

ORDINANCE NO. – 127
TOWNSHIP OF MIDDLESEX
BUTLER COUNTY, PENNSYLVANIA

**AN ORDINANCE OF THE TOWNSHIP OF MIDDLESEX,
BUTLER COUNTY, PENNSYLVANIA, AMENDING
CURRENT PROVISIONS OF ITS ZONING ORDINANCE,
CODIFIED AS CHAPTER 175, ZONING, OF THE
TOWNSHIP CODE, SETTING FORTH ITS AUTHORITY
TO REGULATE OIL AND GAS OPERATIONS.**

WHEREAS, the Township of Middlesex has enacted a consolidated Zoning Ordinance, Ordinance No. 108, on September 20, 2006, and which is codified in the Code of the Township of Middlesex in Chapter 175; and,

WHEREAS, the Middlesex Township Board of Supervisors has the power to protect the health, safety, and welfare of the people and property in the Township; and

WHEREAS, the Middlesex Township Zoning Ordinance as currently written does not expressly provide for the use or regulation of oil and gas operations; and

WHEREAS, the Middlesex Township Board of Supervisors desires to expressly provide for the use and regulation of oil and gas operations within the Township.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Middlesex Township Board of Supervisors that Chapter 175, Zoning, of the Township Code, is amended as follows:

SECTION 1. ARTICLE II, Section §175-8 TERMS DEFINED, is amended by adding the following new terms and definitions (underscoring language):

ENVIRONMENTAL ACTS: All statutes enacted by the Commonwealth relating to the protection of the environment or the protection of public health, safety and welfare, that are administered and enforced by the Pennsylvania Department of Environmental Protection (DEP) or by another Commonwealth agency, including an independent agency, and all federal statutes relating to the protection of the environment, to the extent those statutes regulate oil and gas operations.

NATURAL GAS: A fossil fuel consisting of a mixture of hydrocarbon gases, primarily methane, and possibly including ethane, propane, butane, pentane, carbon dioxide, oxygen, nitrogen and hydrogen sulfide and other gas species. The term includes natural gas from oil fields known as “non-associated” gas, coal beds, shale beds and other formations. The term does not include coal bed methane.

NATURAL GAS COMPRESSOR STATION: A facility designed and constructed to compress natural gas that originates from an OIL AND GAS WELL SITE DEVELOPMENT or collection of such wells operating as a midstream facility for delivery of natural 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 that is not a NATURAL GAS COMPRESSOR STATION and which is designed and constructed to remove materials and gases 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.

OIL AND GAS WELL SITE DEVELOPMENT: The term includes the following: well location assessment, including seismic operations, well site preparation, construction, drilling, water or fluid storage operations, hydraulic fracturing and site restoration associated with an oil and gas well of any depth. The term includes conventional (vertical) and non-conventional (horizontal) methods of drilling.

SECTION 2. ARTICLE IV, AG-A Residential District, Section §175-14 Authorized uses is amended as follows (underscored language):

A. Permitted Uses.

(1) Principal Uses:

(j) Oil and Gas Well Site Development, subject to §175-155.2.

(2) Accessory Uses:

(l) Oil and Gas Well Site Development, subject to §175-155.2.

(m) Other accessory uses customarily incidental to and on the same lot with any permitted use, conditional use or use by special exception authorized in this district.

- B. Conditional Uses.
 - (1) Principal Uses:

- (h) Natural Gas Compressor Station, subject to Section §175-155.3.

SECTION 3. ARTICLE V, AG-B Agricultural District, Section §175-21 Authorized uses is amended as follows (underscoring language):

- A. Permitted Uses.

- (1) Principal Uses:

- (j) Oil and Gas Well Site Development, subject to §175-155.2.

- (2) Accessory Uses:

- (k) Oil and Gas Well Site Development, subject to §175-155.2.

- (l) Other accessory uses customarily incidental to and on the same lot with any permitted use, conditional use or use by special exception authorized in this district.

- B. Conditional Uses.

- (1) Principal Uses:

- (h) Natural Gas Compressor Station, subject to Section §175-155.3.

SECTION 4. ARTICLE VII, C-2 Highway Commercial District, Section §175-54 Authorized uses is amended as follows (underscoring language):

- B. Conditional uses.

- (1) Principal uses.

- (l) Oil and Gas Well Site Development, subject to §175-155.2.

SECTION 5. ARTICLE IX, I-1 Restricted Industrial District, Section §175-55 Authorized uses is amended as follows (underscoring language):

- A. Permitted Uses.

- (1) Principal Uses:

- (k) Oil and Gas Well Site Development, subject to §175-155.2.

- (l) Natural Gas Compressor Station, subject to §175-155.3.

- B. Conditional uses.
 - (1) Principal uses.
 - (i) Natural Gas Processing Plant, subject to §175-155.3.

SECTION 6. ARTICLE XX, TC Town Center District, Section §175-210 Authorized uses is amended as follows (underscoring language):

- (B) Conditional uses.
 - (9) Oil and Gas Well Site Development, subject to §175-155.2.

SECTION 7. ARTICLE XXI, C-3 Regional Commerce District, Section §175-221 Authorized uses is amended as follows (underscoring language):

In the C-3 Regional Commerce District, the following principal uses are authorized:

- (C) Conditional uses.
 - (1) Oil and Gas Well Site Development, subject to §175-155.2.
 - (2) Natural Gas Compressor Station, subject to §175-155.3.
 - (3) Natural Gas Processing Plant, subject to §175-155.3.

SECTION 8. ARTICLE XXIII, R-AG Residential Agriculture District, Section §175-244 Authorized uses is amended as follows (underscoring language):

- A. Permitted Uses.
 - (1) Principal Uses:
 - (i) Oil and Gas Well Site Development, subject to §175-155.2.
 - (2) Accessory Uses:
 - (k) Oil and Gas Well Site Development, subject to §175-155.2.
 - (l) Other accessory uses customarily incidental to and on the same lot with any permitted use, conditional use or use by special exception authorized in this district.

SECTION 9. ARTICLE III, Map; Districts; Boundaries; General Regulations, Section §175-12 is amended as follows (underscored language):

- C. In the AG-A and, AG-B and R-AG Districts, principal farm buildings and structures may occupy the same lot as a single-family dwelling. Two single-family dwellings shall not occupy the same lot unless all applicable requirements of the Subdivision and Land Development Ordinance are met.

- F. In the C-1, C-2 and, I-1 and C-3 Districts, several authorized uses may occupy the same lot or structure, provided all applicable requirements for each of the uses can be met on the lot.

SECTION 10. ARTICLE XII, Supplementary Regulations, is amended by adding the following new sections to the Township Code (underscored language):

SECTION §175-155.2. OIL AND GAS WELL SITE DEVELOPMENT

- 1. A company, entity or person desiring to engage in Oil and Gas Well Site Development shall obtain a Zoning Certificate from the Township.

- 2. Application Requirements. The Application must include the following information:
 - a. A written narrative signed and dated by the applicant, describing the proposed use outlining an approximate time line for the proposed development.

 - b. Written authorization from the property owner(s) who has legal or equitable title in and to the surface of the proposed Development. A copy of the oil and gas, mineral or other subsurface lease agreement or similar document vesting legal or equitable title to the surface will constitute written authorization.

 - c. The name and address of each property owner for each property within 1,000 feet of the proposed well, and well as all abutting property owners.

 - d. A copy of the Applicant's Erosion and Sediment Control Plan (ESCGP-2) and Post-Construction Stormwater Management Plan prepared by a

licensed professional (e.g. engineer, surveyor, geologist or landscape architect) who is registered in Pennsylvania. Said professional should have attended training provided by Pennsylvania Department of Environmental Protection, Office of Oil and Gas Management on erosion and sediment control and post construction stormwater management for oil and gas activities.

- e. A road access plan showing both temporary and permanent access routes and identifying all ingress and egress points.
- f. If any weight-restricted Township roads will be used by Applicant for any oil and gas development or operations, Applicant shall comply with any applicable Township ordinances, PennDOT regulations, Township road bonding requirements and provide proof of bonding of said roads and enter into a road maintenance agreement with the Township. In lieu of road bonding, the Township and Applicant may mutually agree to other terms to provide for restoration of the affected road(s).
- g. A copy of Highway Occupancy Permits and other permits already obtained at the time of the application submission. If no such permit has been obtained, the Applicant shall provide a copy of its application for the HOP and with an approved permit when obtained. A driveway permit shall be required if the entrance to the site is on a Township road.
- h. A copy of the Applicant's Preparedness, Prevention and Contingency Plan.
- i. The name of an individual or individuals and their emergency contact information for the Township or residents to report emergencies 24 hours a day each day of the week.
- j. Fee reimbursement. The applicant agrees to reimburse the Township for all fees permitted under Section 617.3(e) of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10617.3(e).

- 3. Minimum Lot Requirement. Oil and gas well site development shall only be permitted to be located on property that is a minimum of ten (10) acres or larger. Multiple properties may be combined to meet the ten (10) acre minimum.

4. State and Federal Compliance. The Applicant shall comply with all applicable state and federal regulations and shall show evidence of obtaining the required state and/or federal permits, including proof of insurability, before initiating any work and maintaining the required permits throughout the duration of all operations. The Applicant shall notify the Township immediately of any suspension or revocation of the required state and/or federal permits. Upon notification of said suspension or revocation, the Township-issued permits will hereby be deemed suspended or revoked until state and/or federal compliance is reached.

5. Access roads. Access to any well site shall be arranged to minimize danger to traffic and nuisance to surrounding properties and to maintain the integrity of Township roads. The following shall apply:
 - a. The access road to the well site, beginning with its intersection with a Township road, shall be paved for the first 50 feet and shall be improved with gravel or limestone for the remaining length in a manner that would reasonably minimize water, sediment or debris carried onto any public road. This shall be in place prior to the commencement of drilling operations.

 - b. All roads and accessways shall be constructed and maintained to prevent dust and mud from the surrounding area. A method of dust abatement shall be utilized during dry weather and under no circumstances shall brine water, sulphur water or water in mixture with any type of hydrocarbon be used for dust abatement.

6. Traffic. The Applicant shall take 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). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with development Applicant will provide flag persons or other alternative and approved safety mechanism to ensure the safety of children at or near schools or school bus stops and include adequate sign and/or warning measure for truck traffic and vehicular traffic. Applicant will coordinate its efforts with affected school districts so as to minimize heavy truck traffic during the hours school buses are picking up or dropping off children and provide

7. Site Orientation. Before drilling, first responders shall have on-site orientation and be provided with adequate awareness information. Upon request from the Township, Applicant will, prior to drilling of an oil or gas well, make available 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 Applicant anticipates drilling activities in the Township.

8. Noise standards. For Oil and Gas Well Site Development noise levels shall be equal to or less than 60 dBa at the property line dividing the site developed and all adjoining properties. In the event that an Applicant is unable to meet the aforementioned requirements the Applicant may either:
 - a. Utilize appropriate noise mitigation measures that may include sound barriers or such technology or devices that will allow the Applicant to meet said noise requirements; or

 - b. Obtain a release waiver of said noise requirements from the owners/renters of those properties which would be affected by noise conditions in excess of that allowed.

9. Lights. No Applicant shall permit any lights located on any operation site to be directed in such a manner so that they shine directly on public road, protected use, adjacent property or property in the general vicinity of the operation site. To the extent practicable, and taking into account safety considerations, site lighting shall be directed downward and internally so as to avoid glare on public roads, protected uses, and adjacent dwellings and buildings. Exterior lights shall be turned off except when personnel are working on site or motion sensors are activated.

10. Water Storage. Temporary water storage tanks or impoundments are permitted on the same lot provided the applicant shall adhere to the following:
 - a. Impoundment must be 200 feet from property lines;

 - b. A copy of the Pennsylvania Department of Environmental Protection permit(s), if applicable, must be provided at the time of application or when available;

- c. Chain-link fencing must be installed around any impoundment and shall be at least six (6) feet in height; and
 - d. The impoundment must be reclaimed in accordance with Department of Environmental Protection's rules and regulations after all of the proposed wells have been completed, or after each well is completed in the event that no additional wells are to be drilled within three (3) months.
11. Operating times. All site preparation and pre-production activities on the site, as well as access road maintenance, site reclamation activity and other ongoing ancillary activities shall be permitted only on Mondays through Saturdays (with the exception of federal and/or state holidays) between the hours of 7:00 a.m. and 5:00 p.m., prevailing time, or as otherwise authorized by the Board of Supervisors. The active drilling and completions phases are exempt from the limitations of this paragraph.
12. Signage, site identification. All signage must comply with Pennsylvania Department of Environmental Protection's "Unconventional Well 911 Emergency Response Information" Regulations, 35 Pa. C.S. § 7321(a)(4) and 28 Pa. Code § 78.55(e), as may be amended.
13. Regulations set forth in this Section supersede the regulations set forth in Section §175-139 of the Township Code.
14. If there are unique characteristics of a proposed site, the Township's Zoning Officer (if a permitted use) and/or the Board of Supervisors (if a conditional use) may impose or request additional requirements from an Applicant.

SECTION §175-155.3. NATURAL GAS COMPRESSOR STATION and NATURAL GAS PROCESSING PLANT

1. Natural Gas Compressor Station or Natural Gas Processing Plant shall meet the location restrictions established by the Commonwealth, its regulatory agencies and found in those Environmental Acts.

2. No Natural Gas Compressor Station or Natural Gas Processing Plant shall be located closer than 1,000 feet from any dwelling, occupied structure, library, school, place of worship or recreational use areas on adjoining properties unless a written waiver is submitted by the owner of such structures or properties.
3. A Natural Gas Compressor Station or Natural Gas Processing Plant shall only be permitted to be located on property that is a minimum of ten (10) acres or larger. Multiple properties may be combined to meet the ten (10) acre minimum.
4. The Applicant shall comply with all applicable state and federal regulations and shall show evidence of obtaining the required state and/or federal permits, including proof of insurability, before initiating any work and maintaining the required permits throughout the duration of all operations. The Applicant shall notify the Township immediately of any suspension or revocation of the required state and/or federal permits. Upon notification of said suspension or revocation, the Township-issued permits will hereby be deemed suspended or revoked until state and/or federal compliance is reached.
5. A copy of the Applicant's Erosion and Sediment Control Plan (ESCGP-2) and Post-Construction Stormwater Management Plan prepared by a licensed professional (e.g. engineer, surveyor, geologist or landscape architect) who is registered in Pennsylvania. Said professional should have attended training provided by Pennsylvania Department of Environmental Protection, Office of Oil and Gas Management on erosion and sediment control and post construction stormwater management for oil and gas activities.
6. First responders shall have on-site orientation and be provided with adequate awareness information. Upon request from the Township, Applicant will, prior to operations, make available 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 Applicant anticipates operations in the Township.
7. Noise standards. For Natural Gas Compressor Stations and Natural Gas Processing Plants levels shall be equal to or less than 60 dBA at the property line dividing the site developed and all adjoining properties. In the event that an Applicant is unable to meet the aforementioned requirements the Applicant may either:

- a. Utilize appropriate noise mitigation measures that may include sound barriers or such technology or devices that will allow the Applicant to meet said noise requirements; or
 - b. Obtain a release waiver of said noise requirements from the owners/renters of those properties who would be affected by noise conditions in excess of that allowed.
8. The Applicant shall take the necessary safeguards to ensure that the paved Township roads utilized shall 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.
9. Applicant shall take 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). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with development Applicant will provide flag persons or other alternative and approved safety mechanism to ensure the safety of children at or near schools or school bus stops and include adequate sign and/or warning measure for truck traffic and vehicular traffic. Applicant will coordinate its efforts with school districts so as to minimize heavy truck traffic during the hours school buses are picking up or dropping off children and provide documentation of the cooperation.
10. A copy of Highway Occupancy Permits and other permits already obtained at the time of the application submission. If no such permit has been obtained, the Applicant shall provide a copy of its application for the HOP and with an approved permit when obtained. A driveway permit shall be required if the entrance to the site is on a Township road.
11. The access driveway off the public road to the Natural Gas Compressor Station or Natural Gas Processing Plant site shall be gated at the entrance to prevent illegal access.
12. Fencing of at least eight (8) feet in height shall be installed around all Natural Gas Compressor Stations and Natural Gas Processing Plants.

13. Site lighting shall be directed downward and inward toward the Natural Gas Compressor Station or Natural Gas Processing Plant so as to minimize glare on public roads and adjacent buildings and properties.
14. Regulations set forth in this Section supersede the regulations set forth in Section §175-139 of the Township Code.
15. If there are unique characteristics of a proposed site, the Township may impose or request additional requirements from an Applicant.
16. Construction Permit. The Applicant shall apply for and obtain a Township Construction Permit prior to initiating the construction of either a Natural Gas Compressor Station or Natural Gas Processing Plant.

SECTION 11. Repealer.

Any ordinance, or section, paragraph or sentence in any other ordinance conflicting with the provisions of this Ordinance is hereby repealed to the extent of such conflict.

SECTION 12. Penalties.

Any Applicant/Operator 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 \$600.00 for each day of violation 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 day of the determination of the violation by the Material District Judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce 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 notices and/or to seek equitable relief, including injunction relief, 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 and court costs associated with enforcement.

SECTION 13. Interpretation and Severability.

This Ordinance is to be interpreted 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 and other related uses are permitted in the Township and not to regulate technical aspects of such operations, including technical aspects of oil and gas well functioning and matters ancillary thereto governed by Act 13 of 2012 or other laws of the Commonwealth, any regulations adopted pursuant thereto, and any applicable federal laws and/or regulations.

The provisions of this Ordinance are severable. If any provision or part thereof is held to be illegal, invalid, unconstitutional, or to be pre-empted by applicable law and/or regulations by any court of competent jurisdiction, then such provision or part thereof shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion thereof.

REMAINDER

OF

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SECTION 14. Effective Date.

This Ordinance shall take effect in accordance with applicable law.

ORDAINED AND ENACTED this _____ day of _____, 2014.

ATTEST:

TOWNSHIP OF MIDDLESEX

Secretary

By: _____
Mike Spreng, Chairman

By: _____
Donald P. Marshall, Vice-Chairman

By: _____
James F. Evans, Supervisor

I, Scot E. Fodi, Township Manager/Secretary of the Township of Middlesex, do hereby certify that the foregoing Ordinance was advertised in the Butler Eagle, a newspaper of general circulation, on _____ and _____, 2014, that this is a true and correct copy of Ordinance No. # _____ adopted at a regular meeting of the Board of Supervisors, held on the _____ day of _____, 2014.

Township Manager/Secretary

Date

Zoning District	Oil & Gas Well Site	Natural Gas Compressor Station	Natural Gas Processing Plant
AG-A Rural Residential	Permitted Use	Conditional Use	X
AG-B Agricultural	Permitted Use	Conditional Use	X
R-AG Residential Agricultural	Permitted Use	X	X
R-1 Suburban Residential	X	X	X
R-2 Residential	X	X	X
PRD	X	X	X
TC-Town Center	Conditional Use	X	X
C-1 Neighborhood Commercial	X	X	X
C-2 Highway Commercial	Conditional Use	X	X
C-3 Regional Commercial	Conditional Use	Conditional Use	Conditional Use
Airport District Overlay	X	X	X
I-1 Restricted Industrial	Permitted Use	Permitted Use	Conditional Use