

CCHOA Board Meeting Agenda
26 July 2023, 6:30pm
Circle C Community Center via zoom

- I. Roll Call
- II. Acceptance of Agenda
- III. Acceptance of June 28, 2023 board meeting minutes *Joanne Kinzer*
- IV. Homeowner Forum (*3 min each*)
(Homeowners may sign up to speak for the Homeowners Forum by calling the HOA manager at 512-288-8663 or sending an email to info@circlecranch.info at least a week before the meeting, in writing. Members will be given 3 minutes to address the board. The Board will send a reply through the HOA Office after the meeting.
- V. Management Reports
 - a. General Report, *Karen Hibpshman*
 - 1. June YTD Financials
 - b. Landscape Report, *Karen Hibpshman*
 - c. Aquatics Report, *Brody McKinley*
 - d. Maintenance Report, *Karen Hibpshman*
- VI. Discussion Items
 - a. Storm Damage Update
 - b. 2023 Legislative Changes
 - c. The Board is considering amending the Bylaws
 - d. Code of Conduct
 - e. Short-Term Rental (STR)
 - f. Swimming Pools
- VII. Action Items
 - a. Board Appointment
 - b. Texas Gas Easement & ROW Agreement
 - c. OHAN Representative
 - d. Swimming Pools
 - e. CCN design proposal
 - f. CCN Project budget adjustment
- VIII. Adjourn Public Meeting
- IX. Executive Session

Attachments

- 1. June 2023 Board Meeting Minutes
- 2. General Report (including YTD Financials)
- 3. Landscape Report
- 4. Aquatics Report
- 5. Maintenance Report

Circle C Homeowners Association
Board Meeting Minutes
June 28, 2023

1. The CCHOA Board of Directors convened on June 28, 2023, at the Community Center and via video conferencing (Zoom). Stephen Bega called the meeting to order at 6:33p.m. In attendance were board members Stephen Bega, David Lachance, Joanne Kinzer, Kimberly De La Garza and Mark Blanton. Paul Oveisi joined via Zoom. Trinh Bartlett was not present. CHOA Manager Karen Hibpshman (HOA Manager), Robert Bardeleben (Facilities Director) and Brody McKinley (Aquatics Director) were present.
2. Stephen presented the June 28, 2023 agenda. Karen asked the board to table the CCN design proposal. Kimberly motioned to accept the agenda with the changes. Joanne seconded the motion. All were in favor and the motion passed.
3. Stephen presented the May 31, 2023 Board of Directors Meeting Minutes. Joanne motioned to approve the minutes as written. David seconded the motion. All were in favor and the motion passed.
4. Stephen introduced the Homeowner Forum. No Homeowners were signed up for the Homeowner Forum.
5. Karen provided the management report and the YTD Financials.
6. Karen presented the landscaping report.
7. Brody presented the aquatics report.
8. Robert presented the maintenance report.
9. The first discussion item was the Storm Damage Update. We finished the final list from the storm damage. The storm last week brought a couple of trees that have to be addressed but nothing major. We will continue to address tree issues when they are brought to us.
10. The second discussion item was the 2023 Legislative changes. Karen discussed the different changes that came down. Will work with the attorney to update the guidelines or policies to address the necessary changes and present them to the board.
11. Stephen asked to move Discussion item e to the third discussion item. The third discussion item was the issue of STR's (Short-term rental). Four homeowners attended to speak the board on what they are experiencing with a STR. It was suggested to file a complaint through Airbnb. Karen will also reach out to the attorney for additional guidance on what would be the most effective way to address.

12. The fourth discussion item was the Board is considering amending the Bylaws. Karen explained that one of the main reasons for amending the Bylaws is to clearly outline electronic voting and holding the meetings over Zoom.
13. The fifth discussion item Swimming Pools. There are several options presented to the board to review. We can do a poll through Doodle for the board if that will help separated the different options.
14. David left the meeting at 8:35pm
15. The first action item was Swim Center Redesign Proposal. Stephen motion to accept the current proposal contingent on it including the provision that if there are changes needed, a change order is submitted in writing. Paul seconded the motion. Stephen, Kimberly and Paul voted yes. Mark voted no. The motion passed 3-1.
16. The second action item was CCN design proposal. Mark motioned to table. Kimberly seconded the motion. All were in favor and the motion passed.
17. Joanne re-joined the meeting via zoom at 9:15pm.
18. The third action item was the CCN Project budget adjustment. Karen will provide additional documentation. Kimberly motioned to table. Mark seconded the motion. All were in favor and the motion passed.
19. Mark motioned to adjourn the Public Meeting at 9:18 pm. Kimberly seconded the motion. All were in favor and the motion passed.
20. No executive session.

**Circle C Homeowners Association
 Manager's Report
 June 26, 2023 – July 21, 2023**

**Violation Report
 June 26, 2023 – July 21, 2023**

	June 26, 2023 – July 21, 2023		June 27, 2022- July 22, 2022	
192 Violations			229	
Rubbish/Debris	38	19.79%	56	24.45%
Front Yard Maintenance	70	36.46%	61	26.64%
Architectural	12	6.25%	18	7.86%
Vehicle Storage	9	4.69%	11	4.80%
Repair of Exterior Damages	20	10.42%	25	4.68%
Exterior Lighting	11	3.37%	15	1.17%
Driveway	2	1.04%	1	0.0%
Fencing	2	1.04%	5	0.58%
Use Limitations	2	1.041%	20	1.75%
Recreational Equipment	20	10.42%	3	1.31%
Offensive Activities	2	1.04%	2	0.87%
Common Properties	0	0.0%	2	0.87%
Maintenance	5	2.60%	10	4.37%
Abutting Landscaping	0	0.00%		

192 Violations by Stage			229 Violations by Stage		
Stage 1/Cooperative Letters	158	82.29%	181	79.03%	
Stage 2 Letters	27	14.06%	34	14.87%	
Stage 3 Letters	6	3.12%	14	6.11%	
Stage O	1	0.52%	0	0.0%	

192 Violation Updates/Creates			229 Violation Updates/Creates		
Closed	72	37.05%	117	51.09%	
New	98	51.04%	72	31.44%	
Escalated	17	8.85%	35	15.28%	
Re-Opened	5	2.60%	5	2.188%	
Attorney			0	0.00%	

Administration

26 New Homeowner Packets mailed June 17th – July 21st.

Financial

AP checks were signed on July 20th with Terri Giles

Upcoming Special Events

Aug 11th – Farmers Market – CCCC Parking Lot
Aug 14th – Large Brush Collection – North of Slaughter Lane
Aug 14th – First day of School
Aug 21st – Large Bush Collection – South of Slaughter Lane
Aug 28th – Bulk Item Pick-up – North of Slaughter Lane
Aug 30th – Board Meeting
Sept 4th – Bulk Item Pick-up – South of Slaughter Lane

Project/Updates

- Storm Damages – will walk through that under “Discussion Items”
- There are still issues from the Verizon project that are still being repaired. Irrigation wiring is still an issue and not 100%.
- Accident on La Crosse on July 5th. We were able to get a copy of the accident report and have started the insurance claim process. Have the bills for the emergency clean-up and working on the cost for the repair. The insurance company has stated they will be covering the claim.
- CCN – Boring company has started potholing to locate the utilities and gas lines. Contractor has been in touch daily with findings. Still having issues with Austin Water and Texas Gas marking their lines, new 811 requests have been submitted. I have reached out to Paige Ellis’s office for help.
- We have partnered with the City of Austin for a “Varsity Program” (55+) at the Community Center on Monday, Wednesday and Friday mornings. They are working on getting me a monthly calendar to publish on trips and events are being planned.
- The city will start the remaining part of the corridor project. I am continuing to work with the corridor folks and the shared Use Path project from Barstow to MoPac and the start date was delayed due to permitting issues. From the new plans, it appears that they will be pinching down the sidewalk around trees and also utility boxes. In locations where we need a sleeve under the sidewalk, we will provide the sleeves to ensure we are able to access the irrigation. The intersection at Escarpment/Slaughter, they are bidding out the project Oct 2023? Construction could start February 2024. They will be installing a pond in the southeast corner of Slaughter/Escarpment for this project and the entrance will be off of Slaughter Lane.
- Billing for the 1st semi-annual payment from Commercial HOA was sent for \$54,500.00. Payment has been received.
- The Rowell 1st semi-annual invoice was sent for \$55,897.12 and received
- The Cove @ Circle C 1st semi-annual was sent for \$9,007.05. Payment has been received.

- City of Austin billing sent 6.23.23 for \$17,600.
- Received an email the USPS is no longer taking responsibility for any of the Cluster Box Units (CBU). This includes repair and replacement. For repairs, we will have to coordinate with the USPS for them to open the boxes, empty them of mail and once repairs are done, the USPS will resecure the mailboxes. The same will be for the replacement of any CBU's.
- The phones at the Swim Center have been changed. The new number is 512-363-5578.
- We continue to use the Circle C Ranch HOA Facebook page along with the website to get information out to the residents.

- **Capital Projects**

2023 Capital Budget Projects include:

SC – Pool. Covers	Will order in August
SC – Lane Lines	Completed
SC – Lounge Chairs	Completed
SC – Benches/Tables	Waiting on updated quote
CC – Lounge Chairs	Completed
CC- Refinish Splash Pad Features \$4,500 from 2022 Budget	Completed
Splash Pad Surface/Bollard Repair	Completed
CC-Replace Rails/Repair Decking	Will be completed in July
SC – AC Replacement	Completed
CC – Replace Grinder Pumps	Completed
Node Clock Replacement	Started
Rock Work	Not Started
Plant Replacement	
Escarpment Project	Working on some alternatives that will be more affordable
CCN Improvement	They are currently potholing along Barstow to locate all the utilities and gas lines. Contractor is in touch daily
Construction Repairs	Repairs due to construction have been done at Bernia, Trissino, Slaughter, La Crosse, Escarpment and Archeleta.

Current or Future Projects

- Irrigation Infrastructure
- Signage
- Monuments
- Landscape Prep
- Expansion of CCCC pool
- Phase II

2023 CCHOA INCOME BUDGET

Category	Subcategory	2023 Budget	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Totals	%
Homeowner Income	Homeowner Dues	\$4,470,000	\$29,483.04	\$1,168,979.37	\$670,704.38	\$122,908.45	\$244,432.75	\$94,741.60	\$2,331,249.59	52%
Homeowner Income	Resale Certificates	\$30,075	\$2,700.00	\$2,925.00	\$4,725.00	\$4,725.00	\$4,725.00	\$5,850.00	\$25,650.00	85%
Homeowner Income	Transfer Fees IOcome	\$55,125	\$1,400.00	\$1,925.00	\$2,800.00	\$2,625.00	\$4,375.00	\$4,375.00	\$17,500.00	32%
Homeowner Income	Late Fees Collected	\$25,000	\$616.49	\$2,385.58	\$1,157.08	\$2,164.20	\$7,477.31	\$4,108.02	\$17,908.68	72%
Homeowner Income	Lien Admin Fees Income	\$420	\$14.00	\$276.00	\$327.46	\$276.00	\$138.00	\$125.00	\$1,156.46	275%
Homeowner Income	Filing Fee Income	\$1,680	\$56.00	\$241.54	\$280.00	\$340.97	\$120.03	\$280.00	\$1,318.54	78%
Homeowner Income	NSF Charges	\$50	\$0.00	\$0.00	\$0.00	\$25.00	\$0.00	\$0.00	\$25.00	50%
Homeowner Income Total		\$4,582,350	\$34,269.53	\$1,176,732.49	\$679,993.92	\$133,064.62	\$261,268.09	\$109,479.62	\$2,394,808.27	52%
Architectural Review Income	Architectural Review IOcome	\$10,000	\$1,140.00	\$960.00	\$1,215.00	\$940.00	\$955.00	\$1,240.00	\$6,450.00	65%
Architectural Review IOcome Total		\$10,000	\$1,140.00	\$960.00	\$1,215.00	\$940.00	\$955.00	\$1,240.00	\$6,450.00	65%
Rental Income	Office Rent	\$9,000	\$0.00	\$1,834.11	\$0.00	\$0.00	\$1,834.11	\$0.00	\$3,668.22	41%
Rental Income	Grill Rent	\$6,600	\$1,100.00	\$525.30	\$0.00	\$1,575.90	\$0.00	\$0.00	\$3,201.20	49%
Rental Income Total		\$15,600	\$1,100.00	\$2,359.41	\$0.00	\$1,575.90	\$1,834.11	\$0.00	\$6,869.42	44%
Aquatics Income	Pool Programs	\$60,000	\$2,112.00	\$3,180.00	\$2,815.00	\$2,247.00	\$20,905.50	\$10,553.92	\$41,813.42	70%
Aquatics Income	Pool Programs - Swim Team	\$136,500	\$15,390.00	\$15,233.00	\$14,132.50	\$15,636.50	\$18,144.11	\$11,601.50	\$90,137.61	66%
Aquatics Income	Facility Income	\$35,000	\$5,139.34	\$8,971.80	\$1,012.00	\$9,617.00	\$7,850.50	\$9,368.93	\$41,959.57	120%
Aquatics Income Total		\$231,500	\$22,641.34	\$27,384.80	\$17,959.50	\$27,500.50	\$46,900.11	\$31,524.35	\$173,910.60	75%
CCCC Income	CCCC Facility Rentals	\$50,000	\$7,300.00	\$6,207.50	\$9,020.00	\$4,413.75	\$11,243.50	\$9,648.75	\$47,833.50	96%
CCCC Income Total		\$50,000	\$7,300.00	\$6,207.50	\$9,020.00	\$4,413.75	\$11,243.50	\$9,648.75	\$47,833.50	96%
Landscape Reimbursements	Stratus Reimb	\$109,000	\$0.00	\$0.00	\$0.00	\$54,500.00	\$0.00	\$0.00	\$54,500.00	50%
Landscape Reimbursements	COA Reimb	\$17,600	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Landscape Reimbursements Total		\$126,600	\$0.00	\$0.00	\$0.00	\$54,500.00	\$0.00	\$0.00	\$54,500.00	43%
Credit Card Rewards		\$0	\$0.00	\$0.00	\$7,500.00	\$2,000.00	\$0.00	\$0.00	\$9,500.00	#DIV/0!
Miscellaneous	Interest Income	\$15,000	\$5,421.11	\$12,182.71	\$7,360.93	\$12,462.50	\$8,698.79	\$7,870.62	\$53,996.66	360%
Miscellaneous	Sales Tax Discount	\$0	\$0.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.30	
Miscellaneous Total		\$15,000	\$5,421.41	\$12,182.71	\$14,860.93	\$14,462.50	\$8,698.79	\$7,870.62	\$63,496.96	423%
Cove @ CC Reimbursement	Cove @ Circle C HOA	\$15,000	\$0.00	\$0.00	\$0.00	\$0.00	\$9,007.05	\$0.00	\$9,007.05	60%
Rowell Reimbursement	The Rowell HOA	\$110,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$55,897.12	\$55,897.12	51%
Rimbursement Total		\$125,000	\$0.00	\$0.00	\$0.00	\$0.00	\$9,007.05	\$55,897.12	\$64,904.17	52%
Grand Total		\$5,156,050.00	\$71,872.28	\$1,225,826.91	\$723,049.35	\$236,457.27	\$339,906.65	\$215,660.46	\$2,812,772.92	55%

2023 CCHOA EXPENSE BUDGET

Category	Subcategory	2023 Budget	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Totals	%
Commons Area Services	Landscape Maint Contract	\$1,510,634	\$125,888.25	\$125,888.25	\$125,888.25	\$125,888.25	\$125,888.25	\$125,888.25	\$755,329.50	50%
Commons Area Services	Contract Landscape SC	\$38,606	\$3,217.25	\$3,217.25	\$3,217.25	\$3,217.25	\$3,217.25	\$3,217.25	\$19,303.50	50%
Commons Area Services	Contract Landscape CCCC	\$38,606	\$3,217.25	\$3,217.25	\$3,217.25	\$3,217.25	\$3,217.25	\$3,217.25	\$19,303.50	50%
Commons Area Services	Contract Landscape AV	\$27,376	\$2,281.41	\$2,281.47	\$2,281.47	\$2,281.47	\$2,281.47	\$2,281.47	\$13,688.76	50%
Common Area Services	Contract Landscape GR	\$27,376	\$2,281.41	\$2,281.41	\$2,281.41	\$2,281.41	\$2,281.41	\$2,281.41	\$13,688.46	50%
Common Area Services	Common Area Holiday Lighti	\$53,116	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Commons Area Services	Landscape Repairs	\$140,000	\$6,708.00	\$19,749.20	\$11,773.26	\$12,324.19	\$10,185.84	\$11,407.94	\$72,148.43	52%
Commons Area Services	Landscape Water Utilities	\$255,000	\$7,269.44	\$6,474.85	\$5,096.10	\$6,736.68	\$7,303.89	\$17,436.14	\$50,317.10	20%
Commons Area Services	COA Water Utility Complianc	\$8,000	\$6,014.18	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,014.18	75%
Common Area Services	Landscape Electric Utilities	\$36,000	\$3,234.98	\$2,847.78	\$3,007.38	\$2,932.14	\$3,189.85	\$3,177.11	\$18,389.24	51%
Common Area Services	Tree Care	\$75,000	\$0.00	\$1,426.19	\$0.00	\$0.00	\$18,471.40	\$7,730.00	\$27,627.59	37%
Commons Area Services	Fence Repairs & Maint	\$8,000	\$0.00	\$0.00	\$196.10	\$0.00	\$0.00	\$0.00	\$196.10	2%
Commons Area Services	Electrical Repairs & Maint	\$12,000	\$476.30	\$421.53	\$3,241.63	\$0.00	\$0.00	\$0.00	\$4,139.46	34%

Common Area Services	Neighborhood Maint & Repa	\$24,000	\$60.56	\$716.50	\$10,772.05	\$3,358.97	\$0.00	\$494.12	\$15,402.20	64%
Common Area Services	Non Contract Landscape - St	\$20,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$8,934.84	\$8,934.84	45%
Commons Area Services Total		\$2,273,714	\$160,649.03	\$168,521.68	\$170,972.15	\$162,237.61	\$176,036.61	\$186,065.78	\$1,024,482.86	45%
Aquatics Facilities	Administrative	\$65,000	\$4,047.24	\$6,586.28	\$5,326.70	\$4,072.18	\$5,242.50	\$4,208.85	\$29,483.75	45%
Aquatics Facilities	Supplies - Pool	\$27,500	\$2,594.02	\$1,716.95	\$1,025.45	\$725.51	\$546.83	\$597.26	\$7,206.02	26%
Aquatics Facilities	Supplies - Chemicals	\$95,000	\$2,445.38	\$6,051.40	\$4,026.74	\$7,491.53	\$7,104.19	\$7,188.21	\$34,307.45	36%
Aquatics Facilities	Supplies & Fees - Swim Team	\$19,000	\$3,463.40	-\$407.38	\$911.25	\$1,959.53	\$1,023.28	\$216.91	\$7,166.99	38%
Aquatics Facilities	Maintenance - Pool	\$125,400	\$8,778.12	\$10,038.92	\$15,705.32	\$5,256.23	\$15,056.10	\$4,062.27	\$58,896.96	47%
Aquatics Facilities	Maintenance - Building	\$86,200	\$4,276.02	\$7,208.57	\$8,431.71	\$4,683.19	\$3,897.71	\$4,608.36	\$33,105.56	38%
Aquatics Facilities	Payroll - Staff	\$954,650	\$31,482.30	\$40,240.79	\$83,053.03	\$60,435.18	\$89,979.95	\$163,321.86	\$468,513.11	49%
Aquatics Facilities	Payroll - Programming Staff	\$49,950	\$77.86	\$401.31	\$1,388.39	\$1,900.26	\$3,243.34	\$4,779.56	\$11,790.72	24%
Aquatics Facilities	Payroll - Swim Team	\$144,600	\$7,751.24	\$8,283.88	\$14,134.96	\$9,659.53	\$9,902.59	\$7,945.09	\$57,677.29	40%
Aquatics Facilities	SC-Utilities - Water	\$30,000	\$1,951.17	\$2,180.04	\$2,048.06	\$2,267.57	\$2,100.09	\$2,074.23	\$12,621.16	42%
Aquatics Facilities	Avana _Utilities-Water	\$9,000	\$100.85	\$685.84	\$431.32	\$100.85	\$815.25	\$175.72	\$2,309.83	26%
Aquatics Facilities	GR- Utilities - Water	\$4,500	\$160.37	\$231.10	\$180.13	\$197.61	\$924.64	\$159.73	\$1,853.58	41%
Aquatics Facilities	SC-Utilities - Electric	\$33,000	\$1,891.51	\$1,948.76	\$2,089.23	\$1,620.51	\$2,162.59	\$2,248.58	\$11,961.18	36%
Aquatics Facilities	Avana - Utilities- Electric	\$16,000	\$643.00	\$469.85	\$818.17	\$645.68	\$873.64	\$926.91	\$4,377.25	27%
Aquatics Facilities	GR -Utilities-Electric	\$9,000	\$478.68	\$528.22	\$456.72	\$448.23	\$461.41	\$438.65	\$2,811.91	31%
Aquatics Facilities	Utilities - Natural Gas	\$52,000	\$5,493.65	\$8,921.80	-\$508.92	\$1,012.89	\$1,486.76	\$744.87	\$17,151.05	33%
Aquatics Facilities	SC-Utilities - Telephone/Inte	\$15,000	\$575.53	\$575.53	\$580.55	\$580.55	\$580.55	\$580.55	\$3,473.26	23%
Aquatics Facilities	Avana - Telephone/Internet	\$5,000	\$261.67	\$262.37	\$976.94	\$261.41	\$260.84	\$261.03	\$2,284.26	46%
Aquatics Facilities	GR- Telephone/Internet	\$5,000	\$282.08	\$269.02	\$973.58	\$258.06	\$257.49	\$262.68	\$2,302.91	46%
Aquatic Facilities Total		\$1,745,800	\$76,754.09	\$96,193.25	\$142,049.33	\$103,576.50	\$145,919.75	\$204,801.32	\$769,294.24	44%
Circle C Community Center	Utilities - Water	\$27,000	\$344.53	\$387.88	\$357.30	\$497.18	\$491.35	\$604.99	\$2,683.23	10%
Circle C Community Center	Utilities - Electric	\$26,000	\$1,581.99	\$984.20	\$1,688.36	\$1,426.23	\$1,502.96	\$1,729.11	\$8,912.85	34%
Circle C Community Center	Utilities - Telephone/Interne	\$9,000	\$676.63	\$676.64	\$685.00	\$685.00	\$685.00	\$685.00	\$4,093.27	45%
Circle C Community Ctr	Events Payroll	\$8,500	\$275.96	\$505.96	\$1,069.22	\$590.42	\$780.33	\$830.96	\$4,052.85	48%
Circle C Community Center	Maintenance - Building	\$61,500	\$1,628.51	\$3,779.56	\$2,235.40	\$2,269.60	\$2,080.79	\$3,076.21	\$15,070.07	25%
Circle C Community Ctr Total		\$132,000	\$4,507.62	\$6,334.24	\$6,035.28	\$5,468.43	\$5,540.43	\$6,926.27	\$34,812.27	26%
Maintenance Operations	Office Supplies	\$1,200	\$150.47	\$0.00	\$0.00	\$138.56	\$0.00	\$0.00	\$289.03	24%
Maintenance Operations	Employee Education	\$1,200	\$215.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$215.00	18%
Maintenance Operations	Uniforms	\$1,800	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Maintenance Operations	Staff Recruitment	\$300	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Maintenance Operations	Safety Equip/Supplies	\$1,400	\$0.00	\$110.64	\$38.94	\$0.00	\$273.69	\$0.00	\$423.27	30%
Maintenance Operations	Maintenance Payroll	\$225,000	\$15,897.88	\$15,897.88	\$23,846.82	\$15,897.88	\$15,897.88	\$15,897.88	\$103,336.22	46%
Maintenance Operations	Pool Tech	\$95,000	\$4,197.70	\$4,197.70	\$6,296.55	\$4,197.70	\$4,884.45	\$5,128.95	\$28,903.05	30%
Maintenance Operations	Payroll Taxes	\$20,000	\$1,784.58	\$952.05	\$1,916.60	\$1,276.73	\$1,286.27	\$1,305.55	\$8,521.78	43%
Maintenance Operations	Computer/Software	\$1,400	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Maintenance Operations	Tools/Supplies	\$5,000	\$556.56	\$1,488.02	\$20.00	\$96.14	\$86.57	\$1,164.72	\$3,412.01	68%
Maintenance Operations	Office Furniture	\$600	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Maintenance Operations Total		\$352,900	\$22,802.19	\$22,646.29	\$32,118.91	\$21,607.01	\$22,428.86	\$23,497.10	\$145,100.36	41%
HOA Operations	Office Supplies	\$9,000	\$457.23	\$44.82	\$764.17	\$178.71	\$88.76	\$1,139.27	\$2,672.96	30%
HOA Operations	Equip & Maintenance	\$18,000	\$341.27	\$437.11	\$366.66	\$1,363.70	\$131.84	\$229.63	\$2,870.21	16%
HOA Operations	HOA Owned Vehicle Expense	\$8,000	\$426.31	\$1,643.54	-\$3,805.69	\$4,580.88	\$173.50	\$159.20	\$3,177.74	40%
HOA Operations	Postage	\$20,000	\$2,993.37	\$2,136.36	\$572.51	\$858.45	\$410.55	\$7,976.82	\$14,948.06	75%
HOA Operations	Web Operations	\$3,000	\$69.79	\$1,071.11	\$305.30	\$193.81	\$38.40	\$738.63	\$2,417.04	81%
HOA Operations	Printing	\$5,000	\$2,400.03	\$144.38	\$0.00	\$0.00	\$0.00	\$2,795.90	\$5,340.31	107%
HOA Operations	HOA Meetings	\$5,000	\$2,988.31	\$127.92	\$445.48	\$127.92	\$297.47	\$0.00	\$3,987.10	80%
HOA Operations	Deed Restrictions	\$5,000	\$719.45	\$0.00	\$0.00	\$719.45	\$0.00	\$0.00	\$1,438.90	29%
HOA Operations	HOA Special Events	\$45,000	\$0.00	\$2,073.53	\$4,469.45	\$3,167.95	\$4,277.67	\$2,720.77	\$16,709.37	37%
HOA Operations	Professional Fees	\$2,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
HOA Operations	Reserve Study Update	\$5,500	\$2,675.00	\$0.00	\$0.00	\$2,675.00	\$0.00	\$0.00	\$5,350.00	97%
HOA Operations Total		\$125,500	\$13,070.76	\$7,678.77	\$3,117.88	\$13,865.87	\$5,418.19	\$15,760.22	\$58,911.69	47%
Financial Management	Management Services	\$115,000	\$9,276.30	\$9,276.30	\$9,276.30	\$9,276.30	\$9,276.30	\$9,276.30	\$55,657.80	48%
Financial Management	Resale Certificate	\$13,350	\$450.00	\$850.00	\$650.00	\$1,100.00	\$1,150.00	\$1,200.00	\$5,400.00	40%
Financial Management	Lien Filing Administrative Fee	\$4,500	\$840.00	\$1,400.00	\$104.00	\$156.00	\$104.00	\$0.00	\$2,604.00	58%

