

Introduction: The following draft model ordinance addressing oil and gas exploration, extraction and development is intended to be used as a reference tool for municipalities to use when considering amendments to its zoning ordinance. This draft model ordinance is not a standalone ordinance and must be amended into a municipality’s zoning ordinance as authorized by the PA Municipalities Planning Code. Any amendments to a municipal zoning ordinance shall follow the procedures set forth in the PA Municipalities Planning Code, Sections 609 - Enactment of Zoning Ordinance Amendments, and 610 – Publication, Advertisement and Availability of Ordinances.

The following paragraph extracted from the PA Oil and Gas Act (Act 223) outlines a municipality’s authority to impose zoning regulations (as authorized by Act 247, The PA Municipalities Planning Code) and regulations under the Flood Plain Management Act (Act 166 of 1978) on oil and gas exploration, extraction and development, but also states that municipal ordinances cannot regulate “oil and gas well operations” or “contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act.....”.

Sec. 601.602. Local Ordinances

Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code, and the act of October 4, 1978 (P.L. 851, No. 166), known as the Flood Plain Management Act, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded. No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act. The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined.

Once again, this is a draft model ordinance only. The legality and enforceability of this draft model ordinance cannot be assured. Each municipality should consult with its own solicitor regarding this matter and to customize such an ordinance to fit the municipality’s needs.

**DRAFT MODEL ZONING ORDINANCE AMENDMENT
FOR
OIL AND GAS EXPLORATION**

**(Municipality) Ordinance No. _____
An Ordinance Amending Ordinance No. _____ of
(Municipality), known as the (Municipality) Zoning
Ordinance, providing for the regulation of Oil
and Gas Exploration.**

**(Municipality) hereby amends Ordinance No. _____ known
as the (Municipality) Zoning Ordinance, by adding the following:**

Section 1. PURPOSE:

The purpose of this ordinance is to provide for the health, safety and welfare of the (municipality's) residents through zoning and floodplain management provisions, for the development of land for oil and gas drilling. It is necessary and appropriate to adopt reasonable requirements for oil and gas resource development so that these resources can be obtained in a manner that is economically remunerative and that minimizes the potential impact on the residents of the (municipality).

(Municipality) recognizes that the regulation of oil and gas operations is the primary responsibility of the regulatory agencies of the Commonwealth of Pennsylvania and is preempted from regulating the same features of oil and gas well operations or accomplishing the same purposes regulated under the PA Oil and Gas Act (Act 223), but maintains its zoning powers as authorized under PA Act 247, the Pennsylvania Municipalities Planning Code and through the (municipality's) Zoning Ordinance.

Section 2. DEFINITIONS:

“Applicant” -- Any person, owner, operator, partnership, company, corporation and its subcontractors and agents who has an interest in real estate for the purpose of exploring or drilling for, producing, or transporting oil or gas.

“Building” -- An occupied structure with walls and roof with which persons live or customarily work. The term shall not include a barn, shed or other storage building.

“Collector Street” -- A public street or road which, in addition to providing access to abutting lots, intercepts local streets and provides a route for carrying considerable volumes of local traffic to community facilities and arterial streets.

“Department” -- The Department of Environmental Protection of the Commonwealth.

“Drilling Pad” -- The area of surface operations surrounding the surface location of a well or wells.

“Hydraulic Fracturing (Fracking)” -- The process of injecting water, customized fluids, sand, steam, or gas into a gas well under pressure to improve gas recovery.

“Local Street” -- A public street or road designed to provide access to abutting lots and to discourage through traffic.

“Natural Gas Compressor Station” -- A compressor engine facility designed and constructed to compress natural gas that originates from an oil and gas well or collection of such wells for continued delivery of oil and gas to a transmission pipeline, distribution pipeline, processing facility, or storage facility or field.

