

**TOWNSHIP OF UPPER BURRELL
WESTMORELAND COUNTY, PENNSYLVANIA**

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF UPPER BURRELL AMENDING THE ZONING ORDINANCE NO. 1 OF 2009, AS AMENDED, TO PERMIT OIL AND GAS DEVELOPMENT AND WELL DRILLING USE IN CERTAIN AREAS OF THE TOWNSHIP SUBJECT TO CERTAIN RESTRICTIONS AND DEFINING AND PERMITTING NATURAL GAS PROCESSING PLANTS, NATURAL GAS COMPRESSOR STATIONS AND REFINERY USES, SUBJECT TO CERTAIN LIMITATIONS

WHEREAS, The Board of Supervisors of The Township of Upper Burrell finds that the proposed amendments will promote the public health, safety and welfare and practical community development in Upper Burrell and will provide for gas and oil drilling to take place in areas of the Township in locations which will allow for extensive extraction of gas and oil with the least detrimental impact on residentially zoned property, historic or recreational resources and schools.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED and it is hereby ordained and enacted by the Board of Supervisors of the Township of Upper Burrell, Westmoreland County, Pennsylvania as follows:

SECTION 1 PURPOSE

The regulation of well-sites herein will permit reasonable access to a significant portion of the gas resources in the Township, while protecting certain other uses and by regulating gas and oil well use in a manner consistent with traditional zoning regulations without primarily regulating the technical aspects of oil and gas well functioning.

Article I, Section 27 of the PA. Constitution provides that the people have a right to clean air, pure water and the preservation of the natural values of the environment. This Constitutional provision indicates that protection of the environment through land use regulation is a proper governmental purpose. However, this protection is not absolute, but must be balanced against the interest of landowners in using and developing their property.

The Pa. Municipalities Planning Code permits zoning ordinances to promote, protect and facilitate the public health, safety, morals, and the general welfare as well as water, sewage, a safe, reliable, and adequate water supply, aquifers, light and air. 53 P.S. 10603, 10604.

A municipality also has the ability to regulate land under its police powers. 53 P.S. 65729.

SECTION 2 AMENDMENTS

The Board of Supervisors of the Township of Upper Burrell ordains that the Zoning Ordinance of the Township of Upper Burrell, Westmoreland County, is hereby amended, as follows:

Section 201, Definitions, is amended to provide as follows for the following defined terms:

OIL AND GAS WELLS: The drilling and operation of oil or gas wells. The Oil and Gas Well use shall not be included with in the use described in this Ordinance as “Extraction of minerals and soil.” The Oil and Gas Well use shall be deemed to be located at the well-site. For the purposes of this Ordinance, a “well-site” shall consist of the graded pad and appurtenant area occupied by the facilities, structures and equipment necessary for or incidental to the drilling, production or operation of an Oil or Gas Well at the site, including well site preparation, well-site construction, drilling, hydraulic fracturing, site restoration, water and other fluid storage, impoundment and transportation located at the site and used for such activities and installation of associated equipment, the site preparation, construction and installation, maintenance and repair of oil and gas pipelines and associated equipment and other equipment and activities at the site associated with drilling for, production and transportation of oil and gas, but excluding any structure, facility or use constituting a Natural Gas Compressor Station or a Natural Gas Processing Plant or any other facility used primarily to refine or process gas or oil. The underground activities and processes used and the migration of gas or oil from a subsurface area to a gas or oil well-site at the surface shall not in and of themselves constitute mineral removal and are allowed to occur in RA and I zoning districts as a special exception.

CONVENTIONAL GAS AND OIL WELL: Those gas and oil wells drilled to depths shallower than the base of the Elk Sandstone or its stratigraphic equivalent and any drilling of a single gas and oil well for no more than seven consecutive days total in any calendar year.

NATURAL GAS COMPRESSOR STATION: A facility designed and constructed to compress natural gas that originates from an Oil or Gas Well or collection of such wells operating as a midstream facility for delivery of oil and gas to a transmission pipeline, distribution pipeline, Natural Gas Processing Plant, or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.

NATURAL GAS PROCESSING PLANT: A facility used to remove materials such as ethane, 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 used primarily to remove water, water vapor, oil or naturally occurring liquids from natural gas.

REFINERY: A building and equipment for refining or processing oil or gas or similar products.

