

**BOROUGH OF FANWOOD
COUNTY OF UNION**

ORDINANCE NO. 17-04-R

**AN ORDINANCE OF THE BOROUGH OF FANWOOD, COUNTY OF
UNION, AND STATE OF NEW JERSEY, AMENDING THE FANWOOD
BOROUGH CODE REGARDING OIL AND HAZARDOUS SUBSTANCE
PIPELINES**

WHEREAS, certain pipelines are designed to transport oil and other hazardous substances which, if a discharge occurred, will result in environmental contamination and degradation of the environment, including the land, water and air; and

WHEREAS, these pipelines are not public utilities which provide services to the public as end users such as water, electricity, natural gas, and telephone communication services and are not regulated by the New Jersey Board of Public Utilities; and

WHEREAS, these pipelines may pose a threat to infrastructure which provides these public utility services; and

WHEREAS, the Borough of Fanwood Master Plan provides that a general objective for the Borough of Fanwood (The "Borough") with regard to planning and zoning is: "To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare"; and

WHEREAS, the Borough believes that oil and hazardous substance pipelines may also pose a threat to the health and welfare of the residents of the Borough; and

WHEREAS, the Borough believes that it is in the best interest of the health, safety, and welfare of its residents that the Code of the Borough of Fanwood be clarified to provide that oil and hazardous substance pipelines which are not public utilities and are not regulated by the New Jersey Board of Public Utilities are specifically prohibited within the residential zone districts of the Borough and shall constitute conditional uses in all other zones and districts of the Borough subject to the provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Fanwood, County of Union, State of New Jersey as follows:

Section 1. The Code of the Borough of Fanwood, County of Union, State of New Jersey, is hereby amended to as to add a new Chapter 214, entitled "Pipelines" as follows:

§214-1 Definitions.

- A. Critical Land Use. A land use that, if located in the vicinity of an oil and Hazardous Substance pipeline, represents an unusually high risk to life in the event of a pipeline failure due to the characteristics of the inhabitants or functions of the use. Critical Land Uses include without limitation:
- 1) Child care;
 - 2) Houses of worship and other religious institutions;
 - 3) Hospitals;
 - 4) High-rise buildings, including hotels, dormitories, apartment complexes, and office buildings, which may not lend themselves to a timely evacuation;
 - 5) Open space uses, including Green Acres and Borough-owned lands designated as open space preservation areas, farmland preservation areas, historic preservation areas, Blue Acres preservation areas, active recreation areas, and passive recreation areas;
 - 6) National Park Service designated National Natural Landmarks;
 - 7) New Jersey Department of Environmental Protection (“NJDEP”) designated New Jersey Natural Areas and Natural Heritage Priority Sites;
 - 8) Senior and residential care facilities; and
 - 9) Institutional uses, including public and private schools, day-care facilities, and public or quasi-public buildings.
- B. Essential Public Facilities. Those public facilities which provide basic health and safety services to residents and visitors of the Borough, including, without limitation, water sanitation plants, water treatment plants, sewer treatment plants, water storage facilities, telecommunication towers, police stations, fire stations, jails, courthouses, public health facilities, and emergency operations centers.
- C. Hazardous Substance. Any substance designated under 40 CFR 116 pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act, Public Law 92-500; 33 U.S.C. § 1251 et seq.), the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or Section 4 of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-4 et seq., including without limitation petroleum, petroleum products, pesticides, solvents and other substances.
- D. Oil and Hazardous Substance Pipeline. A pipeline, whether above or below ground, which transports or is designed to transport oil or other Hazardous Substance. As used herein, a pipeline includes all parts of those physical facilities through which oil or a Hazardous Substance moves or is meant to move in transportation, including pipes, valves, and other appurtenances attached to pipes, compressor units, pumping stations, metering stations, regulator stations, delivery stations, emergency response terminals, holders, breakout tanks, fabricated assemblies, and other surface pipeline appurtenances.

E. Pipeline Owner. The company, entity, or person(s) that owns an Oil and Hazardous Substance Pipeline.

F. Pipeline Operator. The company, entity, or person(s) responsible for the operation, maintenance and management of an Oil and Hazardous Substance Pipeline.

§214-2 Oil and Hazardous Substance Pipelines.

A. Applicability. The provisions in this section apply to all Oil and Hazardous Substance Pipelines proposed for construction and siting within the Borough. To the extent any regulations within this section conflict with state or federal regulations or laws regulating oil and Hazardous Substance pipelines, those state or federal regulations and laws shall take precedence over this Ordinance.

B. Uses. Oil and Hazardous Substance Pipelines that are not providing services to the public as end users and are not regulated by the New Jersey Board of Public Utilities are prohibited in all residential zones and districts within the Borough and shall constitute conditional uses in all other zones and districts within the Borough subject to the provisions of this Ordinance.

C. Development and Construction of Oil and Hazardous Substance Pipelines. The following requirements and standards shall apply for the development and construction of any Oil or Hazardous Substance Pipeline within the Borough:

1. Application and approvals. A resolution of approval by the Borough Planning Board shall be required prior to the construction of any Oil and Hazardous Substance Pipeline within the Borough. An original application for a pipeline approval and permit shall be submitted to the Borough Planning Board Secretary with a copy submitted to the Borough Engineer. Such application shall include:

- a. Three (3) sets of plans showing the dimensions, valving frequency, and proposed construction and siting of the Oil and Hazardous Substance Pipeline, related appurtenances and facilities;
- b. Detailed cross-section drawings for all proposed pipeline public street right-of-way, closings and easements, wetlands and New Jersey open waters crossings;
- c. A flow diagram showing the daily design capacity of the proposed Oil and Hazardous Substance Pipeline;
- d. A description of any changes in flow in the Oil and Hazardous Substance Pipeline once in operation; and
- e. The proposed maximum operating pressure, in pounds per square inch gauge (psig) at all points of change in elevation greater than 500 feet, or every 500 feet in length as a minimum.

2. Required Setbacks. To promote the public health, safety, and general welfare and to mitigate the aesthetic and environmental impacts of the Oil and Hazardous Substance Pipeline and to minimize the potential damage or interruption to Essential Public Facilities by the Oil and Hazardous Substance Pipeline, the construction and siting of any Oil and Hazardous Substance Pipeline in the Borough shall require the following setbacks:
 - a. Wellhead Protection Areas. Except as otherwise set forth in this section or as approved by the Borough Engineer as part of the pipeline permit and approval process where adequate mitigation measures have been demonstrated by the applicant, the Oil and Hazardous Substance Pipeline shall not be located within the vicinity of a wellhead protection area (“WPA”), and shall not be located closer than 2,500 feet in a Tier 1 WPA, 1,000 feet in a Tier 2 WPA, and 500 feet in a Tier 3 WPA.
 - b. 100-Foot Setbacks. Except as otherwise set forth in this section, Oil and Hazardous Substance Pipelines shall not be constructed and sited closer than 100 feet from:
 - (i) Any Wetlands;
 - (ii) Any year-round naturally occurring creek, stream, river, private or public well, or pond, unless approved by the Borough Engineer as part of the pipeline permit and approval process where adequate mitigation measures have been demonstrated by the applicant; or
 - (iii) Any property in a business district or where a business is located.
 - c. 150-Foot Setbacks. Except as otherwise set forth in this section, Oil and Hazardous Substance Pipelines shall not be sited closer than 150 feet from any residential property, zone or district on level grade.
 - d. 250-foot setbacks. Except as otherwise set forth in this section, Oil and Hazardous Substance Pipelines shall not be constructed and sited closer than 250 feet from any residential property, zone or district where the residential property, zone or district is located downhill from the pipeline at a grade equal to or greater than five percent (5%), except that Oil and Hazardous Substance Pipelines shall be located on slopes of a grade equal to or greater than fifteen percent (15%).
 - e. 1000-Foot Setbacks. Except as otherwise set forth in this section, Oil and Hazardous Substance Pipelines shall not be constructed and sited closer than 1000 feet from any Critical Land Use lot or Essential Public Facilities structure.
3. Submittal of Additional Information. If requested by the Borough Engineer, preliminary as-built information, including, without limitation, as-built drawings, a

copy of GIS shapefiles of the pipeline and its related appurtenances and facilities within the Borough, and any additional requested information about the Oil and Hazardous Substance Pipeline shall be filed ninety (90) days before the date the pipeline is proposed to become operational with the Borough Engineer. Updated as-built information, including, without limitation, as-built drawings, a copy of GIS shapefiles of the Oil and Hazardous Substance Pipeline and its related appurtenances and facilities within the Borough, and any additional information requested by the Borough Engineer about the pipeline shall be filed within sixty (60) days after the Oil and Hazardous Substance Pipeline has become operational with the Borough Engineer.