“Natural Gas Processing Plant” -- A facility designed and constructed to remove

materials such as ethane, propane, butane, and other constituents or similar substances from natural gas to allow such natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets but not including facilities or equipment that is designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from the natural gas.

“Oil and Gas” -- Crude oil, natural gas, methane gas, coal bed methane gas, propane, butane and/or any other constituents or similar substances that are produced by drilling an oil or gas well.

“Oil and Gas Development or Development” -- The well site preparation, construction, drilling, redrilling, hydraulic fracturing, and/or site restoration associated with an oil or gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; and the installation and use of all associated equipment, including tanks, meters, and other equipment and structures whether permanent or temporary; and the site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment and other equipment and activities associated with the exploration for, production and transportation of oil and gas. The definition does not include natural gas compressor stations and natural gas processing plants or facilities performing the equivalent functions.

“Oil or Gas Well” -- A pierced or bored hole drilled or being drilled in the ground for the purpose of, or to be used for, producing, extracting or injecting gas, oil, petroleum or another liquid related to oil or gas production or storage, including brine disposal.

“Oil or Gas Well Site” -- The location where facilities, structures, materials and equipment whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, production or operation of an oil or gas well.

This definition also includes exploratory wells.

“Operator” -- The person designated as the well operator on the permit application or well registration.

“Owner” -- A person, who owns, manages, leases, controls or possesses an oil or gas well.

“Pad Drilling” -- The drilling of multiple wells from a single location.

“Storage Well” -- A well used for and in connection with the underground storage of natural gas, including injection into or withdrawal from an underground storage reservoir for monitoring or observation of reservoir pressure.

“Well Pad” -- The area used for development and production of oil and gas including buildings and structures and all activities associated with an oil and gas well after drilling activities are complete.

Section 3. ZONING CLASSIFICATIONS

Subject to the provisions of this ordinance:

A. An oil or gas well site shall be considered a permitted use by right within _____ Zoning District(s).

B. An oil or gas well site may be permitted in _____ Zoning District(s) as a _____ {conditional use or special exception}. *(For either a conditional use or special exception, additional standards and conditions should be added here.)*

C. An oil and gas well site shall not be permitted in areas not identified in **A** and **B**. (if applicable)

· Note: See Huntley and Huntley vs. The Borough Council of the Borough of Oakmont for Pennsylvania Supreme Court decision on municipal zoning powers over natural gas production.

D. A natural gas compressor station or a natural gas processing plant or any similar facilities performing the equivalent functions shall be considered a permitted use by right within _____ Zoning District(s).

E. A natural gas compressor station or a natural gas processing plant or any similar facilities performing the equivalent functions may be permitted in _____ Zoning District(s) as a _____ {conditional use or special exception}. (*For either a conditional use or special exception, additional standards and conditions should be added here.*)

F. A natural gas compressor station or a natural gas processing plant or similar facilities performing the equivalent functions shall not be permitted in areas not identified in **D** and **E**.

Section 4. APPLICABILITY:

A. This ordinance applies to all oil and gas well sites, natural gas compressor stations, and natural gas processing plants that will be permitted or constructed after the effective date of the ordinance. (All oil and gas well sites, natural gas compressor stations, and natural gas processing plants must receive permit approval prior to construction)

B. Oil and gas well sites, natural gas compressor stations, and natural gas

processing plants that were permitted and constructed prior to the adoption of this ordinance shall not be required to meet the requirements of this ordinance. Any modification to an existing or permitted oil or gas well site that occurs after the effective date of this ordinance and materially alters the size, type, location, number of wells and other accessory equipment or structures, or any expansion (capacity or footprint) to an existing natural gas compressor station or natural gas processing plant shall require compliance with and a zoning permit under this ordinance.

Section 5. PERMIT REQUIREMENT:

A. No oil or gas well site, natural gas compressor station, or natural gas processing plant or an addition to an existing oil or gas well site, natural gas compressor station, or natural gas processing plant shall be constructed or located within (municipality) unless a zoning permit under this ordinance has been issued by the (municipality) to the owner or operator approving the construction or preparation of the site for oil or gas development or construction of natural gas compressor stations or natural gas processing plants.

