

**MODEL HAZARDOUS LIQUID PIPELINE ORDINANCE  
TO IMPLEMENT AND SUPPLEMENT COUNTY LAND RESTORATION AND  
DAMAGE ASSESSMENT AUTHORITY IN ACCORDANCE WITH  
IOWA CODE ANNOTATED CHAPTER 479B**

**Section 1. Intent.**

- a) The intent of this ordinance is to protect the residents and lands of County from the physical and economic harm that may be caused by construction of a Hazardous Liquid Pipeline, consistent with Iowa Code Annotated Chapter 479B.
  
- i) Restoration of and Damage Recovery for Agricultural Land. This ordinance implements the authority granted to the County by Iowa Code § 479B.30 related to recovery of Agricultural Damages on Agricultural Land caused by construction of Hazardous Liquid Pipelines, and Iowa Admin. Code 199, Chapter 9, related to restoration of Agricultural Lands during and after Pipeline Construction.
  
- ii) Restoration of Non-Agricultural Land and Recovery of Non-Agricultural Damages. This ordinance extends County authority to require restoration of Non-Agricultural Lands and to establish procedures for recovery of Non-Agricultural Damages caused by construction of a Hazardous Liquid Pipeline within County. The County finds that such authority is an exercise of county home rule powers authorized by Iowa Const. Art. III, § 39A. The County finds that the exercise of this authority is necessary because Iowa Code Chapter 479B and Iowa Admin. Code 199, Chapter 9, apply only to restoration of Agricultural Land and recovery of damages for harm to agricultural interests, and do not apply to restoration Non-Agricultural Land or recovery of Non-Agricultural Damages.
  
- iii) Procedures. This ordinance specifies the procedures to be used by County to implement:
  - (1) the authority granted to County by Iowa Code 479B.30, Iowa Admin. Code 199, Chapter 9, related to protection of Agricultural Land from the adverse impacts of Hazardous Liquid Pipeline Construction; and
  - (2) The home rule authority granted by Iowa Const. Art. III, § 39A, to restore Non-Agricultural Land and to allow for recovery of Non-Agricultural Damages from the adverse impacts of Hazardous Liquid Pipeline Construction, consistent with state law.

## **Section 2. Definitions.**

- a) “Agricultural Damages” means damages caused by surveying for and construction and operation of a Pipeline, within the meaning of Iowa Statutes Chapter 479B and Iowa Administrative Code 199-9.
- b) “Agricultural Land” has the same meaning as defined in Iowa Admin. Code 199-9.1 and means any land devoted to Agricultural Use, including, but not limited to, land used for crop production, cleared land capable of being cultivated, hay land, pasture land, managed woodlands and woodlands of commercial value, truck gardens, farmsteads, commercial agricultural-related facilities, feedlots, rangeland, livestock confinement systems, land on which farm buildings are located, and land used to implement management practices and structures for the improvement or conservation of soil, water, air, and related plant and animal resources.
- c) “Affected Landowner” means any Person with a legal right or interest in real property in County, including but not limited to a Landowner, a contract purchaser of record, a Person possessing the property under a lease, a record lienholder, and a record encumbrancer of the property, whose land is affected by surveying for or construction or operation of a Hazardous Liquid Pipeline.
- d) “Affected Person” means any Affected Landowner and any Person or business that is a resident of County whose real or personal property or business income is damaged by surveying for or construction or operation of a Hazardous Liquid Pipeline.
- e) “Agricultural Use” is the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, and grazing or the production of livestock. Farming shall also include the production of timber, forest products, nursery products, or sod.
- f) "County" and "the County" mean [name] County.
- g) “County Damages” means the costs to restore and repair any roads, bridges, or other county real and personal property owned by County, including, but not limited to, the costs of restoration of natural resources and vegetation.
- h) “County Inspector” means a professional engineer who is licensed under Iowa Code chapter 542B, who is familiar with agricultural and environmental inspection requirements, and who is designated by the County board of supervisors to be responsible for completing an on-site inspection for compliance with this chapter and Iowa Code chapter 479B.
- i) “Hazardous Liquid” has the same meaning as defined in Iowa Code § 479.2(2), and includes crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

- j) “Landowner” has the same meaning as in Iowa Code § 479B.4(4) and § 479B.30(7), and includes a Person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and farm tenants.
- k) “Non-Agricultural Damages” means damages to Non-Agricultural Land, personal property, and business income not related to Agricultural Use caused by surveying for and construction and operation of a Pipeline, not otherwise subject to recovery under Iowa Code Chapter 479B and Iowa Administrative Code Chapters 199-9 and 199-13 as Agricultural Damages, but does not include compensation for a property interest subject to compensation for a taking by eminent domain under Iowa Code Annotated Chapter 6B.
- l) “Non-Agricultural Land” means all land in County that is not Agricultural Land as defined in this section.
- m) “Occupied Residence” is a structure that has been inhabited any time within the previous twelve (12) month period.
- n) “Occupied Business” is a structure that has been used for a commercial or nonprofit use by a business or non-profit entity any time within the previous twelve (12) month period.
- o) “Person” has the same meaning as in Iowa Admin. Code 199-13.1(3), and includes an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).
- p) “Pipeline” has the same meaning as defined in Iowa Code § 479B.2(2), and includes an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of Hazardous Liquids.
- q) “Pipeline Company” has the same meaning as defined in Iowa Code § 479B.2(4), and includes a Person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any Hazardous Liquid or underground storage facilities for the underground storage of any Hazardous Liquid.
- r) “Pipeline Construction” has the same definition as in Iowa Admin. Code 199-9.1(2) and means activity associated with installation, relocation, replacement, removal, or operation or maintenance of a Pipeline that disturbs Agricultural Land, but shall not include work performed during an emergency, tree clearing, or topsoil surveying completed on land under easement with written approval from the Landowner. Emergency means a condition involving clear and immediate danger to life, health, or essential services, or a risk of a potentially significant loss of property. When the emergency condition ends, Pipeline Construction will be in accordance with these rules.

### **Section 3. Compliance with Restoration Standards.**

- a) Restoration Standards – Agricultural Land. Pipeline Company shall comply with all standards and procedures in Iowa Code chapter 479B, Iowa Admin. Code chapters 199-9 and 199-13, or a separate agreement between the Pipeline Company and the Landowner made in accordance with Iowa Code chapter 479B, Iowa Admin. Code chapter 199-9, as well as the procedural requirements in this ordinance.
- b) Restoration Standards – Non-Agricultural Land. Pipeline Company shall restore all Non-Agricultural Land to at least its pre-construction condition to the maximum extent feasible. In addition, Pipeline Company shall:
  - i) remove construction related debris, litter, and material not an integral part of the Pipeline from the construction areas and adjacent lands within one week of completion of backfill. Under no circumstances will Pipeline Company or its contractors bury or burn any trash, debris or foreign material.
  - ii) consult with and where feasible comply with the choices of Affected Landowners on revegetation, including but not limited to, choice of seed mixes, method of reseeding, and weed and erosion control measures and monitoring.
  - iii) ensure that mulch is installed as required by site contours, seeding methods, or weather conditions or when requested by a Landowner.
  - iv) prevent the introduction of invasive species, including but not limited to noxious weeds, and ensure ongoing control of invasive species.
  - v) restore all waterbodies to at least their pre-construction condition to the maximum extent feasible.
  - vi) avoid and protect historical and cultural properties via surveying and consultation with Landowners and other owners of historical and cultural properties, including by providing an unanticipated discovery plan to County and other Affected Persons.
  - vii) avoid and protect non-agricultural conservation lands and lands subject to natural resource easements, and if not avoided, ensure restoration of such lands to at least their pre-construction condition to the maximum extent feasible.
- c) Standards Applicable to Occupied Residences. Pipeline Company shall construct Pipeline to minimize impacts to Occupied Residences. When a Pipeline passes within one thousand (1,000) feet of any Occupied Residence, Pipeline Company shall implement the following:

- i) To the extent feasible, Pipeline Company shall coordinate construction work schedules with affected residential owners prior to the start of construction.
  - ii) Pipeline Company shall maintain access to an Occupied Residence at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Pipeline Company and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with occupants, to the extent possible.
  - iii) Pipeline Company shall install temporary safety fencing to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.
  - iv) Pipeline Company shall notify residents of Occupied Residences within 1,000 feet of construction no less than forty-eight (48) hours in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- d) Standards Applicable to Occupied Businesses. Pipeline Company shall construct Pipeline to minimize impacts to Operating Businesses. When a Pipeline passes within one thousand (1,000) feet of any Occupied Business, Pipeline Company shall implement the following:
- i) To the extent feasible, Pipeline Company shall coordinate construction work schedules with affected business and nonprofit occupants prior to the start of construction.
  - ii) Pipeline Company shall maintain access to an Occupied Business at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Pipeline Company and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with occupants, to the extent possible. Pipeline Company shall provide temporary signs to direct the customers and patrons of Occupied Businesses to alternative means of access during construction.
  - iii) Pipeline Company shall install temporary safety fencing to control access and minimize hazards associated with an open trench and heavy equipment in a commercial districts.
  - iv) Pipeline Company shall notify businesses and nonprofits in Occupied Businesses within 1,000 feet of construction no less than forty-eight (48) hours in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- e) Restoration of Water Supply. In the event construction of the Pipeline causes a water well or water supply to be diminished in quantity or quality, Pipeline Company shall provide a comparable permanent replacement water supply at Pipeline Owner's expense. Pipeline Company shall perform baseline water testing for both domestic and livestock water wells within two thousand (2,000) feet of the proposed Hazardous Liquid Pipeline Route prior to construction of the Pipeline with the results delivered to the County Inspector and made available to Affected Persons and the public upon request.
- f) Restoration of County Property.

- i) Pipeline Company will restore County Property to at least its original condition, or as regards county infrastructure and personal property, replace such property with comparable or better property.
- ii) Restoration of County Roads.
  - (1) The County Board's general supervision and control of county roads shall ensure the appropriate and timely maintenance of all county roads pursuant to *Iowa Code* § 306.4 and any amendments thereto.
  - (2) Pipeline Company shall complete a County Road and Right-of-Way Application Form including each county, township, or municipal road or street to be crossed under, over, or across by a Pipelines.
  - (3) Pipeline Company shall, in coordination with the County and County Inspector and other appropriate jurisdictions, conduct a pre-construction survey of roadways and related improvements, drainage pipes and similar structures, and bridge conditions that may be used during construction of a Pipeline, including haul roads, and any roads used for alternative routes. Such survey shall include photographs and written agreement documenting the condition of the public roads, to determine all county, township, or municipal roads or streets to be used for the purposes of transporting pipe, substation parts, and other equipment for construction and/or maintenance, and to determine all applicable weight and size permits from the impacted jurisdictions prior to construction. Pipeline Company shall be responsible for, at its sole expense, restoring such roads, streets and bridges to pre-construction conditions. County Inspector shall determine the need for and extent of repair and direct Pipeline Owner to make such repairs.
  - (4) Pipeline Company shall pay a one-time nonrefundable Road Survey Application fee of \$5,000 simultaneously at the time it submits its pre-construction survey. An annual renewal fee of \$500.00 per County roadway crossed by the Pipeline or any related structure shall be paid by Pipeline Company on the anniversary of the completion date of the Pipeline in the County, such fee to be used for ongoing inspection of County property in the Pipeline right-of-way. This fee shall be paid every year on the anniversary date of that any portion of the Pipeline or related facilities is located in the County. All payments shall be delivered to the County Treasurer, payable to the County.
- iii) [additional as per County needs].

#### **Section 4. County Inspector.**

- a) Designation of County Inspector. Due to the significant responsibilities assigned to the County Inspector by Iowa Admin. Code 199-0.1(2), the board of supervisors will designate a County Inspector in accordance with County's competitive procurement policy, including publication of a request for proposal and competitive negotiation.
- b) Duties of County Inspector. The County Inspector shall undertake all duties assigned by Iowa Admin. Code 199-9 and this section.
- c) Notice of Inspection to Affected Landowner. The County Inspector shall provide notice, or cause Pipeline Company to provide notice, to an Affected Landowner of all inspections of:
  - i) Staking;
  - ii) Construction;
  - iii) Backfill;
  - iv) Wet conditions;
  - v) Restoration activities, including restoration of tile, terraces, waterways, other erosion control structures, land slope and contour, field entrances, roads, and other inspection activities on the Affected Landowner's land.
- d) Notice to Affected Landowner of Pipeline Company Violations. In addition to providing a written notice of violation and order for corrective action to a Pipeline Company and Pipeline Company's contractor under Iowa Admin. Code 199-9.8(1), County Inspector will also provide a copy of the notice and order to Affected Landowner.
- e) Notice to Affected Landowner of Request for Board of Supervisors Resolution of Violation. In the event County Inspector requests that the board of supervisors resolve a dispute with Pipeline Company on a violation of construction and restoration standards under Iowa Admin. Code 199-9.8(2), County Inspector shall provide a copy of such request to Affected Landowner.
- f) Notice to Affected Landowner of Petition or Complaint to Iowa Utilities Board. In the event the board of supervisors under Iowa Admin. Code 199-9.9 petitions the Iowa Utilities Board for a corrective action order or files a complaint with the Iowa Utilities Board seeking civil penalties, the board of supervisors shall provide written notice of such appeal or complaint to any Affected Landowner whose land was damaged by Pipeline Company's alleged failure to comply with applicable standards.

#### **Section 5. Damage Compensation Petitions.**

- a) Determination of Completion of Construction. Consistent with Iowa Code § 479B.30 and Iowa Admin. Code 199-9.10, and in accordance with this ordinance, the board of supervisors of County shall review a certificate of completion provided by a Pipeline Company to County Inspector, supported by evidence that all construction activities have

ended, that restoration of all affected Agricultural Lands is complete, and that 70 percent growth is established in locations requiring seeding. Pipeline Company shall include as an attachment to a certificate of completion all documents required by Iowa Admin. Code 199-9.11. Following notice and a public hearing in which Affected Persons may present evidence that construction or restoration is not complete, the board of supervisor may approve or reject the certificate of completion of construction. If the board of supervisors rejects the certificate, it shall provide Pipeline Company with a list of deficiencies, require Pipeline Company to undertake any uncompleted work, and require Pipeline Company to submit an amended certificate of completion. If the board of supervisors approves a certificate of completion, it shall require Pipeline Company to provide notice to Affected Landowners and publish a notice of completion in a newspaper of general circulation.

- b) Petition for Compensation Commission. Not less than ninety days after publication of the notice of completion of construction, and if an agreement cannot be made as to damages, Affected Landowners and Affected Persons whose real property, personal property, or business income was damaged by the construction of the Pipeline, or the Pipeline Company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the Pipeline.
  
- c) Application for Compensation. If the board of supervisors by resolution approves the petition, an Affected Landowner, Affected Person, or Pipeline Company shall commence a proceeding by filing an application for compensation with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section Iowa Code § 6B.4. The application for compensation shall contain all of the following information:
  - i) The name and address of the applicant and a description of the land on which damage is claimed to have occurred, or a description of the personal property to which damage is claimed to have occurred, or a description of the business to which damage is claimed to have occurred;
  - ii) A description of the nature of the damage claimed to have occurred and the amount of the damage claimed; and
  - iii) The name and address of the Pipeline Company claimed to have caused the damage or the name and address of the Affected Landowner or Affected Person.
  
- d) Notice of Compensation Hearing. After the commissioners have been appointed, the commissioners shall serve on Pipeline Company a notice of compensation hearing at least 90 days before such hearing stating all of the following:
  - i) That a compensation commission has been appointed to determine the damages caused by the construction of the Pipeline;

- ii) The name and address of the Affected Landowner or Affected Person who filed an application for compensation, and a description of the real property, personal property, or business to which the damage is claimed to have occurred; and
  - iii) The date, time, and place when the Pipeline Company and the Affected Landowner or Affected Person may appear before the commissioners, the commissioners will review and consider the premises, personal property, or business records, and such other evidence provided by an Affected Landowner, Affected Person, or Pipeline Company related to claims for compensation, and the commissioners will proceed to appraise the damages.
- e) Service of Notice of Compensation Hearing. Upon receipt of the notice of compensation hearing, the Pipeline Company shall within 30 days serve such notice on the Affected Landowner or Affected Person that filed an application for compensation.
- f) Consolidation of Compensation Procedures. If more than one Affected Landowner or Affected Persons petitions the county board of supervisors, the application to the chief judge, notice to the Pipeline Company, notice to Affected Landowners and Affected Persons, and appraisal of damages shall be consolidated into one application, notice, and appraisal. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the Landowners by doing so.
- g) Assessment of Compensation. At the time provided in the notice of compensation hearing the commissioners shall view the real property, personal property, business records, and other evidence of damage provided by an Affected Person and assess the damages sustained by the Affected Person by reason of the construction of the Pipeline, and they shall file their report with the sheriff. The appraisal of damages returned by the commissioners is final unless appealed. After the appraisal of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the Pipeline Company and the Affected Landowner or Affected Person of the date the appraisal of damages was made, the amount of the appraisal, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisal of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.
- h) Assessment of Costs. The Pipeline Company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the Affected Landowner or Affected Person as determined by the commissioners if the award of the

commissioners exceeds one hundred ten percent of the final offer of the Pipeline Company prior to the determination of damages. The Pipeline Company shall file with the sheriff an affidavit setting forth the most recent offer made to the Landowner. Commissioners shall receive a per diem of fifty dollars, or such other amount as found necessary by the board of supervisors, and actual and necessary expenses incurred in the performance of their official duties. The Pipeline Company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

**Section 6. Confidential Information.**

At the time of filing of the Pipeline Permit Application the Applicant shall identify any information within its application that it considers confidential business information, provide an explanation that describes the confidentiality of the information, and request that such information be treated as confidential by the County. The Applicant has the burden to prove that information is confidential. The County Board of Commissioners/Supervisors or its designee shall determine whether or not such information is public information or confidential information. The County may release confidential information subject to protective order.

**Section 7. Severability.**

Every provision in this ordinance and every application of the provisions in this ordinance are severable from each other. If any application of any provision in this ordinance to any Person or group of Persons or circumstances is found by a court to be invalid, the remainder of this ordinance and the application of the ordinance's provisions to all other Persons and circumstances may not be affected. All valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the County's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance invalid in a large or substantial fraction of relevant cases, the remaining valid applications shall be severed and allowed to remain in force.

This ordinance shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with state and federal law and constitutional requirements. Such constructions are authorized only to the extent necessary to save the ordinance from judicial invalidation.

**Section 8. Effective Date.**

This Ordinance shall take effect and be in force from and after the date of adoption by the County Board of Supervisors.