

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF NOCKAMIXON, BUCKS COUNTY, PENNSYLVANIA AMENDING CHAPTER 234 OF THE CODE OF ORDINANCES OF NOCKAMIXON TOWNSHIP RELATING TO ZONING IN NOCKAMIXON TOWNSHIP TO REVISE ZONING REGULATIONS RELATING TO THE USE OF LAND FOR DIRECT RECOVERY AND EXTRACTION OF SUBSURFACE OIL AND GAS; TO INCORPORATE PROVISIONS CONCERNING THE SEVERABILITY OF THE SECTION AND TO PROVIDE FOR REQUIREMENTS FOR THE USE IN THE EVENT THAT SECTION 234-23 R, SUBSECTIONS 1-7 ARE DECLARED INVALID AND ARE NOT SEVERED

BACKGROUND:

- A. By Ordinance No. 56, as amended, the Nockamixon Township Board of Supervisors (“Board”) has enacted a zoning ordinance (“Zoning Ordinance”) pursuant to its authority under, *inter alia*, Article 27 of the Constitution of the Commonwealth of Pennsylvania, the Second Class Township Code, and the Municipalities Planning Code (“MPC”).
- B. The Zoning Ordinance, as amended, is codified at Chapter 234 of the Code of Ordinances of Nockamixon Township (the “Code”).
- C. By Ordinance No. 126, adopted May 16, 2006, the Board amended the Code enacting regulations relating to the use of land for direct recovery and extraction of subsurface oil and gas.
- D. By Ordinance No. 129, adopted April 17, 2007, the Board further amended the Code, and, in particular, its provisions relating to the use of land for direct recovery and extraction of subsurface oil and gas.
- E. Since the enactment of Ordinance No. 129, the Pennsylvania Supreme Court has issued two rulings, Huntley & Huntley, Inc. v. Borough of Oakmont and Great Lakes Energy Partners v. Salem Township, which upheld the authority of municipalities to regulate the use of land for direct recovery and extraction of subsurface oil and gas, while recognizing certain limits on such authority.
- F. The Board, through additional study since the enactment of Ordinance Nos. 126 and 129, has determined that it is prudent to enact further amendments to the Code provisions that relate to the use of land for direct recovery and extraction of subsurface oil and gas.

- G. The Board has determined that while its existing ordinance provisions are valid and constitutional, it is prudent to incorporate provisions concerning the severability of the section and to provide for requirements for the use in the event that Section 234-23 R, subsections 1-7 are declared invalid and are not severed.
- H. The proposed amendments have been advertised, considered and reviewed in accordance with the requirements of the MPC and the Second Class Township Code.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby **ENACTED AND ORDAINED** by the Board of Supervisors of Nockamixon Township, Bucks County, as follows:

Section 01: A new subsection 8 shall be added to Section 234-23 R, G-18 Recovery of Subsurface Gas and Oil Deposits, of the Code and shall read in full as follows:

8. The provisions of this Section are declared to be severable. If any provision of this section is declared to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall have no effect on the remaining provisions of this section.

Section 02: A new Section 9 shall be added to Section 234-23 R, G-18 Recovery of Subsurface Gas and Oil Deposits, of the Code and shall read in full as follows:

9. In the event that any court of competent jurisdiction declares all subsections 1-7 above to be invalid or unconstitutional, and/or refuses to sever any of the above-set forth provisions of this Section, use G-18, as defined above, shall be permitted subject to all of the following requirements:

a. Statement of purpose. The purpose of this subsection R is to provide for the health, safety, welfare of the residents and their property in Nockamixon Township; to provide the procedure for the issuance of zoning permits to enable oil and gas deposits to be extracted through direct, on-site wells; to protect the character of the community, facilitating beneficial and compatible land uses; and to further the Township's interest in the orderly development and use of land in a manner consistent with local demographic and environmental concerns.

b. Subject to the provisions of this subsection R, this use shall be permitted as a principal use upon conditional use approval in only the I, Industrial, and Q, Quarry, zoning districts.

c. This use is prohibited as a principal use on any property subject to a conservation easement or open space conditions, or any similar restrictions, whether public or private.

d. This use shall not occur, no conditional use approval shall be granted, and no building or zoning permit shall be issued, until the applicable procedures and standards in this subsection R have been satisfied, the applicable provisions of this Zoning Ordinance and the Code of Ordinances of Nockamixon Township have been satisfied, and all applicable requirements of other governmental agencies have been satisfied, as evidenced by copies of all applicable permits.

e. An applicant shall submit an application, a site plan, and all documentation necessary to satisfy the requirements of this subsection R.

f. Upon approval of the application, all subsequent activities in connection with the use shall be carried out in conformance with the site plan, the conditional use decision and all conditions, zoning permit, and all standards contained in this subsection R.

g. To the extent any provision of this subsection conflicts with any provision of any other applicable ordinance, law, rule or regulation, the more restrictive provision shall apply.