OPERATOR: Any person, 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 and also any "well operator" or "operator" as defined in the Oil & Gas Act.

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 a well of any depth into, through, and below the surface of the earth.

WELL SITE: A graded pad designed and constructed for the drilling of one or more Oil and Gas wells.

PROTECTED STRUCTURE: Any occupied residence, commercial business, school, religious institution or other public building located within 1,000 feet of the surface location of a well that may be impacted by noise generated from drilling or hydraulic fracturing activity at a Well Site. The term shall not include any structure owned by an oil and gas lessor who has signed a lease with the Operator granting surface rights to drill the subject well or whose owner (or occupants) has (have) signed a waiver relieving the Operator from implementation of the measures established in paragraph 16 of this Ordinance for the owner's (occupants') benefit.

OIL AND GAS DEVELOPMENT: The well site preparation, well site construction, drilling, hydraulic fracturing, and/or site restoration associated with an Oil and Gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; 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 of that Natural Gas Compressor Stations and Natural Gas Processing Plants or facilities performing the equivalent functions that operate as midstream facilities. Natural Gas Compressor Stations and Natural Gas Processing Plants or facilities performing the equivalent functions that operate as midstream are not authorized.

ARTICLE XVI

SECTION 1613.11 OIL AND GAS DEVELOPMENT

- A.** The Applicant shall show the proposed routes of all trucks to be utilized for hauling to and from the Gas and Oil well-site and the estimated weights of those trucks. The Applicant shall show evidence of compliance with designated weight limits on Township streets, unless bond and an excess maintenance agreement to assure road damage repair is provided, and shall design the hauling routes to minimize the use of an impact upon Township streets wherever feasible.

The Applicant shall also show evidence satisfactory to the Township Engineer that intersections along proposed hauling routes provide a sufficient turning radius for trucks to be utilized for hauling, such that all turns can be safely made without damage to vehicles, sidewalks, curbs or surrounding property.

- B.** The Applicant or Operator shall post a bond or other financial security in favor of the Township and in a form acceptable to the Township prior to beginning operations to guarantee restoration of Township streets which may be determined in the reasonable opinion of the Township Engineer to be damaged as a result of traffic generated by Gas and Oil Well generated traffic. In addition, if the Township Engineer concludes that Gas and Oil Well generated traffic will cause substantial damage to a Township road, then the Applicant must, before operations begin, enter into an agreement with the Township undertaking the responsibility to repair the road to the extent determined in the reasonable discretion of the Township Engineer, which agreement may provide for bond to be posted in excess of otherwise applicable Penn DOT limits when the Township Engineer has reasonably estimated that the cost of repair will exceed the Penn DOT limits. Roads will be kept and restored to the same, similar or better condition, during and after the drilling.

In addition, should the Township Engineer reasonably determine that preventive measures, such as shoring of bridges or putting protective mats over utility lines, should be taken to prevent damage to Township roads, bridges or utilities, then the Applicant shall install such protective measures as directed by the Township Engineer, prior to beginning operations.

The proposed routes must be designed to minimize the impact on streets within the Township. The Township reserves the right to designate alternate routes in the event the applicant's proposed routes are deemed inadequate, unsafe or overly disruptive to normal vehicular traffic by the Municipal Engineer. Vehicles are to operate on state routes and may only use municipal roads when the use of state routes is not feasible.

Notwithstanding any other provision in this Ordinance, provide sufficient parking to allow all vehicles associated with the Gas and Oil Well operation to be parked off-street. Parking areas within 200 feet of an occupied building not associated with the gas and oil well operation shall provide a slag or stone or other surface designed to minimize dust or, alternatively, dust reduction measures such as water sprinkling whenever necessary. Temporary housing is not permitted on site.

Operator shall take all necessary steps to ensure that public roads remain free of dust, dirt, mud or debris resulting from Gas and Oil Well traffic or activities, including road sweeping and tire washing if needed. Roads will be kept in the same, similar or better condition during operations as before operations started. Where traffic generated by

the Gas and Oil Well is heavy in the proximity of school bus stops, the Operator will provide flagmen to ensure the safety of children waiting for or leaving school buses.

