

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS ADOPTING BUILDING REGULATIONS AND PROCEDURES PROMOTING RISK REDUCTIONS OF OPERATIONS AND DEVELOPMENT NEAR PIPELINES; MAKING FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING A MAXIMUM PENALTY; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City Council of the City of Kyle (the “City”) recognizes the need to continue to regulate certain aspects of oil and gas pipeline activity as well as development in and around hazardous pipelines in order to preserve and protect the public health, safety, and welfare, and to preserve the quality of life and property values;

WHEREAS, City and Hays County have some of the fastest growing populations in the nation and the City has undertaken and exercised its authority to adopt a Comprehensive Plan to plan for the future development and urbanization of the City, including a roadway/transportation plan;

WHEREAS, pipeline incidents have potential for significant impact on life, property, and the environment and just as transmission pipelines pose a risk to their surroundings, so does human activity in the vicinity of pipelines. Pipelines of a certain size and operating pressure cannot be relocated or modified once constructed.

WHEREAS, such large and high-pressure pipelines pose a unique and unprecedented impediment to the future development of the City and the provision of local government services;

WHEREAS, although concerning in virtually all communities, transmission pipelines have become an integral part of our energy infrastructure, so the City needs to take all steps to protect all development within the City, and the transmission pipelines need to be protected from activities that may impact the integrity of the pipelines; and

WHEREAS, the best way to balance the interests of property owners, developers, and transmission pipeline operators is to make sure that all relevant parties are aware of the plans, concerns and interests of the other parties; and

WHEREAS, early communication between the interested parties will assist with prudent land use permitting decisions;

WHEREAS, the City is a home rule city with the requisite authority to protect the public health, safety, and welfare that can affect the risks associated with increased human activity in the vicinity of transmission pipelines and it is in the public interest to have regulatory control over some aspects of pipeline installation to minimize potentially dangerous conflicts with existing buildings, roadways (current and planned) and land uses together with future infrastructure and development;

and

WHEREAS, the City Council seeks to adopt regulations and procedures in order to reduce the hazards and/or maintain the health, safety and welfare of the City in this potentially risky area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. Building Regulations Amended. The City Council hereby adopts regulations and procedures promoting risk reductions of operations and development near pipelines within the City to read as set forth in Exhibit "A" hereto entitled "Building Regulations and Procedures Promoting Risk Reductions of Operations and Development Near Pipelines," attached to and incorporated in this Ordinance as though fully transcribed herein for all purposes.

Section 3. Amendment of Ordinances. Prior ordinances of the City dealing with or applicable to oil and gas pipelines are hereby amended to the extent of any conflict herewith, and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 4. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

Section 5. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the _____ day of _____, 2019.

FINALLY PASSED AND APPROVED on the _____ day of _____, 2019.

ATTEST:

CITY OF KYLE, TEXAS

Jennifer Vetrano, City Secretary

Travis Mitchell, Mayor

EXHIBIT “A”

Chapter 8, Building Regulations, Article VII, Building Regulations and Procedures Promoting Risk Reductions of Operations and Development Near Pipelines

8-250 OIL AND GAS PIPELINES - General Technical Provisions.

- (1) The following provisions apply solely to natural gas transmission pipelines thirty (30) inches or larger interior diameter, built on or after the date of final passage of this Ordinance (“Natural Gas Transmission Pipelines” or “Pipelines”) and any entities that may operate such Pipelines shall be identified herein as “Pipeline Operators.”
- (2) As determined in the sole, but reasonable discretion of the city, Natural Gas Transmission Pipelines may not interfere with or damage existing utilities, including but not limited to: water, sewer or gas lines, storm drains, electric lines or the facilities of any public utilities located in public rights-of-way, utility easements or other city-owned property or in private residential areas.
- (3) The Pipeline Operator shall be required to comply with pipeline permit requirements in Subsection 8-253 below and all regulations regarding noise in Subsection 8-254 below.
- (4) The Pipeline Operator shall be responsible to grade, level and restore the property affected by pipeline construction to the same surface condition, as nearly practicable, as existed before operations were first commenced within thirty (30) days after completion of the pipeline.
- (5) The Pipeline Operator shall construct, repair and/or maintain all pipelines so as to meet or exceed the applicable minimum criteria established by the statutory or regulatory requirements of the state and federal governments for such pipeline.
- (6) The city has control of roadways and facilities and/or lines existing within public rights-of-way, utility easements or on/under city owned property within the city, whether current or planned and the Pipeline Operator shall, unless pre-empted by state or federal law, design and build all Natural Gas Transmission Pipelines that will be on, over, under, along, across, within, or crossing public roads and/or all facilities and/or lines existing within the public rights-of-way, utility easements or on/under city owned property within the city limits shall be a minimum depth of thirteen (13) feet from top of pipe to surface, irrespective of the angle such Pipeline crosses such roads and/or all facilities and/or other lines existing within such rights-of-way, utility easements or on/under city owned property. “Planned roadways” include but are not limited to roads shown on approved preliminary plats, approved final plats, roads shown on CAMPO maps and any roadways shown on the City of Kyle’s Comprehensive Plan and/or Transportation Plan. Planned roadways may include corridors. “Planned infrastructure” includes but is not limited to water/wastewater/stormwater lines shown on approved preliminary plats, approved final plats, shown on the City of Kyle’s Comprehensive Plan, Master Plans, and/or Capital Improvement Plan.
- (7) At least sixty (60) days prior to finalization of any Natural Gas Transmission Pipeline construction plans, the Pipeline Operator and/or contractor shall provide the city with the construction plans for all Pipeline construction within the city to ensure that all current and future planned roadways have the Pipeline designed to the above-referenced depth.
- (8) At least ten (10) days prior to the commencement of any Pipeline construction, the