Financial Management	Bank Fees	\$40,000	\$2,982.49	\$2,178.25	\$12,103.42	\$9,155.60	\$3,645.01	\$6,091.67	\$36,156.44	90%
Financial Management	CPA/Audit	\$10,000	\$0.00	\$2,259.74	\$1,518.00	\$3,001.50	\$1,817.50	\$1,046.00	\$9,642.74	96%
Financial Management Total		\$182,850	\$13,548.79	\$15,964.29	\$23,651.72	\$22,689.40	\$15,992.81	\$17,613.97	\$109,460.98	60%
HOA Management	Management Payroll	\$225,000	\$15,996.89	\$16,973.64	\$23,647.71	\$15,883.14	\$15,506.64	\$15,506.64	\$103,514.66	46%
HOA Management	Management Payroll Taxes	\$20,000	\$1,826.68	\$1,073.12	\$1,986.53	\$1,322.96	\$1,317.75	\$1,341.66	\$8,868.70	44%
HOA Management	Mileage Reimbursement	\$6,000	\$351.74	\$454.57	\$677.04	\$577.06	\$527.80	\$410.95	\$2,999.16	50%
HOA Management	Insurance Stipend	\$60,000	\$4,729.33	\$3,722.77	\$3,219.49	\$3,722.77	\$3,722.77	\$3,722.77	\$22,839.90	38%
HOA Management	Cont Ed & Skills Enhancement	\$2,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
HOA Management Total		\$313,000	\$22,904.64	\$22,224.10	\$29,530.77	\$21,505.93	\$21,074.96	\$20,982.02	\$138,222.42	44%
Architectural Review Expenses	Architectural Review Expenses	\$8,000	\$969.00	\$816.00	\$1,032.75	\$799.00	\$811.75	\$1,054.00	\$5,482.50	69%
Architectural Review Expenses Total		\$7,500	\$969.00	\$816.00	\$1,032.75	\$799.00	\$811.75	\$1,054.00	\$5,482.50	73%
Legal Services	Legal Services	\$20,000	\$590.00	\$95.00	\$380.00	\$0.00	\$1,100.00	\$0.00	\$2,165.00	11%
Legal Services Total		\$20,000	\$590.00	\$95.00	\$380.00	\$0.00	\$1,100.00	\$0.00	\$2,165.00	11%
Taxes	Property	\$5,500	\$9,986.25	\$11.32	\$0.00	\$0.00	\$0.00	\$0.00	\$9,997.57	182%
Taxes	Income/Franchise Taxes	\$0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,403.94	\$5,403.94	#DIV/0!
Taxes Total		\$5,500	\$9,986.25	\$11.32	\$0.00	\$0.00	\$0.00	\$5,403.94	\$15,401.51	280%
Insurance	General, Property, Boiler & A	\$85,500	\$7,381.91	\$7,381.91	\$7,381.91	\$7,381.91	\$7,381.91	\$7,381.90	\$44,291.45	52%
Insurance	Auto	\$6,000	\$471.00	\$471.00	\$471.00	\$471.00	\$471.00	\$471.00	\$2,826.00	47%
Insurance	D & O Insurance	\$12,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Insurance	Worker's Comp	\$16,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$11,150.33	-\$11,150.33	-70%
Insurance Total		\$119,500	\$7,852.91	\$7,852.91	\$7,852.91	\$7,852.91	\$7,852.91	-\$3,297.43	\$35,967.12	30%
Community Enhancement	Donations	\$1,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%
Community Enhancement	Association Memberships	\$2,000	\$50.00	\$0.00	\$180.00	\$0.00	\$0.00	\$0.00	\$230.00	12%
Community Enhancement Total		\$3,000	\$0.00	\$0.00	\$180.00	\$0.00	\$0.00	\$0.00	\$180.00	6%
Reserve Transfer		\$0	\$0.00							
Grand Total		\$5,281,264	\$333,635	\$348,338	\$416,922	\$359,603	\$402,176	\$478,807	\$2,339,481	44%

Expected Reserve Expenditures and Capital Improvement for 2023

	YTD	
SC Pool Covers	\$8,000	\$0.00
SC - Lane Lines	\$10,000	\$10,689.82
SC - Lounge Chairs	\$2,000	\$2,000.00
SC - Partial Replacement of Benches/Tables	\$12,000	\$0.00
CC - Lounge Chairs	\$2,500	\$2,323.88
CC - Refinish Splash Pad	\$4,500	\$3,586.82
Splash Pad Surface/Bollard Repair	\$6,000	\$6,775.12
CC - 2 Sewage Grinder Pumps	\$12,000	\$16,106.00
CC - Replace Rails/Repair Decking	\$4,000	\$0.00
SC - AC Replacement	\$12,000	\$10,691.40
Node Clock Replacement	\$75,000	\$78,093.75
Rock Work	\$25,000	\$0.00
Escarpment Project	\$500,000	\$0.00
CCN Improvement	\$200,000	\$14,800.00
Construction Repairs	\$50,000	\$22,012.95
Storm Damage	\$0	\$410,900.35
Avana Pool Leak Repair	\$0	\$13,800.00
Total	\$923,000	\$591,780.09

Total Capital Budget Projects	\$923,000.00	\$591,780.09
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Grand Total Expenses	\$6,204,264.00	
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Weather

General:	Beyond Hot
Rainfall Total:	0.02
Temperature:	78-108 degrees
Major Events:	Heat Alert
Drought Status:	Moderate to Extreme

Impact on Landscaped Areas

Very dry, irrigation is running, hand watering

This type of weather generally occurs in August , but arrived six weeks ahead of time

City of Ausitn Stage One Water Restrictions

1x per week, hours restricted to 7pm to midnight, midnight to 8 am

*** additional water restrictions may occur based on triggers set by water level off Lake Tra

Lake Buchanan

Drip irrigation and hand watering are allowed at any time

Burr Oaks and other trees drop their leaves during the extreme heat

Hand watering with mychoryzzhea

to boost water absorbtion

Node clocks can go out at any time

Green landscaped areas have drip irrigation and are watered efficiently

Other areas are suffering due to once per week watering with limited hours

Maintenance Services

Mowing:	Weekly Mowing Rotation
Bed Weeding	Ongoing in all areas
Trimming:	Parkk Place Complete
	Circle C North Complete
	Escarpment Hedges Complete

Dahlgreen Hedges Complete
South Bay Hedges Complete
Park Place Complete
LaCrosse Scheduled

Mulch: Trees at entrance Complete
Park Place Complete

Wildflower Areas: All mowed

Treatments

Fire Ant Bait Park Areas Complete
Nut Sedge Cornerstone Complete
Standard Weed Treatment Ongoing

Outlying Areas

Filter Pond, CCCC weedeated, trash removed
Outlying mail centers cleaned and weed-eated
Outlying Karst Features, Greenbelts, Drainage Areas Complete
Circle C Park Mowing Complete
Barstow Park Major Clean Up Complete
Greyrock Park Major Clean Up Complete

Irrigation

All irrigation is on
Irrigation is set to water according to City of Austin regulations
Standard Repairs and irrigation inspections ongoing
Hand Watering of Trees underway
Double check cleaning underway
Hand Watering of non-irrigated areas underway

Trees

Trees trimmed to clear bike lanes and behind sidewalks
Spruce Canyon Complete

LaCrosse from Escarpment to Spruce Canyon
complete

Escarpment south to SH 45
Complete

Hand Watering with mychorryzhea to trees underway

Construction

Google Fiber at Escarpment between dam and Slaughter
Repairs made

Circle C North main line cut by boring contractors-Repaired

Escarpment at Fire Station

Wire tracking for wires cut by Verizon
Not resolved

Slaughter at Beckett

No water to first median east of Beckett due to construction

LaCrosse Mopac West

No water to median due to construction
Renovation of front area needed

LaCrosse MoPac East

Renovation of front area needed
Irrigation repair needed

Circle C Aquatics

June-23

Summer Operations

Facility Usage	Swim Center		Community Center		Avaña		Greyrock		Total	
	Jun-23	YTD	Jun-23	YTD	Jun-23	YTD	Jun-23	YTD	Jun-23	YTD
Resident Entries	10,287	25,852	5,179	5,852	3,591	4,485	1,346	1,649	20,403	37,838
Unique Residents	2,995	4,082	2,597	2,815	1,723	1,978	564	645	5,188	6,027
Unique Households	1,170	1,523	901	968	575	662	201	222	1,844	2,098
Guest Entries	337	1,491	161	240	79	131	19	35	596	1,897
Other Entries	3,968	11,127	0	0	0	0	0	0	3,968	11,127
Average Hourly Count	44		53		25		11			
Average % of Capacity	18%		29%		16%		7%			
Max Hourly Count	131		148		80		79			
Total Entries	14,592	38,470	5,340	6,092	3,670	4,616	1,365	1,684	24,967	50,862

Incidents	Swim Center		Community Center		Avaña		Greyrock		Total	
	Jun-23	YTD	Jun-23	YTD	Jun-23	YTD	Jun-23	YTD	Jun-23	YTD
Water Rescues	3	6	2	4	0	0	0	0	5	10
First Aid Responses	10	27	2	8	0	0	0	0	12	35
Sudden Illness Treatments	3	4	0	1	0	0	1	1	4	6
Patron Behavior Incidents	1	2	2	2	1	1	1	2	5	7
Biohazard Cleanups	3	6	1	4	1	1	0	0	5	11
Suspensions/Expulsions	0	0	0	0	0	0	0	0	0	0
EMS/911 Callouts	0	0	0	0	0	0	0	0	0	0
Total Incidents	17	39	5	14	1	1	2	3	25	57
Incident per Entry Ratio	0.12%	0.10%	0.09%	0.23%	0.03%	0.02%	0.15%	0.18%	0.10%	0.11%

Revenue	Jun-23	YTD
Aquatics Programs	\$ 10,553.92	\$ 41,382.92
Swim Team	\$ 11,601.50	\$ 90,061.61
Guest Fees	\$ 4,126.00	\$ 5,666.00
Area Reservations	\$ 2,700.00	\$ 2,700.00
Facility Rentals	\$ 1,156.25	\$ 4,593.75
Lane Rentals	\$ -	\$ 23,943.00
Other Facility Income	\$ 1,386.68	\$ 5,048.82
Total Aquatics Revenue	\$ 31,524.35	\$ 173,396.10

Programs	Jun-23
Select Swim Team	88
Masters Swimming	19
Group Swim Lessons	55
Private Swim Lessons	161
Water Aerobics	23
Certification Courses	1
WSI Course	0
Total Participants	347

Reservations & Rentals	Jun-23	YTD
Area Reservations	5	5
Facility Rentals	1	6
Lap Lane Reservations	72	788
Total Reservations	78	799

Aquatics Staffing	Jun-23
Lifeguards/Head Guards	138
Front Desk Staff	16
Instructors/Coaches	14
Total Staff	168

Resident Stats	Individuals	Households	Members / Household
Homeowners	14,034	5,212	2.69
Renters	750	209	3.59
New Memberships	213	103	
Totals	14,784	5,421	2.73

Circle C HOA
Maintenance Report for Board July 2023
Prepared by Robert Bardeleben -Facilities Director

SWIM CENTER COMPOUND/Maintenance Offices

- Routine Cleaning and Maintenance have been completed
- Minor Equipment and Facility Repairs Made
- Had HVAC Coil Fan and Capacitor Replaced

COMMUNITY CENTER

- Routine inspections and maintenance have been completed
- Had Coil Sensor Replaced and Refrigerant Topped Off on Meeting Room 3 HVAC System

COMMUNITY CENTER POOL

- Routine cleaning and maintenance have been performed.
- Minor Repairs have been completed on equipment and facility.
- We are having issues with plaster popping loose on pool -one more small issue in the last month

NEIGHBORHOOD

- Minor repairs have been completed as needed
- Repaired Sidewalks in Two Different Areas—One on Barstow and One on Escarpment
- Quarterly Neighborhood Inspections have been completed

AVANA AMENITIES CENTER

- Routine Cleaning and Maintenance have been completed
- Minor repairs have been made

GREY ROCK AMENITIES CENTER

- Routine Cleaning and Maintenance have been completed
- Minor repairs have been made

May 30, 2023

POA LEGISLATIVE UPDATE, 2023 TEXAS LEGISLATIVE SESSION

Dear Association Managers and Clients,

The 2023 Texas legislative session is over. Three major POA bills passed the legislature, all of which will shortly become law unless the governor vetoes any of them during the veto period (which lasts through June). A veto is highly unlikely.

Bills passing this session will require a number of **action items for HOAs and condominium associations.** A summary of action items is listed on the last page, with more detail described below.

Niemann & Heyer LLP will be happy to help you implement these action items. **Order forms for HOAs and for Condominium Associations are attached.**

Good news: No new laws mandating that all owners can have chickens (no chicken laws passed!) There were MANY onerous bills that **Texas Community Association Advocates**, <https://txcaa.org/>, a volunteer state-wide lobby association for POAs and their members, of which **Connie Heyer** is a founder and long-time board member, was highly successful on in its attempts to defeat legislation that would have been harmful to POAs and their members. TCAA and its board also accomplished much in terms of passing legislation to fix problems from last session (like front yard fencing and ACC membership.)

HB 614 HOA Fines

This bill is n/a to condominiums; it is only applicable to HOAs. No later than **January 1, 2024**, all HOAs must have a fining policy filed of record in order to levy a fine. The policy must include:

- 1) the general categories of restrictive covenants for which fines may levy,
- 2) a schedule of fines for each category of violation, and
- 3) information about the owners' right of hearing to contest fines.

This recorded policy must be posted on the HOA's website, or annually sent to each owner.

Action item: Before January 1, 2024, any HOA wishing to preserve its ability to fine will need to have a new fine policy filed of record that satisfies all statutory requirements.

HB 886
HOA Lien Filing

This bill is n/a to condominiums; it is only applicable to HOAs. This bill requires additional notices to be sent to homeowners before a lien can be filed by the HOA.

Under current law there is a mandatory notice, certified mail, under Property Code 209.0064. This is the mandatory 45-day notice sent by the management company, that must contain a fully-itemized accounting of all amounts due (it should contain a full copy of the owner's ledger dating back to the last zero balance). This notice also notifies owners of the option for a payment plan, along with other required language.