B. The permit application, or amended permit application, shall be accompanied by a fee as established in the (municipality's) schedule of fees.

C. Any modification to an existing and/or permitted oil or gas well site that materially alters the size, location, number of wells or accessory equipment or structures, or any modification to an existing natural gas compressor station or natural gas processing plant shall require a modification of the permit under this ordinance. Like-kind replacements shall not require a permit modification.

Section 6. PRE-APPLICATION CONFERENCES:

A. Purpose.

1. Before submitting an application, the applicant shall meet with the (municipality) staff to determine the requirements of and the procedural steps and timing of the application. The intent of this process is for the applicant to obtain necessary information and guidance from the (municipality) staff before entering into any commitments or incurring substantial expenses with regard to the site and plan preparation. (Municipality) shall schedule a conference within thirty (30) days of receiving any such request from an applicant.

B. Process.

1. A pre-application conference is required on the part of the applicant and shall not be deemed the beginning of the time period for review as prescribed by law. The pre-application conferences are intended for the benefit of the applicant in order to address the required permit submittals and are advisory only and shall not bind the (municipality) to approve any application for a zoning permit or to act within any time limit relative to the date of such conference.

Section 7. PROCEDURE

A. Seismic Testing does not require a zoning permit.

B. A zoning permit shall be obtained for each well pad.

C. When multiple wells are located on the same well pad, a separate permit for each well is not required. However, written notification must be provided to the (municipality) at least 14 days, but no more than 90 days, prior to

drilling of each well not already identified in a zoning permit.

Section 8. PERMIT APPLICATION:

A. The applicant shall provide to the (municipality) at the time of permit application:

1. A narrative describing an overview of the project including the number of acres to be disturbed for development, the number of wells to be drilled including DEP permit number(s) for all wells, if available, at the time of submittal and provided when issued later, and the location, number and description of equipment and structures to the extent known.

2. A narrative describing an overview of the project as it relates to natural gas compressor stations or natural gas processing plants.

3. The address of the oil or gas well site, natural gas compressor station or natural gas processing plant as determined by the County 911 addressing program and information needed to gain access in the event of an emergency.

4. The contact information of the individual or individuals responsible for the operation and activities at the oil or gas well site shall be provided to the (municipality) and all applicable Emergency Responders as determined by the (municipality). Such information shall include a phone number where such individual or individuals can be contacted twenty-four hours per day, three-hundred sixty-five days a year. Annually, or upon any change of relevant circumstances, the applicant shall update such information and provide it to the (municipality) and all applicable Emergency Responders as determined by the (municipality).

5. A site plan of the oil or gas well site showing the drilling pad, planned access roads, the approximate location of derricks, drilling rigs, equipment

and structures and all permanent improvements to the site and any post construction surface disturbance in relation to natural resources. Included in this map shall be an area within the development site for vehicles to locate while gaining access to the oil or gas well site configured such that the normal flow of traffic on public streets shall be undisturbed.

6. To the extent that the information has been developed, the applicant shall provide a plan for the transmission of gas from the oil or gas well site. The plan will identify, but not be limited to gathering lines, natural gas compressor stations, and other midstream and downstream facilities located within the (municipality) and extending 800 ft beyond the (municipality) boundary.

7. A site plan of the natural gas compressor station or natural gas processing plant including any major equipment and structures and all permanent improvements to the site.

8. A narrative and map describing the planned access routes to the well sites on public roads including the transportation and delivery of equipment, machinery, water, chemicals and other materials used in the siting, drilling, construction, maintenance and operation of the oil or gas well site.

9. Operator shall comply with any generally applicable bonding and permitting requirements for (municipality) roads that are to be used by vehicles for site construction, drilling activities and site operations.

