

**ORDINANCE NO. 505-2010**

**AN ORDINANCE PROHIBITING THE LANDFARMING OF OIL AND GAS DRILLING WASTE ON PROPERTY WITHIN THE CITY OF JOSHUA, TEXAS; PROVIDING A DEFINITION OF LANDFARMING; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Joshua, Texas (hereinafter referred to as the City) is a home rule city located in Johnson County created under and operating pursuant to the Home Rule laws of the State of Texas acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, the City Council of the City of Joshua, Texas, desires to adopt regulations prohibiting the process known as landfarming in which a generator of oil and gas drilling waste deposits drilling fluids and cuttings on the surface of property; and

**WHEREAS**, evidence concerning the adverse effects of landfarming on the properties where landfarming has occurred, as well as on adjacent properties and the water supply, has been presented and made available to the City Council; and

**WHEREAS**, a study conducted by the Environmental and Technical Services Division of the Arkansas Department of Environmental Quality (ADEQ) and the ADEQ Water Division found that landfarming had several adverse effects on properties throughout the state, including on properties where the waste was deposited, as well as on adjoining ecosystems; and

**WHEREAS**, the aforementioned study was reviewed by the City Council and made part of the public record; and

**WHEREAS**, the adverse effects of landfarming in North Texas have been reported in the May 12, 2010 edition of "The Fort Worth Weekly" in an article entitled "Toxic drilling waste is getting spread all over Texas farmland"; and

**WHEREAS**, the City of Joshua has tested drilling waste applied recently to a landfarm site in Joshua and found that the drilling mud contained significant levels of arsenic and benzene; and

**WHEREAS**, the Department of Health and Human Services, the International Agency for Research on Cancer, and Environmental Protection Agency have determined that benzene is a human carcinogen;

**WHEREAS**, the process of landfarming creates noxious odors similar to raw sewage which is deemed to be a public nuisance; and

**WHEREAS**, the regulation of the types of fluid that are used in the fracturing (“frac”) process to produce oil and gas is currently under investigation by the House of Representatives Energy and Commerce Committee, and the Committee’s initial research and evidence indicates that several drilling companies use harmful fluids in the frac process as detailed in a February 28, 2010 memorandum from Chairman Henry A. Waxman and Subcommittee Chairman Edward J. Markey to Members of the Subcommittee on Energy and Environment entitled “Examining the Potential Impact of Hydraulic Fracturing”; and

**WHEREAS**, the frac fluids used in the production of oil and gas are found in the drilling mud that may be re-deposited upon property in the landfarming process.

**WHEREAS**, based on the foregoing findings the City Council of the City of Joshua is of the opinion that, in order to protect the public health, safety and general welfare and properly safeguard the environment desired, it is necessary and advisable to adopt regulations to prohibit landfarming.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS:**

**SECTION 1.  
LANDFARMING**

**A. Adoption of preamble.**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Joshua and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**B. Definitions.**

*Landfarming or Landfarm* shall mean the deposit, spreading or mixing of drill cuttings, drilling fluids, drilling mud, produced water or other drilling waste generated by the oil and natural gas well drilling process on to property located within the territorial limits of the City.

**C. Entry on Premises.**

The Gas Inspector and City Manager, as those terms are defined in Ordinance No. 472-2009, the Gas Well Drilling Ordinance of the City of Joshua, as it may be amended, or their designated representatives, shall have the authority to enter and inspect any premises on which they have reason to believe that landfarming has occurred.

**D. Landfarming Prohibited.**

Landfarming shall be prohibited within the City of Joshua, regardless of whether the landfarming operation is permitted or subject to permitting by the Texas Railroad Commission or

other state or federal authority. Except where the temporary containment of drilling mud into appropriate pits is specifically authorized pursuant to Ordinance No. 472-2009, it shall be an offense to landfarm in the City of Joshua or for any land owner to allow landfarming on any property in the City of Joshua.

## **SECTION 2.**

This Ordinance shall be cumulative of all other Ordinances of the City of Joshua, and shall not repeal any of the provisions of such ordinances except in those instances when provisions of such ordinances are in direct conflict with the provisions of this ordinance, in which event the conflicting provisions of such ordinances are hereby repealed.

## **SECTION 3.**

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 4.**

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, upon conviction, not more than Two Thousand Dollars (\$2,000.00) for each offense affecting zoning, fire safety or public health and sanitation. Each day that a violation is permitted to exist shall constitute a separate offense.

## **SECTION 5.**

All rights or remedies of the City of Joshua, Texas are expressly saved as to any and all violations of any ordinance affecting oil and gas drilling and landfarming that 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, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

## **SECTION 6.**

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

**SECTION 7.**

The City Secretary of the City of Joshua is hereby directed to publish in the official newspaper of the City of Joshua the caption, penalty clause and effective date clause of this ordinance as provided by Section 11.12 of the Charter of the City of Joshua.

**SECTION 8.**

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 this 15th day of July, 2010.

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney