

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

ORDINANCE NO. 5 OF 2011

AN ORDINANCE OF UPPER BURRELL TOWNSHIP, FOR THE PURPOSE OF AMENDING ORDINANCE NO. 1 OF 2009, AS AMENDED, FOR THE PURPOSE OF REGULATING CERTAIN GAS RESOURCES DEVELOPMENT AND PROVIDING FOR SEVERABILITY AND REPEAL OF PRIOR INCONSISTENT ORDINANCES.

WHEREAS, 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.

WHEREAS, the Board of Supervisors of the Township of Upper Burrell finds that the proposed amendments will promote the public health, safety, 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 the Township's environment, infrastructure, and related public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Upper Burrell, Westmoreland County, Pennsylvania that Ordinance No. 1 of 2009, Zoning Ordinance of the Township of Upper Burrell is amended as follows:

SECTION 1. Basic Provisions

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.

Upper Burrell Township recognizes that the regulation of oil and gas operations is the primary responsibility of the regulatory agencies of the Commonwealth of Pennsylvania, but that the Township maintains its Zoning power as set forth in 53 P.S. 10101 et. seq., as amended, the Pennsylvania Municipalities Planning Code and through the Upper Burrell Township Zoning Ordinance.

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.

SECTION 2. Definitions

Article II, Section 201, Particular Meanings, is hereby amended by adding the following definitions:

BUNK HOUSE: A housing facility designed and intended to be used for a temporary period of time to house oil and gas exploration workers. Such facility is not intended to accommodate families or school

aged children. A Bunk House may be of travel trailer, camper, mobile home or a structure manufactured for this particular use.

CONVENTIONAL GAS AND OIL WELLS: Those gas and oil wells drilled to depths shallower than the base of the Elk Sandstone or its stratigraphic equivalent, and such oil and gas wells that are planned to involve drilling of a single well on a well site 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. This includes a dew point control facility.

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.

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; 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 other than Natural Gas Compressor Stations and Natural Gas Processing Plants or facilities performing the equivalent functions that operate as midstream facilities.

OIL AND GAS WELLS: The drilling and operation of oil or gas wells. 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 Residential Agricultural (RA), Public (P) and Industrial (I) Zoning Districts as a conditional use.

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 Pennsylvania Oil and Gas Act.

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 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 measure established in this Ordinance for the owner's (occupants') benefit.

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

TOWNSHIP: Upper Burrell Township, Westmoreland County, Pennsylvania.

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

SECTION 3.

Article XVI, Section 1613, Oil and Gas Well Operations and the Table of Authorized Uses are hereby amended by adding the following conditional use and associated requirements:

Oil and Gas Wells are permitted as a Conditional use in the Residential Agricultural (RA) and Public (P) Districts.

Oil and Gas Wells, Oil and Gas Development, Natural Gas Compressor Stations, Natural Gas Processing Plants and related equipment are permitted as a Conditional use in the Industrial (I) District.

SECTION 4.

Article XVI, Section 1613, Oil and Gas Well Operations is hereby amended by adding the following requirements.

1613.11

Roads

Prior to any construction, the Applicant shall provide a map of the proposed routes of all trucks to be utilized for hauling to and from the gas and Oil Well Site, and shall minimize impact upon Township roads whenever feasible. 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 Township Engineer. The Applicant shall also show satisfactory evidence to the Township Engineer that intersections along proposed hauling routes provide a sufficient turning radius for trucks, such that all turns can be safely made without damage to vehicles, sidewalks, curbs or surrounding property.

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 and enter into Road Maintenance Agreement, prior to beginning operations, regarding maintenance and repair of Township roads that are to be used by vehicles for development activities. The applicant shall conduct an inventory, analysis and evaluation of existing road conditions on Township roads along the proposed transportation route identified by the applicant, including photography and video. The Township Road Maintenance Agreement will identify the

responsibilities of the applicant to prepare, maintain, and repair Township roads before, during and immediately after drilling operations associated with the gas resources development. The applicant shall take all necessary corrective action and measures as directed by the Township pursuant to the agreement to ensure the roadways are repaired and maintained during and immediately after drilling operations associated with the gas resources development.

In addition, should the Township Engineer reasonably determine that preventative 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 measure as directed by the Township Engineer, prior to beginning operations.

Upper Burrell Township declares that Oil and Gas Development is a conditional use in the Residential Agricultural (RA), Public (P) and Industrial (I) Zoning Districts in the Township subject to the following conditions:

- a. Where gas and oil resource development constitutes a land development pursuant to Township ordinance, all provisions of the applicable Township ordinances shall apply, except as preempted by state or federal law. The drilling pad, Natural Gas Compressor Stations or Natural Gas Processing Plants shall comply with all setback and buffer requirements of the zoning district in which they are located. Equipment and drilling rigs shall be setback (a fall zone) from Protected Structures, property lines, streets or buildings a distance of one and one-half (1.5) foot for every foot of height of equipment.
- b. The Applicant shall take the necessary safeguards to ensure that the Township roads utilized remain free of dirt, mud and debris resulting from Development activities and/or shall ensure such roads are promptly swept or cleaned if dirt, mud and debris occur. Beginning with its intersection with a public street, any access road for the development shall be at least twenty (20) feet in width. The Applicant shall comply with Township Ordinances regarding connecting driveways, roads, or construction entrances to Township roads, and Township construction standards.

Operator shall take the necessary safeguards to ensure appropriate dust control measures are in place.

Accepted professional standards pertaining to minimum traffic sight distances for all access points shall be adhered to.

- c. An off-street area within the development site for vehicles to stand while gaining access to the gas well site shall be provided so that the normal flow of traffic on the public street is undisturbed.
- d. The applicant shall take all necessary precautions to ensure the safety of persons in area established for road crossing and/or adjacent to roadways. During periods of anticipated heavy or frequent truck traffic associated with the development, the applicant will

coordinate with the Township to develop a safety plan which may include flagmen to ensure the safety of motorists and pedestrians and take measures that include adequate signs and/or other warning measures for truck or vehicular traffic. Where traffic associated with the development is in proximity of school bus stops, the Operator will coordinate with the Township and School District on a safety plan to avoid truck traffic during peak school bus activity time periods, which may include providing flagmen to ensure the safety of children waiting or leaving school buses.

1613.12

NOISE

The Township recognizes and acknowledges that Oil and Gas Development is accompanied by inherent noise. However, the Operator shall take the following steps to minimize, to the extent practicable, the noise resulting from the Development.

- a. Prior to drilling of an Oil and Gas Well or the operation of a Natural Gas Compressor Station or a Natural Gas Processing Plant, the Operator shall establish a continuous seventy-two (72) hour ambient noise level at the nearest Protected Structure property line or one hundred (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 Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.
- b. The Operator shall provide documentation of any established, seventy-two (72) hour evaluation, relied upon to establish an ambient noise level greater than 55 dBA to the Township's Zoning Officer within three (3) business days of such a request from the Zoning Officer.
- c. The noise generated during drilling, hydraulic fracturing activities, Oil and Gas Operations or the Natural Gas Compressor Station or the Natural Gas Processing Plant when measured at the nearest Protected Structure property line or one hundred (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 seventy-two (72) hour evaluation) or default level, whichever is higher:
 - i. During drilling activities by more than seven (7) decibels during the hours of 6:00 a.m. to 10:00 p.m.;
 - ii. During drilling activities by more than five (5) decibels during the hours of 10:00 p.m. and 6:00 a.m.; or
 - iii. By more than ten (10) decibels during hydraulic fracturing operations. The Operator shall inform the Township which level (average ambient noise level or default level) is being used.

- d. 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 (1) hour

- e. If a complaint is received by the Township from any person, whether a resident or otherwise using the Protected Structure as defined herein for any lawful purpose; regarding noise generated during drilling or hydraulic fracturing activities, the Operator shall, within twenty-four (24) hours of receipt of the complaint from the Township, continuously monitor for a forty-eight (48) hour period at a point which is the closer to the complainant's building of:
- i. The complainant's Protected Structure property line nearest to the well site or equipment generating the noise, or
 - ii. One hundred (100) feet from the Protected Structure.
- f. If the Operator engages in any noise testing as required by this Ordinance, it will provide preliminary data to the Township no later than ten (10) business days following the completion of the noise testing. Once the monitoring is complete, Operator will meet with Township representatives and affected residents to discuss whether possible noise abatement measures are warranted, if the permitted levels set forth herein were exceeded. If noise levels violate the standards set forth in this ordinance sound mitigating techniques and/or devices may be required to meet acceptable levels.
- g. 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.
- h. 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 completion in an effort to secure production where there has been none, restore production that has ceased, or increase production.