Pipeline Operator shall give written mailed notice to all residents, tenants and property owners that are located adjacent to the proposed Pipeline. The mailing shall include the Pipeline Operator's publication on Natural Gas Transmission Pipeline safety.

(9) At the time the required Natural Gas Transmission Pipeline records are submitted to the Railroad Commission of Texas, the Pipeline Operator shall provide the city the following information, including GPS information sufficient to locate the Pipelines in the future, including the beginning and end points of the Pipeline and sufficient points in between the Pipeline route and the depth of cover information. This information shall be submitted to the city in a format compatible with the city's own GIS system.

- a. As-built or record drawings of the Natural Gas Transmission Pipelines. Accuracy of the record drawings shall meet the City requirements as established by the City Engineer. The scale of the record drawings shall be a minimum of one inch to 40 feet. The drawings shall also be supplied in a DFF digital file format with the location tied to at least one nearby GPS (global positioning system) city monument. If the new Pipeline length exceeds 1,000 feet within the city, the Pipeline shall be tied to at least two GPS city monuments;
- b. The origin point and the destination of the Natural Gas Transmission Pipeline;
- c. Confirmation of the substance to be transported;
- d. A copy of the substance material safety data sheet (MSDS);
- e. Engineering plans, drawings and/or maps with summarized specifications showing the horizontal location, covering depths and location of shutoff valves of the subject Natural Gas Transmission Pipeline. Drawings shall show the location of other pipelines and utilities that are crossed or paralleled within 15 feet of the Natural Gas Transmission Pipeline right-of-way;
- f. Detailed cross-section drawings for all public rights-of-ways and utility easement crossings on city property as permitted by the city; and
- g. A list of the names and mailing addresses of all the property owners, residents and tenants adjacent to the Natural Gas Transmission Pipeline construction.

(10) A Pipeline Operator that transports Natural Gas through a Natural Gas Transmission Pipeline located in the city shall be a member in good standing with the one call system or other approved excavation monitoring system as required by state law. The Pipeline Operator that transports Natural Gas through a Pipeline shall contract for service with the selected underground utility coordinating system for a minimum of five years unless there is an agreement to change to an alternate system between the city and the Pipeline Operator. Said Pipeline Operator shall maintain such services without interruption for the life of the Pipeline permit and as required under this section.

(11)

- a. At the time of permitting and each year thereafter that the Natural Gas Transmission Pipeline remains active, each Pipeline Operator shall provide to the gas inspector, the fire marshal and the chief of police the names, mailing addresses and telephone numbers of at least two primary persons, officers or contacts available on a 24-hour basis and at least two alternative persons, officers or contacts to be reached in the event that the primary contacts are unavailable who:
 1. Can initiate appropriate actions to respond to an emergency;

2. Have access to information on the location of the closest shutoff valve to any specific point in the city; and
 3. Can furnish the common name of the material then being carried by the Pipeline.
- b. Any change in the above information must be provided to the city by contacting the city engineer prior to such change.

(12) Each Pipeline Operator shall file a copy of all initial or follow-up reports provided to the U.S. Department of Transportation or the Railroad Commission of Texas on unsafe Pipeline conditions, Pipeline emergencies or Pipeline incidents within the city concurrently with the city. In addition, such Pipeline Operator shall file any initial or follow-up reports filed with state and federal environmental regulatory agencies pertaining to Natural Gas Transmission Pipeline releases within the city concurrently with the city.