4. Construction. The Pipeline Owner and Pipeline Operator shall give notice 48 hours prior to the proposed start date of construction of the Oil and Hazardous Substance pipeline to all affected residents, businesses (including agricultural businesses) and to the Borough Engineer and Police Department. Private property owners and business owners shall have access to their properties at all times during pipeline construction.
- D. Emergency Preparedness Plan. Sixty (60) days prior to the first date of operation of the Oil and Hazardous Substance Pipeline, the Pipeline Owner and Pipeline Operator shall meet with the Borough Police Department and Engineer and submit to them an emergency preparedness plan (“EMP”) for any and all emergencies that may result in an accidental leak or failure incident regarding the pipeline and its related appurtenances and facilities. The EMP shall cover the requirements stated in 49 CFR 195.402 and 195.403 and shall identify a responsible local emergency response official and a direct twenty-four (24) hour emergency phone number. No Oil and Hazardous Substance Pipeline shall become operational, nor shall any oil or Hazardous Substance be introduced into the Oil and Hazardous Substance Pipeline prior to the Pipeline Owner and Pipeline Operator receiving the prior written approval of the EMP by the Borough Engineer and Chief of Police.
- E. Insurance. No Pipeline Owner or Pipeline Operator shall operate any Oil and Hazardous Substance Pipeline or introduce any oil or Hazardous Substance into an Oil and Hazardous Substance Pipeline without first obtaining insurance policies covering general liability, environmental incidents and contamination, and property damage in an aggregate amount to be determined by the Borough based upon reasonable estimates of potential liability and property damage that would result from a leak, spill or other failure of the Oil and Hazardous Substance Pipeline. Prior to the first operation of the Oil and Hazardous Substance Pipeline and every year in which the Oil and Hazardous Substance Pipeline is in operation thereafter, the Pipeline Owner or Pipeline Operator shall submit insurance coverage certificates and endorsements to the Borough adding the Borough as an additional named insured on the insurance policies, demonstrating that the required policies and levels of insurance have been obtained.

- F. Indemnification and Hold Harmless. Prior to the first operation of the Oil and Hazardous Substance Pipeline, the Pipeline Owner and Pipeline Operator shall both agree in writing to indemnify and hold harmless the Borough, as well as its officers, officials, supervisors, employees, agents, contractors, and assigns, from any and all liability relating to or arising from the Oil and Hazardous Substance Pipeline, including, but not limited to, any failure, leak, spill, contamination, cleanup, remediation, property damage, and personal injury from and related to such pipeline. The indemnification and hold harmless agreement shall include a provision for the payment of the Borough's reasonable attorneys' fees and costs.
- G. Easements. Any easements or rights-of-way obtained by the Pipeline Owner or Pipeline Operator for the Oil and Hazardous Substance Pipeline shall be recorded by the Pipeline Owner or Pipeline Operator in the office of the County Clerk.
- H. Marking. The Pipeline Owner or Pipeline Operator shall install and maintain markers to identify the location of the Oil and Hazardous Substance Pipeline in accordance with all applicable federal and state requirements.
- I. Pipeline Failure and Remediation. In the event that a leak, spill, or failure has occurred with the Oil and Hazardous Substance Pipeline, the Pipeline Owner and Pipeline Operator shall notify the Borough Engineer, the Borough Police Department, and all property owners within 1000 feet of the affected pipeline area within one (1) hour of discovery of the leak, spill or failure. The Pipeline Owner and Pipeline Operator shall cooperate with the Borough's officials and make every effort to respond as soon as possible to protect the public's health, safety, and welfare. All leak or spill remediation plans shall be made in consultation with the Borough, and no remediation may be deemed complete without final approval thereof by the Borough. In the event that the Oil and Hazardous Substance Pipeline is shut down due to a leak, spill, or failure, the Pipeline Owner and Pipeline Operator shall not restart the pipeline without the written approval of the Borough Engineer.
- J. Repair. Following any repair(s) of an Oil and Hazardous Substance Pipeline, any areas disturbed by such repair(s) shall be revegetated in accordance with the applicable provisions of the Borough Code, rules and standards at the Pipeline Owner's and Pipeline Operator's sole cost and expense.

Section 2. If any part(s) of this Ordinance shall be deemed invalid, such part(s) shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of the Borough inconsistent herewith are repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

Introduced: February 21, 2017

Adopted: March 6, 2017

Colleen Mahr, Mayor

Attest: _____
Eleanor McGovern, Borough Clerk