1613.13

EMERGENCY SERVICES

- a. The Operator shall, prior to drilling, provide the Township adequate information to deal with any potential dangerous conditions that may result due to development activities. First responders shall have on site orientation and be provided adequate awareness information. Upon request from the Township, Operator will, prior to drilling of an Oil and Gas well, make available with at least 30 days notice, at its sole cost and expense, an appropriate site orientation for First Responders. Such site orientation shall be made available at least annually during the period when the Operator anticipates drilling activities in the Township. Operator shall provide appropriate maps, material safety data sheets and emergency plan and Preparedness, Prevention and Contingency Plan (PPC) documents to the Township Manager. The Operator shall provide 24/7 contact information, including a supervisor's name and a toll free number, to all Township emergency service providers, the Township Manager and on signage at the entrance to the well site. Warning signs must be posted providing notice of potential dangers at the well site.

1613.14

LIGHTING

- a. Recognizing that adequate and appropriate lighting is essential to the safety of those involved in the Development of Oil and Gas, the Operator shall take steps, to the extent practicable, to direct sight lighting downward and inward toward the drillsite, wellhead, or other area being developed so as to attempt to minimize glare on public roads and adjacent buildings within three hundred (300) feet of the drillsite, wellhead, or other area being developed.
- b. Recognizing that the specific location of equipment and facilities is an important an integral part of Oil and Gas development, as part of the planning process, Operator shall strive to consider location of its temporary and permanent operation, where prudent and possible, so as to minimize interference with Township residents' enjoyment of their property.

1613.15

PUBLIC NOTICE

- a. Prior to drilling an Oil and Gas Well, but not later than two (2) weeks prior to drilling, the Operator shall provide the following information to each resident within 1,000 feet of the planned surface location of the well:
 - i. A copy of the well survey plat showing the locations of the planned wells.
 - ii. A general description of the planned operations at the planned well and associated equipment used in the Development of the well.
 - iii. The contact information for the Operator, and

- iv. The availability of the Operator to hold a meeting with such residents to present Operator's plans for the well and to allow for questions and answers. The meeting shall be held prior to Well Site construction.

1613.16

APPLICATION

- a. Any applicant desiring approval of a conditional use application pursuant to this ordinance shall submit a written application. Before submitting an application the Applicant is strongly encouraged to meet with the Municipal staff to determine the requirements of and the procedural steps for the application. The intent of this process is for the Applicant to obtain necessary information and guidance from the staff before entering into any commitments or incurring substantial expenses with regard to the site and plan preparation.

The application shall not be considered complete and properly filed unless and until all items required by this ordinance, including application fee, have been received. Such application shall include the following information and plans:

- i. Application for Land Development other than a Subdivision according to section 409.2 of Ordinance No. 2 of 2007, Subdivision and Land Development, as applicable.
 - ii. Applicant shall comply with all Upper Burrell Township ordinances. An addendum listing the various Ordinances of the Township which may apply is attached; this addendum is for reference purposes and is not meant to be all inclusive.
 - iii. Provide written evidence that legal notice of the intent to drill has been given to the property owner(s) who have legal or equitable title in and to the surface of the proposed Development.
- b. 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 thirty (30) days of receipt of such permits and plan.
 - c. Access directly to State roads shall require Pennsylvania Department of Transportation (PennDOT) Highway Occupancy Permit Approval. Prior to initiating any work at a drill site, the Township shall be provided a copy of the Highway Occupancy Permit. Access directly to Township roads shall require a Township Driveway Permit prior to initiating any work at a Well Site.
 - d. Copies of any and all permits and applications submitted to the various local, county, state and federal agencies. Permits and plans shall include but not be limited to the Pennsylvania Department of Environmental Protection well application and permit, ESCGP-1 or other erosion and sedimentation permits and all air, water and waste management permits.
 - e. The applicant shall provide the GIS location and make application to the Township for a 911 address of the Well Site. The applicant must mark the site at the entrance where it intersects with a Township road using a reflective address sign, in accordance with Pennsylvania Department of Transportation standards, as amended.