What is new? The new law, effective **September 1, 2023**, requires additional notices.

- 1) The "first notice" must be sent via first class mail to the owner's address in HOA records, or via email to an email address the owner has provided the HOA. The first notice has no particular requirements other than to notify the owner of the delinquency.
- 2) The "second notice" must be sent at least 30 days after the first notice. The "second notice" in our firms' opinion may be combined with the 209.0064 letter (the 209.0064 letter may in our opinion serve as the second notice). This letter must be sent certified mail, return receipt requested.

Action item: For any collection that will be undertaken after 9-1-23 you will need to be able to prove that you sent TWO notices. Send both notices, and provide copies of both notices to your HOA collections attorney:

(Notice #1) email or first class mail an initial late/delinquency notice. Keep a copy of the notice - -your HOA's collection attorney will need a copy, and

(Notice #2) make sure that at least 30 days pass after notice (1), and then send the 209.0064 letter you already send (including with a full copy of the itemized ledger – dating back at least to the last zero balance) via certified mail, return receipt requested. Keep a copy of this notice – your HOA's collection attorney will need a copy.

SB 1668
HOA and Condominium Omnibus Bill

This bill makes a LOT of changes to both HOA and condominium law. All provisions take effect September 1, 2023.

Changes applicable to HOAs only:

ACC membership: Last session a bill passed that prohibited any board members from serving on the ACC if the HOA has more than 40 lots. That has now changed under certain conditions.

All HOAs with more than 40 lots must effective 9-1-23 perform an ACC candidate solicitation, in the exact same manner as HOAs now perform a board candidate solicitation. HOAs with more than 40 lots must solicit ACC candidates by either mailing a solicitation to all owners, OR *both* emailing a solicitation to each owner for whom the HOA has an address and posting notice on the HOA website or in the common area.

If after sending this notice HOAs with more than 40 lots still do not have enough interested non-board member candidates to serve on the ACC, the association can appoint board members to the ACC.

Action item: HOAs with more than 40 lots must send ACC candidate solicitations in the same manner that HOAs with more than 100 lots now sent board candidate solicitations (email to all owners for whom the HOA has an email address, and website posting or common area posting). Solicitations must contain a deadline (at least 10 days from the date notice is sent) and method for owners to indicate interest in an ACC position. If (and only if) HOAs don't get enough interested candidates by the deadline, then board members can serve on the ACC.

Changes applicable to condominiums only:

Condo records posted online: For any condo with more than 60 units, OR any condo of any size managed by a management company, all association dedicatory instruments must be posted on an internet website maintained by the HOA or its management company and accessible to HOA members (this mirrors current HOA law.)

Action item: no later than 9-1-23, each professionally-managed condo association of any size, and each self-managed condo association with more than 60 units, must have all of its dedicatory instruments posted on a website/portal accessible to its members.

Condo management certificates: All condo management certificates now must reference not only the declaration information but information for all amendments to it, the phone number and email address of the management company, the website address where the dedicatory instruments are posted, and all transfer fees. These certificates must be filed both with the county clerk, and with TREC. (This also mirrors current HOA law.).

Action item: no later than 9-1-23, file a new management certificate with the county and with TREC, listing all declaration amendments, the management company email, the condo association's website address, and all transfer fees for the association (not just working capital-type transfer fees paid to the HOA, but also including fees charged by the management company associated with transfer.)

[Note, if the condo has a management certificate of record currently, no filing with TREC must be done until 3-1-24. However TREC filling is recommended to be done in conjunction with the required updated filing with the county clerk – deadline 9-1-23.]

Condo resale certificate fee cap: Like with HOAs, resale certificate fees for condominiums, effective 9-1-23, are capped at \$375.

Action item: Make sure that effective 9-1-23, condominium owners are not charged more than \$375 for a resale certificate.

Changes applicable to both HOAs and condominiums:

Fencing: Good news on this front! HOAs and condos do not have to make blanket exceptions in order to allow front – yard fencing (this is generally only applicable to condos if the condo owner owns the front yard). Associations may prohibit fencing that obstructs any license area (for example, an area to which the HOA has a landscape license), drainage easement/drainage area (usually identified on a plat), or sidewalk. HOA restrictions may also wholly prohibit front-yard fencing, except in cases (like for judges or other public figures) where an owner’s address is exempt from public disclosure, or law enforcement has confirmed a need for enhanced security measures for this particular owner.

Action item: If you wish to disallow front yard fencing, and front yard fencing is not expressly disallowed under your documents, your association documents should be amended to prohibit front-yard fencing. When reviewing ACC applications for fencing, be mindful of drainage easements and other similar areas and know that fencing does not have to be allowed in these areas. All associations should consult their HOA attorney for amendments and easement questions.

Summary of action items:

For HOAs:

- 1) FINES. Before January 1, 2024, any HOA wishing to preserve its ability to fine will need to have a new fine policy filed of record that satisfies all statutory requirements.
- 2) COLLECTIONS. For any collection that will be undertaken after 9-1-23 you will need to be able to prove that you sent TWO notices. Send both notices, and provide copies of both notices to your HOA collections attorney:

(Notice #1) email or first class mail an initial late/delinquency notice. Keep a copy of the notice - your HOA's collection attorney will need a copy, and

(Notice #2) make sure that at least 30 days pass after notice (1), and then send the 209.0064 letter you already send (including with a full copy of the itemized ledger – dating back at least to the last zero balance) via certified mail, return receipt requested. Keep a copy of this notice – your HOA's collection attorney will need a copy.

- 3) ACC MEMBERS. HOAs with more than 40 lots must send ACC candidate solicitations in the same manner that HOAs with more than 100 lots now sent board candidate solicitations (email to all owners for whom the HOA has an email address, and website posting or common area posting). Solicitations must contain a deadline (at least 10 days from the date notice is sent) and method for owners to indicate interest in an ACC position. If (and only if) HOAs don't get enough interested candidates by the deadline, then board members can serve on the ACC.
- 4) FRONT YARD FENCING. If you wish to disallow front yard fencing, and front yard fencing is not expressly disallowed under your documents, your association documents should be amended to prohibit front-yard fencing. When reviewing ACC applications for fencing, be mindful of drainage easements and other similar areas and know that fencing does not have to be allowed in these areas. All associations should consult their HOA attorney for amendments and easement questions.

For Condominiums:

- 1) no later than 9-1-23, each professionally-managed condo association of any size, and each self-managed condo association with more than 60 units, must have all of its dedicatory instruments posted on a website/portal accessible to its members.
- 2) no later than 9-1-23, file a new management certificate with the county and with TREC, listing all declaration amendments, the management company email, the condo association's website address, and all transfer fees for the association (not just working

capital-type transfer fees paid to the HOA, but also including fees charged by the management company associated with transfer.)

- 3) Make sure that effective 9-1-23, condominium owners are not charged more than \$375 for a resale certificate.

FOURTH AMENDED BYLAWS
OF
CIRCLE C HOMEOWNERS ASSOCIATION, INC.
A TEXAS NON-PROFIT CORPORATION

ARTICLE I

NAME AND LOCATION. The name of the corporation is Circle C Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located in Travis County, Texas at a location established by the Board of Directors. Meetings of members and directors may be held at such places within the State of Texas, County of Travis, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 1. "Properties" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Declarant" shall mean and refer to Circle C Development Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the County Clerk of Travis County, Texas.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III
MEETINGS OF MEMBERS

Section 1. Annual Meetings. The annual meeting of the members shall be held within the first quarter of the year. The place, date, and time of meeting shall be established by the Board of Directors.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to one-tenth (1/10) of all of the eligible votes.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the eligible votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Voting Methods. At all meetings of members, each member may vote in person or by proxy. The Board may in its discretion implement any other voting method allowed by law, such as voting by mail or electronic means. All proxies shall be in writing and filed with the secretary or other designated Association agent. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. The Board shall promulgate the form of all proxies and ballots, and no other form shall be valid.

Section 6. Conduct of Members' Meeting. All meetings of the Association will be conducted under the current edition of Robert's Rules of Order.

Section 7. Vote Taken Without a Meeting. An election or vote may be held without a meeting using any method of voting that the Board in its discretion shall determine: provided, that notice of such election/vote and the instructions on how to cast a vote must be given not later than the 20th day before the latest date on which a ballot may be submitted, returned, or cast.

ARTICLE IV
BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of the Association shall be managed by a board of seven (7) directors, each of whom shall be a member of the Association.

Section 2. Term of Office. A director's term of office shall be three years. Every third year, three terms shall expire; in the other two years, two terms shall expire. At the time of adoption of this Fourth Amendment to Bylaws, two terms will expire in 2024, three terms will expire in 2025, and two terms will expire in 2026.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association voting at a meeting at which a quorum is present. In the event of death, resignation or removal of a director, his successor shall be selected by a majority of the remaining members of the Board, and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors can be made by any member of the association. In order for a nominee's name to be included in any official ballot, that nominee must 1) be an association member in good standing, 2) obtain signatures of association members representing at least twenty (20) lots in good standing in the association or receive a recommendation from the Nominating Committee and 3) have completed a Candidate Questionnaire composed by a Nominating Committee appointed by the Board. No candidate meeting these requirements will be removed from the ballot unless they so choose. Nominations can also be made from the floor at the annual meeting.

Section 2. Election. Election to the Board of Directors shall be by secret written and/or electronic ballot. Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held annually at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by a majority of directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association.

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Area to be maintained.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX
COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

The Association may maintain an email list for the purpose of communicating with its members. The contents of this list shall be confidential, shall not be filed among the records of the Association, and shall not be disclosed to any member and/or third party unless required by Court order. The email list will be used for official Association communications only.

ARTICLE XI
ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 18 percent per annum or the maximum legal rate, whichever is lesser, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII
AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that if there is a valid FHA or VA Letter of Approval in effect, the Federal Housing

Administration or the Veterans Administration, as applicable, shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control: and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIII
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Throughout these Bylaws, words importing the masculine gender shall be read as also importing the feminine gender.

Exhibit "A"

CODE OF CONDUCT

For the benefit of all residents, and in the interest of allowing residents to both express their opinions and peaceably enjoy their property and common areas, the Board of Directors has adopted this Code of Conduct as an Association rule.

This Code of Conduct provides that Association officers and directors, owners, residents, and guests must conduct themselves in a civil, non-intimidating, and non-threatening manner when dealing with the Association's agents (including without limitation its officers, directors, committee members, manager and other management company agents, employees, contractors, independent contractor service providers, and other agents), as well as other owners, residents, and guests. No person has the right to abuse, disturb, or unreasonably annoy another, nor does any person have a duty to tolerate abuse or unreasonable annoyance or disturbance.

1. Prohibited conduct. The following conduct is expressly prohibited between or among any of the above-described parties:
 - a. photographing, recording, or video-taping residents, guests, or agents of the Association without their express consent¹;
 - b. verbal abuse, including yelling, name-calling, or similar;
 - c. insults, derogatory name-calling, or demeaning comments;
 - d. cursing or profanity;
 - e. use of slurs of a nature that is racial, ethnic, religious, sexual orientation-related, or gender-related;
 - f. behavior that a person of ordinary sensibilities would find intimidating, aggressive or threatening;
 - g. hostile or unwanted touching, physical contact, or threats of physical contact;
 - h. sexual harassment or lewd behavior;
 - i. sexually suggestive language or other language that is likely to be offensive to a person of ordinary sensibilities;
 - j. posting any item, including correspondence, on the doors of any other resident or anywhere in the community without express written permission from the Board, and placing any item in the area of the door(s) of any other resident or anywhere else in the community other than in a resident's own property;
 - k. correspondence, whether oral, written, or electronic, that is deemed in the Board's or manager's sole discretion to be harassing or intimidating (the Board and/or manager may without limitation consider the tone, time, and frequency of correspondence, and whether previous reply has been given to similar correspondence, in determining whether correspondence is harassing or intimidating);
 - l. publicly posting in any forum (by way of example and not limitation, via internet, text, mail, paper flyer) any comment, statement or remark about an Association employee, officer, director or representative that is or may reasonably be considered to be defamatory, threatening, harassing, or intimidating;
 - m. calling, texting, or otherwise corresponding with another resident or a director, manager, or other agent of the Association after being instructed not to do so;
 - n. asking Association or management personnel to perform personal errands;
 - o. creating a fire hazard of any sort anywhere in the condominiums;
 - p. making loud noises or other engaging in other activity that unreasonably interferes with a resident's peaceful enjoyment of the community or is a nuisance;
 - q. entering another owner's Unit or that Unit's Limited Common Elements without the Unit owner's permission;
 - r. depositing trash, clutter, debris, or other objects on another resident's property, on the Common Elements, or anywhere other than designated receptacles;
 - s. placing any items on any of the General or Limited Common Elements, except as expressly authorized by the Declaration, the Rules, or the Board of Directors;
 - t. obstructing free passage along sidewalks and doorways, either in person or by use of an object;

¹ This is not applicable to monitoring equipment installed or maintained by the Association in or around common areas or to other monitoring equipment approved with written consent of the Board.

- u. directly addressing contractors or persons who are performing work around the condominium in a way that the person finds to be intrusive, interfering, harassing, or threatening. Without limitation, owners may not direct or attempt to direct association's contractors actions in any way. Any questions or concerns regarding the work of association service providers must be directed to management unless an owner is expressly directed to communication in an alternate manner;
 - v. interrupting utility service to any part of the condominium without prior written approval of the board or management;
 - w. causing damage to any common elements, other units, or the personal property of others that is located on the condominium property;
 - x. displaying in any manner weapons such as knives, guns, brass knuckles, or other similar items, regardless of whether the display is intended as threatening. All such items may be transported to the owners' unit to and from the owner's car as reasonably necessary but at all times in a case or other enclosed carrier.
 - y. reporting an alleged violation of a building, health or safety code when no such violation exists or is substantiated by the code enforcement body.
2. Requests to leave. Any resident, guest, director or officer who is requested by the Board or managing agent to leave the manager's office or an Association facility or meeting shall do so immediately.
 3. Communication with the Association Manager or Board. The Board or manager may require, in their sole discretion and upon notice to a resident, that all non-emergency communication (emergency being immediate threat to persons or property) from the resident or owner be in writing and/or in a particular form (such as, without limitation, mail or email).

