



# BOROUGH OF FRANKLIN PARK

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September 9, 2019

**Governor Thomas W. Wolf**  
Office of the Governor  
508 Main Capitol Building  
Harrisburg, PA 17120

**Honorable Mike Turzai**  
125 Hillvue Lane, 1<sup>st</sup> Floor  
Pittsburgh, PA 15237

**Senator Lindsey Williams**  
5000 McKnight Road  
Pittsburgh, PA 15237

RE: Requested Legislation Regarding Unconventional Oil and Gas Drilling

Dear Governor Wolf, Senator Williams, and State Representative Turzai:

We, the undersigned members of the Franklin Park Borough Council and the Mayor of Franklin Park, seek your assistance in promoting sensible legislation to be enacted at the state level which will allow municipalities to adequately protect their residents, their environmental resources and their infrastructure from the negative impacts of unconventional oil and gas drilling and activities related thereto.

For over a year, we have been working on municipal legislation to zone for and regulate unconventional oil and gas uses within the Borough of Franklin Park. Although we have drafted, and are currently considering, one of the most comprehensive and restrictive municipal zoning ordinances related to unconventional oil and gas drilling in the state, we have had to balance our duty to protect the health, safety and welfare of our community, its residents and our environment with our duty to zone for a land use that we believe cannot currently be safely developed in a densely populated, residential area. Our predicament arises as a direct result of an inconsistency between the Pennsylvania Municipalities Planning Code and the Pennsylvania Constitution. As local elected officials, we do not have the power to fix the inconsistencies in these state laws, but you, as state legislators, do have that power.

As you may be aware, all municipalities in the Commonwealth of Pennsylvania, except the cities of Pittsburgh and Philadelphia, are subject to the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* (the "MPC"). Under the MPC, "[z]oning ordinances shall provide for the reasonable development of minerals *in each municipality*" (See, 53 P.S. §10603(i), emphasis

added)<sup>1</sup>. Additionally, except in very rare instances, Pennsylvania courts have widely and overwhelmingly discouraged exclusionary zoning. Thus, based on Pennsylvania statutory law, and the common law that has derived therefrom, Pennsylvania municipalities that are subject to the MPC currently have no choice but to zone for unconventional oil and gas land uses within their municipal boundaries.

In addition to the provision of the MPC that requires municipalities to provide for the development of minerals, municipalities are also subject to Article I, Section 27 of the Pennsylvania Constitution which states in relevant part that, “The people have a right to clean air [and] pure water . . . Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Our obligations under this Constitutional Amendment cannot be ignored. Yet, for Franklin Park and for many other municipalities in Pennsylvania, there is an inherent inconsistency between the obligation of a municipality under the MPC to zone for unconventional oil and gas land uses within the municipality and the duty to uphold and enforce Article I, Section 27 of the Pennsylvania Constitution by ensuring that the rights of all people to clean air and pure water are not violated. This inconsistency forces municipal officials to choose between compliance with the MPC and compliance with the Pennsylvania Constitution.

We understand the economic value that the unconventional oil and gas industry has brought to the Commonwealth; however, as a densely populated<sup>2</sup> suburb of the Commonwealth's second largest city, we do not believe that unconventional oil and gas land uses, such as drilling and fracking of wells, impoundments of wastewater and cuttings, injection wells and compressor stations, are appropriate land uses in our residential municipality. These are land uses that, very simply, do not belong in close proximity to population centers due to their impacts, both known and unknown, on our air, soil, water and infrastructure and the concomitant impacts on the health, safety and welfare of those living and working nearby.

It is important to note that Section 10603(i) of the MPC requiring mineral development in each municipality was drafted prior to the modernization of the hydraulic fracturing process whereby oil and gas developers use horizontal or lateral drilling to reach natural gas two miles or more from a vertical well bore. When the MPC was enacted, oil and gas were extracted from shallow wells and each well bore only reached the oil and gas located in pockets directly below the surface of the well bore. The ability to extract oil and gas within a two plus mile radius of a single well bore, the millions of gallons of chemically treated water necessary to do so and the tons of environmentally hazardous waste products produced by this extraction methodology *were never contemplated* by the legislators who enacted the MPC in 1968. Imposing this law on

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<sup>1</sup> We note here that Allegheny County has 130 municipalities, 129 of which are required to provide some location within their respective municipal boundaries for the development of minerals under the MPC. Allegheny County has more municipalities than any other county within the Commonwealth. Luzerne County is a distant second with 76 municipalities.

