

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWNSHIP OF SOLEBURY,
BUCKS COUNTY, PENNSYLVANIA, AMENDING THE
SOLEBURY TOWNSHIP STORMWATER MANAGEMENT
AND GRADING ORDINANCES REGARDING THE
PENNSYLVANIA STORM WATER MANAGEMENT ACT'S
"HIGH TUNNEL" EXEMPTION**

WHEREAS, Section 1516 (53 P.S. Section 66516) of the Pennsylvania Second Class Township Code provides that the corporate powers of the Board of Supervisors of Solebury Township (the "Board of Supervisors") include the ability to plan for the development of the Township through Zoning, Subdivision, and Land Development Regulations under the Act of July 13, 1968 (P.L. 805, No. 247), known as the "Pennsylvania Municipalities Planning Code";

WHEREAS, Section 1601 of the Second Class Township Code provides that the Board of Supervisors may adopt Ordinances in which general or specific powers of the Township may be exercised, and, by the enactment of subsequent Ordinances, the Board of Supervisors may amend, repeal, or revise existing Ordinances (53 P.S. Section 66601);

WHEREAS, the Pennsylvania Second Class Township Code authorizes the Board of Supervisors to enact regulations as may be necessary for the health, safety, and general welfare of the Township and its residents (53 P.S. Section 66506), and to enact stormwater management ordinances and to require those conducting earthmoving activities to obtain Township approval (53 P.S. Section 67704);

WHEREAS, other state laws including *inter alia* the Pennsylvania Storm Water Management Act ("Act") charge the Township with certain responsibilities regarding changes to land, stormwater, and protection of water quality, property, natural resources, and human life and safety;

WHEREAS, the General Assembly enacted Act 15 of 2018, which provides an exemption from the Act for "high tunnels," as the Act defines such structures, and requires municipalities to amend their ordinances accordingly;

WHEREAS, the proposed amendments are geared toward fulfilling the Township's obligations under Article I, Section 27 of the Pennsylvania Constitution, and of protecting the public health, safety, and welfare of Township citizens; and

WHEREAS, the proposed amendments have been advertised, considered, and reviewed in accordance with Municipalities Planning Code Section 609 (53 P.S. Section 10609);

NOW THEREFORE, in consideration of the foregoing, be it **ENACTED** and **ORDAINED** by the Board of Supervisors of Solebury Township, Bucks County, Pennsylvania, as follows:

I. Chapter 23 of the Solebury Township Code of Ordinances is hereby **AMENDED** as follows:

A. STRIKE Section 23-105.1.B. and **REPLACE** it with the following:

B. Agricultural activity when operated in accordance with a conservation plan, nutrient management plan or erosion and sedimentation control plan approved by the Bucks County Conservation District. Construction of new and/or expansion of existing buildings, structures, and/or impervious surfaces (including associated earth disturbance) shall be subject to the provisions of this chapter unless exempt pursuant to § 23-105, Subsection 2, or exempt from the Storm Water Management Act (35 P.S. § 680.1 *et seq.*) because the structure qualifies as a “high tunnel” under 35 P.S. §§ 680.4 and 680.11(c).

II. Chapter 9 of the Solebury Township Code of Ordinances is hereby **AMENDED** as follows:

A. STRIKE Section 9-105.2.B. and **REPLACE** it with the following:

B. Agricultural activity when operated in accordance with a conservation plan, nutrient management plan or erosion and sedimentation control plan approved by the Bucks County Conservation District. Construction of new and/or expansion of existing buildings, structures, and/or impervious surfaces (including associated earth disturbance) shall be subject to the provisions of this chapter, unless the structure qualifies as a “high tunnel” under 35 P.S. §§ 680.4 and 680.11(c), subject to confirmation by the Township Engineer that the criteria of the aforementioned statutory provisions are met. Such high tunnels shall comply with the provisions of this Chapter identified in Section 9-116, including the modified requirements set forth in that Section.

B. ADD the following to Section 9-104:

High tunnel – a structure that meets the requirements of 35 P.S. §§ 680.4 and 680.11(c).

C. ADD a new Section 9-116 as follows:

9-116 Modified Requirements for High Tunnels

1. This section sets forth the modified requirements that high tunnels must comply with under this Chapter. High tunnels are exempt from any provision of this Chapter not identified below.

2. The following provisions of this Chapter shall apply to high tunnels:

- a. Section 9-105.1.C.
- b. Section 9-105.2.
- c. Section 9-105.3.A. through C., E., F. A permit application for a high tunnel must also include a copy of all approved plans (such as a soil conservation plan, nutrient management plan, and/or agricultural erosion and sedimentation plan) for the high tunnel.
- d. Section 9-105.4.
- e. Section 9-105.5. All approved plans (e.g. a soil conservation plan) for a high tunnel and all of the Storm Water Management Act's high tunnel standards shall be included in any approved grading plan and grading permit for a high tunnel.
- f. Section 9-105.6.A., D. Also, a condition of any grading permit issued for a high tunnel shall be that all measures required by the approved grading plan (including but not limited to practices required by the Storm Water Management Act) shall be installed in accordance with the approved grading plan prior to any earthmoving and/or stripping activities, and shall be maintained in accordance with the approved grading plan.
- g. Section 9-107.A. except Section 9-107.1.A.(1)(c). Also, the high tunnel grading plan shall:
 - i. illustrate the location of practices included in approved plans (e.g. a soil conservation plan, nutrient management plan, and/or agricultural erosion and sedimentation plan) for the high tunnel; and
 - ii. demonstrate the high tunnel's compliance with the requirements of the Storm Water Management Act and illustrate the location of practices required by that law.
- h. Section 9-108.2. through 3., and 8. through 11., except that, under Section 9-108.10, the Township may require only the erosion and sedimentation and/or stormwater controls as approved in the grading plan.
- i. Sections 9-109, 9-111 through 9-115
- j. Section 9-110, except that, under Section 9-110.1, the Township Engineer shall inspect the high tunnel to verify compliance with the approved grading plan, including practices required the Storm Water Management Act.

III. Partial Repealer

All other provisions of the Ordinances of Solebury Township, as amended, shall remain in full force and effect. All other Ordinances or provisions of the Ordinance inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, hereby specifically repealed.

IV. Severability

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence or part of a provision had not been included herein.

V. Effective Date

All provisions of this Ordinance shall be in full force and effect five (5) days after the approval and adoption.

ORDAINED AND ENACTED this ____ day of _____, 2019.

BOARD OF SUPERVISORS OF SOLEBURY
TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA

Mark Baum Baicker, Chair

John Francis, Vice-Chair

Noel Barrett, Member

Kevin Morrissey, Member

Robert A. McEwan, Member

Attest:

Catherine Cataldi, Township Secretary