10. A description of, and commitment to maintain, safeguards that shall be taken by the applicant to ensure that the (municipality) streets utilized by the applicant shall remain free of dirt, mud and debris resulting from site development activities; and the applicant's assurance that such streets will be promptly swept or cleaned if dirt, mud and debris occur as a result of applicant's usage.

11. A statement that the applicant will make the operation's Preparedness, Prevention and Contingency Plan available to the (municipality) and all Emergency Responders at least 30 days prior to drilling of an oil or gas well and at least annually thereafter while drilling activities are taking place at the oil or gas well site.

12. An appropriate site orientation and training course of the Preparedness, Prevention and Contingency Plan for all applicable Emergency Responders as determined by the (municipality). The cost and expense of the orientation and training shall be the sole responsibility of the applicant. If multiple wells/well pads are in the same area (covered by the same emergency response agencies), evidence from the appropriate emergency response agencies that a training course was offered in the last 12 months shall be accepted. Site orientation for each well/well pad shall still be required for the appropriate Emergency Responders, as determined by the (municipality).

B. Within 15 business days after receipt of a permit application, the (municipality) will determine whether the application is complete and advise the applicant accordingly.

C. If the application is complete and fulfils the requirements of this ordinance, the (municipality) shall issue or deny a permit within 30 days following the date the complete application was submitted.

D. If the application is incomplete and/or inadequate, the (municipality) will notify the applicant of the missing and/or inadequate material and, upon receiving said material, shall issue or deny the permit within 30 days.

E. As a condition of permit approval, applicant shall provide all permits and plans from the Pennsylvania Department of Environmental Protection and all

other appropriate regulatory agencies within 30 days of receipt of such permits and plans. A narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts shall be provided to the (municipality).

F. If temporary housing for well site workers is proposed on the well site, a plan showing the number and location of the units shall be provided to the (municipality). Temporary housing plans shall be in compliance with all applicable (municipal) regulations.

Section 9. SITE DESIGN AND INSTALLATION:

A. Access.

1. Vehicular access to a natural gas well, oil well or well pad solely via a residential street is discouraged.
2. Vehicular access to a natural gas well, oil well or well pad via a collector street is encouraged.
3. Accepted professional standards pertaining to minimum traffic sight distances for all access points shall be adhered to.
4. Access directly to State roads shall require Pennsylvania Department of Transportation (PADOT) Highway Occupancy Permit Approval. Prior to initiating any work at a drill site, the (municipality) shall be provided a copy of the Highway Occupancy Permit.
5. Access directly to (municipal/county) roads shall require a (municipal/county) Driveway Permit/Highway Occupancy Permit prior to initiating any work at a well site.

B. Height.

1. Permanent structures associated with an oil and gas well site, both principal and accessory, shall comply with the height regulations for the zoning district in which the oil or gas well site is located.

2. Permanent structures associated with natural gas compressor stations or natural gas processing plants shall comply with the height regulations for the zoning district in which the natural gas compressor station or natural gas processing plant is located.

3. There shall be an exception to the height restrictions contained in this section for the temporary placement of drilling rigs, drying tanks, pad drilling and other accessory uses necessary for the actual drilling or re-drilling of an oil or gas well. The duration of such exemption shall not exceed the actual time period of drilling or re-drilling of an oil or gas well or pad drilling.

C. Setbacks/Location.

1. Setback distances shall follow requirements listed in the Pennsylvania Oil and Gas Act (PA Act 223), 25 Pa. Code Sec. 78.1 et seq., 25 Pa. Code Sec. 79.1 et seq., and general setback requirements of the zoning district in which the oil or gas development is located.

2. Drilling rigs and equipment shall be located a minimum setback distance of one (1) foot for every foot of height of equipment from any property line, public or private street, or building not related to the drilling operations on either the same lot or an adjacent lot.

3. Natural gas compressor stations and natural gas processing plants shall comply with all general setback and buffer requirements of the zoning district in which the natural gas compressor station or natural gas processing plant is located.