(13) Every Pipeline Operator shall be required to file with the city an annual verified safety report in letter form on or before June 30 of each year to cover a reporting period of the previous June 1 through May 31. Said written report shall contain a statement that the Natural Gas Transmission Pipeline has no outstanding safety violations within the City of Kyle as determined in an inspection or audit by either the Railroad Commission of Texas and/or the U.S. Department of Transportation with regard to any Natural Gas Transmission Pipeline operating within the city. Alternatively, if there are any safety violations as determined by the Railroad Commission of Texas and/or the U.S. Department of Transportation that have not been corrected, these shall be described to the city with an action plan to correct the safety violations. Said action plan shall include a timeline for corrective action and the individual or firm responsible for each action.

8-251 OIL AND GAS PIPELINES – Technical Provisions for Building Around Pipelines

(1) In this section:

(a) **HAZARDOUS PIPELINE** means a pipeline designed for the transmission of a hazardous liquid with an inside diameter of eight inches or more.

(b) **HAZARDOUS LIQUID** means a liquid that is dangerous to human health or safety or the environment if used incorrectly or if not properly stored or contained. Pipeline safety regulations identify [petroleum](#), petroleum products, or anhydrous ammonia as hazardous liquids. (Reference [49 CFR 195.2](#)).

(c) **NATURAL GAS** means natural gas, the principal constituent of which is methane. For purposes of this Ordinance, Natural Gas is not a Hazardous Liquid.

(d) **TRANSMISSION PIPELINE** means large lines (greater than thirty (30) inches interior diameter) that move natural gas long distances around the country, often at high pressures (typically 200 – 1500 psi)

(e) **NEW CONSTRUCTION** means the construction after August __, 2019 of a structure intended for human occupancy, and includes the construction of a new structure, the construction of an addition to an existing structure and the reconstruction of a portion of an existing structure. The term excludes an addition to or the reconstruction or replacement of a structure existing on August __, 2019 used for:

- (i) single-family residential use;
- (ii) small lot single-family residential use;
- (iii) single-family attached residential use;
- (iv) duplex residential use;

- (v) two-family residential use;
 - (vi) mobile home residential use; or
 - (vii) in a neighborhood plan combining district:
 - (viii) cottage special use;
 - (ix) urban home special use; or
 - (x) secondary apartment special use.
- (f) RESTRICTED PIPELINE AREA includes an area within 25 feet of a Hazardous Pipeline or within 200 feet of a Natural Gas Transmission Pipeline.
- (g) USE REQUIRING EVACUATION ASSISTANCE includes the following uses:
- (i) congregate living;
 - (ii) convalescent services;
 - (iii) detention facilities;
 - (iv) day care services (commercial);
 - (v) hospital (general);
 - (vi) hospital (limited);
 - (vii) medical offices exceeding 5,000 square feet of gross floor area;
 - (viii) private primary educational facilities;
 - (ix) private secondary educational facilities;
 - (x) public primary educational facilities;
 - (xi) public secondary educational facilities; and
 - (xii) retirement housing (large site).

(2) Areas Involving a Use Requiring Evacuation Assistance

(a) Subject to subsection (b) below, a Use Requiring Evacuation Assistance is prohibited in a structure intended for human occupancy that is located within 500 feet of a Hazardous Pipeline or within 500 feet of a Natural Gas Transmission Pipeline.

(b) This prohibition does not apply to a structure that is located between 200 and 500 feet of a Hazardous Pipeline or a Natural Gas Transmission Pipeline if by resolution the Council determines, after receiving a recommendation from the fire chief that

(1) the structure has a performance-based design that provides an adequate time period for occupant evacuation to a safe place in the event of a pipeline leak or fire associated with the pipeline, after considering:

- (a) the requirements of Chapter 25-12, Article 7 (*Uniform Fire Code*) and the 2000 edition of the National Fire Protection Association 101 Life Safety Code;
- (b) the site and structure design;
- (c) the structure's building materials;
- (d) the structure's distance from the pipeline;
- (e) the use of radiant energy barriers;
- (f) access to the site and the structure by emergency responders;
- (g) available on-site resources for emergency responders;
- (h) the topography and other natural features;
- (i) the use of the structure; and
- (j) the evacuation capability of the occupants;

(2) the structure incorporates a system for the early detection and notification of a pipeline leak, if the fire chief determines that an appropriate system is commercially available; and

(3) the performance-based design for occupant evacuation and the early detection and notification system are certified and sealed by an engineer registered in Texas.

(3) Areas Involving New Construction

- (a) A person may not build New Construction within 200 feet of a Hazardous Pipeline or a Natural Gas Transmission Pipeline unless:
 - (1) the fire chief determines that:
 - (i) the New Construction has a performance-based design that provides a minimum one-hour time period for occupant evacuation to a safe place in the event of a pipeline leak or a fire associated with the pipeline, in accordance with Chapter 25-12, Article 7 (Uniform Fire Code) or the 2000 edition of the National Fire Protection Association 101 Life Safety Code;
 - (ii) the New Construction incorporates a system for the early detection and notification of a pipeline leak, if the fire chief determines that an appropriate system is commercially available; and
 - (iii) the performance-based design for occupant evacuation and the early detection and notification system are certified and sealed by an engineer registered in Texas; or
 - (b) the New Construction complies with the standards for construction near a pipeline defined as a Hazardous Pipeline by the City of Austin, as prescribed by the Fire Protection Criteria Manual adopted by City of Austin.

(4) Areas Involving A Restricted Pipeline Area

- (a) Subject to subsection (b) below, A person may not place a structure or excavate within a Restricted Pipeline Area.
- (b) This prohibition does not apply to:
 - (i) the pipeline or an appurtenance;
 - (ii) a facility that produces, consumes, processes, or stores the product transported by the pipeline, including a power generation facility;
 - (iii) a public or private utility line (which may include but not be limited to water and wastewater lines, stormwater and/or drainage lines) that crosses the Restricted Pipeline Area, including an appurtenance to the line;
 - (iv) a utility service connection;
 - (v) a road;
 - (vi) a surface parking lot; or
 - (vii) a structure or excavation that the City and pipeline operator determines does not disturb the pipeline or impede its operation.
- (c) Before a person may place a road, surface parking lot, or utility line in a restricted pipeline area, the person must deliver to the City and pipeline operator a certification by a registered engineer stating that the proposed construction activity and structure are designed to prevent disturbing the pipeline or impeding its operation.

8-252 OIL AND GAS PIPELINES – Risk Reduction and Consultation

(1) “Development Permit”, for purposes of this consultation zone requirement, means any permit required by the city for activity that involves construction, grade modification, excavation, blasting, land clearing, or the deposit of earth, rocks or other materials that places an additional load upon the soil. Construction that involves work totally within an existing building footprint, such as residential remodeling projects, is specifically exempted from these consultation zone requirements.

(2) Consultation Zone Distance. The consultation zone requirement applies to Development Permits involving any parcel that is within 660 feet of the centerline of a Natural Gas Transmission Pipeline. The 660 foot consultation zone distance may be lessened for certain Development Permit activities if notice of the Development Permit activities and the distance changes are provided to the Pipeline Operator(s) by the Development Permit applicant and no objection is provided by such Pipeline Operator. There must be written documentation demonstrating that such notice has been provided to the Pipeline Operator(s) and that within fifteen (15) days of delivery of such for such proposed Development Permit activities.. The intent of this section is to provide flexibility and to avoid unnecessary paperwork and delays in the permitting process while also making sure that all activities that may impact the integrity of a Natural Gas Transmission Pipeline are given an opportunity to be thoroughly reviewed by the Pipeline Operator(s). The fifteen (15) day time period may be extended so long as the Pipeline Operator(s) has contacted the applicant and requested such extension of time.

(3) Consultation Zone Notification. Whenever any applicant applies for a Development Permit within the consultation zone established for Natural Gas Transmission Pipelines, the staff at the permit counter shall notify the applicant that they are within the consultation zone, explain the relevant application procedures, and provide contact information for the applicable Pipeline Operator(s). This same procedure shall be followed whenever an individual inquires about development regulations or zoning restrictions for property within the consultation zone.

(4) Complete Application for Development Permit within Consultation Zone. A complete application for any Development Permit within the designated consultation zone must include written verification from the applicant that:

- a) The applicant has delivered notice to the Pipeline Operator(s) and has provided the Pipeline Operator(s) with documentation detailing the proposed Development Permit activity and where the activity is to take place; and
- b) That the Pipeline Operator(s) has either (i) responded with no objections, (ii) has failed to respond to the applicant within the fifteen (15) day time period set out above, or (iii) has provided objections to the applicant.
- c) The notice and written documentation shall be provided to the Pipeline Operator via both regular mail and certified, return receipt requested, and demonstrates that the Pipeline Operator(s) has received the documentation showing the proposed Development Permit activity and its location.
- d) If the Pipeline Operator(s) has responded, such documentation shall also be included.

(5) Checklist. A checklist, provided by the City and submitted by an applicant for a Development Permit involving any parcel that is within 660 feet of the centerline of a Natural Gas Transmission Pipeline must reference the Natural Gas Transmission Pipeline(s) and provide information concerning any impact the activity will have upon the integrity of the Natural Gas Transmission Pipeline(s).

8-253 OIL AND GAS PIPELINES - City Permit Required.

(1) Prior to the construction and/or operation of Natural Gas through a Transmission Pipeline or Hazardous Materials through a Hazardous Pipeline as both are defined in 8-251 on or after the date of passage of this ordinance, the pipeline operator shall provide to the city certification from a professional engineer registered with the State of Texas that the design and installation of the Natural Gas Transmission Pipeline(s) or Hazardous Pipeline(s) meet all state and federal requirements.

(2) Transmission Pipelines, Hazardous Pipelines, gathering lines and production lines within the city limits or extraterritorial jurisdiction shall be constructed in accordance with the ordinances, utilize best management practices, and be designed and constructed to the latest standards mandated by the United States Department of Transportation (DOT) and Texas Railroad Commission for pipelines operating within a class 3 location in accordance with 49 CFR § 192.111, as amended.

(3) Compression and gas lift facilities shall be required to comply with all state and/or federal regulations relative to emissions standards and air permitting compliance requirements for exhaust emissions, fugitive emissions, greenhouse gas emissions, and all other applicable air quality standards associated with natural gas compression and gas lift facilities. Best management practices to meet all permitting requirements and control emissions generated at compression and gas lift facilities, and associated equipment, shall be required and submitted to the city for approval. Compression facilities shall be equipped with:

- (a) Gas and flame detection equipment designed to shut down the operations if a gas leak or flame is detected at the facility;
- (b) High/low pressure automatic cutoff switch; and
- (c) Sound control enclosures to reduce compressor noise and vibrations.

(4) The pipeline operator shall backfill all trenches and compact such trenches to 95% standard density proctor in eight-inch lifts and construct the Natural Gas Transmission Pipeline so as to maintain a minimum depth of ten (10) feet below the finished grade except in public rights-of-way, where minimum cover to the top of the pipe shall be at the discretion of the city based on existing or planned utilities, but at no time less than thirteen (13) feet from top of pipe to the surface. During the backfill of any pipeline excavations in open cut sections, the pipeline operator shall bury "buried pipeline" warning tape one foot above any such pipeline to warn future excavators of the presence of a buried pipeline. The city may also require that a Natural Gas Transmission Pipeline be redesigned or relocated should it conflict with the proposed alignment and depth of a gravity dependent utility.

(5) The Pipeline Operator shall equip all portions of the Natural Gas Transmission Pipeline within the city limits with either (a) an automated pressure monitoring system that detects leaks and shuts off any line or any section of line that develops a leak or (b) institute 24- hour pressure monitoring of the Pipeline system which provides monitoring of the Pipeline within the city limits.

(6) Review by the City for all proposed Natural Gas Transmission Pipelines through private

residential areas shall be required prior to the issuance of a pipeline permit for the commencement of Pipeline construction.

(7) All known oil and gas pipelines, including Hazardous Pipelines and all private or public easements must be indicated on a plat.

(8) A pipeline permit application shall be required as follows:

a. Applications for Natural Gas Transmission Pipeline, Hazardous Pipelines, or other activities regulated by Section 8-251 shall be submitted to the city in a form prescribed by the city.

b. Plans submitted with each application for a pipeline permit shall be in a format approved by the city showing the dimensions and locations of the pipeline and related items or facilities, as well as all proposed lift stations, pumps or other service structures related to such pipeline and the location, type and size of all existing utilities, drainage, rights-of-way and roadway improvements. The plans must additionally show the elevation and location of all known public utilities within 15 feet of the centerline of the proposed pipeline. Any application that fails to meet these requirements will be returned as incomplete to the applicant.

c. The following information shall be provided in the application:

1. The name, business addresses and telephone numbers of the pipeline operator;
2. The names, titles and telephone numbers of the following:
 - i. The person signing the application on behalf of the pipeline operator;
 - ii. The person designated as the principal contact for the submittal; and
 - iii. The person designated as the 24 hour emergency contact.
3. The origin point and the destination of the proposed subject pipeline;
4. A text description of the general location of the proposed subject pipeline;
5. Identification of the substance to be transported through the proposed subject pipeline;
6. A copy of the substance material safety data sheet (MSDS);
7. Engineering plans, drawings and/or maps with summarized specifications showing the horizontal location, covering depths and location of shutoff valves of the proposed subject pipeline. To the extent that information can be obtained, drawings shall show the location of other pipelines and utilities that will be crossed or paralleled within 15 feet of the proposed subject pipeline right-of-way;
8. A description of the consideration given to matters of public safety and the avoidance, as far as practicable, of existing habitable structures and private residential areas;
9. Detailed cross section drawings for all public street rights-of-way and public utility easement crossings;
10. The proposed method or methods to be used for the installation of the pipeline;
11. Methods to be used to prevent both internal and external corrosion;
12. A binder or certificates of all bonds and insurance; and
13. A proposed alignment strip map showing name and address of all affected property owners.

(9) Fees associated with such pipeline permit(s) are as follows:

(a) *Pipeline permit application* fee. Every application for a pipeline permit shall be accompanied by a permit fee of \$2,500.00.

(b) *Pipeline right-of-way review and inspection* fee. Every applicant for a pipeline permit where a portion of the project is located within the public rights-of-way or public utility easements shall pay a fee equal to five (5) percent of the total construction costs of

that portion of the project that is located within the public rights-of-way. Each pipeline permit application for use of a public right-of-way or public utility easement is subject to review and determination by the city's engineer or his/her designee.

(1) In the event the pipeline permit application for use of public right-of-way or public utility easement is approved, the review and inspection fee shall be paid within thirty (30) days of approval. Permittees using the public right-of-way or a public utility easement shall enter into a city-approved use agreement with the city prior to receiving a pipeline permit authorizing the use of the city right-of-way or public utility easement.

(2) In the event a pipeline permit application for use of public right-of-way is denied, an applicant may appeal such denial within five (5) days of receipt of written notice of such denial to the city manager. The decision of the city manager may be appealed to the City Council within five (5) days of receipt if the city manager's decision. The City Council's decision shall be final.

(c) *Pipeline right-of-way annual use fee.* Annual fee of \$1.80 times the number of linear feet of public ROW occupied. Payment for the first year is due within 30 days of approval and payment for subsequent years is due prior to each anniversary of the effective date of the agreement. This fee may, in the sole discretion of the city, be adjusted for inflation.

(d) *Pipeline Information Reporting Fees.* A fee in the amount of \$500.00 shall be required annually on or before June 30 of each year together with the required annual safety report letter.

8-254 OIL AND GAS PIPELINES - Noise

(1) The Pipeline Operator of a Natural Gas Transmission Pipeline as defined in Section 8-251 shall submit a noise management plan detailing how the Pipeline or any equipment or facilities including compressor stations used in the installation of the Pipeline and/or, transportation of Natural Gas complies with the maximum permissible noise levels of this section. The noise management plan must:

- a. Identify operation noise impacts;
- b. Provide documentation establishing the ambient noise level prior to construction of any pipeline; and
- c. 1. Detail how the impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 - i. Nature and proximity of adjacent development, location and type;
 - ii. Seasonal and prevailing weather patterns, including wind directions;
 - iii. Vegetative cover on or adjacent to the site; and
 - iv. Topography.

2. The Pipeline Operator shall be responsible for verifying compliance with this section and the noise management plan after the installation of the noise generation equipment.

(2) No Natural Gas Transmission Pipeline or any equipment or facilities including compressor stations associated with such pipeline shall be operated at any location within the city in such a manner so as to create any noise, that Exceeds 55 dB(A) at the closest noise sensitive areas (i.e. homes, businesses, parks, churches, etc.)

(3) The sound level meter used in conducting noise evaluations shall meet the American National Standard Institute’s Standard for sound meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

(4) A citation may be immediately issued for failure to comply with the provisions of this section. However, if the Pipeline Operator is in compliance with the approved noise management plan, and a violation still occurs, the Pipeline Operator will be given 24 hours from notice of noncompliance to correct the violation from an identified source before a citation is issued. Additional extensions of the 24-hour period may be granted in the event that the source of the violation cannot be identified after reasonable diligence by the operator.

8-255 OIL AND GAS PIPELINES – Emergency Response Plans and Emergency Incident Reporting.

(1) Each operator of a pipeline required to obtain a pipeline permit under 8-253 above shall maintain written procedures to minimize the hazards resulting from an emergency. These procedures shall at a minimum provide for the following:

a. Prompt and effective response to emergencies, including but not limited to the following:

1. Leaks or releases that can impact public health safety or welfare;
2. Fire or explosions at or in the vicinity of a pipeline or pipeline easement;
3. Natural disaster;
4. Effective means to notify and communicate required and pertinent information to local fire, police and public officials during an emergency;
5. The availability of personnel, equipment, tools and materials as necessary at the scene of an emergency;
6. Measures to be taken to reduce public exposure to injury and probability of accidental death or dismemberment;
7. Emergency shut down and pressure reduction of a pipeline;
8. The safe restoration of service following an emergency or incident; and
9. A follow-up incident investigation to determine the cause of the incident and require the implementation of corrective measures.