Section 03: In the event that any court of competent jurisdiction declares Ordinance No. 126 and/or Ordinance No. 129 to be invalid or unconstitutional, and refuses to sever any of the provisions of such Ordinances, Section 234-23, Industrial Use Regulation of the Code shall be amended so that it contains a subsection R, which shall read in full as follows:

R. G-18 Recovery of Subsurface Gas and Oil Deposits, These are activities limited to the recovery and removal of subsurface gas and oil deposits through direct on-site drilling as defined and set forth in the Pennsylvania Oil and Gas Act (58 P.S. §601.101 et seq.) and the regulations enacted thereto. This does not include the recovery and removal of any other subsurface minerals, such as coal, gravel, sand, clay, topsoil, stone or any other mineral other

than oil and gas, such use being covered by use G-11, Quarry Extraction Operations. Use G-18 is permitted subject to all of the following requirements:

1. Statement of purpose. The purpose of this subsection R is to provide for the health, safety, welfare of the residents and their property in Nockamixon Township; to provide the procedure for the issuance of zoning permits to enable oil and gas deposits to be extracted through direct, on-site wells; to protect the character of the community, facilitating beneficial and compatible land uses; and to further the Township's interest in the orderly development and use of land in a manner consistent with local demographic and environmental concerns.

2. Subject to the provisions of this subsection R, this use shall be permitted as a principal use upon conditional use approval in only the I, Industrial, and Q, Quarry, zoning districts.

3. This use is prohibited as a principal use on any property subject to a conservation easement or open space conditions, or any similar restrictions, whether public or private.

4. This use shall not occur, no conditional use approval shall be granted, and no building or zoning permit shall be issued, until the applicable procedures and standards in this subsection R have been satisfied, the applicable provisions of this Zoning Ordinance and the Code of Ordinances of Nockamixon Township have been satisfied, and all applicable requirements of other governmental agencies have been satisfied, as evidenced by copies of all applicable permits.

5. An applicant shall submit an application, a site plan, and all documentation necessary to satisfy the requirements of this subsection R.

6. Upon approval of the application, all subsequent activities in connection with the use shall be carried out in conformance with the site plan, the conditional use decision and all conditions, zoning permit, and all standards contained in this subsection R.

7. To the extent any provision of this subsection conflicts with any provision of any other applicable ordinance, law, rule or regulation, the more restrictive provision shall apply.

Section 04: In the event that any court of competent jurisdiction declares Ordinance No. 126 and/or Ordinance No. 129 to be invalid or unconstitutional, and refuses to sever any of the provisions of such Ordinances, Section 234-31.D Off-Street Parking Requirements, of the Zoning Ordinance shall be amended to include the following use and off-street parking space requirements:

<u>Type of Use</u>	<u>Number of Off-Street Spaces Required</u>
Use G-18, Recovery of Subsurface Oil & Gas Deposits	All off-street parking spaces shall be provided as the Nockamixon Township Board of Supervisors shall determine is adequate to serve customers, employees, visitors, and vehicles normally parked on the premises.

Section 05: In the event that any court of competent jurisdiction declares Ordinance No. 126 and/or Ordinance No. 129 to be invalid or unconstitutional, and refuses to sever any of the provisions of such Ordinances, Sections 234-45.A(2) and 234-47.A(2) of the Zoning Ordinance shall be amended to permit use G-18, Recovery of Subsurface Oil and Gas Deposits, as a principal use upon conditional use approval.

Section 06: In the event that any court of competent jurisdiction declares Ordinance No. 126 and/or Ordinance No. 129 to be invalid or unconstitutional, and refuses to sever any of the provisions of such Ordinances, the Table of Use Regulations, found as Attachment A to the Zoning Ordinance, shall be amended to add a line for Use G-18, Recovery of Subsurface Oil and Gas Deposits; and to designate it as being permitted by the letter “C” in only the I, Industrial and Q, Quarry, zoning districts.

Section 07: All inconsistent provisions of other ordinances or resolutions are repealed to the extent of the inconsistency. All other provisions of the ordinances of Nockamixon Township shall remain in full force and effect.

Section 08: The provisions of this ordinance are declared to be severable. If any provision of his ordinance is declared to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall have no effect on the remaining provisions of this ordinance.

Section 09: This ordinance shall be effective five (5) days after adoption by the Nockamixon Township Board of Supervisors.

ORDAINED AND ENACTED this _____ day of _____, 2009.

BOARD OF SUPERVISORS OF NOCKAMIXON
TOWNSHIP, BUCKS COUNTY,
PENNSYLVANIA

Nancy C. Janyszeski, Chair

Bruce G. Keyser, Vice Chair

Henry J. Gawronski

James A. Litzenberger

Albert M. Santopietro

ATTEST:

Township Secretary