Beginning with its intersection with a public street any access road or driveway for the development or drill site shall be paved with an impervious material for the first (50') fifty feet and consist of the following material:

- Compacted subgrade
- PADOT Class 4 Geotextile Fabric
- 8" AASHTO #2 Crushed Aggregate Base Course
- 2" PADOT 2A Aggregate (Choke material)
- 4" Compacted – Superpave 25mm Binder Course

The remainder of the driveway to the well pad shall be constructed with the following material:

- Compacted Subgrade
- 8" AASHTO #2 Crushed Aggregate Base Course
- 2" PADOT 2A Aggregate (Choke material)

- C.** Prior to the commencement of Oil or Gas Well drilling activities, the actual commencement of drilling activity, no construction activities involving excavation of, alteration to or repair work on any access road to the site of the mineral removal or upon an Oil or Gas Well site, or other site of mineral removal, shall be performed during the hours of 9:00 p.m. to 6:00 a.m.
- D.** The Township recognizes and acknowledges that oil and gas Development is accompanied by inherent noise. The regulations in this section are intended and shall be interpreted and applied to establish a process for reasonable noise control that provides for response to individual complaints, and requires that undue noise be addressed, where feasible, without the Township dictating the particular operational steps that must be taken.

The Operator shall take the following steps to minimize, to the extent practicable, the noise resulting from the Development:

- 1.** Prior to drilling of an Oil and Gas Well, the Operator shall establish a continuous 72 hour ambient noise level at the nearest Protected Structure property line or 100 feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure or, alternatively, and 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 Institutes 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 Township's zoning officer within three business days of such a request from the Zoning Officer.
3. The noise generated during drilling and hydraulic fracturing activities when measured at the nearest Protected Structure property line or 100 feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure, shall not exceed the average ambient noise level (as determined by the 72 hour evaluation) or default level, whichever is higher:
 - a. During drilling activities, by more than 7 decibels during the hours of 7:00 a.m. to 9:00 p.m.
 - b. During drilling activities, by more than 5 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 Township of which level (average ambient noise level or default level) is being used.

- c. Adjustments to the foregoing noise limits may be permitted in accordance with the following:

Permitted Increase (dBA)	Duration of Increase (minutes)*
5	15
10	5
15	1
20	1
*Cumulative minutes during any one hour.	

- d. If a complaint is received by the Township from any person, whether a resident or otherwise using the Protected Structure for any lawful purpose, within 1,000 feet from the wellhead or equipment generating noise during drilling or hydraulic fracturing activities, the Operator shall, within 24 hours of receipt of the complaint from the Township continuously monitor for a 48 hour period at a point which is the closer the complainant's building of:

- (1) the complainant's Protected Structure property line nearest to the well-site or equipment generating the noise; or
 - (2) one hundred (100) feet from the Protected Structure.
- e. If the Operator engages in any noise testing as required by the Ordinance, it will provide preliminary data to the Township no later than 10 business days following the completion of the noise testing. Once the monitoring is complete, Operator will meet with Township representatives and affected property owners to discuss whether possible noise abatement measures are warranted, if the permitted levels set forth herein were exceeded. If permitted levels are exceeded, the Operator shall utilize the services of a person or firm with expertise in noise measurement, noise remediation and in gas and oil well extraction, drilling and operation, to study, with the involvement and input of the Township Engineer, any feasible remedial measures, including but not limited to construction of sound walls and placement of acoustic blanketing for sound insulation. The results of the study shall be provided in a written report to the Township as to whether any such remedial measures are effective and feasible based on all the relevant circumstances, including the noise level, the extent that the permitted noise level is exceeded, the number of Protected Structures adversely affected and their location, the nature and type of drilling equipment being utilized, the cost, and whether the use of any such remedial measures would create a safety hazard or be contrary to state or federal regulation, and whether such remedial measures would be economically feasible, given standards in the industry, the value of extractable gas and oil and other factors identified by the expert.

If the written report concludes that any effective and feasible remedial measures are available, then such measure or measures shall be implemented as recommended by the report, to bring noise within permitted levels.

