHIP

The City of Denton's Strategic Plan is an action-oriented road map that will help the City achieve its vision. The foundation for the plan is the five long-term Key Focus Areas (KFA): Organizational Excellence; Public Infrastructure; Economic Development; Safe, Livable, and Family-Friendly Community; and Sustainability and Environmental Stewardship. While individual items may support multiple KFAs, this specific City Council agenda item contributes most directly to the following KFA and goal:

Related Key Focus Area: Safe, Liveable & Family-Friendly Community

Related Goal: 4.2 Promote clean and healthy neighborhoods

EXHIBITS

Exhibit 1- Agenda Information Sheet

Exhibit 2 – Presentation

Respectfully submitted:
Kenneth Banks, 349-7165
General Manager of Utilities