(2) Upon discovery of a pipeline emergency or incident, any affected pipeline operator shall as soon as practical communicate to the city’s 911 system the following information:

- a. A general description of the emergency or incident;
- b. The location of the emergency or incident;
- c. The name and telephone number of the person reporting the emergency or incident;
- d. The name of the pipeline operator;
- e. Whether or not any hazardous material is involved and identification of the hazardous material so involved; and
- f. Any other information as requested by the emergency dispatcher or other such official at the time of reporting the emergency or incident.

8-256 OIL AND GAS PIPELINES – Pipeline Repairs and Maintenance

(1) All repairs and maintenance of pipelines are to be performed in accordance with U.S. Department of Transportation and Railroad Commission of Texas mechanical integrity requirements.

(2) If non-emergency repairs necessitate excavation of a Natural Gas Transmission Pipeline or Hazardous Pipeline, the pipeline operator shall send notification to occupants of business establishments and residential dwellings located adjacent to the pipeline to be excavated at least five (5) days prior to commencing such repairs.

(3) If above-ground non-emergency repairs that are not routine maintenance are required, the pipeline operator shall send notification to occupants of businesses and residential dwellings located within 200 feet from the centerline of the pipeline section to be repaired at least five (5) days prior to commencing such repairs.

(4) The notice required herein shall be sent by United States regular mail, postage prepaid mailed at least five (5) business days prior to commencing any non-emergency repair; provided, however, that the pipeline operator may use hand delivery notice as an alternative, at the pipeline operator's discretion.

(5) Inspection of the interior of all regulated pipelines shall comply with United States Department of Transportation and Railroad Commission of Texas rules.

(6) A pipeline operator shall keep protected and painted all pipeline risers and all appurtenances related to the pipeline, including compressor stations or other facilities which are composed of materials which are generally protected or painted. Such operator shall repaint all such items at sufficiently frequent intervals to maintain same in good condition. It shall be a violation of this article for any pipeline operator to permit any pipeline riser and/or appurtenances related to pipeline construction and operations to be in a state of disrepair or to have chipped, peeling or unpainted portions.

8-257 OIL AND GAS PIPELINES – No Implied Grant of Use.

Nothing in this subsection grants permission for the use of any street, public rights-of-way, utility easements or city-owned property. In the event a Pipeline Operator wishes to undertake any Natural Gas Transmission Pipeline construction on, over, under, along or across any public rights-of-way, utility easements or other city-owned property, the Pipeline Operator shall apply for and execute a written agreement with the city governing the terms and conditions for such use; obtain all required permits and comply with any other applicable provisions of the city code.

8-258 OIL AND GAS PIPELINES – No Assumption of Responsibility by City; Responsibility.

(1) Nothing in these provisions shall be construed as an assumption by the city of any responsibility of a pipeline operator of a pipeline not owned by the city.

(2) It is the joint and several responsibility of the owner and the pipeline operator of any and all pipeline to maintain the markers in accordance with this article. The location of all new or replacement pipe and pipelines shall be marked by the owner(s) thereof or by the person installing or operating such pipelines as follows:

(a) Marker signs shall be placed at all locations where pipe or pipelines cross property boundary lines and at each side of a public street or road right-of-way which the pipe or pipeline crosses.

(b) The top of all marker signs shall be a minimum of four feet above ground level, and the support post must be sufficient to support the marker sign and shall be painted yellow or such other color as may be approved by the director of transportation and public works or his or her designee.

(c) For Natural Gas pipelines, all marker signs shall be a minimum of 12 inches square and shall be marked as "gas pipe line" And for Hazardous Liquid pipelines, all marker signs shall be a minimum of 12 inches square and shall be marked as "hazardous liquid pipeline."

(d) All marker signs shall contain the name of the owner and operator of the pipeline and a 24-hour local contact number.

(e) Pipelines shall be marked along their entire length with a buried metal wire and metallic flag tape.

(f) All signs shall also contain an 811 designation "Call Before You Dig" statement.

(g) The pipeline operator shall annually replace signage that has been lost, damaged or removed.

(h) All signs described herein are exempt from Chapter 29, Sign Standards and Permits.

8-259 OIL AND GAS PIPELINES – Public Awareness Information.

In keeping with the Natural Gas Pipeline Safety Act of 1968 and 49 CFR § 192.614, "Damage Prevention Program," 49 CFR § 192.615, "Emergency Plans," the Hazardous Liquids Safety Act of 1979, and 49 CFR § 195.408, "Communications," 49 CFR § 195.440, "Public Awareness," and the Community Right-to-Know Act, 40 CFR Parts 350-374, all as amended:

(1) Annually, all pipeline operators will provide affected landowners, public officials and emergency providers with appropriate public awareness information as outlined in API 1162.

