

**MADISON COUNTY, KENTUCKY FISCAL COURT
ORDINANCE NO. 16-06**

AN ORDINANCE AMENDING THE 2013 LAND USE REGULATIONS OF MADISON COUNTY TO REQUIRE A CONDITIONAL USE PERMIT FOR CONSTRUCTION AND OPERATION OF COMPRESSOR UNITS ASSOCIATED WITH NON-UTILITY NATURAL GAS PIPELINES

Whereas, the Madison County Fiscal Court referred a proposal to the planning commission pursuant to KRS 100.211(3) to amend the 2013 *Land Use Regulations of Madison County* in order to require a conditional use permit for the construction and operation of compressor stations associated with natural gas pipelines other than those exempted from planning and zoning regulations by state or federal law; and

Whereas, in accordance with KRS Chapter 424 and KRS 100.211(3), public notice was provided and a public hearing on the proposal was conducted by the planning commission, at which time testimony was received concerning the advisability of adoption of the amendments below outlined; and

Whereas, KRS 100.211(3) provides that the planning commission is to make a recommendation as to the text of the amendment and whether the amendment shall be approved or disapproved and shall state the reasons for its recommendation; and

Whereas, testimony was received regarding construction and operation of compressor units associated with natural gas pipelines, and the adverse effects that could result from such construction and operation, including noise, traffic, land, water, air, visual, aesthetic, and other impacts that may, without adoption of appropriate conditions, impair the integrity or character of the zone in which it is located or adjoining zones; and

Whereas a conditional use is defined by KRS 100.111(6) to mean a use which is “essential to or would promote public health, safety, or welfare,” but “which would impair the integrity or character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation;” and

Whereas a conditional use permit is an appropriate vehicle to allow proper integration into the community of uses such as compressor units that may be suitable only in specific locations only if certain conditions are met; and

Whereas, Madison County has adopted comprehensive planning and zoning for the county, and as such, is empowered by KRS 353.500 to regulate aspects of oil and gas transmission through KRS Chapter 100; and

Whereas, KRS 100.324 exempts public utilities operating under the jurisdiction of the Public Service Commission, the Department of Vehicle Regulation or Federal Energy Regulatory Commission, any municipally owned electric system, and common carriers by rail from needing approval by a planning unit for the location or relocation of any of their service facilities; and

Whereas, there have been proposed two new compressor units on property within the jurisdiction of the Madison County planning commission that are owned and operated by an entity that is a common carrier transporting natural gas in interstate commerce by pipeline but is not a public utility within the meaning of KRS 100.324, and is thus subject to reasonable regulation under the *Land Use Regulations of Madison County*; and

Whereas the Federal Energy Regulatory Commission encourages “cooperation between interstate pipelines and local authorities” and has noted that while “state and local agencies may [not] prohibit or unreasonably delay the construction or operation of facilities approved by this Commission[,]” that state or local permits may be required provided that they are not inconsistent with conditions in any issued Certificate of Public Convenience and Necessity under the Natural Gas Act; and

Whereas, in the *Order Denying Rehearing* in the case of *Dominion Transmission Inc.*, Docket No. CP-12-72-01 (2013), the Federal Energy Regulatory Commission noted that “[t]he Commission does not take preemption lightly, and consistently encourages applicants to cooperate with state and local authorities...In light of this goal, the Commission has found that not all additional costs or delays associated with state and local laws are necessarily unreasonable. *See Islander East Pipeline Co.*, 102 FERC ¶ 61,054 at P 113; and

Whereas, the January 2013 *Land Use Regulations of Madison County* currently regulates the construction and operation of new pipelines, providing that “Public, quasi-public, and private service utility lines, pipelines, power lines, roads and etc., which extend more than 500 feet, that transport the material, service or supplies from one service are (sic) to another” are conditional uses in zones UC-5, RC-5, UC-10 and RC-10; and

Whereas, the current land use regulations do not specifically address the installation of compressor units on existing pipelines that may extend through lands zoned for uses other than UC-5, RC-5, UC-10 and RC-10; and

Whereas, the same and perhaps greater potential for impairment of the integrity and character of a zoning district from construction and operation of compressor units associated with pipelines exists in zones other than those referenced in numerical paragraphs 9 and 10, justifying amendment to the 2013 *Land Use Regulations of Madison County* in order to clarify that installation of compressor units in zones other than UC-5, RC-5, UC-10 and RC-10 require a conditional use permit;

Now, therefore, be it ordained by the Madison County Fiscal Court of Madison County, Kentucky that **Ordinance No. _____** is hereby amended to read as follows:

Section 402.7.3 of the 2013 *Land Use Regulations of Madison County* is amended as follows:

On Page 49 of the Ordinance, insert a footnote 1 in the chart category at two locations in the chart, to read:

Public, quasi-public, and private service utility lines, pipelines, power lines, roads and etc., which extend more than 500 feet, that transport the material, service or supplies from one service are to another.¹