- f. Exhaust from any internal combustion engine or compressor used in connection with the drilling of any well or for use on any production equipment or used in Development shall not be discharged into the open air unless it is equipped with (i) an exhaust muffler or (ii) an exhaust box. The exhaust muffler or exhaust box shall be constructed of non-combustible materials designed and installed to suppress noise and disruptive vibrations. Moreover, all such equipment with an exhaust muffler or exhaust box shall be maintained in good operating condition according to manufacturer's specifications.
- g. All work-over operations shall be restricted to the hours of 6:00 a.m. to 10:00 p.m., except in the extent of an emergency, as reasonably determined by the Operator. "Work-over operations" shall mean work performed in a well after its

1. Install chain link fencing at least six feet high around drilling, fracturing and hydraulic equipment and install permanent fall protection fencing meeting OSHA requirements around any pit for impoundment of liquid at a depth greater than two feet. A sample standard follows for guidance:
 - a. Support posts shall be set in concrete and imbedded into the ground to a depth sufficient to maintain the stability of the fence. Temporary fence posts shall not be required to be set in concrete;
 - b. The chain link fence shall have a minimum thickness of eleven (11) gauges;
 - c. Tension rods shall be three-eighths- inch (3/8") round steel bolt stock. Adjustable tighteners shall be turnbuckle or equivalent having six-inch (6") minimum take-up. Tension bars shall have minimum thickness of one-fourth (1/4") by three-fourths inch (3/4");
 - d. All chain link fences shall be equipped with at least one (1) gate. The gate shall meet the following specifications:
 - (1). Each gate opening shall not be less than twelve (12) feet wide and be composed of two (2) gates, each of which is not less than six (6) feet wide, or one (1) sliding gate not less than twelve (12) feet wide. If two (2) gates are used, gates shall latch and lock in the center of the span.
 - (2). The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked except when no one is working on the site.
 2. Install warning signs providing notice of potential dangers at the well site.
 3. Provide at least one on-site security guard 24/7 when a drilling rig or hydraulic fracturing equipment is on the well site.
- G.** Each application for a Special Exception under this section shall have attached thereto a Site Plan. The Proposed Site Development Plan shall be a topographic plan, prepared by a professional engineer registered in the Commonwealth of Pennsylvania, to a scale no greater than 1 inch = 200 feet, on a standard sheet size of 24"H x 36"W, to include the following:
1. Title block giving name of development, property owner, developer, north point, key location map, registration stamp, date and scale on a standard sheet size of 24"H x 36"W, with index;
 2. Property lines, zoning ordinance district boundary lines and total acreage of parcel proposed for development;
 3. All existing streets, right of ways, and easements related to the development;

4. Owners of adjacent properties, including the location of any existing structures and driveway locations;
5. The location of relevant natural features on site, including, but not limited to, streams or other natural water courses and adjacent areas which are subject to flooding, and significant stands of existing trees;
6. The location of relevant natural features abutting properties within 300 feet, including, but not limited to, streams or other natural water courses and adjacent areas which are subject to flooding, and significant stands of existing trees;
7. The location of structures on abutting property within 300 feet of common property lines and the location of any Protected Structures.
8. The location of all gas and oil well structures, facilities, equipment or buildings.
9. The location of existing structures, buildings and accessory uses on site;
10. The location of vehicle and equipment cleaning and tire cleaning areas and a description of the proposed program for removing mud and other well site generated debris from public streets.
11. The location of proposed access roads and proposed haul roads;
12. The location of storm-water and sediment controls or any water impoundment facilities.
13. Provide a copy of the Environmental Impact Statement, submitted to DEP, which shall include the following:
 - A description of existing conditions in the area and the land use history of the property;
 - A description of the proposed Gas and Oil Well operations, and associated facilities;
 - An assessment of the proposed Gas and Oil Well operations on abutting, surrounding uses.
 - A historical record of previous Gas and Oil Well operations at the site; and
 - A description of existing conditions, including Gas and Oil Well facilities, structures, buildings or equipment.
14. A copy of any permit or permit application issued by or submitted to the Pennsylvania Department of Environmental Protection., and any applicable Pa. DOT or municipal highway occupancy and driveway permit.

