

**TOWN OF BARTONVILLE
ORDINANCE NO. 515-11**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS, ESTABLISHING A MORATORIUM ON ACCEPTING, PROCESSING OR ISSUING PERMITS, AUTHORIZATION OR APPROVALS NECESSARY FOR THE CREATION OF DEVELOPMENT PLATS (SUBDIVISION OR SITE PLANNING), CONSTRUCTION OF FACILITIES RELATED TO GAS EXPLORATION AND PRODUCTION OR OTHERWISE INTRODUCING CHEMICAL AGENTS INTO SUCH FACILITIES FOR THE EXPLORATION OR PRODUCTION OF GAS; PROVIDING FOR WRITTEN FINDINGS; PROVIDING AN EXPIRATION DATE; PROVIDING FOR AN EXTENSION OF SUCH MORATORIUM; PROVIDING FOR A WAIVER BY THE TOWN COUNCIL, AFTER NOTICE AND HEARING IN ACCORDANCE WITH STATE LAW; PROVIDING FOR LIMITATIONS ON MORATORIUM FOR PERSONS WITH VESTED RIGHTS; PROVIDING A SAVINGS CLAUSE; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE OF ALL OTHER ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO-THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town has information which calls into question the process of drilling fracing gas wells for exploration purposes; and

WHEREAS, the Town has certain regulations concerning the process of gas drilling and fracing and the agents used for fracing; and

WHEREAS, the Environmental Protection Agency has identified that ground water may be contaminated and has identified the Town of Bartonville as a possible source of further investigation regarding such contamination as a result of gas drilling and the hydraulic fracing process; and

WHEREAS, there has been identified ambient air quality issues associated with gas drilling, fracing and gas production in the North Texas Region; and

WHEREAS, the Town may not have adequate regulations in place to ensure that chemical agents used in hydraulic fracing process and drilling process may not damage the ground water within the jurisdiction of the Town; and

WHEREAS, the Town accesses such ground water as its drinking water source through the Bartonville Water Supply Corporation and Argyle Water Supply Corporation; and

WHEREAS, the Town has been identified as a possible area upon which the Federal Environmental Protection Agency desires to perform studying testing of possible ground water contamination; and

WHEREAS, the public health, safety and welfare will be negatively impacted if chemical agents are introduced into the ground water as a result of gas drilling and hydraulic fracing of such wells; and

WHEREAS, the Town has undertaken to give the proper notice and held the required public hearings under state law to impose a moratorium on the industrial and/or commercial operation of gas drilling and of hydraulic fracing permits under local ordinances and under state law; and

WHEREAS, the Town has determined that current regulations adopted by the Town may be inadequate to prevent new development from being detrimental to the health, safety and welfare of the Town and that time is needed in order to determine and gather sufficient evidence in order to consider the harmful effects of hydraulic fracing and gas drilling within the Town limits; and

WHEREAS, that such new regulations that could be brought into place would limit, prohibit or ensure that chemical agents used in the fracing process protect the public water supply and the general health, safety and welfare of the citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS:

**SECTION 1.
INCORPORATION OF PREMISES**

That the above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION 2.
WRITTEN FINDINGS**

That the general health, safety and welfare may be negatively impacted by additional drilling of natural gas wells and mineral extraction by the introduction of chemicals into the water supply and such may contaminate the ground water supply of the Town of Bartonville;

That the general health, safety and welfare of the Town may be negatively impacted by such hydraulic fracing and use of chemical agents in the drilling process of gas wells by the introduction of chemicals into the ground water through such production; that the Town's regulations and ordinances may be inadequate to protect the health safety and welfare.

It is important to protect the status quo while the committee named herein review and

update and make a determination if any additional regulations should be considered and adopted by the Town; and, such additional regulations are appropriate to otherwise protect the health, safety and welfare and that such review will take place as required in the ordinance.

SECTION 3. ACTION

That a moratorium for a period not to exceed ninety (90) days from the effective date of this ordinance is hereby placed on the granting of any permit, taking of any application for a plat, subdivision, site plan and otherwise determining the appropriateness of issuing a permit for gas well drilling and production activities including, but not limited to the hydraulic fracturing of gas wells or other processes of mineral extraction.

