

**MADISON COUNTY, KENTUCKY FISCAL COURT  
ORDINANCE NO. 16-07**

**AN ORDINANCE AMENDING THE 2013 LAND USE REGULATIONS OF  
MADISON COUNTY TO REQUIRE A CONDITIONAL USE PERMIT FOR  
CONSTRUCTION, CONVERSION AND OPERATION OF NON- PUBLIC  
UTILITY PIPELINES FOR TRANSPORTATION UNDER PRESSURE OF  
HAZARDOUS LIQUIDS.**

*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 that a conditional use permit be obtained as a precondition to construction or conversion of a non-public utility pipeline for transportation under pressure of hazardous liquids; 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*, The location or routing of a hazardous liquids pipeline is a matter that is outside of the jurisdiction of the Department of Transportation under the Pipeline Safety Act, 49 U.S.C. 60104(e); and

*Whereas*, the Federal Energy Regulatory Commission does not have jurisdiction over the location or routing of a pipeline constructed or converted to use for transportation of hazardous liquids; and

*Whereas*, KRS 100.324 generally exempts public utilities regulated by the Kentucky Public Service Commission, the Department of Vehicle Regulation, or Federal Energy Regulatory Commission, from obtaining approval for location or relocation of service facilities, but does not exempt service facilities owned by entities other than public utilities; and

*Whereas*, the Office of Pipeline Safety report titled *Building Safe Communities: Pipeline Risk and its Application To Local Development Decisions* (October 2010), noted that the permitting and routing of interstate natural gas pipelines are approved by the Federal

Energy Regulatory Commission (FERC) [and that] State agencies (e.g. Public Utility Commissions) approve the permitting and routing of intrastate natural gas pipelines and interstate and intrastate hazardous liquid transmission pipelines owned by regulated public utilities; and

*Whereas*, the Kentucky Public Service Commission has no authority to review or approve the location or routing of hazardous liquids transmission pipelines other than those of regulated public utilities; and

*Whereas*, the federal Office of Pipeline Safety in a 2010 report on pipeline risk and local development planning, noted that the potential consequences of the transportation of hazardous liquids in pipelines are different than the risks of natural gas pipelines, vary according to the commodity involved, and present different challenges for mitigation when compared with natural gas pipelines; and

*Whereas*, a 2004 Special Report published by the Transportation Research Board of the National Academies, titled *Transmission Pipelines and Land Use: A Risk-Informed Approach*, noted that rational land use decisions that provide appropriate physical separation between people and pipelines could reduce the risk associated with the increasing numbers of people in proximity to transmission pipelines. The Special Report encouraged the development of “risk-informed land use guidance” to assure compatibility of land uses, structures, and human activities with pipelines; and

*Whereas*, in a May 24, 2014 letter to the President of the TransCanada Corporation, Jeffrey Wiese, Associate Administrator for Pipeline Safety in the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation underscored the role of local governments, noting that:

Despite Federal preemption of pipeline safety regulation, the role and powers of local

authorities to affect pipeline safety is critical. Local governments have traditionally exercised broad powers to regulate land use and property development, including in the vicinity of pipelines. Nothing in Federal law impinges on these traditional prerogatives of local government, so long as local officials do not attempt to regulate the field of pipeline safety preempted by Federal law. In fact, PHMSA believes that pipeline safety is a responsibility shared by all three levels of government – federal, state, and local – as well as by pipeline operators, excavators, and property owners[;] and

*Whereas*, KRS 100.111(21), defines structure as “anything constructed or made, the use of which required permanent location in or on the ground or attachment to something

having a permanent location in or on the ground, including buildings and signs,” thus empowering planning units to regulate pipelines; and

*Whereas*, after hearing testimony from the public on each of these findings, the Planning Commission recommended the following text be adopted by the Fiscal Court of Madison County, Kentucky; and

*Whereas*, for these reasons and after review of the testimony presented at the Planning Commission hearing, the Madison County Fiscal Court of Madison County, Kentucky has determined that the requirement of obtaining a conditional use permit as a precondition to construction or conversion of a non-public utility pipeline for transportation under pressure of hazardous liquids is necessary and prudent in order to allow the proper integration into the community of uses which may be suitable in specific locations only if certain conditions are met;

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:

1. ARTICLE V DEFINITIONS is amended to include a new definition of “hazardous liquids” to read as follows:

“Hazardous liquids pipeline” shall include any pipeline constructed or converted to use for transportation under pressure of crude oil, petroleum, natural gas liquids, anhydrous ammonia, and carbon dioxide. This section does not apply to piping within the boundaries of a manufacturing facility or a gas or service station, nor to public facilities or public utility facilities as provided in KRS 100.324.

2. SECTION 402.6 is amended to include in the chart a new use category as follows:

10. “Hazardous liquids pipeline” and to provide that such use is a conditional use requiring approval under Section 402.10 in all UC, RC, R and C districts.

3. SECTION 402.7 is amended to include in the charts a new use category as follows:

“Hazardous liquids pipeline” and to provide that such use is a conditional use requiring approval under Section 402.10 in all Industrial and Hazardous Industrial districts.

4. A new section is created to read as follows:

SECTION 402.10

1. An applicant for a conditional use permit for construction or conversion of a pipeline for transportation of hazardous liquids shall demonstrate compliance with the requirements of KRS 100.111(6) and KRS 100.237, including all measures proposed to

be taken to assure compatibility of the proposed use of the pipeline for transportation of hazardous liquids with the surrounding land uses, considering:

a. Noise and odor from aboveground pipeline operation and maintenance activities such as

\_\_\_\_\_ pump station machinery, start-up and shut-down activities, heat exchangers or other equipment emissions, relief valves, backup power generators, and other sources of noise

\_\_\_\_\_ or odor;

b. Impacts on existing and proposed roads and other infrastructure, including water and wastewater infrastructure;

c. Proximity to industrial areas where manufacturing processes involve storage of flammable

\_\_\_\_\_ liquids or gases, toxic chemicals, explosives, or other hazardous substances that could be

\_\_\_\_\_ compromised as a result of an accident;

d. Proximity to institutional facilities such as schools, daycare facilities, hospitals, nursing

\_\_\_\_\_ homes, jails and prisons;

e. Proximity to public safety and emergency response facilities;

f. Proximity to current or planned places of mass public assembly;

g. Proximity to cultural, historic, and natural resources of significance;

h. Proximity to and impacts on prime or significant farmland; and

i. Proximity to residences.

2. The Board of Adjustment may retain the services of a consultant familiar with transportation of hazardous liquids by pipeline, to review and make recommendations concerning the adequacy of the measures proposed by the applicant to assure compatibility of the use of the pipeline for transportation of hazardous liquids with other land uses, and the applicant shall be required to make a deposit with the Board of the estimated costs associated with the consultant's review upon application and shall reimburse the Board for any costs exceeding the deposit. The Board of Adjustment may require, among other conditions, the posting of bonds for roads and structures and liability insurance to assure compensation for any injuries or damage caused by the pipeline operation.

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

1. The Ordinance Amending the Madison County Land Use Regulations concerning Pipelines 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 24<sup>th</sup> day of May, 2016.

DATE ADOPTED: May 24, 2016  
 MOTION BY: John Tudor  
 SECONDED BY: Roger Barger

VOTE:	YES	NO
Magistrate Larry Combs	<u>✓</u>	_____
Magistrate Roger Barger	<u>✓</u>	_____
Magistrate John Tudor	<u>✓</u>	_____
Magistrate Tom Botkin	<u>✓</u>	_____
Judge Reagan Taylor	<u>✓</u>	_____

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

DATE ADOPTED: June 14<sup>th</sup> 2016  
 MOTION BY: Larry Combs  
 SECONDED BY: John Tudor

VOTE:	YES	NO
Magistrate Larry Combs	<u>✓</u>	_____
Magistrate Roger Barger	<u>✓</u>	_____

Magistrate John Tudor  
Magistrate Tom Botkin  
Judge Reagan Taylor

✓      \_\_\_\_\_  
✓      \_\_\_\_\_  
✓      \_\_\_\_\_

B-30 -  
MADISON COUNTY JUDGE/ EXECUTIVE

Attest:

Kenny Barger  
Madison County Clerk, Kenny Barger