

New Requirements for Pipeline Projects  
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# **INTERNATIONAL RIGHT OF WAY ASSOCIATION**

# New Pipeline Requirements

- City of Fort Worth Pipeline Ordinance (1/09);
- Texas Midstream v. City of Grand Prairie;
- Legislative Update on pipelines.


# City of Fort Worth Ordinance

- As a part of the substantial revisions to the Gas Drilling Ordinance, COFW enacted a pipeline ordinance, including requirements for saltwater pipelines.
- Became effective January of this year.



# Background on Municipal Regulation

- Pipeline Safety Act of 1994, provides federal minimum standards for safety and precludes municipal regulation;
- Texas Utility Code vests exclusive jurisdiction to the TXRRC over safety standards, but allows municipalities some authority;
- Municipalities may adopt standards related to mapping, inventorying or relocation of city streets or private residential areas.

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- COFW Ordinance is targeted to ensure the compatibility of pipelines and facilities to surrounding uses, reduce noise, maintain property values and protect quality of life.
    - Ordinance divides pipelines into “city regulated pipelines” and “state or federal regulated pipelines.”

# Why does COFW need a Pipeline Ordinance?

- Density-gathering lines and connecting lines more dense than ever seen in urban context;
- Duplication-multiple producers must build out to interstate transmission lines;
- Knowledge-City must know where all of the lines are located;
- Future Land Use and Planning-pipelines have a significant impact on future use by city and private development.

# Section 15-46 Highpoints

- Pipelines may not interfere with existing utilities or ROW;
- Must restore to original condition;
- Must meet or exceed federal and state requirements;
- 10 days prior to construction, operator shall give written mailed notice to all tenants, property owners and residents that are located adjacent to proposed line.

# Filing with City

- As built, record drawings and plans;
- GPS locations of line;
- Data compatible with City GIS;
- Disclosure of substance to be transported;
- MSDS sheets;
- Engineering plans, showing depths, shutoff valves, other pipelines or utilities within 15 feet;
- All property owners, tenants or residents adjacent.

# Other Requirements

- Must participate in “One Call”
- Annual update of contact information for shutoff, emergency and materials;
- Provide City with any reports made to State or Federal regulators;
- Annual report to City that pipeline has no outstanding safety violations.

# City Regulated Pipelines

- Must incorporate all federal and state requirements for lines between well and first transfer;
- Obtain permit;
- When applying for well permit must show proposed route to reach transmission line;
- Must submit application to COFW BEFORE making any offer or initiating any negotiations in residential area.

# Gas Drilling Review Committee

- Any pipeline passing through a private residential area in the City must be reviewed by GDRC, a committee of specified City departments.
  - Public notice and opportunity for citizen input;
  - Technical advisor can be employed, as needed;
  - City Council can authorize an independent study.

# Other Requirements

- Abandonment procedures;
- Required Emergency Response Plan
- Notice to adjacent property owners of repair or maintenance work;
- Pipeline markers;
- Permission required to place line on, over, under or along any public ROW, utility easement or City owned property.

# Saltwater Pipelines

- Must obtain permission from the City;
- Designed and sealed by a professional engineer;
- Locate 5 feet below City utilities;
- Automatic shutdown system;
- Markers.

# Texas Midstream v. City of Grand Prairie

- Case filed in Dallas federal court by TM to challenge and void GP ordinance on compressor stations.
- TM argued that compressor station was part of a federally regulated pipeline and GP's ordinance was a "safety" regulation and thus preempted by federal law.
- Injunction was requested allowing TM to build where and how it wished.

# Judge Fitzwater's Decision

- Majority of GP Ordinance was not adopted for "safety" thus was not preempted by federal law.
- Setbacks, design features, landscape and material requirements were appropriate areas for regulation and TM was bound to follow them.
- Entered injunction on part of GP Ordinance that required 8 foot fence.

# West Fork Partners, LP v. Chesapeake Exploration et. al

- Does a pipeline subsidiary have to honor lease conditions in favor of the mineral owner lessor?
- Case just filed and now in Judge Fitzwater's court for determination.

# Legislative Update

- Numerous pipeline bills filed this session.
  - Municipalities and counties seeking greater authority to regulate;
  - Citizen demands for greater protection;
  - Industry desire for uniform requirements.

# HB 1535 Burnam

- Requires RRC Process and Approval for pipeline routes. (mirrors the PUC approach to transmission lines)
  - Notice to affected persons;
  - Limited to Tarrant County;
  - Apply with proposed route and three alternatives;
  - Must include feasibility study of using existing ROW;
  - Hearing upon request;
  - Market need assessed.

# SB 686 Davis/ HB 876 Orr

- Texas Department of Transportation shall allow subsurface access to its controlled access ROW for installation of natural gas pipeline if it does not interfere with existing utilities.
  - TxDot may regulate horizontal and vertical location.

# SB 2433 Davis

- Pipeline operator that seeks to acquire an easement on property or ROW held by a municipality must provide city notice of proposed line and time to consider.
  - Within 60 days, city must either consent or suggest a feasible alternative considering city's:
    - Comprehensive plan;
    - Transit development plan;
    - Economic development plan.

## SB 2433

- If no agreement can be reached, pipeline company can proceed with condemnation BUT, city may move the court to determine that the city's route is more reasonable.
  - If court determines this, the acquisition of property may be conditioned on use of the city's preferred route.

# SB 2401 Davis

- Bill clarifies and modifies existing RRC requirements for identifying and repairing pipeline leaks.

# HB 4441 Gonzalez Toureilles

- Confers exclusive jurisdiction on RRC to establish standards for pipelines and appurtenant facilities.
- In doing so, RRC must:
  - Encourage use of public streets, roads, highways, and other existing ROW;
  - Require pipeline companies to minimize impact on existing land use;
  - Prevent public entities from prohibiting use of ROW.

# HB 3729 King

County may allow subsurface access to a county road ROW for a gas line or temporary water line.

County may regulate vertical or horizontal location and may charge operator for cost of relocation.

# SB 1679 Hinojosa/ HB 1426 Crownover

- Common Purchaser has the right to lay and maintain a pipeline over, under, across and along a public road or municipal street or alley.
  - Must have consent and direction of city.

# HB 1566 England

- Municipalities would have authority to regulate natural gas compressor stations, considering:

- Proximity to residential areas;
- Height and size of station;
- Aesthetic compatibility with area;
- Compliance with city's comprehensive plan.

May regulate safety of above ground if consistent with federal law.

# HB 1538 Burnam

- County or municipality may set safety regulations applicable to a gas gathering or transmission line if consistent with federal law.

# HB 1537 Burnam

- Safety requirements for pipelines, Tarrant only;
  - Setback of 300 feet from pipeline to structure with inhabitants;
  - Gas must be odorized;
  - Gas must be dehydrated at wellhead;
  - Pipelines must be coated.

# HB 1536 Burnam

- Gas corporation may not condemn property for a gathering or transmission line that transports gas for a single producer.

# SB 902 Davis/ HB 2255 Hancock

- Green completion bill.
  - Limits release of gas from well site to atmosphere;
  - For Barnett, sets prohibition after two days.



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