

ORDINANCE GUIDELINES

SURFACE LAND USES AFFILIATED WITH TRANSMISSION PIPELINES

Note: The purpose of these guidelines is to provide a framework for an ordinance to be enacted as part of a Municipality’s Zoning Ordinance, preferably within a “Supplementary Regulations” section. All contents of these ordinance guidelines, as well as any modifications made by local municipalities consistent with local planning objectives, are subject to review by a municipal solicitor consistent with the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, and the Pennsylvania Oil and Gas Act (including amendments contained in Act 13 of 2012 and subsequent findings of the PA Commonwealth Court and PA Supreme Court of challenges to Act 13).

AN ORDINANCE PURSUANT TO ARTICLE VI OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, AMENDING CHAPTER ___ OF THE CODE OF ORDINANCES OF _____ TOWNSHIP, BEING THE ZONING ORDINANCE BY PROVIDING FOR THE REGULATION OF SURFACE LAND USES AFFILIATED WITH TRANSMISSION PIPELINES. EFFECTIVE FIVE DAYS FROM ENACTMENT.

Section 1. The Code of the Township of _____, Chapter ___ thereof, being the _____ Township Zoning Ordinance, as amended (the "Zoning Chapter"), Article ___, Supplementary Regulations, Section ___, is amended by adding a new section ___, to read as follows:

- A. Surface Land Uses Affiliated with Transmission Pipelines. The purpose of this section shall be to:
 - (1) Accommodate the need for surface land uses affiliated with transmission pipelines consistent with the desire to protect the health, safety and welfare of the citizens of the Township.
 - (2) Minimize aesthetic, nuisance and visual impacts of surface land uses affiliated with transmission pipelines through design, siting and vegetative screening.
 - (3) Ensure the location of surface land uses affiliated with transmission pipelines in compliance with applicable industry standards and requirements, Federal law, and Pennsylvania State law, including the Federal Energy Regulatory Commission (FERC), the Pennsylvania Oil and Gas Act (as amended), and Pennsylvania case law.
 - (4) Preserve the rural, suburban and urban character of neighborhoods adjacent to surface land uses affiliated with transmission pipelines.

B. Use provisions.

- (1) Surface land uses affiliated with transmission pipelines shall be permitted as a principal use by right in the *Industrial District* where underground pipelines exist or are proposed. Such uses shall meet the dimensional requirements, including but not limited to area and bulk standards, of the *Industrial District*. Applicants are required to demonstrate to the satisfaction of the Township that the requirements of Section C, Standards for surface land uses affiliated with transmission pipelines, can be met.

Note: Municipalities may wish to permit surface land uses as conditional uses within their Industrial District (rather than as by right uses); if so, the standards contained in Subsection C, below, would become the “conditional use standards” by which the land use would be permitted.

Note: Municipalities may wish to designate other areas where surface uses are permitted as conditional uses, such as zoning districts within which existing pipeline corridors already exist, or other special use districts (such as a defined “pipeline corridor district”) appropriate for such uses. Each municipality will need to carefully consider whether additional or special use districts are appropriate for surface land uses affiliated with transmission pipelines in their community. Sample language for permitting surface land uses affiliated with existing transmission pipelines follows and could be inserted here as Subsection B.2; –

- (2) Except as otherwise designated in Subsection (3) below, surface land uses affiliated with transmission pipelines shall be permitted as a principal use in _____ zoning districts where underground pipelines exist as of the date of adoption of this Section when authorized as a conditional use pursuant to Section C, Standards for surface land uses affiliated with transmission pipelines and (*insert reference to municipal Conditional Use Approval Standards*). In addition, such uses shall meet the dimensional requirements, including but not limited to area and bulk standards, of the underlying district.

- (3) Surface land uses affiliated with transmission pipelines shall be prohibited in the *Historic Preservation Overlay District*.

Note: The example in Subsection B.3 above prohibits surface land uses in historic districts. Municipalities may also wish to prohibit or otherwise regulate such uses in other special districts or resource protection areas such as scenic corridor overlay districts, water resource protection areas (critical aquifer recharge areas, source water protection areas, wellhead protection areas, etc.), natural resource protection areas (wetlands, riparian buffer areas, rare habitat areas), etc.

- (4) All other uses ancillary to surface land uses affiliated with transmission pipelines are prohibited unless otherwise permitted in the zoning district in which the use is located.

Note: Ancillary uses could include signage or others types of outbuildings.