<sup>2</sup> We note here that Franklin Park, as of 2017, had a population density of 1,071 people per square mile. See, [www.city-data.com/city/Franklin-Park-Pennsylvania.html](http://www.city-data.com/city/Franklin-Park-Pennsylvania.html). Allegheny County, as of 2017, had a population density of 1,684 people per square mile. See, [www.opendatanetwork.com](http://www.opendatanetwork.com).

municipalities today for uses that were never contemplated is patently unfair and unsound. Times have changed, the methods of mineral extraction insofar as oil and gas are concerned have changed and we believe it is time for the Pennsylvania state legislature to revisit this outdated provision of the MPC. Accordingly, we seek your assistance to have simple, sensible and straightforward legislation enacted at the state level that will allow each municipality to determine for itself whether unconventional oil and gas uses are appropriate land uses.

Ideally, we believe that each municipality in the Commonwealth should have the right to determine, for and on its own behalf, whether some or all unconventional oil and gas uses are appropriate land uses within its respective municipal boundaries. We recognize that providing all municipalities with the power to exclude some or all unconventional oil and gas land uses would be a broad-sweeping change to Pennsylvania state law. If such a sweeping change is not palatable, we alternately propose that any municipality with a population density greater than 280 people per square mile or any municipality located in a county with a population density greater than 280<sup>3</sup> people per square mile, be given the option, under state law, to exclude some or all unconventional oil and gas land uses from its municipality. A chart has been attached for your convenience showing the population density of Pennsylvania counties in which unconventional oil and gas activities are currently taking place in Pennsylvania.

We believe that such changes to state law and the absolute ability of municipalities to determine the appropriateness of unconventional oil and gas land uses within their municipal boundaries are in keeping with the oath of office that we have all taken to support, obey and defend the Constitution of this Commonwealth. We believe that if the state legislature takes no action with respect to our request, it is tantamount to forcing local municipal officials to violate their oath of office as we find the express requirements of the MPC and the Pennsylvania Constitution to be at odds insofar as unconventional oil and gas land uses are concerned. We implore the state legislature to amend the MPC so that municipal officials can perform their duties in a manner that remains true to the sworn oath of office that they have taken.

It is our desire to work with you to address this situation. To that end, we have attached to this letter sample legislation in the hopes of making it easier for you to advance this issue within the state legislature. If you care about the residents of the Commonwealth, and we trust that you do, we are confident you will take prompt action in furtherance of our request for legislative change.


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<sup>3</sup> The Center for Rural Pennsylvania, a legislative agency of the Pennsylvania General Assembly, in its September 2011 publication entitled "Rural Pennsylvania and the 2010 Census" states that a county is considered urban if its population density is at or above the statewide population density of 284 people per square land mile. We have rounded this number to the nearest ten for purposes of determining those areas that are considered densely populated.


Should you so desire, we are also available to meet with you, or representatives from your office, to further discuss our concerns, our request and the actions that you plan to take in response to our request. Our Borough Manager, Rege Eber, will contact you in the coming days to gauge your interest in meeting with us.

Thank you for your consideration.

Respectfully,

  
Dennis E. O'Keefe, Mayor


  
James W. Hogg, Council President

  
John P. Parks, Council Vice-President

  
Laura A. Coombs, Council 2<sup>nd</sup> Vice-President

  
James W. Lawrence, Councilmember

  
Luke R. Myslinski, Councilmember

  
Thomas C. Schwartzmier, Councilmember

cc: Allegheny County Executive Rich Fitzgerald  
Allegheny County Council Representative Cindy Kirk  
Kay K. Pierce, Manager, Allegheny County Planning Division  
Rege Ebner, Borough Manager, Franklin Park Borough  
Amy E. Sable, Esq., Special Counsel for Franklin Park Borough

**POPULATION DENSITY OF PENNSYLVANIA COUNTIES WHERE  
UNCONVENTIONAL OIL AND GAS DRILLING IS CURRENTLY TAKING PLACE**

<b>COUNTY</b>	<b>POPULATION DENSITY (people/sq.mile)</b>
Allegheny*	1,684.0
Armstrong	105.5
Beaver*	392.3
Blair	241.7
Bradford	54.6
Butler	233.1
Cameron	12.8
Centre	138.7
Clarion	66.6
Clearfield	71.3
Clinton	44.2
Crawford	87.7
Fayette	172.8
Forest	18.1
Greene	67.2
Huntingdon	52.5
Indiana	107.5
Jefferson	69.3
Lycoming	94.5
McKean	44.4
Mercer	173.4
Potter	16.1
Somerset	72.4
Sullivan	14.3
Tioga	37.0
Venango	81.5
Warren	47.3
Washington	242.5
Westmoreland*	355.4
Wyoming	71.2

\*Of the counties that currently have unconventional oil and gas activities taking place, only Allegheny, Beaver and Westmoreland counties are considered urban counties by the Pennsylvania State Assembly. The population density of Allegheny County is *more than four times greater* than the population density of Beaver County, the second most densely populated county on the chart.

Allegheny County information as of 2017. Source: [www.opendatane트워크.com](http://www.opendatane트워크.com)

All other county information as of 2010. Source: <https://www.indexmundi.com/facts/united-states/quick-facts/pennsylvania/population-density#table>

## **PROPOSED REVISIONS TO THE MPC FOR CONSIDERATION**

### **CURRENT LANGUAGE OF SECTION 10603(i) OF THE MPC:**

Zoning ordinances shall provide for the reasonable development of minerals in each municipality.

**PREFERRED PROPOSED REVISION:** Amend and restate Section 10603(i) of the MPC to state as follows:

Zoning ordinances shall provide for the reasonable development of minerals in each municipality; provided, however, notwithstanding anything to the contrary contained in this Act or in any other state law, rule or regulation, each municipality shall have the authority, through properly enacted zoning ordinances, to exclude unconventional oil and gas drilling and related land uses from the land uses permitted by right, condition and/or special exception within its municipal boundaries. For purposes of this section, unconventional oil and gas drilling shall mean the production or extraction of hydrocarbons from a geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval by vertical or horizontal well bores stimulated by hydraulic fracturing, steam assisted gravity drainage or such other techniques other than traditional vertical well extraction of hydrocarbons. For purposes of this section, land uses related to unconventional oil and gas drilling shall mean all land uses necessitated by and/or used in conjunction with unconventional oil and gas drilling and/or which arise as a result of the wastes produced by unconventional oil and gas drilling, including, but not limited to, natural gas compressor stations, natural gas processing plants, injection wells, impoundments of fracking fluid, impoundments of brine, impoundments of cuttings, and solid waste storage or disposal facilities used for the storage and/or disposal of any and all wastes produced by unconventional oil and gas drilling.

**ALTERNATE PROPOSED REVISION:** Amend and restate Section 10603(i) of the MPC to state as follows:

Zoning ordinances shall provide for the reasonable development of minerals in each municipality; provided, however, notwithstanding anything to the contrary contained in this Act or in any other state law, rule or regulation, any municipality located in a county with a population density equal to or greater than 280 people per square land mile and any municipality with a population density equal to or greater than 280 people per square land mile, shall have the authority, through properly enacted zoning ordinances, to exclude unconventional oil and gas drilling and related land uses from the land uses permitted by right, condition and/or special exception within its municipal boundaries. For purposes of this section, unconventional oil and gas drilling shall mean the production or extraction of hydrocarbons from a geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval by vertical or horizontal well bores stimulated by hydraulic fracturing, steam assisted gravity drainage or such other techniques other than traditional vertical well extraction of hydrocarbons. For purposes of this section, land uses related to unconventional oil and gas drilling shall mean all land uses necessitated by and/or used in conjunction with unconventional oil and gas drilling and/or which arise as a result of the wastes produced by unconventional oil

and gas drilling, including, but not limited to, natural gas compressor stations, natural gas processing plants, injection wells, impoundments of fracking fluid, impoundments of brine, impoundments of cuttings, and solid waste storage or disposal facilities used for the storage and/or disposal of any and all wastes produced by unconventional oil and gas drilling.