

Supplement to the PA Municipalities Planning Code Act 13 of 2012

Act 13 of 2012 amends the Oil and Gas Act of 1984 and was signed into law by Governor Corbett on February 13, 2012. Several provisions in the Act affect the practice of municipal and county zoning which is authorized in the PA Municipalities Planning Code. While not directly amending the MPC, to have a complete understanding of municipal zoning authority the new Act's provisions must be incorporated into MPC Article VI, Zoning. This Supplement provides relevant portions of Act 13 that affect zoning.

Several terms used in the Act may be confusing. For example, "*unconventional gas well*," actually refers to the type of natural gas well that is the principal object of these regulations: gas from the Marcellus Shale formation. This term and other related definitions are found in Chapter 23.

Selected Definitions from Chapter 33

- Unconventional Formation.** A geologic shale formation existing below the base of Elk Sandstone or its geologic equivalent stratigraphic interval where natural gas generally cannot be produced at economic flow rates or in economic volumes *except by vertical or horizontal well bores stimulated by hydraulic fracture treatments* or by using multilateral well bores or other techniques to expose more of the formation to the well bore.
- Unconventional Gas Well.** A bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation.

Several additional definitions follow the selected provisions for Chapter 32.

NOTE: provisions or portions of provisions shown in **bold** or *italicized* are for reader convenience only. They are not in the Act.

**Prepared for use in the Pennsylvania Municipal Planning Education Institute's
*Planning and Zoning Course Program***

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ACT 13 of 2012

CHAPTER 33 LOCAL ORDINANCES RELATING TO OIL AND GAS OPERATIONS

3301. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

- Building. An occupied structure with walls and a roof within which individuals live or customarily work.
- Commission. The Pennsylvania Public Utility Commission.
- 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 department 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.
- Local Government. A county, city, borough, incorporated town or township of this Commonwealth.
- Local Ordinance. An ordinance or other enactment, including a provision of a home rule charter, adopted by a local government that regulates oil and gas operations.
- MPC. The Act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code.
- Oil and Gas Operations. The term includes the following:
- (1) well location assessment, including seismic operations, well site preparation, construction, drilling, hydraulic fracturing and site restoration associated with an oil or gas well of any depth;
 - (2) water and other fluid storage or impoundment areas used exclusively for oil and gas operation
 - (3) construction, installation, use, maintenance and repair of:
 - (i) oil and gas pipelines;
 - (ii) natural gas compressor stations; and
 - (iii) natural gas processing plants or facilities performing equivalent functions; and
 - (4) construction, installation, use, maintenance and repair of all equipment directly associated with activities specified in paragraphs (1), (2) and (3), to the extent that:
 - (i) the equipment necessarily located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant; and
 - (ii) the activities are authorized and permitted under the authority of a Federal or Commonwealth agency.
- Permitted Use. A use which, upon submission of written notice to and receipt of a permit issued by a zoning officer or equivalent official, is authorized to be conducted without restrictions other than those set forth in section 3304 (relating to uniformity of local ordinances).

3302. Oil and Gas Operations regulated pursuant to Chapter 32.

Except with respect to local ordinances adopted pursuant to the MPC and the act of October 4, 1978 (P.L.851, No. 166), known as the **Flood Plain Management Act**, all local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 (relating to development) are hereby superseded. No local ordinance adopted pursuant to the MPC or the Flood Plain Management Act shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas operations regulated by Chapter 32, or that accomplish the same purposes as set forth in Chapter 32. The Commonwealth, by this section, preempts and supersedes the regulation of oil and gas operations as provided by this chapter.

3303. Oil and Gas Operations regulated by environmental acts.

Notwithstanding any other law to the contrary, environmental acts are of Statewide concern and, to the extent that they regulate oil and gas operations, occupy the entire field of regulation, to the exclusion of all local ordinances. The Commonwealth by this section, preempts and supersedes the local regulation of oil and gas operations regulated by the environmental acts, as provided in this chapter.

3304. Uniformity of local ordinances.

(a) General Rule.

In addition to the restrictions contained in sections 3302 (relating to oil and gas operations regulated pursuant to Chapter 32) and 3303 (relating to oil and gas operations regulated by environmental acts), **all local ordinances regulating oil and gas operations shall allow for the reasonable development of oil and gas resources.**

(b) Reasonable development of oil and gas resources.

In order to allow for the reasonable development of oil and gas resources, a local ordinance:

- (1)** Shall allow well and pipeline location assessment operations, including seismic operations and related activities conducted in accordance with all applicable Federal and State laws and regulations relating to the storage and use of explosive throughout every local government.
- (2)** May not impose conditions, requirements or limitations on the construction of oil and gas operations that are more stringent than conditions, requirements or limitations imposed on construction activities for other industrial uses within the geographic boundaries of the local government.
- (3)** May not impose conditions, requirements, requirements or limitations on the heights of structures, screening and fencing, lighting or noise relating to permanent oil and gas operations that are more stringent than the conditions, requirements or limitations imposed on other industrial uses or other land development within the particular zoning district where the oil and gas operations are situated within the local government.
- (4)** Shall have a review period for permitted uses that does not exceed 30 days for complete submissions or that does not exceed 120 days for conditional uses.
- (5)** Shall authorize oil and gas operations, other than activities at impoundment areas, compressor stations and processing plants, as a permitted use in all zoning districts.
 - (5.1)** Notwithstanding section 3215 (relating to well location restrictions), may prohibit, or permit only as a conditional use, wells or well sites otherwise permitted under paragraph (5) within a residential district if the well site *cannot* be placed so that the wellhead is at least **500 feet** from any existing building. In a residential district, all of the following apply:

- (i) A well site may not be located so that the outer edge of the well pad is closer than **300 feet from an existing building**.
 - (ii) Except as set forth in paragraph (5) and this paragraph, oil and gas operations, other than the placement, use and repair of oil and gas pipelines, water pipelines, access roads or security facilities, may not take place within **300 feet of an existing building**.
- (6) Shall authorize **impoundment areas** used for oil and gas operations as a permitted use in all zoning districts, provided that the edge of any impoundment area shall not be located closer than **300 feet from an existing building**.
- (7) Shall authorize natural gas **compressor stations** as a permitted use in agricultural and industrial zoning districts and as a conditional use in all other zoning districts, if the natural gas compressor building meets the following standards:
 - (i) is located **750 feet** or more from the nearest existing building or **200 feet** from the nearest lot line, whichever is greater, unless waived by the owner of the building or adjoining lot; and
 - (ii) the noise level does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is less.
- (8) Shall authorize a **natural gas processing plant** as a *permitted use in an industrial zoning district* and as *conditional uses in agricultural zoning districts* if all the following apply:
 - (i) The natural gas processing plant building is located at the greater of at least **750 feet** from the nearest existing building or at least **200 feet** from the nearest lot line unless waived by the owner of the building or adjoin lot.
 - (ii) The **noise level** of the natural gas processing plant building does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is less.
- (9) Shall impose restrictions on vehicular access routes for overweight vehicles only as authorized under 75 Pa.C.S. (relating to vehicles) or the MPC.
- (10) May not impose limits or conditions on subterranean operations or **hours of operation** of compressor stations and processing plants or hours of operation for the drilling of oil and gas wells or the assembly or disassembly of drilling rigs.
- (11) **May not increase setback distances** set forth in Chapter 32 (relating to development) or this chapter. A local ordinance may impose setback distances that are not regulated by or set forth in Chapter 32 or this chapter if the setbacks are no more stringent than those of for other industrial uses within the geographic boundaries of the local government.

3305. Commission.

(a) Advisory opinions to municipalities.

- (1) A municipality may, prior to the enactment of a local ordinance, in writing, request the commission to review a proposed local ordinance to issue an opinion on whether it violates the MPC, this chapter or Chapter 32 (relating to development).
- (2) Within 120 days of receiving a request under paragraph (1), the commission shall, in writing, advise the municipality whether or not the local ordinance violates the MPC, this chapter or Chapter 32.
- (3) An opinion under this subsection shall be advisory in nature and not subject to appeal.

(b) Orders.

- (1) An owner or operator of an oil or gas operation, or a person residing within the geographic

boundaries of a local government, who is aggrieved by the enactment or enforcement of a local ordinance may request the commission to review the local ordinance of that local government to determine whether it violates the MPC, this chapter or Chapter 32.

(2) Participation in the review by the commission shall be limited to parties specified in paragraph (1) and the municipality which enacted the local ordinance.

(3) Within 120 days of receiving a request under this subsection, the commission shall issue an order to determine whether the local ordinance violates the MPC, this chapter or Chapter 32.

(4) An order under this subsection shall be subject to de novo review by the Commonwealth Court. A petition for review must be filed within 30 of the date of service of the commission's order. The order of the commission shall be made part of the record before the court.

(c) Exemptions.

An opinion under subsection (a) and an order under subsection (b) shall not be subject to:

(1) 2 Pa. C.S. Ch.5 Subch. A (relating to practice and procedure of Commonwealth agencies);

(2) 65 Pa. C.S. Ch.7 (relating to open meetings; or

(3) 66 PA. C.S. Ch3 Subch.B. (relating to investigations and hearings).

(d) Authority.

The commission has the following powers to carry out this chapter:

(1) Employ individuals.

(2) Issue orders.

(3) Promulgate regulations.

(4) Until January 1, 2012, promulgate temporary regulations. Regulations under this paragraph:

(i) shall expire no later than two years following the effective date of this section; and

(ii) are exempt from:

(A) sections 201, 202 and 203 of the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law; and

(B) the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act.

3306. Civil Actions.

The following shall apply:

(1) Notwithstanding any provision of 42 Pa. C.S. Ch.85 Subch. C (relating to actions against local parties), any person who is aggrieved by the enactment or enforcement of a local ordinance that violates the MPC, this chapter or Chapter 32 may bring an action in Commonwealth Court to invalidate the ordinance or enjoin its enforcement.

(2) An aggrieved person may proceed under this section without first obtaining review of the ordinance by the commission.

(3) In an action relating to the enactment or enforcement of a local ordinance, a determination of the commission made under section 3305(b) (relating to commission) shall become part of the record before the court.

3307. Attorney fees and costs.

In an action brought under section 3306 (relating to civil actions), the court may do any of the following:

(1) If the court determines that the local government enacted or enforced a local ordinance with willful or reckless disregard of the MPC, this chapter or Chapter 32 (relating to development), it may order the local government to pay the plaintiff reasonable attorney fees and other reasonable costs incurred by the plaintiff in connection with the action.

(2) If the court determines that the action brought by the plaintiff was frivolous or was brought without substantial justification in claiming that the local ordinance in question was contrary to the MPC, this chapter or Chapter 32, it may order the plaintiff to pay the local government reasonable attorney fees and other reasonable costs incurred by the local government in defending the action.

3308. Ineligibility.

If the commission, the Commonwealth Court or the Supreme Court issues an order that a local ordinance violates the MPC, this chapter or Chapter 32 (relating to development), the municipality enacting or enforcing the local ordinance shall be immediately ineligible to receive any funds collected under Chapter 23 (relating to unconventional gas well fee). The local government shall remain ineligible to receive funds under Chapter 23 until the local government amends or repeals its ordinance in accordance with this chapter or the order or determination that the local ordinance is unlawful or is reversed on appeal.

3309. Applicability.

(a) Ordinances.

This chapter shall apply to the enforcement of local ordinances existing on the effective date of this chapter and to the enactment or enforcement of a local ordinance enacted on or after the effective date of this chapter.

(b) Local Governments.

A local government that has enacted a local ordinance relating to oil and gas operations prior to the effective date of this chapter shall have 120 days from the effective date of this chapter to review and amend an ordinance in order to comply with this chapter.

**CHAPTER 32
(RELATING TO DEVELOPMENT)
Section 3215**

3215. Well location restrictions.

(a) General Rule

Wells may not be drilled within **200 feet**, or, in the case of an unconventional gas well, **500 feet** measured horizontally from the vertical well bore to a building or water well, existing when the copy of the plat is mailed as required by section 3211(b) (relating to well permits) without written consent of the owner of the building or water well.

Unconventional gas wells may not be drilled within **1,000 feet** measured horizontally from the vertical well bore to any existing water well, surface water intake, reservoir or other water supply extraction point used by a water purveyor without the written consent of the water purveyor.

If consent is not obtained and the distance restriction would deprive the owner of the oil and gas rights of the right to produce or share in the oil or gas underlying the surface tract, the well operator shall be granted a variance from the distance restriction upon submission of a plan identifying the additional measures, facilities or practices as prescribed by the department to be employed during well site construction, drilling and operations. The variance shall include additional terms and conditions required by the department to ensure safety and protection of affected persons and property, including insurance, bonding, indemnification and technical requirements. Notwithstanding section 3211(e), if a variance request has been submitted, the

department may extend its permit review period for up to 15 days upon notification to the applicant of the reasons for the extension.

(b) Limitation.

(1) No well site may be prepared or well drilled within **100 feet** or, in the case of an unconventional well, **300 feet** from the vertical well bore or **100 feet** from the edge of the well site, whichever is greater, measured horizontally from any solid blue lined stream, spring or body of water as identified on the most current 1 ½ minute topographic quadrangle map of the United States Geological Survey.

(2) The edge of the disturbed area associated with any unconventional well site must maintain a **100-foot** setback from the edge of any solid blue lined stream, spring or body of water as identified on the most current 1 ½ minute topographic quadrangle map of the United States Geological Survey.

(3) No unconventional well may be drilled within **300 feet** of any wetlands greater than one acre in size, and the edge of the disturbed area of any well site must maintain a 100-foot setback from the boundary of the wetlands.

(4) The department shall waive the distance restrictions upon submission of a plan identifying additional measures, facilities or practices to be employed during well site construction, drilling and operations necessary to protect the waters of this Commonwealth. The waiver, if granted, shall include additional terms and conditions required by the department necessary to protect the waters of this Commonwealth. Notwithstanding section 3211(e), if a waiver request has been submitted, the department may extend its permit review period for up to 15 days upon notification to the applicant for the reasons for the extension.

(c) Impact.

On making a determination on a well permit, the department shall consider the impact of the proposed well on public resources, including but not limited to:

- (1) Publicly owned parks, forests, game lands and wildlife areas.
- (2) National or State scenic rivers.
- (3) National natural landmarks.
- (4) Habitats of rare and endangered flora and fauna and other critical communities.
- (5) Historical and archeological sites listed on the Federal or State list of historic places.
- (6) Sources used for public drinking supplies in accordance with subsection (b).

(d) Consideration of municipality and storage operator comments.

The department may consider the comments submitted under section 3212.1 (relating to comments by municipalities and storage operators) in making a determination on a well permit. Notwithstanding any other law, no municipality or storage operator shall have a right of appeal or other form of review from the department's decision.

(d.1) Additional protective measures.

The department may establish additional protective measures for storage of hazardous chemicals and materials intended to be used, or that have been used, on an unconventional well drilling site within **750 feet** of a solid blue lined stream, spring or body of water identified on the most current 7 ½ minute topographic quadrangle map of the United States Geological Survey.

(e) Regulation criteria.

The Environmental Quality Board shall develop by regulation criteria:

- (1) For the department to utilize for conditioning a well permit based on its impact to the public resources identified under subsection (c) and for ensuring optimal development of oil and gas resources and respecting property rights of oil and gas owners.
- (2) For appeal to the Environmental Hearing Board of a permit containing conditions imposed by the department. The regulations shall also provide that the department has the burden of proving that the conditions were necessary to protect against a probable harmful impact of the public resources.

(f) Floodplains.

- (1) No well site may be prepared or well drilled within any floodplain if the well site will have:
 - (i) a pit or impoundment containing drilling cuttings, flowback water, produced water or hazardous materials, chemicals or wastes within the floodplain; or
 - (ii) a tank containing hazardous materials, chemicals, condensate, wastes, flowback or produced water within the floodway.
- (2) A well site shall not be eligible for a floodplain restriction waiver if the well site will have a tank containing condensate, flowback or produced water within the flood fringe unless all the tanks have adequate floodproofing in accordance with the National Flood Insurance Program standards and accepted engineering practices.
- (3) The department may waive restrictions upon submission of a plan that shall identify the additional measures, facilities or practices to be employed during well site construction, drilling and operations. The waiver, if granted, shall impose permit conditions necessary to protect the waters of this Commonwealth.
- (4) Best practices as determined by the department to ensure the protection of the waters of this Commonwealth must be utilized for the storage and handling of all water, chemicals, fuels, hazardous materials or solid waste on a well site located in a floodplain. The department may request that the well site operator submit a plan for the storage and handling of the materials for approval by the department and may impose conditions or amend permits to include permit conditions as are necessary to protect the environment, public health and safety.
- (5) Unless otherwise specified by the department, the boundary of the floodplain shall be as indicated on maps and flood insurance studies provide by the Federal Emergency Management Agency. In an area where no Federal Emergency Management Agency maps or studies have defined the boundary of the 100-year frequency floodplain, absent evidence to the contrary, the floodplain shall extend from:
 - (i) any perennial stream up to **100 feet** horizontally from the top of the bank of the perennial stream; or
 - (ii) from any intermittent stream up to **50 feet** horizontally from the top of the bank of the intermittent stream.

(g) Applicability.

- (1) This section shall not apply to a well proposed to be drilled on an existing well site for which at least one well permit has been issued prior to the effective date of this section.
- (2) Nothing in this section shall alter or abridge the terms of any contract, mortgage or other agreement entered into prior to the effective date of this section.

Additional Definitions

Department	The Department of Environmental Protection of the Commonwealth.
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 nonassociated gas, coal bed, shale beds and other formations. The term does not include coal bed methane.
Vertical Gas Well	An unconventional gas well which utilizes hydraulic fracture treatment through a single vertical well bore and produces natural gas in quantities greater than that of a stripper well.
Stripper Well	An unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day during any calendar month, including production from all zones and multilateral well bores at a single well, without regard to whether the production is separately metered.
Spud	The actual start of drilling of an unconventional well.

The full Act takes effect April 14, 2012

Zoning ordinances must be in compliance with the Act 120 days from its effective date: August 14, 2012.

PMPEI, February 20, 2012