4. Recognizing that the specific location of equipment and facilities is an integral part of the oil and gas development, and as part of the planning process, operator shall strive to consider the location of its temporary and permanent operations, where prudent and possible, so as to minimize interference with (municipality) residents' enjoyment of their property and future (municipality) development activities as authorized by the (municipality) applicable ordinances.

5. Exemption from the standards established in this subsection may be granted by the (municipality) upon a showing by the operator that it is not feasible to meet the setback requirements from surface tract property lines and that adequate safeguards have or will be provided to justify the exemption.

D. Screening and Fencing.

1. Security fencing shall not be required at oil or gas well sites during the initial drilling, or redrilling operations, as long as manned 24-hour on-site supervision and security are provided.

2. Upon completion of drilling or redrilling in Residential or Commercial Zones, security fencing consisting of a permanent chain link fence shall be promptly installed at the oil or gas well site to secure well heads, storage tanks, separation facilities, water or liquid impoundment areas, and other mechanical and production equipment and structures on the oil or gas well site.

In all other Zones, water and liquid impoundments must be fenced. The (municipality) may use its discretion to determine whether fencing requirements shall be enforced for well heads, storage tanks, separation facilities, and other mechanical and production equipment and structures on the oil or gas well site in those Zones.

3. Security fencing shall be at least 6 feet in height equipped with lockable gates at every access point and having openings no less than 12 feet wide. Additional lockable gates used to access oil and gas well sites by foot may be allowed, as necessary.

4. First Responders shall be given means to access oil or gas well sites in case of an emergency. Applicant must provide the County 911 Communications Center necessary information to access the well pad in the event of an emergency.

5. Warning signs shall be placed on the fencing surrounding the oil or gas well site providing notice of the potential dangers and the contact information in case of an emergency. During drilling and hydraulic fracturing, clearly visible warning signage must be posted on the pad site.

6. In construction of oil or gas well sites, the natural surroundings should be considered and attempts made to preserve existing trees and other native vegetation. Existing trees and respective root systems should not be disturbed whenever possible. A re-forestation/re-vegetation plan for the site should be considered by the operator.

E. Lighting.

1. Lighting at the oil or gas well site, or other facilities associated with oil and gas development, either temporary or permanent, shall be directed

downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and adjacent properties.

2. Lighting at a natural gas compressor station or a natural gas processing plant shall, when practicable, be limited to security lighting.

F. Noise.

The (municipality) recognizes that oil and gas development is accompanied by inherent noise. However, the operator shall take the following steps to minimize, to the extent possible, noise resulting from the oil or gas well development:

1. Prior to drilling of an oil or gas well, the operator shall establish a continuous 72-hour ambient noise level at the nearest property line of a residence or public building, school, medical, emergency or other public residence or public facility, or 100 feet from the nearest residence or public building, school, medical, emergency or other public residence or public facility, whichever point is closer to the affected facility. In lieu of establishing the above 72-hour ambient noise level, the operator may assume and use, for the purposes of compliance with this ordinance, a default ambient noise level of 55 dBA. The sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

2. The operator shall provide documentation of any established, 72-hour evaluation, relied upon to establish an ambient noise level greater than 55 dBA, to the (municipality) zoning officer within three business days of such a request.

3. The noise generated during drilling and hydraulic fracturing activities

shall not exceed the average ambient noise level (as determined by the 72-hour evaluation as identified in subsection 1) or default level, whichever is higher:

a. During drilling activities, by more than 10 decibels during the hours of 7:00 a.m. to 9:00 p.m.

b. During drilling activities, by more than 7 decibels during the hours of 9:00 p.m. and 7:00 a.m. or by more than 10 decibels during hydraulic fracturing operations.

The operator shall inform the (municipality) of which level (average ambient noise level or default level) is being used.