¹ Proposed compressor units associated with pipelines that were constructed and put into operation prior to adoption of a comprehensive plan and zoning regulations for Madison County and are located in zones other than UC-5, RC-5, UC-10, and RC-10, shall require a conditional use permit prior to construction and operation of the compressor units. The application for a conditional use permit shall provide information regarding those measures proposed to be taken by the applicant to avoid impairment of the integrity and character of the zone in which it is located, or to adjoining zones, such as:

1. Inclusion of measures to locate the unit away from adjoining properties used or zoned for residential occupation;

2. Incorporation of equipment and measures to attenuate noise associated with the construction and operation of any compressor unit, including such measures as enclosure of the unit in a sound-proofed building, sufficient that the exterior noise level associated with the construction and operation of the compressor unit or units shall not exceed the pre-development ambient noise levels as measured from the boundaries of the property on which the compressor unit is located;

3. Provision of setbacks from waterbodies or other measures sufficient to control surface run-on and site run-off in order to prevent contamination from activities associated with the compressor unit;

4. Dust control measures, such as paving of any access road to and surface work areas associated with the operation of the compressor unit, and prompt and effective revegetation of all areas disturbed during construction of the facility;

5. Incorporation of architectural design of the building housing the compressor unit in order that the design of the building is compatible with the visual context of the surrounding development. Examples include design types such as barn structure or equestrian facility, estate residence, school facility or similar institutional use, gazebo or picnic area enclosure, club house or recreational facility, retail or office building, or a combination of such designs;

6. Landscaping structures and property in a manner that is compatible with the existing surrounding properties;

7. Submittal of a blasting plan for any blasting associated with excavation and construction, sufficient to minimize the effects of blasting and ensure safety during blasting operations, including development of pre- and post-blasting inspection, notification, and repair procedures; limits for peak particle velocity and frequency in order to protect nearby underground structures and building foundations; use of measures to prevent the flyrock from leaving the property; public notification of blasting schedule; audible alarms prior to any blasting; and any measures required under state law. If no blasting is proposed, a statement to that effect shall be provided;

8. Installation of such controls on ambient emissions of air pollutants associated with the testing, operation, and maintenance of the compressor unit, as is sufficient to prevent off-site nuisance conditions; and

9. Development of a Spill Control and Countermeasure Plan in order to minimize the risk of potential fuel or equipment fluid spills, and to promptly and effectively contain and remediate any spill or release.

10. Posting of a bond sufficient to protect and restore the roads affected by the haulage of equipment associated with the compressor unit construction to preconstruction status and to maintain Madison County roads that are used for the operation of the compressor unit.

The Board of Zoning Adjustment may impose such conditions as are deemed advisable and necessary to protect the integrity and character of the zone in which the proposed use is located, and any adjoining zone.

If an applicant has received approval for construction and operation of a compressor unit from the Federal Energy Regulatory Commission prior to Board of Zoning Adjustment consideration of an application for a conditional use permit, the applicant shall provide for Board consideration any conditions of approval imposed by the Federal Energy Regulatory Commission addressing the requirements of Paragraphs 1-9.

**NOW, THEREFORE BE IT ORDAINED BY THE FISCAL COURT OF THE
COUNTY OF MADISON, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

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1. The Ordinance Amending the Madison County Land Use Regulations concerning Compressor Stations is hereby approved.
2. All remaining provisions of Ordinance No. _____, continue in full force and effect.

THIS ORDINANCE SHALL BECOME EFFECTIVE ON THE DATE OF THE SECOND READING AND ADOPTION.

INTRODUCED, SECONDED AND GIVEN FIRST READING APPROVAL at a duly convened meeting of the Fiscal Court of Madison County, Kentucky held on the 24th day of May, 2016.

DATE ADOPTED: May 24th 2016

MOTION BY: John Tudor

SECONDED BY: Roger Barger

VOTE:	YES	NO
Magistrate Larry Combs	<input checked="" type="checkbox"/>	_____
Magistrate Roger Barger	<input checked="" type="checkbox"/>	_____
Magistrate John Tudor	<input checked="" type="checkbox"/>	_____
Magistrate Tom Botkin	<input checked="" type="checkbox"/>	_____
Judge Reagan Taylor	<input checked="" type="checkbox"/>	_____

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Fiscal Court of Madison County, Kentucky, held on the 14th day of June, 2016, and of record in Fiscal Court Order Book _____, Page _____.

DATE ADOPTED: June 14, 2016

MOTION BY: Roger Barger

SECONDED BY: John Tudor

VOTE:

YES

NO

Magistrate Larry Combs
Magistrate Roger Barger
Magistrate John Tudor
Magistrate Tom Botkin
Judge Reagan Taylor

✓
✓
✓
✓
✓



MADISON COUNTY JUDGE/ EXECUTIVE

Attest:

