

TOWNSHIP OF MAHWAH
ORDINANCE NO. 1807

AN ORDINANCE AMENDING THE LAND DEVELOPMENT ORDINANCE
OF THE TOWNSHIP OF MAHWAH, CHAPTER XXIV "ZONING",
ARTICLE 4 "DISTRICT REGULATIONS", SECTION 4.3 "GENERAL
USE RESTRICTIONS" BY AMENDING SECTION 4.3(B) TO PROVIDE
REGULATIONS APPLICABLE TO OIL AND HAZARDOUS SUBSTANCE
PIPELINES WITHIN THE TOWNSHIP OF MAHWAH

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 Township of Mahwah Master Plan provides that a general objective for the Township of Mahwah with regard to planning and zoning is "to encourage Township of Mahwah actions to guide the appropriate use or development of all lands in the Township of Mahwah, in a manner which will promote the public health, safety, morals and general welfare"; and

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

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

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mahwah, in the County of Bergen, New Jersey, as follows:

Section 1. Section 24-2.2 of the Code of the Township of Mahwah, titled Definitions, is hereby amended to add the following 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 Township of Mahwah-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;
- (9) Institutional uses, including public and private schools, day-care facilities, and public or public buildings;
- (10) Land traversing sole source aquifers.

B. Essential Public Facilities. Those public facilities which provide basic health and safety services to residents and visitors of Township of Mahwah, including, without limitation, water sanitation plants, water treatment plants, sewer treatment plants, water storage facilities, municipal 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.

Section 24-4.3b2. 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 Township of Mahwah. 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 Township of Mahwah and shall constitute conditional uses in all other zones and districts within Township of Mahwah 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 Township of Mahwah:
 - (1) Application and approvals. A resolution of approval by the Township of Mahwah Planning Board shall be required prior to the construction of any Oil and Hazardous Substance Pipeline within the Township of Mahwah. An original Development Application-Site Plan for a pipeline approval and permit shall be submitted to the Township of Mahwah Planning Board Secretary with a copy submitted to the Township Engineer. Such application shall include:
 - (a) 18 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;
 - (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; and
 - (f) Diagrams and descriptions of all pipeline monitoring facilities and shut off/flow control valves proposed to be located in or closest to the municipality.
- (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 the Oil and Hazardous Substance Pipeline in Township of Mahwah shall be subject to the following setbacks:
- (a) Wellhead Protection or Sole Source Aquifer Areas. In accordance with Appendix A of §24-19 of the Township Code titled "Wellhead Protection", a pipeline, except a natural gas pipeline, is considered a Major Potential Pollutant Source and shall be prohibited with a Tier 1 and 2 Wellhead Protection Area. All other provisions of §24-19 must be complied with.
 - (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 Township of Mahwah 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 5%, except that no Oil and Hazardous Substance Pipelines shall be located on slopes of a grade equal to or greater than 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 Township of Mahwah 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 Municipality, and any additional requested information about the Oil and Hazardous Substance Pipeline shall be filed 90 days before the date the pipeline is proposed to become operational with the Township of Mahwah 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 Municipality, and any additional information requested by the Township of Mahwah Engineer about the pipeline shall be filed within 60 days after the Oil and Hazardous Substance Pipeline has become operational with the Township of Mahwah 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 Township of Mahwah 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 Township of Mahwah 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 and 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 Township of Mahwah 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 Township of Mahwah 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 Township of Mahwah adding the Township of Mahwah 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 Township of Mahwah, 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 Mahwah's reasonable attorneys' fees and litigation 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 Township of Mahwah Engineer, the Township of Mahwah Police Department, and all property owners within 1000 feet of the affected pipeline area within one hour of discovery of the leak, spill or failure. The Pipeline Owner and Pipeline Operator shall cooperate with Township of Mahwah 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 Township of Mahwah, and no remediation may be deemed complete without final approval thereof by the Township of Mahwah. 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 Township of Mahwah Engineer.
- J. Repair. Following any repair(s) of an Oil and Hazardous Substance Pipeline, any areas disturbed by such repair(s) shall be revegetated and restored in accordance with the applicable provisions of the Township Ordinances at the Pipeline Owner's and Pipeline Operator's sole cost and expense.

Section 2. All other parts, portions and provisions of Chapter 24 of the Township of Mahwah Code, be and the same, are hereby ratified and confirmed, except where inconsistent with the terms thereof. In the event of any such inconsistency, the terms of this Ordinance shall be deemed to govern.

Section 3. If any section, paragraph, sub-section, clause or provision of this ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any part thereof.

Section 4. All ordinances or parts of ordinances of the Township heretofore adopted that are inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 5. This Ordinance shall take effect twenty (20) days after final passage, adoption and publication according to law.