SECTION 4. EXTENSION

That this Ordinance may be extended one time after notice and public hearing for an additional ninety (90) day period on such moratorium.

Should the Town determine that the time period of the original ninety (90) days is not feasible, a report will be submitted back to the Town Council with a proposed calendar of when the Council and/or the Committee will complete its work and study in order to determine appropriate regulations, if any, that need to be brought before the Council for consideration. The Town Staff shall solicit such input that may be necessary and appropriate from all affected parties and interests including the oil and gas industry and local activists that seek to provide for the general health and welfare.

That the Council hereby forms an advisory committee composed of seven members appointed by the Mayor consisting of two members of the Town Council; two representatives of the oil and gas industry; two citizen ad hoc members and an employee of the Texas Railroad Commission or the Texas Commission on Environmental Quality. If no member of a state agency is available, the Town's Gas Inspector shall be appointed. The purpose of said committee is to make recommendations for changes to ordinances and regulations, or amendments to Town Ordinances as they relate to mineral extraction.

SECTION 5. WAIVER

That the moratorium adopted herein may be waived upon an application requesting such waiver after notice and hearing by the Town Council. An applicant seeking a waiver for gas drilling or hydraulic fracturing shall be based on assertion of superior property right or interest obtained under a previously existing Development Agreement. An applicant must establish that the public health, safety and welfare is protected by obtaining a waiver and grant of an

appropriate permit. That the burden of proof shall be upon the applicant to show that the public health, safety and welfare is protected where such waiver and the governing body of the Town shall hold such public hearing and vote on whether or not to grant the waiver within ten (10) days after the date of receiving the written request. The request must provide the following information:

- a. A description of the property to be covered by the variance.
- b. An explanation as to why the application of the moratorium is unreasonable as applied to the applicant's property.
- c. A description of any negative impacts created by the moratorium provision.
- d. Any property interests asserted by the applicant.
- e. A plan to insure that the public health, safety and welfare is protected during the drilling and/or extraction process.

The Town Council, in granting such waiver and subsequent permit, may place such reasonable conditions and requirements on such waiver permit to insure the public health, safety and welfare is protected.

**SECTION 6.
LIMITATION ON THE MORATORIUM**

That nothing contained in this Ordinance shall prohibit a person from filing or processing an application for a permit that was previously in progress prior to the adoption of this Ordinance when such is vested under Chapter 245 of the Texas Local Government Code or that would result in the application for zoning filed before the effective date of this ordinance or the temporary moratorium.

**SECTION 7.
PENALTY**

That any person, firm or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the Town of Bartonville, Texas, shall be subject to a fine not to exceed the sum of Two Thousand (\$2,000.00) Dollars for each offense.

**SECTION 8.
SEVERABILITY CLAUSE**

If any article, paragraph, subdivision, clause or provision of this ordinance or the Bartonville Code of Ordinances, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision thereof, or of the Bartonville Code of Ordinances, as amended hereby, other than the part so declared to be invalid or unconstitutional.

**SECTION 9.
CUMULATIVE CLAUSE**

This Ordinance shall be cumulative of all provisions of Ordinances of the Town of Bartonville, Texas except where 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 10.
SAVINGS.**

An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Town of Bartonville Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 11.
ENGROSSMENT AND ENROLLMENT**

The Town Secretary of the Town of Bartonville is hereby directed to engross and enroll this Ordinance by copying the exact Caption, Effective Date and Penalty clause in the minutes of the Town Council of the Town of Bartonville and by filing this Ordinance in the Ordinance records of the Town.

**SECTION 12.
PUBLICATION**

The Town Secretary of the Town of Bartonville is hereby directed to publish in the Official Newspaper of the Town of Bartonville the Caption and the Effective Date of this Ordinance for two (2) days.

**SECTION 13.
EFFECTIVE DATE**

This Ordinance shall be in full force and effect upon passage as provided by law.

AND IT IS SO ORDAINED.

PASSED AND APPROVED by a vote of 3 to 0, with 2 abstentions this the 30th day of March, 2011.

APPROVED:

Ron Robertson, Mayor

(Seal)

ATTEST:

Debbie E. Millican, Town Secretary

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb)