



Proposed Oil and Gas Ordinance: Discussion of Revisions

DATE PRESENTED: AUGUST 21, 2019

PRESENTED BY: AMY E. SABLE, ESQ., SPECIAL COUNSEL TO THE BOROUGH

Brief History of the Proposed Oil and Gas Ordinance

- Ordinance 648-2018 was put into pending ordinance status in December 2018.
- Since that time, presentations regarding the proposed ordinance were made at the February and July 2019 Planning Commission meetings and at the March 2019 public hearing held by Borough Council. Additionally, public comment regarding the proposed ordinance was received by the Planning Commission at its February, March, April, May and July meetings and by Borough Council at the March public hearing, at the continuation of the public hearing in April and at Council's May, June and July 2019 public meetings.

Brief History, continued . . .

- In addition to public comment received at the various meetings of the Planning Commission and Borough Council, written comments were received from many individuals and resident groups with respect to the proposed oil and gas ordinance.
- At its May 14, 2019 meeting, the Planning Commission made recommendations for changes to the proposed ordinance. These recommendations were sent to Council for consideration.
- Council directed me to make revisions to the ordinance reflective of the Planning Commission recommendations as well as to address additional concerns raised by, and requests made by, individuals and resident groups.

Brief History, continued . . .

- On June 19, 2019, Council moved to enter a revised version of the oil and gas ordinance into pending ordinance status. The revised ordinance includes the revisions that were recommended by the Planning Commission, as well as additional revisions that were added in response to the many suggestions and comments received at the various Planning Commission and Council meetings and through written correspondence.
- Tonight, I will review the revisions that have been made. If you were not here for prior presentations and would like a full overview of the proposed ordinance, PowerPoint slides from the presentations made earlier this year can be found on the Borough's website.

Some General Background Regarding Zoning

- Prior to the proposed ordinance being put into pending ordinance status, the Borough did not have an ordinance that addressed oil and gas uses of any type. This does not mean that the use was not allowed in the Borough.
- Typically, the “savings clause” in municipal ordinances would then govern where such a use could be placed. Under the savings clause, uses that are not included in a municipal ordinance are permitted by condition in those zoning districts where similar uses are permitted by right or condition. Where no similar use is listed, uses that are not included in municipal ordinances arguably become conditional uses throughout the entire municipality.



Some General Background Regarding Zoning

- In order to protect the public health, safety and welfare, Borough Council determined that an ordinance addressing oil and gas uses, limiting those uses to a defined area and providing a local regulatory framework for those uses would greatly benefit the Borough and would provide many protections that were not in the underlying zoning ordinance.



Revisions to the Definitions

1. The definition of “Oil and Gas Development” was revised to exclude natural gas compressor stations and natural gas processing plants. Rationale: This is a *correction* to the definition since natural gas compressor stations and natural gas processing plants are separately defined and fall under the umbrella term “oil and gas development facility”. The word “recovery” was also added to the definition. Rationale: This was added in response to requests made by residents. The term “production” in the definition was meant to include recovery but some residents felt that this was not clear.



Revisions to the Definitions

2. The definition of “Public Recreation Area” was revised to include land owned by the Allegheny Land Trust. Rationale: The land owned by the Allegheny Land Trust is contiguous to Linbrook Park and is to be used as a public recreation area. Additionally, public comment, including a comment from a representative of the land trust, was received requesting this revision.

3. A definition for “stimulation” was added. The ordinance defines stimulation as: Any action taken with respect to a well that is intended to stimulate or enhance the flow of oil and gas production. Rationale: A new section regarding water testing was added to the ordinance which utilizes this term.



Revisions to the Definitions

4. A definition for “unconventional well” was added to the proposed ordinance.

Rationale: A new section regarding water testing was added to the ordinance which utilizes this term.

Revisions to Setbacks

- The overall setback of oil and gas developments/facilities to protected structures was increased from a minimum of 1,000 feet to a minimum of 1,100 feet.
- Additionally, a new setback of a minimum 2,000 feet between oil and gas developments/facilities and adult care facilities, day cares, hospitals, retirement communities and schools was added.
- Rationale: Public comment requesting an increase in the overall setback to protected structures and a desire to provide increased protections to vulnerable communities was received and considered. The requests were analyzed in the context of legal constraints that prohibit exclusionary zoning and mapping prepared by the Borough engineer showing various setback distances from existing protected structures in the Borough.

Revisions to Setbacks

- Setbacks to the lot line of public recreation facilities were decreased from 1,000 feet to 500 feet.
- Rationale: The area of the overlay was reduced and more land was added to the definition of public recreation facility. The reduction in size of the overlay and increase in areas defined as public recreation facilities caused the 1,000 foot setback to be too large - - it caused a significant area of the overlay district to become unusable for the overlay use, potentially creating an exclusionary zoning issue. To continue to protect public recreation areas while also avoiding exclusionary zoning issues, the setback to the lot line of public recreation areas was reduced to 500 feet.

Revisions to Lot Sizes

- The lot size for both oil and gas developments and oil and gas facilities has been increased from a minimum of 5 acres to a minimum of 10 acres.
- Rationale: Many members of the public requested an increase in the minimum lot size, most oil and gas developments and oil and gas facilities are on parcels that are 10 acres or larger and the proposed overlay district can accommodate this larger minimum parcel size.

Revisions to Traffic Controls

- A new section was added to the traffic control provisions of the proposed ordinance that requires the access driveway to the development or facility to be paved with an impervious material for the first 50 feet, at a minimum. The remainder of the access driveway must also be paved with materials designed to (i) minimize dust and particulate; (ii) minimize the runoff of water, sediment and other debris onto any public roadway and adjacent property; and (iii) allow the safe passage of emergency vehicles into the development or facility.
- Rationale: Added in response to public comments regarding dirt and debris being tracked on to Borough roadways and regarding accessibility by emergency vehicles.

Revisions to Impoundment Provisions

- The section of the proposed ordinance related to impoundments has been revised such that, other than fresh water, no impoundment may be used to store any substance or material generated from any property other than the property on which the impoundment is located. Additionally, the Borough reserves the right to require impoundments to be completely enclosed within a structure with solid walls and a roof.
- Rationale: These changes were made to address concerns raised by residents about the content of impoundments, specifically that they should not be used as a dumping ground for wastes from other locations and that in some instances, depending upon what is in the impoundment, safety may dictate that the impoundment be enclosed.



Revisions Made to Address Nuisance Concerns

- In reviewing public comment received, as well as information regarding the impact that oil and gas uses have on local communities, it was determined that additional regulation of noise, vibrations and lighting would be needed to address unique and impactful issues that arise in the context of oil and gas uses. Accordingly, the sections of the proposed ordinance addressing noise, vibrations and lighting have been revised to provide increased protection of the public welfare.

Revisions to Noise Requirements

- As oil and gas uses have become more prevalent across Pennsylvania, it has become apparent that traditional noise regulations in municipal ordinances are not always adequate to regulate or mitigate the type of noise produced by these activities. Most traditional noise ordinances regulate high frequency sound, also called “A scale noise” or “the noise you can hear” and do not address low frequency sound, also called “C scale noise” or “the noise you can feel”. Thus, while the “A scale noise” is measured, controlled and regulated and oil and gas uses may be fully compliant, often “C scale noise” is not addressed at all and it is this type of noise that is produced by oil and gas uses that tends to be more bothersome.

Revisions to Noise Requirements

- To address the potential problems caused by “C scale noise”, new regulations have been added to the oil and gas ordinance which require that an applicant for an oil and gas use submit both a noise study and analysis and a noise management and mitigation plan conducted and prepared by an independent consultant with proven expertise in noise analysis, management and mitigation.
- Both the noise study and analysis and the noise management and mitigation plan must address “A scale noise” and “C scale noise”. The requirements for both the study and the plan are comprehensive.
- The noise provision also allows the Borough to impose additional noise control requirements as it deems necessary and appropriate in connection with any conditional use approval of an oil and gas use.

Revisions to Lighting Requirements

- The Borough's standard lighting ordinance applies to oil and gas uses. The standard ordinance offers adequate protections against light spilling onto neighboring properties. In addition, other provisions regarding glare were included in the proposed ordinance. However, the proposed ordinance did not address the removal or reduction of lighting when it is no longer needed, so a sentence has been added to the proposed ordinance that requires that "[a]fter hours of operation or when the site has been fully developed or reclaimed, lighting shall be reduced to the minimum required for safety and security purposes."



Addition of a Vibrations Section

- Oil and gas uses often create vibrations that can become a nuisance to surrounding properties if not properly regulated. While the Borough does have an underlying vibrations ordinance that applies to all uses in the Borough that may create vibratory effects, it was determined that some additional provisions were needed with respect to oil and gas uses to protect the public health, safety and welfare.
 - For this reason, a new section was added to the proposed ordinance which specifically addresses vibrations with respect to oil and gas uses.
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Addition of a Vibrations Section

- The new section relies, in part, on compliance with the Borough's existing vibrations ordinance, but also requires that an applicant for an oil and gas use submit a vibration study and analysis conducted and prepared by an independent consultant with expertise in vibration analysis, management and mitigation and a vibration management and mitigation plan, acceptable to the Borough.
 - The new vibrations section also allows the Borough to impose additional vibration control requirements as it deems necessary and appropriate in connection with any conditional use approval of an oil and gas use.
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Additional Evidence of Compliance with State and Federal Laws

- While the proposed ordinance required compliance with all applicable laws, rules, regulations and ordinances, some additional language has been added to this section that requires an applicant for an oil and gas use to submit proof of compliance to the Borough with the applicant's conditional use application.
- Specifically, a provision has been added that requires an oil and gas operator to provide the Borough with copies of all permits and permit applications required by state and federal law.

Additional Evidence of Compliance with State and Federal Laws

- Additionally, a provision has been added that requires the applicant to provide certification that a bond is held by the Pennsylvania Department of Environmental Protection to ensure proper plugging when the applicant's well is classified as inactive by the Pennsylvania Department of Environmental Protection.
- Rationale: Concerns raised by residents regarding the ability of the Borough to determine an applicant's compliance with other laws, as well as specific concerns raised about abandoned wells, led to these revisions.

Revisions to the Notice of Spills Provision

- The notice of spills provision has been revised to provide for immediate notification of certain borough personnel of spills, leaks, malfunctions or releases constituting an emergency. Previously, the language had provided a 12 hour window for notice.
- Rationale: Many comments were received requesting that immediate notification be required in the case of an emergency situation.



Addition of Water Testing Requirements

- Previously, the proposed ordinance was silent with respect to testing of private water supplies because the state currently has regulations in place in this regard.
 - Many residents expressed their concern over potential pollution of private water supplies in the Borough.
 - The DEP oversees enforcement of state regulations related to preventing the contamination of water and the Borough cannot step into the DEP's regulatory role, however, to address concerns related to cost and frequency of water testing, a water testing section was added to the proposed ordinance.
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Addition of Water Testing Requirements

- The new requirements require that operators of unconventional wells test all private water sources located within 2,500 feet of the surface location of the wellbore.
- All water testing required in accordance with this section shall be performed at the sole cost and expense of the operator and shall be performed by an independent state-certified water testing laboratory agreed upon by the Borough.
- The purpose of the water testing is to determine the baseline quality of private water supplies in the vicinity of an unconventional well site and to evaluate the resultant changes that may occur or have an impact on the private water supply.
- Property owners may opt out of the water testing at their discretion.

Addition of Water Testing Requirements

- The independent water testing laboratory will provide all landowners consenting to such water testing with the test results for their respective private water supply as those results become available.
- The operator of an unconventional well shall also test all private water supplies located within 2,500 feet of the surface location of any wellbore every six (6) months, at a minimum, from the commencement of drilling, altering or reworking of a well to the date that is 18 months following completion of the well.

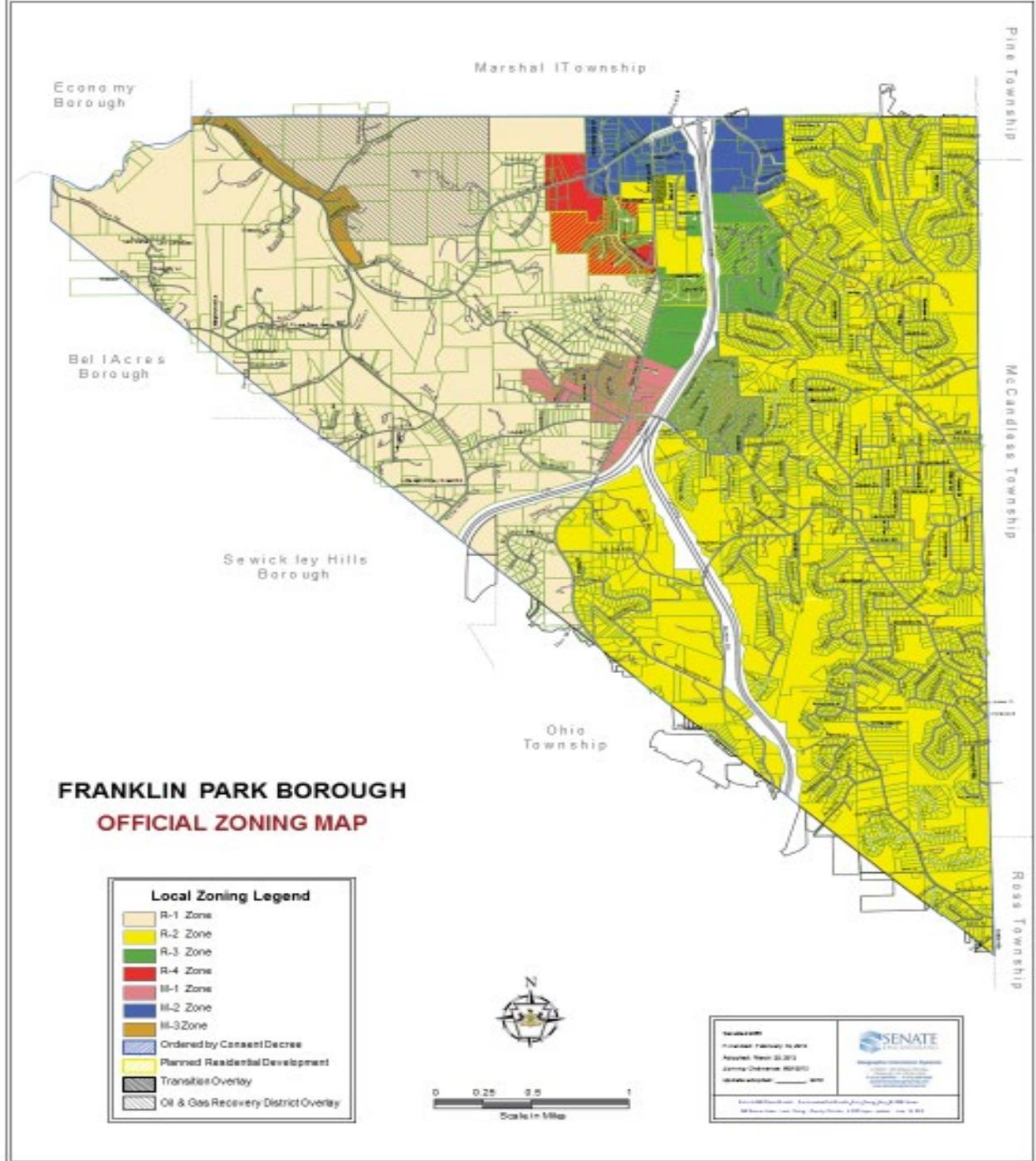
Addition of Water Testing Requirements

- The operator is also required to drill a test water well outside of the limits of the proposed well pad but no more than 750 feet from the proposed wellbore for the purposes of obtaining a baseline assessment of water quality in the vicinity of the proposed well site. Similar to the private water supply testing that is required, pre-drill and post-drill testing is required for this test well.
- The parameters to be tested for by the independent water testing laboratory are set forth in the ordinance and the Borough has also been given the power to add parameters in its discretion.



Reduction in the Area of the Proposed Overlay

- The proposed overlay area has been reduced in size from approximately 667.9 acres to 514.11 acres.



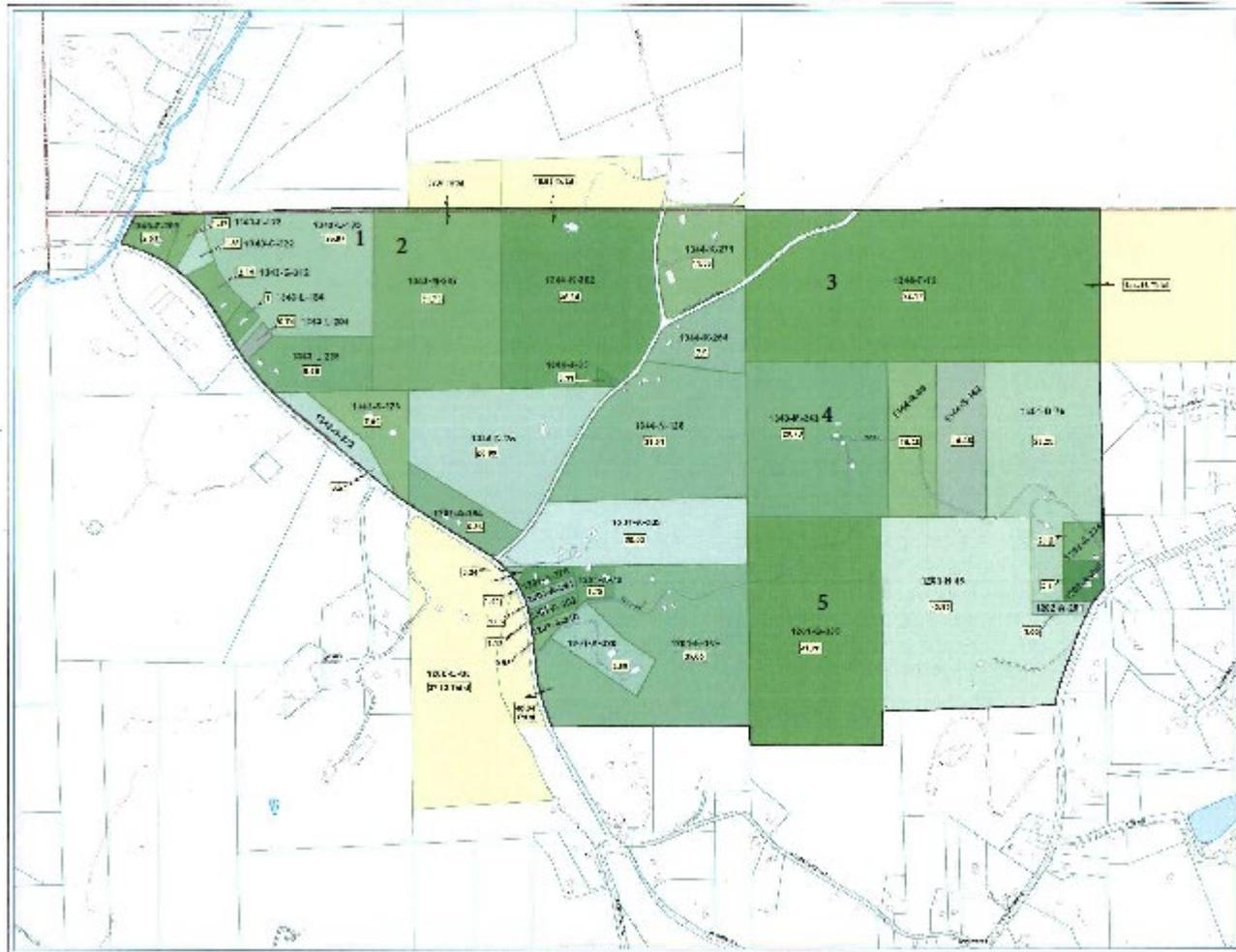
**FRANKLIN PARK BOROUGH
OFFICIAL ZONING MAP**

Local Zoning Legend

	R-1 Zone
	R-2 Zone
	R-3 Zone
	R-4 Zone
	M-1 Zone
	M-2 Zone
	M-3 Zone
	Ordered by Consent Decree
	Planned Residential Development
	Transfer Overlay
	Oil & Gas Recovery District Overlay



<p>Franklin Park Borough Prepared: February 16, 2011 Adopted: March 22, 2011 Drawing: Ordinance 2011-012 2011-012-01-0000</p>	<p>SENATE Strategic Information Systems</p>
<p><small>Seneca Software Corporation, 10000 Seneca Drive, Suite 100, Pittsburgh, PA 15237 412-261-1000, www.senate.com</small></p>	



**THE BOROUGH
FRANKLIN PARK**

CLASSIFICATION OF ZONING DISTRICTS
2016

REGIONAL LOCATION MAP



- Map Legend:**
- Waterway
 - Major Road
 - Minor Road
 - Street
 - Public Park
 - Private Park
 - Public School District
 - Private School District
 - Public Water Utility
 - Private Water Utility



For more information, contact the Planning Board at 100 Franklin Park, NJ 07003. Phone: 908-761-1000. Fax: 908-761-1001. Website: www.franklinparknj.gov

Other Revisions of Note

- A provision has been added that prohibits flaring of wells at any time.
- The resource utilized for determining odor thresholds has been updated.
- Some tweaks have been made in the “Purpose” section of the ordinance and a sentence has been added to make it clear that the proposed ordinance applies to the zoning of oil and gas surface operations only.

Additional Revision Suggested by the Planning Commission

- At the July 2019 Planning Commission meeting, two residents requested that impoundments be equipped with air filtration systems.
- The Planning Commission recommended that Council approve the pending ordinance, provided, that revisions reflective of this request be added to the pending ordinance.
- While the ordinance already requires that “air pollutive emissions” be controlled in accordance with applicable law and, in a sense, already addresses the concern raised, revisions are being recommended to directly address the air filtration request.

Additional Revision Suggested by the Planning Commission

- Two changes are being proposed to address the request as follows (changed language is in red):
 1. In the impoundments section, change the final sentence to: “The Borough reserves the right to require impoundments to be completely enclosed within a structure with solid walls and a roof **and, where such enclosure is required, may also require air filtration systems to be installed in and/or on the enclosure.**”
 2. In the emissions section, add the following language: “. . . and the operator shall operate and maintain a vapor recovery unit or vapor destruction unit, or other available and feasible means to eliminate vapors emitted from any condensation tanks **and/or enclosed impoundments** located at an oil and gas development or facility.”

Additional Revision Suggested by the Planning Commission

- These changes would not be considered “substantial changes” to the ordinance under the Municipalities Planning Code and do not require a re-advertisement of the pending ordinance.

MUNICIPAL OIL AND GAS ORDINANCES - COMPARISON OF SELECTED PROVISIONS

Municipality	Franklin Park	McCandless	Marshall	Pine	Economy	Bell Acres	Leet
Type of Use	Conditional	Conditional	Conditional	No ordinance. Use is conditional by virtue of savings clause.	Permitted and Conditional	Conditional	Conditional
Setback – Protected Structures	1,100 feet	1,000 feet	None. Defaults to state requirement of 500 feet.	Defaults to state requirement of 500 feet.	500 feet to well pads 750 feet to compressor stations and processing plants	Well Pads: 500 feet Other O&G uses: Boundary of other use shall be 250 feet from business structures and 500 feet from residential structures	500 feet
Setback – Vulnerable Populations	2,000 feet	No	No	No ordinance	No	Well Pads: 1,500 feet Other O&G Uses: Boundary shall be 2,500 feet from certain uses	1,500 feet
Minimum Acreage	10 acres	2 acres in Institutional District; 2.5 acres in the C-2 District	1 acre	No ordinance	None stated for oil and gas operations; 1 acre for compressor stations; 25 acres for processing plants	1 acre	10 acres for well pads 5 acres for compressor stations and processing plants

Municipality	Franklin Park	McCandless	Marshall	Pine	Economy	Bell Acres	Leet
Environmental Rights Clause in Ordinance	Yes	No	No	No ordinance	No	No, but similar provision does put a burden on the applicant to demonstrate no danger to the public health, safety and welfare.	No
Water Testing Provisions	Yes	No	No	No ordinance	No	No	Yes, but appears to mirror the state requirements.
“C” Noise Provisions	Yes	No	No	No ordinance	No	No	No
Area Zoned	Overlay district comprised of 514.11 acres	C-2 Neighborhood Shopping and Institutional Districts (includes lands used for parks, NA schools, private schools and hospitals among other things)	Open Space, Public and Conservation District (includes state gamelands, two sportsmen’s clubs and parks)	No ordinance	Permitted in 3 districts, Conditional in 2 districts, not permitted in one district which is 100% built out	M-3 Zoning District	AA Residence Zoning District AAA Residence Zoning District B Residence Zoning District
Vibration Language	Yes	No	No	No ordinance	No. Underlying ordinance prohibits vibrations on neighboring properties.	No	Yes

MUNICIPAL OIL AND GAS ORDINANCES - COMPARISON OF SELECTED PROVISIONS

Municipality	Franklin Park	McCandless	Marshall	Pine	Economy	Bell Acres	Leet
Seismic Testing Ordinance	Yes. Stand alone ordinance being introduced on 8/21/19.	No	No	No	Not a separate ordinance. Zoning Ordinance specifically allows seismic testing <i>without a permit</i> in areas where oil and gas operations are allowed (which is all but one small zoning district).	Yes	Yes