

# Holt County Nebraska Zoning

## ARTICLE 6

### PIPELINE CONSTRUCTION, INSTALLATION, LOCATION, AND MAINTENANCE ABOVE GROUND AND BELOW GROUND IN HOLT COUNTY APPROVED 10/15/2010

#### **Section 1. Definitions.**

- (1) Applicant. As used herein, "Applicant" shall mean any entity that applies for a Pipeline Construction Permit and shall include any successor, employee, agent, representative, assignee, contractor, lessee, or sublessee, Applicant, licensee, invitee, guest, or permittee of Applicant, or any other person or entity that has obtained or hereafter obtains rights or interests from Applicant, or Property Owner to Property Owner's land.
- (2) Property Owner. Property Owner, as used herein, shall mean the owner of the land over which or through which, the pipeline will ultimately go, together with his, her, or its heirs, successors and/or assigns,
- (3) Pipeline. "Pipeline" means a pipe with a nominal diameter of eight inches or more, located in the county, that is used to transport all petroleum products, natural gas or water, but does not include a pipe used to transport or store petroleum products, natural gas or water within a refining, storage, or manufacturing facility.
- (4) Pipeline, Permitted Uses. The following uses are permitted in Holt County and are exempt from the provisions of this Ordinance:
  - (a) Pipeline within a Property Owner's property lines, for personal and/or agricultural use.
  - (b) New, or replacement, sewer and/or water lines located and installed by a public utility or municipality in conformance with state approved sewer and/or water guidelines.
  - (c) New sewer and/or water lines whose principal function is to provide service to a new development that is approved either by the State of Nebraska, County of Holt or local municipality.
  - (d) New sewer and/or water lines for the purpose of addressing a health emergency documented by the State or County Health Officer.

#### **Section 2. Pipeline Construction Permit.**

##### **Section 2.1. Pre-Construction Filing Requirements.**

- (1) Applicant must file with the Planning and Zoning Committee the Pipeline Construction Permit Form including all associated plans of the proposed Pipeline,

including the Construction, Mitigation and Reclamation Plan, and submit property owners names and addresses, for acquired easements or leases, State approval documentation, if any, proposed County Road crossings, proposed County haul routes and voluntary submittal of other information that would assist the Planning and Zoning Committee in evaluation of the proposed Pipeline project as Pre-Construction Requirements.

(2) Applicant shall further file with the Planning and Zoning Committee the location of the Pipeline right-of-way or easement area by recording a "Notice of Location" referring to the right-of-way and setting forth the legal description of the right-of-way and the location of the pipeline contained therein, which description shall be set forth by map attached to the Notice of Location. A copy of the Notice of Location shall promptly be delivered to the Property Owner. No construction or installation of the Pipeline shall occur until the Notice of Location has been filed with the Planning and Zoning Committee and delivered to the Property Owner. Prior to construction, Property Owner will be contacted by Applicant's project manager or designated agent to review the timing of construction and discuss site-specific issues and implementation of mitigation and reclamation measures.

(3) Each Pipeline Construction Permit application shall be accompanied by at least two (2) sets of plans showing dimension and locations of the Pipeline, related items or facilities within the subject right-of-way or easement, and all proposed lift stations, pumps or other service structures related to such Pipeline, and the location, type and size of all existing utilities, drainage, right-of-way, and roadway improvements. Also required for submittal are:

(a) Cross-section drawings for all public street right-of-way and easement crossings;

(b) The maximum design capacity of the proposed transmission facility;

(c) Changes in flow in the transmission facilities connected to the proposed facility; and

(d) The proposed maximum operating pressure, expressed in pounds per square inch gauge (psig), not to exceed the manufacturer's recommended operating pressure.

## Section 2.2. Hearings.

(1) Appearance before the Planning and Zoning Committee is required for the Pipeline project. The Planning and Zoning Committee will review the permit information and will recommend approval or denial, and require any modifications and/or conditions, to the Holt County Board of Supervisors. The Pipeline Construction Permit must be reviewed by the Holt County Board of Supervisors in any case at their next scheduled meeting following the Planning and Zoning Committee's decision.