Further, the Association may, upon notice to a resident or owner, direct the resident or owner to discontinue all non-emergency communications, and may decline to reply to communications except as required by law. The Board may require all communications to be through the management representative or other Association agent only (may prohibit direct communication with directors or officers). For any situation involving immediate threat of physical harm to persons, 911 should be contacted.

When there are multiple owners of a property, the Board may select one of the owners as the contact person for all communications. Following notice to the owners that one has been chosen as the contact person, that contact person is the only one that will be deemed authorized to communicate with the Association.

4. Communication from tenants. All communications related to Association matters should come from owners rather than their tenants. The Board or manager, in their sole discretion, may decline to reply to communications from tenants.
5. Association employees/contractors. Residents may not instruct, direct, or supervise the Association's or manager's employees, agents, or contractors unless otherwise directed to do so in writing by the Board. Residents and guests may not harass or interfere with the performance of any duties being performed by the Association's or manager's employees, agents, or contractors.
6. Owner Responsibility. Owners are responsible, and can be fined, for all violations committed by residents of their unit, their guests and invitees, as well as their tenant's and their tenant's guests and invitees.
7. Fines/enforcement action. Notwithstanding any other language to the contrary in other Rules, a fine in the amount of \$100/violation shall apply to each violation of this Code of Conduct, unless the Board of Directors determines otherwise². If an Owner has been cited for a violation of this Code of Conduct in the preceding six months, the fine shall increase to \$150/violation. In addition, the Association may invoke any other remedy allowed by its **Enforcement Policy**.

² The board may in its discretion pass a resolution setting fines for any specific violation case-by-case, at a higher or lower amount, as it believes appropriate.

3. Temporary Easement. Grantee shall have the right to use an additional twenty-five feet (25') as workspace alongside, adjacent to and parallel with the Easement and as much of the surface of the adjacent land as may be reasonably necessary during the construction and installation of the Facilities on the Property.

4. Purpose of Easement. The Easement shall be used for the purpose of surveying, placing, establishing, laying, constructing, installing, realigning, modifying, operating, repairing, maintaining, inspecting, patrolling (by surface and air), protecting, rebuilding, replacing, relocating, adding, substituting, improving, accessing, abandoning in place and removing a regulator station, together with the right to install certain related appurtenances, including, and expressly limited to, vent pipes, valves, markers, pumps, meters, regulators, rectifiers, cathodic corrosion control devices and alternating current mitigation equipment and facilities (generally including cathodic protection test leads, gradient control matting, grounding systems, rectifiers, eclectic meters, junction boxes, power supplies, anodes, decouplers, wires, ribbons, poles, and below ground beds), electric facilities, communication facilities and any other related appurtenances and equipment that may be necessary or desirable in connection with said above ground facilities (together the "Facilities"). Grantee shall also have the right (i) to fence and enclose the area where the Facilities are located, (ii) to enclose any of the appurtenances in separate enclosures, (iii) to grade, place and maintain pavement, gravel, or caliche within the fenced area to inhibit the growth of grasses and weeds, and (iv) to install markers and other above ground appurtenances as required by applicable laws or regulations. Grantee's right to grant a third party access to the Easement shall be limited to purposes related to the surveying, placement, construction, installation, operation, safety, repair, maintenance, inspection, patrol, protection, rebuilding, replacement, relocation, abandonment or removal of the Facilities. Grantee shall not use the Easement for purposes other than hereinabove granted without the express written consent of Grantor.

5. Duration of Easement. This Easement shall be perpetual.

6. Consideration. Subject to Paragraph 11 (Restoration), the consideration for the Easement includes full and final payment for any and all damages occurring to the land, pasturage, vegetation (grass, crops, tree, shrubs, *etc.*) timber, gates, fences, irrigation systems, buildings or other improvements of Grantor on the Property resulting from Grantee's exercise of the rights herein granted, including any monetary damages arising from the construction and installation of the Facilities and any income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments.

7. Warranty of Title. Grantor represents and warrants that it is the owner in fee simple of the Property, subject only to outstanding mortgages, if any, now of record, and in the event of default by Grantor, Grantee shall have the right to discharge or redeem for Grantor, in whole or in part, any mortgage, tax or other lien on said Property and thereupon be subrogated to such lien and rights incident thereto. Grantor and Grantor's successors and assigns are and shall be bound to warrant and forever defend the rights conveyed in this Agreement to Grantee and Grantee's successors and assigns, against every person lawfully claiming or to claim all or any part of the interest in the Property.

8. Exclusiveness of Easement. The Easement granted to Grantee hereunder is exclusive. Grantor represents and warrants that it has not and will not in the future convey any other easement or conflicting rights in the Easement area covered by this grant. Grantor covenants not to, nor permit others to, impound water or construct any building or other permanent structure, including without limitation gates, fences, trees, engineering works, power poles, light poles, roadways, driveways and sidewalks (“Encroachment”), nor to alter the surface grade of the Property within the boundaries of the Easement or so close thereto as to prevent proper maintenance, repair or removal of the Facilities without Grantee’s prior written consent. In the event the terms of this Paragraph are violated, Grantor shall immediately eliminate such violation upon receipt of written notice from Grantee, or Grantee shall have the immediate right to correct or eliminate the Encroachment at the sole expense of Grantor. If Grantee agrees in the future to relocate all or part of the Facilities to accommodate construction or surface regrading by Grantor, then Grantor shall reimburse Grantee for all costs associated with such relocation.

9. Encroachments. Grantee shall have the right to mow the Easement, cut and trim trees or shrubbery and to correct or eliminate any other Encroachment upon the Easement. Grantee shall dispose of all cuttings and trimmings either by piling and burning in the Easement (subject to fire or air pollution laws and regulations) or by loading and hauling away from the Property.

10. Existing Environmental Conditions. Grantor represents and warrants that as of the effective date of this Agreement, (i) the Property complies in all material respects with any applicable federal or state environmental laws and regulations; (ii) Grantor has not (and has no knowledge of any other person or entity which has) caused any production, use, release, threatened release or disposal of any hazardous materials at the Property in any material quantity; and (iii) Grantor has no notice or knowledge of any actual, pending or threatened environmental claims against the Property.

11. Restoration. During the term of this Agreement, Grantee shall maintain the Easement in a manner consistent with the purposes for which the Easement will be used by Grantee hereunder. Grantee will restore the Easement and Grantor’s remaining property, if any, used by Grantee to as near to original condition as reasonably practicable, or, in the event Grantee does not restore the Easement and Grantor’s remaining property, if any, used by Grantee, Grantee shall, in addition to the consideration paid for this Agreement, pay Grantor for actual monetary damages incurred by Grantor that arise from the damage to the Easements and/or Grantor’s remaining property, if any, caused by Grantee. Upon the termination of this Agreement, Grantee shall remove the Facilities and restore the Easement and any Property used by Grantee as nearly as reasonably practicable to as good a condition as existed at the time of commencement of Grantee’s operations hereunder in accordance with applicable law, rules and regulations. Grantor has the right to actual monetary damages arising from the repair maintenance, inspection, replacement, operation, or removal of the Facilities after initial construction and installation of the Facilities.

12. Gates and Fences. Grantee shall have the right to remove, cut, use, repair, and replace any gates or fences that cross the Easement. In the event Grantee does not repair and/or restore the fences or gates, Grantee shall, in addition to the consideration paid for this Agreement, pay Grantor for any damage caused by Grantee to the gates and fences.

13. Insurance. Grantee shall maintain at all times while it uses the Easement, including during construction and operations on the Easement, commercial liability insurance, issued by an insurer authorized to issue liability insurance in this State, or self-insurance, insuring the Grantor against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of the Grantee or Grantee's agents or contractors.

14. Entire Agreement. This Agreement contains the entire agreement between the parties relating to its subject matter. Except as otherwise provided in Paragraph 2 (Easement Description), any amendment or modification must be in writing and executed by both parties. If there are conflicts between any exhibit and the body of this Agreement, the body of this Agreement will control.

15. Dispute Expenses and Attorneys' Fees. If any controversy, claim, or dispute arises relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

16. Assignability and Binding Effect. This Easement shall be assignable in whole or in part. Grantee shall provide written notice to the property owner at the last known address of the person in whose name the Property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the Property if and when Grantee assigns the interest under this Agreement to another entity, provided that such notice is not required if the assignment is to an affiliate or to a successor through merger, consolidation or other sale or transfer of all or substantially all of Grantee's assets and businesses. This Agreement and all the rights, terms, provisions, and obligations granted herein are covenants running with the Property and shall bind and inure to the benefit of Grantee and Grantee's successors and assigns and to the benefit of Grantor and Grantor's heirs, successors and assigns.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Grantor has executed this Agreement to be effective on the date first written above.

GRANTOR: Circle C Homeowners Association, Inc., a Texas non-profit corporation

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGMENT (CORPORATE)

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this _____ day of _____, 2023, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same in the capacity _____ of Circle C Homeowners Association, Inc., a Texas non-profit corporation for the purposes and consideration therein expressed.

(seal)

Signature: _____

Typed Name: _____

Notary Public in and for the State of _____

My commission expires: _____

After recording, return to:

Texas Gas Service

Attn: Billi Cottier

9228 Tuscanv Way

Austin, Texas 78754

Pipeline Basics & Specifics About Natural Gas Pipelines

Introduction to Pipelines

There are over 2.6 million miles of fuel pipelines in the United States. Who regulates pipelines and under what set of regulations depends on what the pipeline carries, how much it carries, and where it goes. Pipelines are categorized into several types.

All fuel pipelines are either:

- 1) **Hazardous Liquid** pipelines carrying crude oil and refined fuels such as gasoline, diesel and jet fuel. They also carry highly volatile liquids, such as butane, ethane, propane, which will form vapor clouds if released to the atmosphere, and anhydrous ammonia.

or

- 2) **Natural Gas** pipelines carrying natural gas, the principal constituent of which is methane.

Depending on where they are in a transportation system all natural gas pipelines are either:

- **Transmission pipelines** — the large lines (typically 6-48 inches in diameter) that move gas long distances around the country, often at high pressures (typically 200 – 1500 psi); or
- **Distribution pipelines** — are a system of mains and service lines that deliver natural gas to our individual homes and businesses. They operate at a relatively low pressure; or
- **Gathering pipelines** — transporting gas away from the point of production (well pad) to another facility for further refinement or to transmission pipelines; or
- **Production Lines** — the pipes and equipment, normally near the wellhead, used to produce and prepare the gas for transport.

THE CURRENT U.S. PIPELINE SYSTEM

- About 200,000 miles of onshore and offshore Hazardous Liquid pipelines;
- About 320,000 miles of onshore and offshore Gas Transmission and Gathering pipelines;
- About 2,170,000 miles of Natural Gas Distribution mains and service pipelines

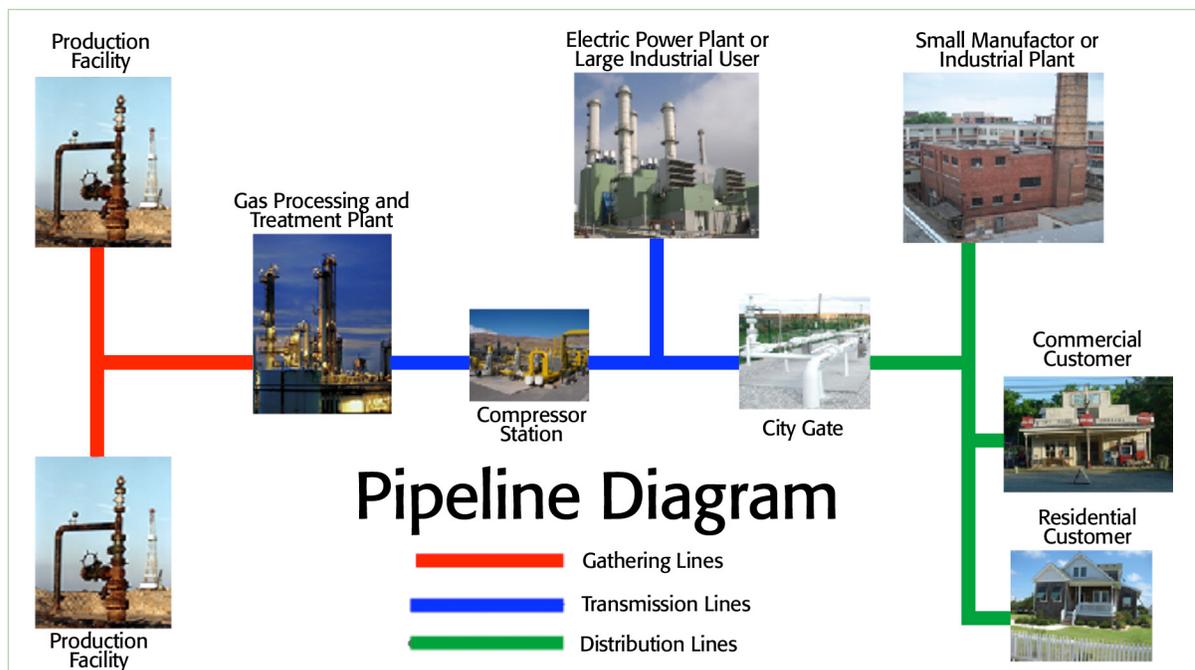
Pipeline Briefing Paper #2

Pipeline Basics & Specifics About Natural Gas Pipelines

Finally, (and you'd think this one would be simpler) pipelines are divided for jurisdictional purposes into:

- **Interstate pipelines**
- **Intrastate pipelines**

In most cases, you can determine whether a pipeline is inter- or intra- state by finding out if it goes beyond the borders of a single state. If it leaves the state, it should be interstate; if it stays within one state, it should be intrastate. But sometimes this description is accurate, and sometimes it isn't. Some large pipelines that cross state boundaries are classified as intrastate if the pipeline ownership changes at the state line. For example, the same gas transmission pipeline designated as *interstate* in Oregon, turns into an *intrastate* line when it hits California. Conversely, a transmission line that does not carry product outside one state can be considered interstate if the operator chooses to get its tariff approved by the Federal Energy Regulatory Commission (FERC), which governs tariffs on interstate transmission lines.



The gas pipeline transportation system from production to consumption

Unfortunately, even something seemingly so simple as determining whether a particular pipeline is a production or gathering line, or a gathering or transmission line, is not so simple under existing regulatory definitions, and they allow for some degree of choice by an operator in how a line is designated, and therefore how much of it is regulated as a particular type of line.

A couple other terms that are used frequently when talking about natural gas pipelines need to be defined. Unfortunately these terms are used in many different ways and standard definitions do not exist in federal regulations. They include:

Wet Gas and Dry Gas - Natural gas is a gas comprised of multiple hydrocarbons, the most prevalent being methane. The higher the methane concentration, the “drier” the gas is. Other minor components include evaporated liquids like ethane, butane and pentane, which are collectively referred to as natural gas liquids (NGLs), or condensates. The higher the percentage of NGLs, the “wetter” the gas is. There are no definitions in the federal regulations that define at what point gas is considered wet or dry.

Sour Gas – Normally this refers to natural gas that contains an appreciable quantity of hydrogen sulfide. Hydrogen sulfide is a concern because it is extremely poisonous and can cause health problems at high enough concentrations. When mixed with water it also becomes extremely acidic causing corrosion problems for pipelines.

How Natural Gas Pipelines Work

Natural gas is moved through pipelines as a result of a series of compressors creating pressure differentials – the gas flows from an area of high pressure to an area of relatively lower pressure. Compressors are powered by electric or natural gas fired engines that compress or squeeze incoming gas and push it out at a higher pressure. As one would expect compressor stations for large transmission lines are much bigger than the compressors used to move the gas through the small distribution lines to our homes. Some gathering systems do not need compressors because the pressure of the gas coming out of the wells is enough to move the gas through the gathering lines.

Natural gas is compressed in transmission pipelines to pressures typically ranging from 500 to 1400 pounds of pressure per square inch. Compressor stations on transmission pipelines are generally built every 50 to 100 miles along the length of a transmission pipeline, allowing pressure to be increased as needed to keep the gas moving. Some gas transmission pipelines are bi-directional meaning gas can be coming from both ends of the pipeline, and depending on where gas is removed and where the compressors create the pressure differential, gas may flow either direction. One example is William’s Northwest Pipeline that comes past us here in Bellingham. It accepts gas from Canada to the north and from the Rocky Mountain region to the south. These bi-directional pipelines boast of greater flexibility in both supply and price to customers.

Many gas transmission pipelines are “looped,” which just means there are two or more pipelines running in parallel to each other normally in the same right of way. Looping provides increased storage of gas in the system to meet demands during peak use periods.

Gas pipeline operators monitor for any problems and handle the flow of gas through the pipeline using a Supervisory Control and Data Acquisition system (SCADA). A SCADA is a pipeline computer system designed to gather information such as flow rate through the pipeline, operational status, pressure, and temperature readings. This information allows pipeline operators to know what is happening along the pipeline, and allows quicker reactions for normal operations and to equipment malfunctions and releases. Some SCADA systems also incorporate the ability to remotely operate certain equipment, including compressors and valves, allowing operators in a control center to adjust flow rates in the pipeline as well as to isolate certain sections of a pipeline.

The “city gate” is where a transmission system feeds into a lower pressure distribution system that brings natural gas directly to homes and businesses. At the city gate the pressure of the gas is reduced, and it is normally the location where odorant (typically mercaptan) is added to the gas, giving it the characteristic smell of rotten eggs so leaks can be detected. While transmission pipelines may operate at pressures over 1000 psi, distribution systems operate at much lower pressures. Some gas mains (2 to 24 inches in diameter) in a distribution system may operate up to 200 psi, but the small service lines that deliver gas to individual homes are typically well under 10 psi.

Once the gas is delivered to the local gas utility at the city gate, the gas utility’s control center monitors flow rates and pressures at various points in its system. The operators must ensure that the gas reaches each customer with sufficient flow rate and pressure to fuel equipment and appliances. They also ensure that the pressure stays below the maximum pressure for each segment of the system. As gas flows through the system, regulators control the flow from higher to lower pressures. If a regulator senses that the pressure has dropped below a set point it will open accordingly to allow more gas to flow. Conversely, when pressure rises above a set point, the regulator will close to adjust. As an added safety feature, relief valves are installed on pipelines to vent gas if a line becomes over pressured and the regulators malfunction.

Construction of Natural Gas Pipelines

The construction phase of pipeline installation is a critically important time to ensure the long-term integrity of the pipeline. Below are a few of the issues dealt with during the construction phase that affect pipeline safety. Some gathering and most production lines are not required to follow these standards.

Materials

Most transmission and gathering pipelines are now made out of high carbon steel. Pipe sections are fabricated in steel rolling mills and inspected to assure they meet government and industry safety standards. Generally between 40 and 80 feet in length, they are designed specifically for their



Example of a problematic cross bore of a gas pipeline through a sewer line

intended location in the pipeline. A variety of soil conditions and geographic or population characteristics of the route will dictate different requirements for pipe size, strength, and wall thickness.

Distribution pipelines may also be made of steel, but increasingly high strength plastic or composites are being used. Older distribution pipelines were frequently made of cast iron. Cast iron gets brittle with age, and can be susceptible to fractures when subjected to ground movement from freeze/thaw cycles or other causes. Some states require regular “frost

Pipeline Construction Video

This link is to a Spectra Energy video that shows what they describe as typical gas transmission pipeline construction: <https://youtu.be/gW6EU0g6ys>

The content of the voiceover has a pro-industry skew, but the construction video is informative and gives a clear picture of the scale of such projects.

surveys” during winter months in hopes that leaks formed from pipes cracking as a result of frost heaves are found and repaired quickly. Some plastics are also known to become brittle with age. The National Transportation Safety Board has recommended replacement of Aldyl-A type plastic pipes in distribution systems for years, yet failures in these pipes are still occurring.

Pipe Burial

Historically pipelines were installed using an open trench method, and this is still used for the majority of transmission and gathering lines. Underground techniques such as boring and horizontal directional drilling (HDD) allow pipe to be installed without digging a trench. HDD is often used where pipelines need to make river crossing as a way to greatly reduce the environmental disturbance of the river and to bury the pipeline much deeper. Boring is used extensively with distribution pipelines, especially in urban areas, for road crossings and to avoid other utilities. Both HDD and boring come with their own unique risks, for instance other utilities that are hard to locate, such as plastic or clay sewer lines, can be drilled right through (see picture). These “cross bores” often go unnoticed until the sewer lines clogs and an unsuspecting plumber or homeowner tries to clear the clog with a power snake auger. The auger may break the gas line through the pipe causing gas to leak into the sewer line and into the home where it could explode.

Federal regulations require that transmission pipelines and regulated type A gathering lines be buried at least 30 inches below the surface in rural areas and deeper (36 inches) in more populated areas. In addition, the pipeline must be buried deeper in some locations, such as at road and railroad crossings (36 inches) and crossings of navigable bodies of water (48 inches), and may be less in other locations such as when it is installed in consolidated rock (18 to 24 inches). Distribution mains must be at least 24 inches deep with some exceptions. Service lines on distribution systems must be 12 inches deep on private property, and 18 inches deep along roads and streets. The depth of burial is just for installation, and there is nothing in the federal regulations that requires this depth be maintained over time. These depth requirements went into effect in 1970, and pipelines that were installed before that time did not have to meet these requirements.

Pipe Coatings

Several different types of coatings may be used to protect the exterior of steel pipe from corrosion. The most common coatings are fusion bonded epoxy or polyethylene heat-shrink sleeves. Many coatings are now installed in the factory, but field coating application is still required in these instances in the areas where the pipes are welded together. Prior to field application, the bare pipe is thoroughly cleaned to remove any dirt, mill scale or debris. The coating is then applied and allowed to dry. After field



The Enbridge pipeline that failed in Michigan in 2010 had older enamel wrap coating installed

coating and before the pipe is lowered into the trench, the entire coating of the pipe is inspected to ensure that it is free from defects. Older pipelines may be uncoated or have coal tar or enamel wrap coating. The picture here shows the older enamel wrap coating on the Enbridge pipeline that failed in Michigan in 2010.

Welding of Steel Pipelines

To carry out the welding process, the pipe sections are temporarily supported along the edge of the trench and aligned. The various pipe sections are then welded together into one continuous length, using manual, semiautomatic or automatic welding procedures. As part of the quality-assurance process, each welder must pass qualification tests to work on a particular pipeline job, and each weld procedure must be approved for use on that job in accordance with federally adopted welding standards. Welder qualification takes place before the project begins. Each welder must complete several welds using the same type of pipe as that to be used in the project; the welds are evaluated by placing the welded material in a machine and measuring the force required to pull the weld apart. It is interesting to note that a proper weld is actually stronger than the pipe itself.

For higher stress pipelines over 6 inches in diameter, a second level of quality-assurance ensures the quality of the ongoing welding operation. To do this, qualified technicians sample a certain number of the welds (the sample number varies based on the population near the pipeline) using radiological techniques (i.e., X-ray or ultrasonic inspection) to ensure the completed welds meet federally prescribed quality standards. The X-ray technician processes the film in a small, portable darkroom at the site. If the technician detects certain flaws, the weld is repaired or cut out, and a new weld is made. Another method of weld quality inspection employs ultrasonic technology.

Operating Pressure

Maximum allowable operating pressure (MAOP) is the maximum internal pressure at which a pipeline or pipeline segment may be continuously operated. These pressures are set at levels meant to ensure safety by requiring that the pressure does not cause undue stress on the pipeline. How this pressure is determined is defined in federal regulations and is based on a number of different factors such as the location of the pipeline, pipe wall thickness, previous pressure tests, and the pressure ratings of various components. The actual operating pressure will vary along the pipeline, depending on terrain, elevation, and distance from a compressor station. The combination of MAOP and the diameter of the pipeline determine the potential impact radius (PIR) if a pipeline should fail.

Valves

The subject of pipeline valves generates substantial discussion. When it took the pipeline company in San Bruno, CA 90 minutes to drive to the valve and manually turn it off – substantially exacerbating that disaster – that led to new legislation nationally relating to automated valves on new transmission lines and a study of the idea of retrofitting certain existing lines.

On the distribution side, in 2006 Congress passed a statute requiring excess flows valves (small inexpensive valves that go on each service line to a house) to be installed on every new home built and when service lines are replaced. These “EFVs” shut off the gas to a home automatically if the line is broken by things such as excavation or a cross bore as explained earlier. PHMSA is undertaking a rulemaking in 2015 to require the installation of EFV's on multifamily dwellings and some commercial buildings.

Valves and Valve Placement

A valve is a mechanical device installed in a pipeline and used to control the flow of gas. Some valves have to be operated manually by pipeline personnel, some valves can be operated remotely from a control room, and some valves are designed to operate automatically if a certain condition occurs on the pipeline. If a pipeline should fail, how quickly the valves can be closed and the distance between the valves are some of the main determinations for how much fuel is released.

Testing of Pipelines Before They Go In Service

Generally, but with certain exceptions, all regulated pipelines constructed since 1970 have to be pressure tested before they can be placed into service. The purpose of a pressure test is to eliminate any defect that might threaten the pipeline's ability to sustain its maximum allowable operating pressure plus an additional safety margin, at the time of the pressure test. A pipeline is designed to a specified strength based on its intended operating pressure. Critical defects that cannot withstand the pressure will fail. Upon detection of such failures, the defects are repaired or the affected section of the pipeline is replaced and the test resumed until the pipeline "passes".

Hydrostatic pressure testing consists of filling the pipeline with water and raising the internal pressure to a specified level above the intended operating pressure, and is the norm for testing transmission pipelines. Distribution lines are normally pressure tested with air.

Pipeline Safety Requirements During Operation

Corrosion Protection

Unprotected steel pipelines are susceptible to corrosion, and without proper corrosion protection every steel pipeline will eventually deteriorate. Corrosion can weaken the pipeline and make it unsafe. Luckily, technology has been developed to allow corrosion to be controlled in many cases to extend pipeline life if applied correctly and maintained consistently. Here are the three common methods used to control corrosion on pipelines:

- **Cathodic protection (CP)** is a system that uses direct electrical current to counteract the normal external corrosion that occurs on a metal pipeline due to soil and moisture conditions. CP is used where all or part of a pipeline is buried underground or submerged in water. On new pipelines, CP can help prevent corrosion from starting; on existing pipelines, CP can help stop existing corrosion from getting worse.
- **Pipeline coatings** and linings are principal tools for defending against corrosion by protecting the bare steel from coming in direct contact with corrosive conditions.
- **Corrosion inhibitors** are substances that can be added to the commodity running through a pipeline to decrease the rate of attack of internal corrosion on the steel, since CP cannot protect against internal corrosion. Such inhibitors are of particular use in "wet" gas pipelines.

Right-of-way Patrols

Regulations require regular patrols of pipeline right-of-ways to check for indications of leaks and ensure that no excavation activities are taking place on or near the right-of-way that may compromise pipeline safety. For transmission pipelines, these are often accomplished by aerial patrols, but federal regulations do not specify the required mode of inspection.

Leakage Surveys

Regulations also require regular leakage surveys for all types of natural gas pipelines along the pipeline routes. Personnel walk or drive the route using specialized equipment to determine if any gas is leaking and to then quantify the size of the leak. Very small leaks are a normal part of most gas pipeline systems.

Odorization

Processed natural gas is odorless, so all distribution pipelines, and some natural gas transmission and gathering lines (those mainly in highly populated areas), are required to be odorized so leaking gas is readily detectable by a person with a normal sense of smell.

Class Locations and Integrity Management

The class location of a gas transmission pipeline impacts the pressure at which the pipeline can operate, and has other impacts on how an operator must comply with the regulations. Hazardous liquid pipeline regulations do not use class locations. The class locations defined in the gas pipeline regulations consider the area within 220 yards of any given 1-mile stretch of a pipeline:

- Class 1: rural areas with ten or fewer homes/apartments;
- Class 2: an area with more than 10 but fewer than 46 homes/apartments;
- Class 3: an area with 46 or more homes/apartments, or areas of public assembly that regularly are occupied by 20 or more people; and
- Class 4: where buildings with four or more stories above ground are prevalent.

In class 1 areas the same gas pipeline can operate at a higher pressure than if that pipeline were located in a class 4 area. Class location is not the only thing that impacts the pressure – an operator can also use higher-strength or thicker steel for the pipe to achieve a higher design pressure – but class location is a very important component of the gas regulations.

Integrity Management refers to a set of federal rules that specify how pipeline operators must identify, prioritize, assess, evaluate, repair and validate - through comprehensive analyses - the integrity of their pipelines. Some form of integrity management applies to both transmission and distribution pipelines, although gathering lines are exempt from these requirements. Whether a gas pipeline is subject to integrity management or not, depends on whether it lies within a High Consequence Area (mainly a

more populated area). Another briefing paper focuses on integrity management, so we do not go into detail here. But we bring up integrity management because of the relationship between high consequence areas (HCAs) and class locations. Though both are defined based on population, class locations and HCAs are not the same thing. Gas operators have a choice in the method they use to designate HCAs, and as a result, even some class 3 and 4 areas may not be designated as HCAs, and therefore not subject to the integrity management rules.

For further information:

Pipeline Safety Trust: <http://pstrust.org/about-pipelines1/beginners/>

PHMSA pipeline basics: <http://primis.phmsa.dot.gov/comm/PipelineBasics.htm>

Natural Gas from Wellhead to Burner Tip: <http://naturalgas.org/naturalgas/>

Texas Pipeline Easement Negotiation Checklist

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In response to the oil and gas boom in Texas, pipelines are rapidly being built to ensure line space for the increased production. As of 2012, there were more than 366,000 miles of oil and gas pipelines crisscrossing the state.

Pipelines are usually built across private lands after the pipeline company obtains an easement (the right to use a specified portion of the property of another) from the landowner. Although the monetary compensation is certainly an important factor for a landowner to consider, the nonmonetary terms of the easement may be, in some cases, more important and more valuable. It is critical to include in the written easement agreement any statement or

promise made by the company or it likely will not be enforceable.

The following checklist is certainly not exhaustive, and any landowner negotiating an easement agreement should hire an attorney to represent his or her interests. **This list is not a substitute for legal advice.** Each property is unique, and the following considerations may not apply the same way to different properties because of their specific use and characteristics. Although this list is based on a pipeline easement, these terms may also be helpful in negotiating other easements, such as those for electric or transmission lines, water, wastewater, drainage, or related infrastructure easements.



- **Determine whether eminent domain power exists.** Before beginning negotiations, determine whether the pipeline company has eminent domain power. An entity holding power of eminent domain has the right to take private property for a public use upon payment of adequate compensation to the landowner, even without the landowner's consent. A landowner dealing with a company that does not have eminent domain power is in a much stronger negotiation position. In that case, if the company does not agree to the landowner's terms, it may not legally acquire the easement. If the company has eminent domain power, however, and an agreement cannot be reached, the company could still obtain the easement through eminent domain by filing a condemnation proceeding in court. To understand the positions of the parties, make this determination at the outset of negotiations.

To get this information:

- Ask the company for a copy of the statute that grants them eminent domain power.
- Find out if the company is validly registered with the State Comptroller's office as having eminent domain power.



- If the pipeline company claims eminent domain power because it is a common carrier pipeline (a pipeline-for-hire), request evidence supporting its common carrier status.
 - For transmission lines, obtain a copy of the company's Certificate of Convenience and Necessity from the Public Utility Commission. It explains what condemnation power the company has and may provide additional information about the proposed project.
- **Identify the parties.** Include the names and addresses of the landowner and the company acquiring the easement. Require the pipeline company to designate a specific contact person in case any issues arise and to provide the landowner with a notice in a set period (such as 30 days) if the designated contact person changes.
 - **Determine compensation.** Specify the compensation the company will make for the easement, including when the payment is due. Generally, payment is based per foot, per acre, or per rod (a rod is 16.5 feet) of the pipeline, but may also be a set sum rather than tied to a measurement. Consider seeking payment per square foot rather than per foot or per rod to be adequately compensated for the entire area the company will use. If the company wants a temporary work area on the property in addition to the actual easement area, seek additional compensation for the temporary use of this area.

In addition to a damage payment for the portion of the land used, Texas courts recognize remainder damages (the decreased value of the remainder of the property outside of the easement strip) because of an easement on the property. This is important when the easement agreement limits some or all of the future surface use over the easement area. Consider these types of damages when calculating compensation.

Finally, discuss with an accountant how the payment will be described or structured. The payment description as an easement purchase versus a payment combined with remainder damages may have tax consequences.

- ❑ **See that the easement is specific, not blanket.** Easement agreements often state that a pipeline will be laid “over and across” the landowner’s property. This is a blanket easement that allows the company to place the line anywhere on the property, even if the company verbally promised to place the line in a certain location. To avoid this issue, define a specific easement area and have the company survey it and any temporary work areas. Make that survey an exhibit (documented evidence) to the easement. Also consider requiring a specific setback distance from any buildings or structures if this is a potential issue.
- ❑ **Grant a nonexclusive easement.** Reserve the right to grant additional easements to other parties within the easement area. For example, if another pipeline company wants to place a line on the property, the landowner may want the right to have the line placed within the same easement, rather than having two separate easements across the property.
- ❑ **Check restrictive covenants.** The easement may be planned for property that is subject to restrictive covenants, which might specify the required location and depth of any pipelines. Check any restrictive covenants to determine how they might apply.
- ❑ **Limit the easement agreement to only one pipeline.** Many proposed easement agreements seek to allow the company to “lay lines” or “construct pipelines” across the property. Limit the easement agreement to allow only one line on the property. Also, prohibit the company from assigning or granting rights to another party to lay an additional pipeline in the easement. With this term included, the landowner retains the right to negotiate and receive payment for all additional lines to be added to the easement area, rather than receiving just a one-time payment for an easement that could allow additional lines in the future.
- ❑ **Limit the types of products run through the line.** In addition to restricting the easement to a single line, seek to limit that line to carrying



- a single product. For example, a landowner might grant the right to lay a natural gas pipeline, but if the company later wants to flow carbon dioxide through the line, a second easement would be necessary. At minimum, a landowner should know what products are running through the line.
- ❑ **Determine the permissible pipeline diameter and pressure.** Generally, a landowner wants a smaller, lower-pressure line and a company wants the right to place the largest, highest-pressure line it may ever need. During negotiations, seek an agreement that the line will not exceed a certain diameter and specific pressure to help alleviate safety concerns.
- ❑ **Determine the width of the easement.** Widths are often described in two measurements, a temporary construction easement (generally 50 feet or wider) and a permanent pipeline easement (typically ranging from 20 to 50 feet). Limit both of these measurements to the narrowest width possible to control the amount of land used or damaged by the easement. Also, determine a date by which the temporary pipeline easement will terminate and provide for damages if the company extends this deadline.
- ❑ **Require a specific pipeline depth.** In the past, many easements stated that the pipeline would be “plow depth.” Avoid this type

of nonspecific, subjective term. Easements usually stipulate that the line will be buried 36 inches below the ground, the depth that Texas law requires. If a pipeline is buried at 36 inches, erosion will eventually make the line too shallow to comply with state law. In light of this, have the line buried to at least 48 inches deep, or stipulate that the company maintain the 36-inch depth.

- **Specify what surface facilities, if any, are permitted.** Even underground pipelines require some surface facilities such as cleaning stations, compressor units, and pump stations at points along the line. Require a pipeline company to either waive all surface facilities on the property or specify exactly how many surface facilities will be allowed, their size, type, and location. If surface facilities will be placed on the property, negotiate additional compensation.
- **Reserve surface use.** Retain the right to use as much of the easement area as necessary. For example, once an underground pipeline is in place, the landowner may want to graze his cows on the property, including the surface above the pipeline. Similar consideration applies to the landowner's ability to place roadways, ponds or tanks, and water lines across the easement.
- **Provide property access for the landowner.** It is not uncommon to install a pipeline beneath an entry road or driveway to the landowner's property. State in the agreement that the company will provide access to the landowner's property during the pipeline installation, as well as after the construction is completed.
- **Limit access to the easement.** A landowner can limit the company's access to the easement in a number of ways:
 - Require that notice be given before entry.
 - Set certain times or days when entry is not permitted.
 - Determine where company employees may enter and exit the property.

- Designate what roads may be used while on the property.
- Prohibit any fishing or hunting on the easement or any of the landowner's property by the company or any of its employees, agents, or contractors without landowner permission.

If there are no limitations in the easement agreement, the company can enter the easement at any time for any purpose.

- **Request the use of the double ditch method.** The double ditch method requires the company to dig the pipeline trench so that the topsoil remains separate from the subsurface soil and is placed back on top of the subsoil when the construction is completed and the line buried.
- **Include the right to damages for construction, maintenance, repair, replacement, and removal.** Require the company to be responsible for damages caused not only during construction, but also during future maintenance, repair, and replacement activities. Also, include any limitations or notice requirements desired for the company's maintenance schedule. For example, a farmer growing crops near the pipeline may want written notice before any pesticide or herbicide is sprayed on the easement area.
- **Set specific restoration standards.** To ensure that the easement area is properly restored, state the company's responsibilities regarding repairs. How will the disturbed area over the pipeline be treated after the pipeline has been installed? Will the operator remedy any changes to the slope of the land or replace the topsoil? Will the reseeding be done with native grass or is a special type of seed required? Address these issues in detail. Consider setting a measurable standard to ensure that repairs are adequate or appoint a neutral third party to inspect the land after the damages have been repaired to determine if the repairs are sufficient.

- ❑ **Request payment for damages.** Because pipeline easements generally last a long time, request an up-front payment for damages or require the company to post a bond so that money is available for future damages. This provides some protection to the landowner in the event the company disappears before making damage repairs. Additionally, require that repairs to the surface of the easement be done when the construction is completed as well as when the easement terminates.
- ❑ **Specify fencing requirements.** Require the pipeline company to fence the easement area according to specifications such as the type of fence to be built, the number and type of H-braces to be installed, and the tinsel strength of the wire.
- ❑ **Include repairs or improvements to existing roadways.** Constructing a pipeline requires significant equipment and vehicle traffic. If the company will use any roads owned by the landowner or will construct roads across the landowner's property, require that it restore or improve the roads when the construction is finished.
- ❑ **Determine maintenance responsibilities.** Define whether the company or the landowner is responsible for surface maintenance over the pipeline, such as mowing or removing weeds and overhanging limbs.
- ❑ **Define when the easement will terminate.** From a landowner's perspective, this is perhaps the most important provision of an easement agreement. There are several circumstances under which an easement might terminate under Texas law, but abandonment is the most common concern for landowners with pipeline easements.

Under Texas law, an easement is considered abandoned if there is non-use by the company (an objective test) and the company indicates an intent not to use the line in the future (a subjective test). Under this rule, it is difficult for a landowner to prove the subjective test in order to have the easement terminate due to abandonment.

Instead of relying on the general rule, set a specific, objective standard for when the easement will end. This could be a specific time in the future (for example, the easement will last for 10 years) or may be a statement that if the pipeline company does not flow product through the line for a certain period (for example, 1 year), it is considered abandoned and the easement terminates. Whatever the standard, including it in the agreement prevents easements from lasting into eternity. Further, require that the company provide a release of the easement so it can be recorded in the public record when the easement ends.

- ❑ **State the requirements for removing facilities.** Require the company to remove all lines and structures after termination of the easement or forfeit them to the landowner. Also, state that any damages caused by this removal will be the responsibility of the company.
- ❑ **Determine remedies for violating the easement agreement.** If a company violates the easement agreement, the landowner can file a lawsuit to terminate the agreement, but the court will require that the violation is "material" before granting termination of the agreement. Whether a violation is material is determined on a case-by-case basis on the specific facts at issue. This causes two potential problems: (1) the landowner must go to court, which is expensive and time-consuming, and (2) the violation must be material for termination to be permitted.



To avoid these issues, consider two options:

First, the landowner may be able to define what violations are deemed material and state that in the agreement. For example, the agreement could state that “employees shall be permitted on the easement only and if they leave the easement and enter the landowner’s property, this shall constitute a material breach.” This material breach would permit the landowner to terminate the agreement without court action.

Second, require conditions in the agreement by stating “or the agreement shall terminate without further action by the landowner.” For example, the agreement could say, “employees shall be permitted on the easement only. If they leave the easement and enter the landowner’s property, this shall constitute trespass and the agreement shall terminate.”

Under either of these scenarios, the landowner knows precisely when he or she may terminate the agreement, rather than having to wait for a judicial determination of material.