4. All permanent facilities associated with oil and gas well sites, including, but not limited to, natural gas compressor stations and natural gas processing plants, shall meet the general noise requirements as listed in Section _____ of the (municipality) Zoning Ordinance.

Effective sound mitigation devices shall be installed to permanent facilities to address sound levels that would otherwise exceed the noise level standards.

Natural gas compressor stations and natural gas processing plants or facilities performing the equivalent functions shall be constructed so as to mitigate sound levels, or have installed mitigation devices to mitigate sound levels so as to prevent such activity from being a nuisance to nearby residential or public buildings, medical, emergency or other public facilities.

5. If a complaint is received by the (municipality) regarding noise generated during construction, drilling, or hydraulic fracturing activities, or for natural gas compressor stations, natural gas processing plants or midstream facilities, the

operator shall, within twenty-four (24) hours following receipt of notification, begin continuous monitoring for a period of forty-eight (48) hours at the nearest property line to the complainant's residential or public building or one-hundred feet from the complainant's residential or public building, school, medical, emergency or other public facilities, whichever is closer. The applicant shall report the findings to the (municipality) and shall mitigate the problem to the allowable level if the noise level exceeds the allowable rate.

6. Exemption from the standards established in this subsection may be granted by the (municipality) during the drilling stage or at the oil or gas well site, natural gas compressor station, or at the natural gas processing plant for good cause shown and upon written agreement between the applicant and the (municipality).

G. Prohibitions.

1. A zoning/development permit shall not be issued for any well to be drilled within any floodway identified in the Flood Insurance Study (FIS) prepared and approved by the Federal Emergency Management Agency (FEMA).

a. Drilling and placing associated structures and equipment are not permitted in the floodway of the regulated floodplain.

b. Earth moving activities that do not materially change the contour of the land are permitted for the purpose of pipeline installation.

c. Drilling, associated structures, equipment, development and disturbance in the remainder of the regulated floodplain is strongly discouraged. Upon reasonable justification submitted by the applicant to access the gas or oil is from a site area located in the flood fringe segment of the Regulated (or 100-year) Flood Plain, a Zoning/Development Permit may be issued by the Zoning Administrator, provided:

i. There is compliance with (Section...Flood Plain Regulations)

of this Ordinance.

- ii. Following the submission of a flood evacuation plan.
- d. A closed loop system for drill cutting is preferred in the area of the 100-year flood plain not included in the Floodway.

Section 10. SEVERABILITY:

If any section, subsection, sentence, clause or phrase or portion of this document is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion thereof.

Section 11. PENALTIES:

Any owner, operator, or other person who violates or permits a violation of this chapter shall, upon being found liable therefore in a civil enforcement proceeding before a Magisterial District Judge, pay to the (municipality) a fine of not more than \$500, plus all court costs, including but not limited to reasonable attorney's fees incurred by the (municipality) on account of such violation. No penalty or cost shall be imposed until the date the determination of the violation by the Magisterial District Judge becomes final. If the defendant neither pays nor timely appeals the judgment, the (municipality) may enforce the judgment as provided by law. Each day a violation exists after final judgment shall constitute a separate offense. The amount of the fine imposed shall be multiplied by the number of such days and may be charged and collected by the (municipality) without further judicial proceedings. Further, the appropriate officers or agents of the (municipality) are hereby authorized, to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith. No bond will be required if injunctive relief is sought by the (municipality). A person who violates this Ordinance shall also be responsible for the (municipality's) attorney's fees, engineering fees, expert fees and court costs

reasonably incurred by the (municipality) on account of such violation.

Section 12. EFFECTIVE DATE:

This ordinance shall take effect _____.

Note:

The use of “Permit” throughout the ordinance refers to a “Zoning Permit”. Terminology and definitions in any zoning ordinance amendment should be consistent with the municipality’s existing zoning ordinance. Edits may be necessary in either the existing zoning ordinance or the amendment to ensure consistency.

DRAFT