- C. Standards for surface land uses affiliated with transmission pipelines. The following standards will be considered by the Township prior to permitting surface land uses affiliated with transmission pipelines:

- (1) Setbacks. Unless otherwise approved by the Board of Supervisors upon recommendation of the Township Planning Commission, the applicant shall demonstrate that the setbacks for surface land uses affiliated with transmission pipelines and all supporting equipment and structures to any property line or right-of-way shall be consistent with the minimum setback in the underlying zoning district. In addition, surface land uses affiliated with transmission pipelines and all supporting equipment and structures shall be setback a minimum of seven hundred and fifty (750) feet from residential buildings and all commercial, industrial and institutional uses or a minimum of five hundred (500) feet from the nearest lot line, whichever is greater.

Setbacks may be increased by the Township pursuant to the type of material being managed at the surface land use affiliated with transmission pipelines and whether the use is adjacent to areas of high on-site population. Land uses with high on-site populations include schools (through grade 12, trade schools, advanced education institutions, etc.), hospitals, clinics, multi-family housing, retirement and/or life care facilities, stadiums or arenas, day care centers, or large scale commercial, industrial or institutional uses of fifty (50) or more persons.

The Township shall, on a case-by-case basis determine whether increased setbacks are warranted consistent with the "Potential Impact Radius" (PIR), defined by the relationship between the diameter of the adjacent pipeline (and appurtenances) and its maximum operating pressure (see Exhibit 1), whether high on-site populations are located in close proximity, and whether more than one transmission pipeline (such as coupled lines) will be managed at the surface land use affiliated thereto. The PIR approach is applicable only to surface land uses affiliated with "gas" or "petroleum gas" transmission pipelines as defined by Title 49, Code of Federal Regulations, Section 192.3. Surface land uses affiliated with transmission pipelines carrying "hazardous liquids", as defined by Title 49, Code of Federal Regulations, Section 195.2, shall adhere to the setback standards contained in this subsection.

Note: Although Act 13's setbacks were 750 feet from compressor stations, the Act also provided PADEP latitude to reduce such setbacks if waived by the owner of adjacent buildings or adjoining lots. Municipalities wishing to consider larger setbacks for surface land uses affiliated with petroleum or other hazardous liquid pipelines should only do so if they believe they can justify the need for larger setbacks to protect High Consequence Areas (areas with high on-site populations) or Unusually Sensitive Areas (areas with unique natural resource constraints). Any increase or decrease in setbacks should be reviewed by the municipal solicitor. The municipality should consider retaining special counsel to present the case for larger setbacks when/if the conditional use process is utilized.

- (2) Landscaping. The applicant shall provide a plan prepared by a landscape architect licensed in Pennsylvania showing landscaping proposed to be installed to screen and buffer surface land uses affiliated with transmission pipelines. The landscape plan shall incorporate the use of an eight-foot decorative fence surrounded by a mix of native vegetation, including evergreens, shrubbery and trees, which shall not be less than the height of the fence and shall be of sufficient density to screen the facility. Existing vegetation in proximity to surface land uses affiliated with transmission pipelines shall be preserved to the greatest extent possible. All proposed landscaping shall comply with the requirements of the Township's Subdivision and Land Development Ordinance (*or substitute the location of any landscaping provisions of the Township Code*). Applicants shall submit a visual survey from mutually agreed upon vantage points in order to support the proposed landscaping plan's mitigation of visual impacts.

Note: Municipalities could consider whether they wish to ask that the fence provide screening (less than fifty percent open) for surface land uses. In addition, the word "decorative" could be deleted if it is viewed as too subjective.

- (3) Noise. Sound produced by the surface land use affiliated with transmission pipelines shall not result in noise or vibration exceeding the average intensity of noise or vibration occurring from other causes as measured at the property line at any time in a 24 hour period; in no case shall the sound pressure level exceed 60 dB(A) (according to the American National Standards Institute (ANSI) "a" weighted scale) at the property line closest to the land use.
- (4) Odors. Odor, vapors or particulate matter produced by the surface land use affiliated with transmission pipelines shall not exceed the permissible emission of such substances occurring from other causes as measured at the property line. Specific contaminants shall be regulated by PA Code, Title 25, Environmental Protection, Part 1, Subpart C, Article III, Air Resources.
- (5) Signage. All signs, other than utility identification signs, appropriate warning signs, or owner identification signs, shall be prohibited. There shall be no

antennae, advertising, or other items or material affixed to or otherwise placed on surface land uses affiliated with transmission pipelines, except as permitted by the Township, pursuant to its sign ordinance.

- (6) **Parking.** If the surface land use affiliated with transmission pipelines is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of parking spaces shall be equal to the number of people on the largest shift. Parking spaces shall be located within the decorative fence and landscape buffer area so they are substantially concealed when viewed from surrounding properties.
- (7) **Access.** Sufficient access shall be provided to surface land uses affiliated with transmission pipelines for routine maintenance and emergency operations. Such access shall be sufficient to accommodate emergency vehicles, shall be all weather accessible, and shall provide sufficient area to safely deploy emergency equipment.
- (8) **Lighting.** No surface land use affiliated with pipeline utilities shall be artificially lighted except as required for emergency night time access. Any such lights shall be shielded so as to prevent intrusion upon neighboring properties and shall not be directed in such a way as to create a nuisance to users of adjoining streets and property or subject them to direct glare or hazardous interference of any kind.
- (9) **Engineered drawing submission.** Applications for a land use affiliated with transmission pipelines shall be accompanied by engineering drawings prepared by an engineer licensed in Pennsylvania. The applicant shall show that all applicable Commonwealth of Pennsylvania and U.S. standards for the construction, operation, and maintenance of the proposed facility have been met.
- (10) **Design.** The applicant proposing a surface land use affiliated with transmission pipelines must demonstrate that the structure has been designed to blend in with or mimic existing structures in the landscape such as residential outbuildings, farm structures, or other uses permitted in the underlying districts.
- (11) **Visual impact.** Any surface land use affiliated with transmission pipelines shall be designed and constructed so as to mitigate the visual impact from public roads and nearby uses. In addition, the color and other visual features of the land use affiliated with pipeline utilities shall be designed and installed in such a manner so as to create the least visual impact practicable. The applicant shall demonstrate compliance with this section, by among other things, providing photographic perspectives of the proposed site from all sides of the property, adjacent road ways and neighboring properties (with permission of the owners). Mitigation of visual impact shall be consistent with the landscaping requirements of Subsection C (2), above.

- (12) Need. The applicant for a surface land use affiliated with transmission pipelines is required to demonstrate, using scientific and technological evidence, that the facility must be located where it is proposed in order to satisfy its function in the company's pipeline system and demonstrate that there is a need for this facility at the location where it will be located.
- (13) State and Federal Regulation. All applicants, whether commercial pipeline companies or otherwise, must demonstrate the submission of sufficient filings and/or receive sufficient approvals, as required, through the Federal Energy Regulatory Commission (FERC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Commonwealth of Pennsylvania [the Pennsylvania Department of Environmental Protection (PADEP) and/or the Pennsylvania Public Utilities Commission (PA PUC)]. Such documentation is not required as part of the initial application to the Township, but must be included with the final as-built plans submitted upon approval by the Township.
- (14) Removal of surface land uses affiliated with transmission pipelines. Any surface land uses affiliated with transmission pipelines, including access roads and related infrastructure, that are no longer licensed and active shall be removed and the site restored to its original condition at the owner's expense within 60 days of the last date that the facility was licensed by the PADEP and FERC. A bond or escrow account shall be posted with the Township in an amount sufficient to ensure such removal and site restoration prior to the construction of the facility. The applicant shall have prepared and submit to the Township to accompany the bond or escrow account, an estimate of the cost necessary to remove the surface land use facility associated with the pipeline and restore the site to its preconstruction condition.

Section 2. The Code of the Township of _____, Chapter ____ thereof, being the _____ Township Zoning Ordinance, as amended (the “Zoning Ordinance”), Article __, Section __, Definitions, is amended by adding the following terms and definitions therefore in the correct alphabetical sequence:

Pipeline – As defined by Title 49, Code of Federal Regulations, Sections 195.2 and 192.3.

Surface land uses affiliated with transmission pipelines – Above-ground transmission pipeline facilities including, but not limited to, compressor stations, pumping stations, regulator stations, launcher/receiver stations, and other surface pipeline appurtenances.

Transmission Pipelines – Transmission pipelines include, but are not limited to, pipelines designed for the transmission of a "gas" or "petroleum gas", except a "service line", as those terms are defined by Title 49, Code of Federal Regulations, Section 192.3; also included are pipelines designed for the transmission of a "hazardous liquid", as defined by Title 49, Code of Federal Regulations, Section 195.2.