(2) After a review of the Pipeline Construction Permit along with accompanying documents and maps, a Public Hearing date will be set by the Holt County Board of

Supervisors. Two (2) weeks prior to the Public Hearing date, a notice shall be published in a legal newspaper of the County and written notification of the hearing shall be mailed to all affected Property Owners, at a cost to the Applicant.

(a) The Applicant must have the public notice approved by the Holt County Board of Supervisors or its designee prior to publishing said notice.

(b) An affidavit of publication must be presented during the Public Hearing.

(3) The Applicant has the burden of proof to establish that the proposed Pipeline complies with all applicable ordinances along with applicable laws and regulations;

### Section 2.3. One Pipeline.

No more than one pipeline may be placed, installed or constructed upon or in the Pipeline right-of-way or easement area without an easement for same.

### Section 2.4. Topsoil.

Applicant at its own expense shall, unless otherwise requested by Property Owner, abide by all guidelines and recommendations of the local or regional field office of the United States Natural Resources Conservation Service or the Construction, Mitigation and Reclamation Plan, whichever is more stringent, regarding the removal, storage, and replacement of top soil.

(1) At a minimum, the applicant shall strip the topsoil from the ditch line in the Pipeline right-of-way or easement area and segregate all topsoil from the other excavated soil material, prior to construction and installation of any section of the Pipeline placed in the Pipeline right-of-way or easement area. Following the construction and installation of each section of the Pipeline, the top soil shall be replaced, to the extent feasible, as near as practicable to its original location and condition. Topsoil deficiency shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the Property. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement in accordance with recommendations of the United States Natural Resources Conservation Service.

### Section 2.5. Trash Cleanup.

Construction related debris and material which is not an integral part of the Pipeline will be promptly removed from the Property Owner's property at Applicant's expense. Such material to be removed includes all litter generated by Applicant's employees, agents, contractors, or invitees, including construction crews. Following the completion of Applicant's construction activities on the Property Owner's property, Applicant shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by Applicant or its employees, agents, contractors or invitees or its operations on the property. Under no circumstances will Applicant bury or burn any trash, debris or foreign material of any nature on the Property Owner's property.

### Section 2.6. Pipeline Depth.

Except for above-ground piping facilities, such as mainline block valves, pump stations, etc., the Pipeline will be installed and maintained at a depth of no less than four (4) feet below surface to top of the pipe.

### Section 2.7. Location of Pipeline.

If the Pipeline passes within a distance of two hundred and fifty (250) feet or less from a residence, then Applicant shall implement the following protections:

- (a) To the extent feasible, Applicant shall coordinate construction work schedules with affected residential owners prior to the start of construction in the area of the residences.
- (b) Applicant shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Applicant and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential owners and occupants, to the extent possible.
- (c) Applicant shall install temporary safety fencing, when reasonably requested by the owner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.
- (d) Applicant shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- (e) Applicant shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.
- (f) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures and repair of fencing and other structures shall be completed in residential areas within ten (10) days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Applicant's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigating measures shall be maintained until conditions allow completion of cleanup and reclamation.
- (g) Should a water well, or water supply, be damaged (diminishment in quantity or quality) by pipeline installation or operations, a comparable water supply will be immediately provided to the owner of the well and the water well shall be restored or replaced at Applicant's expense.

### Section 2.8. Reclamation Obligations.

Following the completion of the Pipeline construction, or upon removal of the Pipeline at the expiration, termination, or surrender of the Pipeline, Applicant will restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour.

### Section 2.9. Abandonment of Pipeline.

Abandonment of the Pipeline in Holt County shall occur if Applicant ceases to operate the Pipeline for the transportation of petroleum products, natural gas, or water, for a period of ten (10) years. Upon the abandonment of the Pipeline, Applicant, at its option shall:

- (1) Remove the Pipeline from the lands, with full reclamation of the property; or
- (2) Surrender to the Property Owner the right-of-way or easement area with the written consent of the Property Owner.