- f. During construction, the Operator shall remove and dispose of all up-rooted trees, stumps, rubbish, construction materials and debris promptly in the interest of public safety. All refuse stored on site for final off-site disposal shall be located within a building, covered dumpster or other enclosure designed and constructed for the proper storage of such material.
- g. No employees, subcontractors or other persons shall be housed on the well site, Compressor Station site or Processing Plant site except supervisory personnel necessary for safety reasons. Any applicant must register all supervisory personnel occupying a bunk house with the Township Tax Collector in accordance with Ordinance No. 2 of 1991, requiring the owners of all occupied structures to register the occupants. The operator shall meet all State and local water and sewage standards.
- h. The Township recommends all Condensate tanks located on drilling sites, compressor stations and/or processing plants shall be equipped with vapor recovery and/or vapor destruction units or the best technology available.
- i. The applicant shall make reasonable efforts to avoid and/or mitigate any disruption or loss of radio, telephone, cellular phone, television or similar signals, and shall mitigate any harm caused by the oil and gas development in a timely manner.
- j. Drip pans or other containment devices are required on equipment that could potentially leak, discharge or spill hazardous liquids. The Operator is responsible for any spills involving waste materials, oil, gas, toxic or hazardous substances and shall notify the Township of any such spill.

1613.17
FENCING

- a. Install chain link fencing at least six feet high 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:
 - Support posts shall be set in concrete and imbedded into the ground to a depth of sufficient to maintain the stability of the fence. Temporary fence posts shall not be required to be set in concrete;
 - The chain link fence shall have a minimum thickness of eleven (11) gauges;
 - 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”);
 - All chain link fences shall be equipped with at least one (1) gate. The gate shall meet the following specifications:
 - i. 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.

ii. The gates shall be provided with a combination catch and locking attachment device for a padlock, and shall be kept locked when no one is working on the site.

- Security fencing shall not be required at oil or gas well sites during the initial drilling, or re-drilling operations, as long as manned 24-hour on-site supervision and security are provided.
 - Upon completion of drilling or re-drilling, including hydraulic fracturing and associated processes, 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.
 - The Township First Responders shall be given means to access Oil and Gas well sites in case of an emergency. Applicant must provide County 911 Communications Center necessary information to access the Well Pad in case of an emergency.
 - 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.
- b. Operator shall comply with all FAA requirements for equipment, where applicable and inform medical helicopters of any equipment, where applicable.

1613.18

Article IV, Section 401 (B) (RA) is hereby amended by adding the following conditional use to the list:

1. Principal Use
 - k. Oil and Gas Wells
 - l. Natural Gas Compressor Stations

Article XI, Section 1101 (B) (I) is hereby amended by adding the following conditional use to the list:

1. Principal Use
 - j. Oil and Gas Wells and Development
 - k. Natural Gas Processing Plants
 - l. Natural Gas Compressor Stations
 - m. Refineries, for oil, gas or similar products, subject to 1613

Article XII, Section 1201(B) (P) is hereby amended by adding the following conditional use to the list:

1. Principal Use
 - a. Oil and Gas Wells

1613.19 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 identifying 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 Pennsylvania Oil and 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 Pennsylvania Oil and 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 Act.

1613.20 Technical Standards

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

SECTION 5. Repeal

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

Ordained and enacted this 21st day of July, 2011, by the Board of Supervisors of the Township of Upper Burrell.

ATTEST:

TOWNSHIP OF UPPER BURRELL

Amy S. Rockwell
Township Manager

Ross G. Walker, III, Chairman
Board of Supervisors

Peter F. Dombroski, Jr.
Vice Chairman

Thomas C. Baker
Supervisor

Addendum

The Operator when making application to the Township of Upper Burrell is encouraged to familiarize themselves with the Ordinances of the Township. This is not intended to be all inclusive and is included for reference purposes. Ordinances which may in part or in whole have an impact on the application and subsequent Land Development may include the following:

Ordinance No. 1 of 2011, Floodplain Ordinance

Ordinance No. 1 of 2009, Zoning Ordinance

Ordinance No. 2 of 2007, Subdivision and Land Development

Ordinance No. 3 of 2007, Driveways, Roads, Streets or Drainage Facilities to Township Roads

Ordinance No. 4 of 2007, Grading, Excavating and Filling

Ordinance No. 2 of 2005, Uniform Construction Codes

Ordinance No. 2 of 1974, Registration of Tenants

Ordinance No. 1 of 1994, Road Cleaning Surrounding Construction Logging and Well Drilling Sites

Ordinance No. 4 of 1968, Parking Regulations

Ordinance No. 2 of 1980, Hauling In Excess of Posted Weight Limit