- 15.** The location, depth and profile of any proposed pipelines for water, gas, oil or other substance.
 - 16.** A lighting plan, down type, demonstrating maximum feasible reduction of glare onto adjacent properties.
 - 17.** The applicant shall provide the GIS location and 911 address of the Well Site. The applicant must make application to the Township for a street address and mark the site with a reflective address sign, according to Pa. DOT standards, as amended.
 - 18.** Such other information pertinent to the proposed Gas and Oil Well as may be requested by the Township officials.
- e.** During construction, the Operator shall remove and dispose of all un-rooted trees, stumps, brush, rubbish, construction materials and debris promptly in the interest of public safety.
 - f.** No employees, subcontractors or other persons shall be housed on the well site, Compressor Station Site or Processing Plant site.
 - g.** All Condensate Tanks located on drilling sites, Compressor Stations and/or Processing Plants shall be equipped with vapor recovery and/or vapor destruction units.
 - h.** Except in an emergency, no bullhorns should be used on site as a means of communication on the drill site.
 - i.** Operators shall be responsible to pay reasonable attorney fees and engineering fees done by the Township in connection with the application & hearing process.
 - j.** Operator shall strive to consider location of its temporary and permanent operations, where prudent and possible, so as to minimize interference with Township residents' enjoyment of their property and future Township development activities.
 - k.** Prior to drilling an Oil and Gas well or multiple Oil and Gas wells at a location, but no later than two (2) weeks beforehand, the Operator shall provide the following information to each resident within 1,000 feet of the planned location of the well(s):
 - 1.** A copy of the well survey plat showing the location(s) of the planned well(s).
 - 2.** A general description of the planned operations at the planned well(s) and associated equipment used in the Development of the well(s).
 - 3.** The contact information for the Operator.

- 4. The availability of the Operator to hold a meeting with such residents to present Operator’s plans for the well(s) and to allow for questions and answers. The meeting(s) shall be held prior to Well Site construction.
 - l. Drilling companies should test all water within 1000 feet of each well site and share test results with landowners and Township.
 - m. Operators should provide adequate safety training for drillers.
 - n. Operator shall comply with all FAA requirements for equipment, where applicable and inform medical helicopters of any equipment, where applicable.
- 4. The Table of Authorized Uses – Residential and Industrial Districts is amended as follows:
 - a. By adding the following Special Exception in the RA District Oil and Gas Well, subject to the standards set forth in 1613; and
 - b. By adding the following Permitted Use in the Industrial district (Article 11, 1101C.):
 - Natural Gas Processing Plants
 - Natural Gas Compressor Stations
 - Refineries, for oil, gas, or similar products.
- 5. Article 11, Industrial Districts, is amended as follows:
 - a. By adding the following Permitted Use
 - Natural Gas Processing Plants
 - Natural Gas Compressor Stations
 - Refineries, for oil, gas, or similar products (See 1613)
- 6. Article 11, 1101, B.1. d, is amended by adding to Mineral Removal the following
Mineral Removal, not to include Gas and Oil Wells (See Section 1613.)

SECTION 3 INTERPRETATION AND SEVERABILITY

This Ordinance is interpreted to be applied so that it meets all federal and state constitutional and statutory requirements. This Ordinance is to be interpreted and applied to impose zoning regulations indentifying where gas and oil well uses are permitted in the Township and not to regulate technical aspects of gas and oil well operation, including technical aspects of oil and gas well functioning and matters ancillary thereto governed by the Oil & Gas Act and

regulations adopted pursuant thereto. The provisions of this Ordinance are severable. If any provision or part thereof is held to be illegal or invalid, the remaining provisions shall remain in full force and effect. If any provision hereof is held to be pre-empted by the Oil & Gas Act, then such provision and all remaining provisions shall be applicable to the extent it is consistent with and not pre-empted by the Oil & Gas Act.

SECTION 4 TECHNICAL STANDARDS

Technical standards contained within this Ordinance may be amended from time to time by Resolution of the Board of Supervisors.

SECTION 5 APPLICATION FOR SPECIAL EXCEPTION

All special exception applications for Oil and Gas Wells shall be submitted first to the Planning Commission for recommendations to the Zoning Hearing Board.

SECTION 6 REPEAL

Any ordinance or part of any ordinance conflicting with this Ordinance is repealed to the extent of such conflict.

SECTION 7 EFFECTIVE DATE

This Ordinance shall be effective immediately as a pending ordinance.

ORDAINED AND ENACTED by the Board of Supervisors of the Township of Upper Burrell

at a duly assembled public meeting this ____Day of _____, 2010.

ATTEST:

TOWNSHIP OF UPPER BURRELL

Amy Rockwell, Secretary

By: _____
Ross G. Walker, Chairman

This Ordinance recorded in the Township Ordinance book on _____, 2010, by the undersigned.

Secretary