

ORDINANCE NO. 2-2010

AN ORDINANCE OF THE TOWNSHIP OF SOUTH FRANKLIN, WASHINGTON COUNTY, PENNSYLVANIA, AMENDING CHAPTER 185 OF THE SOUTH FRANKLIN TOWNSHIP CODE OF ORDINANCES, ZONING, TO AUTHORIZE OIL AND GAS WELLS AS PERMITTED WITH SPECIFIC CONDITIONS IN THE A-1, A-2 ZONED DISTRICTS AND AS A CONDITIONAL USE IN THE R-2 ZONED DISTRICTS, AND COMPRESSOR STATIONS AND NATURAL GAS PROCESSING PLANTS IN THE A-1 AND A-2 ZONED DISTRICTS AS A CONDITIONAL USE SUBJECT TO THE CONDITIONS AND REQUIREMENTS INDICATED AND SET FORTH HEREIN BY AMENDING SECTIONS 185-12, 185-17 and 185-28 AND 185-13 AND 185-18.

NOW, THEREFORE, be it ordained and enacted, and is hereby ordained and enacted by the Board of Supervisors of the Township of South Franklin, Washington County, Pennsylvania that:

**SECTION 1. PURPOSE**

It is hereby declared to be the purpose of this Ordinance to declare the development of oil and gas a permitted use with specific conditions in the A-1, A-2 zoned districts and as a conditional use R-2 zoned districts of South Franklin Township. The Township recognizes that the regulation of oil and gas exploration and extraction are the primary responsibilities of the regulatory agencies of the Commonwealth of Pennsylvania, but that the Township maintains certain zoning powers and the ability to enact certain legislation regarding the health safety and general welfare of the public, residents and citizens of the Township. It is in the Township's best interest to address the zoning districts where such activities will be permitted and to have information concerning oil and gas exploration, development and production taking place within the Township and to ensure certain security and safety measures related to oil and gas well drilling are in place.

It is also declared to be the purpose of this Ordinance to declare that compressor stations and natural gas processing plants impact property, environment and the residents of the Township in a different manner than oil and gas development and therefore these facilities shall be a conditional use in the A-1 and A-2 zone districts only.

It has also been determined by the Board of Supervisors that it is proper and appropriate to permit the Township to enforce the aforesaid penalties provisions and shall permit the Township to enforce the specific provisions of this Ordinance once the use is properly obtained with conditions without the requirement of utilizing the enforcement and enforcement remedies provisions of Chapter 185 and/or the Pennsylvania Municipalities Planning Code, it being the intent that once the use is properly and legally obtained, that the additional requirements of

the Ordinance pertains to the health, safety and general welfare of the public, residents and citizens of South Franklin Township and does not pertain to the obtaining of the use.

## **SECTION 2. DEFINITIONS**

The following definitions are hereby added in alphabetical order to Section 185-5:

**COMPRESSOR STATION** – A facility designed and constructed to compress natural gas and/or oil that originates from a gas and/or oil well or collection of such wells operating as a midstream facility for delivery of gas and/or oil to a transmission pipeline, distribution pipeline, processing plant or underground storage field, including one or more natural gas and/or oil compressors, associated buildings, pipes, valves, tanks and other equipment

**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 are/is designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from natural gas.

**OIL AND GAS DEVELOPMENT** – The well site preparation, well site construction, drilling, hydraulic fracturing and/or site restoration associated with an oil and/or gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; and the installment and use of all associated equipment, including tanks, meters and other equipment and structures whether permanent or temporary; and the site preparation, construction, installment, 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 compressor stations and natural gas processing plants or facilities performing the equivalent functions that operate as midstream facilities which are only authorized consistent with South Franklin Township Zoning Ordinance as a Conditional Use.

**PROTECTED STRUCTURE** – Any occupied residence, commercial, business, school, religious institution or other public building located within 1,000 feet of the surface location of an oil or gas well, including structures such as garages and barns or other accessory buildings and structures which 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 or 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 this Ordinance for the owner's (occupant's) benefit.

WELL SITE – A graded pad designed and constructed for the drilling of one or more oil and/or gas wells.

### **SECTION 3 – OIL AND GAS DEVELOPMENT**

The following Sections shall be added to Section 185-12 creating a new subparagraph J, for zoned District A-1 designating a permitted use, with the provisions hereinafter set forth and 185-17 for Zoned District A-2 creating a new subparagraph (o) with the provisions hereinafter set forth and 185-28 (creating new) subsections A. (7) for designation and B. (7) for the following provisions:

#### **Oil and Gas Development-**

Oil and Gas Development, as defined herein, is hereby declared to be a permitted use with specific conditions in the A-1, A-2 zoned districts and conditional use R-2 zone districts subject to the standards and criteria and all other applicable provisions of this the South Franklin Township Zoning Ordinance and the following additional provisions and requirements:

- A. No portion of any surface drilling device, equipment or facility of any kind, including surface storage shall be closer than 500 feet of an adjacent property line without the written permission of the property owners within these 500 feet.
- B. The Township reserves the right to set reasonable hours of development/site work and the use of trucking and heavy equipment.
- C. Operator shall comply with any applicable bonding and permitting requirements for township roads that are to be used by overweight vehicles and equipment for Development activities. Notwithstanding the foregoing, the operators/Applicant shall take all necessary corrective action and measure as directed by the Township to ensure the roadways are repaired within seven (7) days of partial destruction.
- D. Operator shall take all necessary safeguards as directed by the Township 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, as directed by the Township.
- E. Operator shall take all necessary precautions to ensure the safety of persons in areas/established for road crossing and/or adjacent to roadways (for example persons waiting for public or school transportation). As directed by the Township, during periods of anticipated heavy or frequent truck traffic associated with Development, Operator will provide flagmen to ensure the safety of children at or near schools or school bus stops and includes

adequate signs and/or other warning measures for truck traffic and vehicular traffic. Operator will attempt to minimize traffic operations during times of use of school buses.

- F. Prior to Development, Operator shall provide to the Township's First Responders, including Fire Department, Police Department and Ambulance, and to the Zoning Officer, a copy of its Preparedness, Prevention and Contingency ("PPC") Plan.
- G. Before drilling, the Township shall ascertain whether the Township's First Responders have secured adequate training to deal with any potential dangerous conditions that may result due to development activities. First Responders shall have a minimum of five hours of training per year to meet this standard. Upon request from the Township, Operator will, prior to drilling of its first Oil and Gas well in the Township, make available with at least 30 days notice, at its sole cost and expense, one appropriate group training program of up to five hours for First Responders. Such training shall be made available at least annually during the period when the Operator anticipates drilling activities in the Township. The Township shall indemnify, hold harmless and defend Operator, its employees and agents from any claims asserted against Operator related to any such training program except as to gross negligence by the Operator and its agents, servants, subcontractors or employees.
- H. Recognizing that the specific location of equipment and facilities is an important and integral part of Oil and Gas Development, as part of the planning process, Operator shall, at the direction of the Township, locate its temporary and permanent operations, so as to minimize interference with Township residents' enjoyment of their property and future Township development activities as authorized by the Township of zoning Ordinance.
- I. Recognizing that adequate and appropriate lighting is essential to the safety of those involved in the Development of Oil and Gas, the Operator shall, with the approval of Township, direct site lighting downward and inward toward the drill site, 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 drill site, wellhead, or other area being developed.
- J. Prior to drilling an Oil and Gas well of multiple Oil and Gas wells at a location, the Operator shall provide the following information to the township and each resident within 1,000 feet of the planned surface 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 wells (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.
- K. As part of the initial application, the Operator/Applicant shall provide to the Township the following:
1. A map showing the planned access route to the Well Sites on public roads.
  2. Information on the status of road bonding.
  3. The Operator's Erosion & Sedimentation Plan.
  4. The well survey plat showing the planned surface location (s) of the well (s), and
  5. The contact information for the Operator.
  6. A general description and schedule of the planned operations at the planned well (s) and associated equipment used in the Development of the wells (s),
- L. At least seven (7) days prior to commencement of drilling the Operator shall provide to the Township Zoning Officer a copy of the drilling permit issued by the Pennsylvania Department of Environmental Protection ("DEP").
- M. Prior to the commencement of drilling activities, no construction activities involving excavation of, alteration to, or repair work on any access road or Well Site shall be performed during the hours of 10:00 p.m. to 7:00 a.m.
- N. Noise, No operation or activity shall cause or create noise in excess of the sound levels prescribed below:
- (1) Residential districts: at no point beyond the boundary of any lot within these districts shall the exterior noise level resulting from any use or activity located on such lot exceed a

maximum of 70 dBA for more than four hours during a twenty-four-hour equivalent period.

- (2) **Commercial districts:** at no point on or beyond the boundary of any lot within these districts shall the exterior noise level resulting from any use or activity located on such lot exceed a maximum of 75 dBA for more than eight hours during a twenty-four-hour equivalent period.
  - (3) **Agricultural Districts:** At no point on or beyond the boundary of any lot shall the exterior noise level resulting from any use or activity located on such lot exceed a maximum of 75 dBA for more than eight hours during a twenty-four-hour equivalent period.
  - (4) Where two or more zoning districts in which different noise levels are prescribed share a common boundary, the most-restrictive noise level standards shall govern.
  - (5) The following uses or activities shall be exempted from the noise regulations:
    - (a) Noises emanating from construction or maintenance activities between 7:00 a.m. and 9:00 p.m.
    - (b) Noises caused by safety signals, warning devices and other emergency-related activities or uses.
  - (6) In addition to the above regulations, all uses and activities within the Township shall conform to all applicable County, State and Federal regulations contained herein and if they are at variance with any other lawfully adopted rules or requirements of the Township, the more restrictive shall govern.
  - (7) The Township reserves the right to require the temporary or permanent erection and use of sound barriers.
- O. If a signed complaint is received by the Township from any person, using a Protected Structure for any lawful purpose, within one thousand (1,000) feet from the wellhead or equipment regarding noise generated during drilling or hydraulic fracturing activities, the Operator shall, within 48 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:
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.
  3. In order for the Township to appropriately enforce the conditions imposed by this Ordinance, to make certain that the health, safety and welfare of its citizens are met and to determine if the use remains compatible with various zoning districts in the Township, if the Operator engages in any noise testing as required by this Ordinance, it will provide the final results to the Township within 10 business days of the Operator's receipt of those final results.
- P. Any internal combustion engine or compressor used in connection with the drilling of any well or for use on any production equipment used in Development shall be equipped with (1) an exhaust muffler or (2) 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.
- Q. The operator shall provide to the Township the sum of \$5,000.00 which represents a fund from which the Township may draw from/be reimbursed by for administrative inspection and engineering costs and fees for review and inspections to ensure compliance with this Ordinance. This amount may be adjusted from time to time by Resolution of the Board of Supervisors. Any costs over and above the aforesaid initial fund incurred by the Township shall be reimbursed to the Township along with a 10% administrative and overhead charge within thirty (30) days of invoicing by the Township.
- R. All activities conducted in association with, and as a part of, oil and gas wells shall be in accordance with the Commonwealth of Pennsylvania Oil and Gas Act as amended and any other applicable Federal, State, County and Township statutes.
- S. The applicant shall have obtained from appropriate State and other applicable regulatory agencies or authorities permits issued in accordance with all applicable laws and regulations for the proposed use. In the event such permits have not been issued at the time Township conditional use approval is requested, the applicant's zoning approval shall be expressly conditioned on the granting of necessary permits as required by the above agencies or authorities. At the time of asking application to such authorities, the applicant shall file with the Township Secretary a copy of each State and Federal application with supporting documentation for the proposed use.

- T. The application shall provide a description of plans for the transportation of materials and equipment to construct the facility and measures that will be taken to maintain all roads within the Township that are used to transport materials and equipment and to repair any damages to the roads that may occur as a result.
- U. Any material stored outside an enclosed structure being used as an incidental part of the primary operation shall be screened by opaque ornamental fencing, walls or evergreen plant material in order to minimize visibility if the storage area is readily visible from adjoining occupied residential properties. Such materials shall not be deemed to include operable vehicles.
- V. An emergency response plan shall be submitted and followed addressing methods to handle the following:
1. Well leakage.
  2. Spill containment.
  3. Vandalism creating unknown conditions.
  4. Defective casing or cementing.
  5. Potential communication between the well and the public water supply.
- W. The applicant shall provide certification that a bond is held by the PA DEP (Pennsylvania Department of Environmental Protection) to ensure proper plugging when the well is classified as inactive by the PA DEP.
- X. The applicant shall provide a schedule indicating the following dates:
1. Site preparation beginnings and endings.
  2. Anticipated drilling activity beginnings and endings.
  3. Anticipated completion (perforating) work to begin and end.
  4. Anticipated stimulation (fracturing) work to begin and end.
  5. Anticipated production work to begin and end.
  6. Anticipated plugging date.
- Y. Adequate security measures shall be proposed to protect wellheads that are in all locations.



- Z. The access road to the well site shall be improved with a dust-free, all weather surface in such a manner that no water, sediment or debris will be carried onto any public street.
- AA. An off-street area for maintenance vehicles to stand while gaining entrance to the access road shall be provided that does not disrupt the normal flow of traffic on the public street.
- BB. All storage trailers will be the subject of a permit charge of \$50.00 per six months. All trailers and/or structures with occupants will be the subject of a permit charge of \$100.00 per six months.
- CC. All pipes outside of the drilling site must be buried three feet below the surface.
- DD. All potential harmful materials must be secured at all times during operation and removed from the property upon clean-up and restoration of the site.
- EE. The Operator/Applicant shall be responsible for the cost to correct or abate for contamination/pollution and/or loss of water from a pond, stream or well.
- FF. Only essential safety and emergency personnel shall be permitted to occupy any trailer or structure at a site overnight and/or for any type of living quarters.
- GG. All impounds designed to hold liquid greater than a depth of 6" shall be fenced.

**SECTION 4.** The Operator/Applicant shall appear at a public meeting of the Township Board of Supervisors at least thirty days prior to the commencing of drilling activities to inform the Township of its intention to commence drilling and be available for answering questions.

**SECTION 5.** Compressor Stations and Natural Gas Processing Plants

1. Compressor Stations and Natural Gas Processing Plants shall be the subject of all of the requirements set forth herein for oil and gas development as stated herein except that they shall only be permitted as a conditional use in the A1 and A2 zoned districts and all other use requirements and Supplemental requirements of the Township Zoning Ordinance and all other applicable Federal, State and Township laws, statutes, rules, regulations and Ordinances.

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2. Section 185-13 A is amended to add subpart (11) titled "Compressor Stations and Natural Gas Processing Plants- refer to Oil and Gas Drilling" and Section 185-18 A is amended to add subpart (7) "Compressor Stations and Natural Gas Processing Plants-refer to oil and gas drilling".

#### **SECTION 6. Penalties and Enforcement**

Any Operator or person performing work at their direction who violates or permits a violation of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township before a Magisterial District Judge, pay a fine of not more than One Thousand Five Hundred (\$1,500), plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. No judgment shall be imposed until the date of the determination of the violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Township 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 Township. A person who violates this Ordinance shall also be responsible for the Township's attorney's fees, engineering fees, expert fees and court costs associated with enforcement.

The aforesaid Penalties provisions shall permit the Township to enforce the specific provisions of this Ordinance once the use is properly obtained the requirement of utilizing the enforcement and enforcement remedies provisions of this Ordinance, it being the intent that once the use is properly and legally obtained that the additional requirements of this Ordinance pertain to the welfare of the public, residents and citizens of South Franklin Township.

#### **SECTION 7. Effective Date**

This Ordinance shall take effect five (5) days after passage.

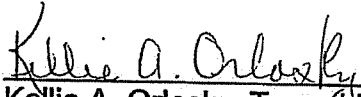
If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of South Franklin Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

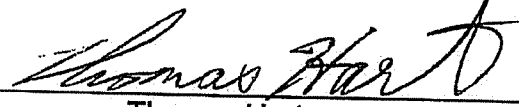
All Ordinances and Resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

ORDAINED and ENACTED this 7 th day of September, 2010, by the Board of the Township of South Franklin, in lawful session duly assembled.

ATTEST:

SOUTH FRANKLIN TOWNSHIP

  
\_\_\_\_\_  
Kellie A. Orlosky, Township Secretary

  
\_\_\_\_\_  
Thomas Hart  
Chairman, Board of Supervisors