

Borough of East Pittsburgh

Ordinance No. ____

AN ORDINANCE OF THE BOROUGH OF EAST PITTSBURGH AMENDING ORDINANCE 908, THE BOROUGH ZONING ORDINANCE, ARTICLE 1200 OF THE ZONING CODE OF THE BOROUGH OF EAST PITTSBURGH, TO PERMIT GAS AND OIL WELL USE IN CERTAIN AREAS OF THE BOROUGH AS CONDITIONAL USE SUBJECT TO CERTAIN RESTRICTIONS

I. Legislative Findings

- A. The Borough Council of EAST PITTSBURGH BOROUGH (“Borough”) finds that the proposed amendments will promote the public health, safety and welfare and practical community development in the Borough and will provide for gas and oil drilling to take place in areas of the Borough in locations which will allow for opportunities for extraction of gas and oil in order to minimize the risk of harm on residentially zoned property, municipal, historical or recreational facilities and resources and schools.
- B. Information provided to the Borough Council and Planning Commission by property owners; Pennsylvania Department of Environmental Protection, by and through its publications, regulations and other guidance; and other interested parties and experts; indicates that horizontal drilling techniques allow for gas to be extracted at distances of up to 8,000 feet from the wellsite. The regulation of well sites herein will permit reasonable access to a significant portion of the gas resources in the Borough, 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 and matter ancillary thereto.
- C. Borough Council has analyzed available scientific and policy related resources to develop sound standards and practices that reflect a balanced approach between the environmental, the citizenry of East Pittsburgh and corporate interests in natural resource exploration and development. Significant public input was encouraged and synthesized in the development of this ordinance.
- D. The Supreme Court of Pennsylvania recently held that the development and operation of unconventional natural gas wells, involving high volume hydraulic fracking, is a “purely industrial use.” Gorsline v. Bd. of Supervisors of Fairfield Twp.,

2018 Pa. LEXIS 2781 (Pa. June 1, 2018). Council finds that limiting such unconventional well uses to the Borough's Industrial District is appropriate.

- E. Consideration was given to academic studies provided to Council, including the following: *Potential Public Health Impacts of Natural Gas Development and Production in the Marcellus Shale in Western Maryland*, Maryland Institute for Applied Environmental Health, School of Public Health, University of Maryland, July 2014; *Adequacy of Current State Setbacks for Directional High-Volume Hydraulic Fracturing in the Marcellus, Barnett, and Niobrara Shale Plays*, National Institute of Environmental Health Sciences, United States National Institute of Health, 2016; *Low Birth Weight Study*, Energy Policy Institutes, University of Chicago and Princeton University, 2017.
- F. Comprehensive Plan
 - 1. East Pittsburgh Borough participates in a multi-municipal comprehensive plan with North Braddock Borough. North Braddock allows for oil and gas development as set forth in section 1203 of the North Braddock Zoning Ordinance.
 - 2. East Pittsburgh Borough is exempt from providing for every legal legitimate land use so long as the use is provided for within a reasonable geographic location of the multi-municipal comprehensive plan as set forth in section 1103 (a)(4) of the Pennsylvania Municipalities Planning Code which states; *"Plan for the accommodation of all categories of uses within the area of the plan, provided, however, that all uses need not be provided in every municipality, but shall be planned and provided for within a reasonable geographic area of the plan."*
- G. Borough Council finds:
 - 1. The Borough is almost entirely built out, such that little, if any undeveloped area is available for large scale industrial facilities, activities and equipment involved in the development and operation of unconventional natural gas wells. The Borough's built-out condition has existed for many years prior to the availability of recent unconventional oil/gas well operations.
 - 2. East Pittsburgh Borough is unique in that it is designated as an environmental justice community.
 - 3. The Borough covers an area of approximately .39 square miles, of which all is land. The Borough is one of the smaller municipalities in Allegheny County in area.

4. The Borough is very densely populated, with an estimated density of 4,574 persons per square mile, over 16 times the average population density in Pennsylvania as a whole, and almost 3 times the population density of Allegheny County.
 5. The Borough's small size and location abutting the Monongahela River, the size and location of its Industrial Zoning District, with the Monongahela River abutting the entire length of the District, its high population density, participation in a multi-municipal comprehensive plan and built out condition makes the Borough uniquely unsuitable for the location of unconventional oil or gas wells.
 6. Protection of the residential character and responsibility of environmental safeguards, being designated as an environmental justice community, warrants that oil and gas wells be set back from lots located in residential districts whether or not a protected structure exists on such lots.
- H. Borough Council has given due public notice, held the requisite hearing and duly notified the Allegheny County Department of Economic Development as pertains to the proposed amendments, and the Planning Commission has been given opportunity to give recommendations.
- II. Amendments. The Borough Council of the Borough of East Pittsburgh ordains that the Ordinance of the Borough of East Pittsburgh, Article 1200 of the Code of the Borough of East Pittsburgh, is hereby amended, as follows:
- A. Article 1202, Definitions, is amended to provide as follows for the following defined term:
 1. The term "Protected Structure" is added as a term defined as follows:
 - a. **Protected Structure** - Any leased or owner-occupied residence, leased or owner-occupied commercial business, school, religious institution or other public building that may be impacted by noise and other external impact generated from activity associated with oil and gas well development and/or natural gas compressor station or natural gas processing plant.
 2. The term "Storage Well" is amended as a term to be defined as follows:
 - a. **Storage Well** – A well that is used for and in connection with the underground storage of natural gas **and/or liquids associated with oil and gas development, including injection into or withdrawal from an underground storage reservoir.**