(2) Each pipeline owner or operator shall maintain a public education program that is communicated to residents and business establishments within 1,000 feet of the centerline of a pipeline.

(3) Pipeline information communicated per subsection (a)(1) of this section shall contain the following subjects:

a. Pipeline location;

b. Material transported within the pipeline;

c. Pipeline markers;

d. How to recognize a pipeline;

e. How to report a pipeline emergency;

f. Contact information regarding underground utility locations;

g. Additional requirements for excavations near a home or business; and

h. Response needs during a pipeline emergency, including instructions for sheltering in the event of an emergency.

(4) Public education information shall be communicated at least annually in both English and Spanish.

8-260 OIL AND GAS PIPELINES – Insurance and Bonds.

(1) Each pipeline operator of a Natural Gas Transmission Pipeline or a Hazardous Pipeline must carry public liability insurance with a carrier rated “A” or better by A.M. Best in a minimum amount of \$1,000,000.00 for one person and \$5,000,000.00 for one accident and property damage insurance in the amount of \$10,000,000.00 for one accident, which shall remain in full force and effect and be carried so long as the pipeline is operated.

(2) Each pipeline operator shall provide and maintain in full force and effect during the term of its regulated pipeline permit insurance with the following minimum limits:

(a) Worker’s compensation at statutory limits.

(b) Employer’s liability insurance with the following minimum limits for bodily injury by:

(i) accident, \$1,000,000 per each accident; and

(ii) disease, \$1,000,000 per employee with a per-policy aggregate of \$1,000,000.

(c) Commercial general liability coverage, including blanket contractual liability, products and completed operations, personal injury, bodily injury, broad form property damage, operations hazard, pollution, explosion, collapse and underground hazards for \$2,000,000 per occurrence and aggregate policy limit of \$2,000,000.

(d) Automobile liability insurance (for automobiles used by the pipeline operator in the course of its performance under the pipeline permit, including employer’s non-ownership and hired auto coverage) for \$2,000,000 combined single limit per occurrence.

(e) Umbrella liability insurance following the form of the primary liability coverage described in Subsections (a) and (b) and providing coverage with minimum combined bodily injury (including death) and property damage limit of \$25,000,000 per occurrence and \$25,000,000 annual aggregate. Increased primary liability limits equivalent to the umbrella liability insurance limits specified will satisfy the umbrella liability insurance requirements.

(3) Performance bond or irrevocable letter of credit.

(a) Before issuance of a pipeline permit, the pipeline operator shall submit to the city a performance bond or irrevocable letter of credit approved as to form by the city attorney in the amount of \$100,000.

(b) The performance bond is effective upon the issuance of the pipeline permit and must remain in full force and effect until all work under the terms of the pipeline permit has been completed.

(c) The performance bond may be amended to include other permitted pipeline permits.

8-261 OIL AND GAS PIPELINES – Violations.

(1) A person is criminally responsible for a violation of this article if the person:

(a) refuses the inspector of the city access to an operation site or a pipeline;

(b) fails to comply with an inspector’s orders; or

(c) fails to comply with any provision of this article.

(2) A person who knowingly violates any provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is continued. Each offense is punishable by a fine of \$2,000. This fine shall be doubled for the second conviction of the same offense within any 24-month period and trebled for the third and any subsequent convictions of the same offense within any 24-month period.

8-262 OIL AND GAS PIPELINES – Street and Right-of-Way Use.(1) In the event a Natural Gas Transmission Pipeline pipeline is placed within any public right-of-way under the

jurisdiction of the town, the owner/operator shall comply with the right-of-way use regulations as provided in this City's Code of Ordinance and obtain an appropriate franchise, permit or authorization for the use of such right-of-way.

(2) To the extent that the provisions of this article conflict with the city's right-of-way use ordinance, this article shall apply.

8-263 CERTAIN USES NEAR PIPELINES.

(A) This section applies to a use that is nonconforming because of its proximity to a Natural Gas Transmission Pipeline or Hazardous Pipeline under Sections 8-251 or 8-252.

(B) Proximity to a Natural Gas Transmission Pipeline or Hazardous Pipeline does not solely cause a structure or area to be noncomplying under Article VII. - Nonconforming Uses And Structures.

(C) If there is a conflict between the regulations prescribed by this section and the regulations as determined by Article VII – Nonconforming Uses and Structures, this provision controls.