- **Include liability and indemnification provisions.** Incorporate liability and indemnification responsibility in the easement agreement. Provide that the landowner is not liable for any acts, omissions, or damages caused by the company, its agents, contractors, or employees. Further, stipulate that if any claim is made against the landowner by any party related to the pipeline or surface facilities, any of the company’s activities, or any environmental laws, the company will hold the landowner harmless and state that this includes paying any judgment against the landowner and providing a defense to the landowner without charge.
- **List the landowner as “additional insured” on the company insurance policy.** Require the pipeline company to list the landowner as an “additional insured” on its insurance policy. This is not usually a major cost to the company and may allow the landowner the protections of the company’s insurance policy if he or she is sued based on something related to the pipeline.



- **Do not be responsible for warranty of title.** Frequently, standard easement agreements require the landowner to warrant title (the landowner promises that there are no other unknown owners or encumbrances on the property). Because the pipeline company is in a better position to conduct a title search and make sure they are negotiating with all the right parties, the landowner should not take the risk of warranting title. If the company goes through the condemnation process, Texas law does not allow it to obtain a warranty of title, so there should be no reason to require this term in a negotiated agreement.
- **Limit the terms of transferability.** Specify whether the company can assign its rights under the agreement to a third party. Request that no assignment be made without prior written consent of the landowner, state that any assignee will be held to the terms of the original agreement between the landowner and the company, and state that the company will remain liable in the event of a breach of the agreement by the assignee. At a minimum, require notification before an assignment occurs.
- **Request a most-favored-nations clause.** Although pipeline companies dislike these requests, ask for a most-favored-nations clause. This provides that if any other landowner in the area negotiates a more favorable deal

within a certain timeframe, the landowner is given the benefit of the more favorable deal.

- **Seek payment for negotiation costs.** Because the landowner may incur significant costs during the negotiation process, including appraiser costs, fees for forestry or agricultural experts, surveyor expenses, and attorney's fees, require the company to pay all or a portion of these costs.
- **Use a choice-of-law provision.** A choice-of-law provision allows the parties to determine which state's law will govern the agreement in the event of a dispute. For example, a pipeline company headquartered in another state may try to require that the law in their home state apply to any dispute involving the easement agreement. Generally, courts enforce these clauses as long as they are not against public policy and are reasonably related to the contract. Because many laws vary by state and a choice-of-law provision could significantly impact rights under the agreement, consult with an attorney to determine which options are the most advantageous to the landowner.
- **Include a forum clause.** A forum clause provides that a dispute over the agreement will be heard in a particular location or court. Include a requirement that any lawsuit be filed in the county where the land is located or the landowner lives. This can significantly lower litigation and travel costs and ensures that if a jury trial occurs, the jury will be made up of local citizens.
- **Understand dispute resolution clauses.** These types of clauses limit the time and expense of a court action in the event of a dispute. There are two primary types of dis-

pute resolution: arbitration and mediation. In arbitration, a third party arbitrator (usually an attorney) hears evidence and delivers a decision. If the arbitration is "binding," that judgment is final, absent evidence of fraud by the arbitrator. Mediation involves a neutral third party who works with the landowner and the company to reach a mutually acceptable resolution. If both parties refuse to agree to settle, the case goes to court. Understanding the difference between these options is important; consult with an attorney to determine which option is best. A dispute resolution clause should identify how the arbitrator or mediator is selected.

- **Review by a licensed attorney.** A licensed attorney familiar with easement negotiation issues should review all pipeline easement agreements. Although hiring an attorney who specializes in representing landowners in these types of transactions may be an additional cost, it could save money in the long run by preventing a dispute from arising because of an unclear or inadequate easement agreement.
- **Money-saving tip.** Because most attorneys bill by the hour, a client can save considerable fees by doing as much legwork as possible before going to the attorney's office. For example, a landowner could collect necessary documents such as the legal description or sketch of the property, saving the attorney the time of locating that information. Moreover, a landowner could prepare a first draft of the easement agreement using this checklist. This would save the attorney the effort of starting from scratch and allow him or her to simply edit the draft prepared by the landowner.

Texas A&M AgriLife Extension Service

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The Texas A&M University System, U.S. Department of Agriculture, and the County Commissioners Courts of Texas Cooperating.

More info on the Texas Gas easement

I looked up the plat, and find no gas easement. I'm thinking that the reference to two lines may be for way off in the future, when the line they plan to install now may need to be replaced.

Attached is a version that has yellow highlights. Note that they give themselves the right to go anywhere on Lot 1 they want, so long as it serves the purpose of the easement. That's in sections 1 and 3. So, they have exclusive use of the easement area and non-exclusive use of the rest of the lot. I think that needs to be narrowed down, since they will have access directly from Cornflower and SH 45.

The 12" diameter (section 4) and 30 x 30 regulator station suggest that this installation may be for more than just service to Circle C residences. I'd want to know what the overall plan is for this pipeline—what is the pipeline's footprint on the other side of the regulator station. And, I'd want to know why they want to put a line in that location.

They get to fence the area where the facilities are located (section 4). You'd want them to fence the regulator station, but probably not the underground pipe.

The depth is 24-36" (section 9), but then there is an above ground regulator station so there will be owner concerns about leaks and explosions.

They have the right to mow, but not the obligation (section 11).

I did a google search and found that main lines can be 16-44 inches and lateral lines 6-16". So, the 12" doesn't seem quite so concerning as it did at first. Still, owners are going to want to know the big picture. If this is a standard type installation designed to serve residences, it should be more palatable than if the location and size are to serve a commercial facility being located on the other side of SH 45.

The search pulled up an info sheet, which raised more questions we might want to ask. Such as, what pressure will it be operated under, and what inspections will they undertake and how frequently. We might want to add a provision that they will comply with all state and federal regs regarding installation, materials, maintenance, and inspection. As to the latter, we might want to be more specific as to the type and frequency of inspections for leaks.

I also found a negotiation checklist from Texas A&M. It suggests limiting the type of product that the pipeline can be used to transport, providing for a maximum pressure. It says that more compensation should be requested for surface facilities. It explains what double ditch means (keeping the topsoil intact and putting it back in place when the digging is done).

It suggests not agreeing to warrant title, and also providing for specific indemnity provisions. The proposed agreement says only that grantee will carry insurance, but doesn't specify any limits.

As indicated, I have no prior experience negotiating gas pipeline easements. While I could probably do an adequate job, I can't help but think that an attorney who has been down this path before could probably do a better job. That would be an eminent domain attorney. Suggest you take this up with the board in executive session and let me know how it wants to proceed. If it wants to hire an eminent

domain expert, here is a link to Dan Foster's bio. <https://bhlawgroup.com/dan-foster-2/>. I'll be happy to make the introduction. I believe that the billing rate for negotiating an easement might be in the range of \$500/hr, unless there is also a dispute regarding valuation, in which case the attorney compensation might come as a percentage of the amount by which proceeds recovered exceed the amount offered.

Jean Phillips <https://loartexas.com/team> (I understand we can get a free consultation with this attorney)

Terry B. Gamble Law Office of Terry B. Gamble, PLLC 4408 Spicewood Springs Road Austin, Texas 78759
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Sejin Brooks <https://www.barronadler.com/attorneys/sejin/>



July 11, 2023

Karen Hibpshman
Circle C HOA Manager
Circle C Home Owners Association
7817 La Crosse Avenue
Austin, Texas 78739

RE: Circle C North Landscape Design

Dear Karen,

Thank you for asking Hitchcock Design Group to submit this proposal for your Circle C North landscape and irrigation project. We appreciate the opportunity to provide our professional services to you and Circle C Home Owners Association.

PROJECT UNDERSTANDING

Based on our discussions with you, we understand that the Circle C Home Owners Association would like re-design the landscape and irrigation along Barstow Avenue and Allerton Avenue (including the medians) from Slaughter Lane to Colberg Drive.

SCOPE OF SERVICES

First, during Preliminary Design, we will have 4Ward survey and locate the curbs, sidewalk and existing trees, landscape materials, and irrigation, with a recommendation of what can remain and what should be replaced. We will then prepare a Schematic Landscape Plan and corresponding Landscape Construction Cost Opinion that identify the scale, character, complexity and potential construction cost of the proposed landscape and irrigation improvements.

Next, during Final Design, we will prepare Landscape Construction Documents, including drawings and specifications, that will be used to competitively bid and construct the improvements.

Finally, during Construction, we will provide limited Construction Observation and Contract Close-out services that will help you administer your contract with the Landscape or General Contractor.

Please see the Scope of Services for our step-by-step approach.

PROFESSIONAL FEES

Based on the Scope of Services, the fees to complete the work as outlined are as follows:

<i>Preliminary Design Services</i>	
Survey and Inventory (by 4WARD surveying) (estimated)	\$6,500
Schematic Design Phase	\$3,000
<i>Final Design Services</i>	\$14,500
Construction Documentation Phase	
<i>Construction Phase Services</i>	\$3,500
Construction Observation	



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Contract Close-out

Total Professional Services: \$27,500

Reimbursable expenses (printing, mileage and courier) will be invoiced in addition to the professional service fees. We recommend setting aside \$1,000 for these expenses.

PROJECT TEAM

I will manage our work locally in Austin Texas. Other members of our firm may participate as needed in order to advance the work in a timely way. Irrigation services will be provided by Paul Radlet and Associates Irrigation Design and these fees are included in the fees above.

If you find this proposal acceptable, we will forward our standard contract for your review and signature. We can begin work upon your authorization.

Thank you again for the opportunity to work with you and Circle C Home Owners Association. If you have any questions or wish to discuss this proposal further, please do not hesitate to call.

Sincerely,
Hitchcock Design Group

Trent Rush
Senior Principal



Scope of Services

Circle C North Landscape Design

PRELIMINARY DESIGN SERVICES

The goal for this part of the agreement is to finalize the program and reach consensus on a preliminary design approach for the proposed landscape improvements.

A. Program and Analysis Phase

Objective: Confirm the characteristics of the existing resources, the requirements and preferences of the Owner, users, and other stakeholders, and produce a Landscape Program that will be the basis for further design.

Process: Hitchcock Design Group will:

1. (Mtg #1) Participate in a kick-off meeting with you and the other project team members confirming:
 - a. Project area, ownership and access
 - b. Goals, objectives and expectations
 - c. Neighboring property owners, and other stakeholder interests
 - d. Identify program of landscape improvements
 - e. Probable jurisdictional interests, regulations and processes
 - f. Comparable projects and best practices
 - g. Budgeted costs
 - h. Owner and HDG responsibilities
 - i. Communications protocol
 - j. Preliminary schedule
 - k. Invoicing and payment procedures
2. Review readily available existing maps, plans and data for the project area and the immediate surroundings including:
 - a. Topographic and boundary surveys (base maps)
 - b. Property ownership and easements (base maps)
 - c. Architectural and/or site engineering plans (base maps)
 - d. City of Austin permitting and construction requirements (if required)
3. Observe and photograph the project area and immediate surroundings in order to identify readily apparent physical conditions and patterns of use.

B. Schematic Design Phase

Objective: Reach consensus with the Owner on the organization, scale, character, cost and construction timing of new landscape improvements.

Process: Hitchcock Design Group will:



1. Using base maps prepared by others, prepare up to two (2) **Iterations of the Schematic Landscape Plans and Image Boards** illustrating the organization, materials and/or finish, scale and character of the proposed hardscape and landscape improvements such as:
 - a. Trees and ornamental plant material
 - b. Turf and other groundcovers
 - c. Irrigation
2. (Mtg #2) Review the schematic design recommendations with the Owner. Identify improvement priorities to advance for initial permitting, bidding and construction.
3. Refine the schematic design recommendations, as may be appropriate, and prepare a **Schematic Landscape Plan and Image Board**.
4. (Mtg #3) Submit and review our refined recommendations and improvement priorities with the Owner.

Deliverable: **Alternative and Preferred Schematic Landscape Plans and Image Boards** (size TBD, color, PDF) for your use and reproduction

FINAL DESIGN SERVICES

B. Construction Documentation Phase

Objective: Finalize the construction documents that will be used to construct the approved landscape improvements.

Process: Hitchcock Design Group will:

1. Using updated base maps, finalize **Landscape Construction Drawings and Specifications** that will be used to bid and construct the approved landscape improvements including:
 - a. Limits of irrigation
 - b. Mulch, soil
 - c. Trees and ornamental plant material
 - d. Turf and other groundcovers
 - e. Plant list and details
2. (Mtg #4) Review the documents with the Owner.
3. Revise the documents as may be appropriate.
4. (Mtg #5) Review the documents with Owner.
5. Revise and submit final Landscape Construction Drawings and Specifications to the Owner.

Deliverable: **Landscape Construction Drawings and Specifications** (size TBD, ACAD and PDF files) for use and reproduction

CONSTRUCTION PHASE SERVICES



Following award of the work to a Contractor, Hitchcock Design Group will provide these Construction Services until Final Acceptance of the work, or until 60 days after Substantial Completion of the work, whichever occurs first.

Deliverable: **Supplementary Instructions and Change Orders** (PDF)

A. Observations

Objective: Become familiarized with the progress and quality of the Contractors' work and to determine if the work is proceeding in general conformance with the Contract Documents.

Process: During construction, Hitchcock Design Group will:

1. If requested by the Owner, Observe the work at intervals appropriate to the stage of construction and prepare written **Field Observation Reports**.
2. Review Contractor submittals and prepare **Submittal Review Memoranda**.

Deliverable: **Field Observation Report** and **Submittal Review Memoranda** (PDF)

B. Contract Close-out

Objective: The objective is to close out the construction contract with the Contractor.

Process: When the work is Substantially Complete, Hitchcock Design Group will:

1. Review substantially completed work and prepare one (1) **Punch List**.
2. Review and prepare recommendations regarding the Contractor's request for acceptance of completed work.

Deliverable: **Punch List, other written correspondence** (PDF)

OPTIONAL ADDITIONAL SERVICES

Services and meetings not specified in this Scope of Services will be considered Additional Services. If circumstances arise during HDG's performance of this Scope of Services that HDG believes require Additional Services, HDG will promptly notify Client about the nature, extent and probable additional cost of the Additional Services, and perform only such Additional Services following Client's written authorization.