B. Article 1203, Conditions, is amended as follows:

1. Article 1203 Section A is amended to add Storage Wells as follows:

a. A. No oil or gas well site, natural gas compressor station, **storage wells** 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 the Borough of East Pittsburgh unless a zoning approval has been issued by the Borough 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.

2. Article 1203 Section D is amended to add subsections 13, 14 and 15 for additional documentation required at the time of application and shall be amended as follows:

a. 13. A Ten-Year Master Plan for Oil and Gas Development in East Pittsburgh Borough and adjacent communities within a three (3) air mile radius. Such Ten-Year Master Plan shall describe and plot all well-pads, transmission lines, compression stations, processing plants, storage facilities, transportation facilities and other related infrastructure built, planned and anticipated by applicant or related third-parties of applicant and intended to serve the Oil and Gas Well that is the subject of the application.

b. 14. Verification that, prior to the commencement of any activity relating to oil and gas operations, the applicant shall have entered into an appropriate roadway maintenance and repair agreement with the Borough, in a form acceptable to the Borough's solicitor, regarding the maintenance and repair of the Borough's streets that are to be used by vehicles for site construction, drilling activities and other site operations.

c. 15. All unconventional drilling conditional use applicants shall disclose all known hazards and risks, as are enumerated in the SEC Form 10-K that is associated with their operations. If the entity is privately held, then they shall also similarly disclose hazards and risks as do publicly traded corporations.

3. Article 1203 Section G, Setbacks/Location, is amended as follows:

a. 1203 Section G (1) is amended by removing certain portions and replacing as follows:

- i. Drilling rigs and equipment shall be located a minimum setback distance of one (1) foot for every height of equipment from any public or private street.
 - b. 1203 Section G (2) is amended by removing certain portions and replacing as follows:
 - i. Natural gas compressor stations and natural gas processing plants shall be located a minimum setback distance of 1,000 feet from protected structures and residential property lines.
 - c. 1203 Section G (3) is amended by removing it in its entirety and replacing as follows:
 - i. Well pads shall be located a minimum setback distance of 1,000 feet from any residential property line or any protected structure
 - d. 1203 Section G (4) is amended by removing it in its entirety and replacing as follows
 - i. Well heads shall be located a minimum setback distance of 1,200 feet from any residential property or protected structure
 - e. 1203 Section G is amended to add subsection 6 as follows:
 - i. 6. Well pads shall be set back so as the outer edge of the well pad is a minimum of 1,320 feet from identified roadway choke points, as defined by Borough Council as roadway intersections that would create hazardous conditions for evacuation in the case of an emergency. These roadway intersections shall include, but are not limited to Braddock Avenue at East Pittsburgh McKeesport Boulevard, Center Street at Bell Avenue Bridge, and Prospect Street.
 - f. 1203 Section G is amended to add subsection 7 as follows:
 - i. 7. All ancillary equipment and storage and/or accessory structures to oil and gas development operations shall be setback at a minimum of 800 feet from residential property lines.
- 4. Article 1203 Section J, Noise is amended as follows:
 - a. 1203 Section J(3)(a) is amended as follows:

i. a. During drilling activities, by more than 5 decibels during the hours of 7:00 a.m. to 9:00 p.m.

b. 123 Section J(3)(b) is amended as follows:

i. b. During drilling activities by more than 3 decibels during the hours of 9:00 p.m. and 7 a.m.

III. 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, as herein defined, are permitted in the Borough 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.

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

V. Effective Date. This Ordinance shall be effective immediately.

ORDAINED and ENACTED this _____ day of _____, 20____.

ATTEST:

BOROUGH OF EAST PITTSBURGH

BY: _____
Borough Manager

BY: _____
President of Council

Approved this _____ day of _____, 20____.

BY: _____

Mayor

CERTIFICATION

I, Seth Abrams, hereby certify that I am the Manager of East Pittsburgh Borough, and that the within Ordinance was enacted at a regular meeting of the Borough Council duly convened, at which a quorum was present and voted in favor thereof.

Certified this _____ day of _____, 20____.

BY: _____

Manager