### Section 2.10. Change of Location of Pipeline.

Property Owner and Applicant acknowledge that the actual location of the Pipeline right of-way or easement area may change because of various engineering factors, and Property Owner agrees to execute and deliver to Applicant, without additional compensation, and, where necessary, in recordable form, any additional documents needed to correct the legal description of the right-of-way to conform with the actual location of the Pipeline. Applicant does not need Property Owner's permission to alter the location of the Pipeline so long as the change of the right-of-way or easement area is less than twenty-five (25) feet in any direction. In the event the Pipeline right-of way or easement area will be moved more than twenty-five (25) feet in any direction, Applicant must obtain written approval from the Property Owner and give written notice to the Planning and Zoning Committee, and shall amend the Pipeline Construction Permit application to reflect such changes. Said document and amendments to the Pipeline Construction Permit, as required, will be prepared by Applicant at its expense. Once installation of the Pipeline is complete, Applicant will deliver to the Planning and Zoning Committee within six (6) months of completion, an "as-built" map that will show exactly where the Pipeline is located, in addition to any other improvements or facilities, whether located above-ground or below-ground, and further to include any modifications to any improvements or facilities owned by Property Owner, such as waterlines or fences.

### Section 3. Indemnification.

The pipeline owner(s) and/or operator(s) shall indemnify, defend and hold harmless Holt County and any Property Owners from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Holt County and/or the Property Owner in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the pipeline and/or related facilities, and the products contained in, transferred through, released or escaped from said pipeline and appurtenant facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any law, including all applicable environmental laws. This shall be true in all instances except for those individuals or companies who intentionally, or by negligence, damage the Pipeline or related facility. No Property Owner or tenant thereof will be held responsible for a Pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the Pipeline, provided no tillage or other agricultural method is used which penetrates the soil by more than two (2) feet from the undisturbed surface and they do not physically strike or impact the surface structures such as valves, etc. with machinery, equipment or

other objects. This shall in no way relieve any Property Owner or tenant, agent or contractor of such Property Owner from their obligation to comply with the Nebraska One-Call Notification System Act and any amendments thereto (See Revised Reissued Statutes of Nebraska Sections 76-2301 to 76-2330), or relieve them of liability for their failure to do so. As between the Pipeline operator, the Property Owner or its tenant, a Pipeline leak which is not caused by a violation of the above provisions or other tortious conduct by Property Owner or its tenant shall not be the responsibility of said Property Owner or tenant, as the case may be.

#### **Section 4. Protection of Proprietary Information.**

Holt County will keep detailed information filed (not including the plans or Pipeline Construction Permit) restricted from public access for security purposes, to protect proprietary information, and to protect the commercial interests of the Applicant.

#### **Section 5. Compliance with Applicable Laws.**

Pipeline owners, operators and/or contractors, and their employees, agents, contractors, and invitees, must comply with all applicable local, state and federal laws and regulations in construction and operation of the Pipeline.

#### **Section 6. Variances.**

##### **Section 6.1. Hardship.**

Where the Planning and Zoning Committee finds that extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Applicant, may result from strict compliance with these regulations, they may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent or purpose of the Pipeline Construction Permit, and will not be detrimental to the public health, safety or welfare or injurious to other property in the territory in which Pipeline is situated.

##### **Section 6.2. Application Required.**

(1) The Holt County Planning and Zoning Committee shall hear and decide appeals and requests for variances from the terms of this Ordinance. The Planning and Zoning Committee shall base their determination on technical justifications, and has the right to attach such conditions to variances as they deem necessary to further the purposes and objectives of this Ordinance. Applications for any such variance shall be submitted in writing by the Applicant at the time the Pre-Construction Requirements are filed with the Planning and Zoning Committee, and shall state fully and clearly all facts relied upon by the Applicant and shall be supplemented with maps, plans or other additional data which may aid the Planning and Zoning Committee in the analysis of the proposed project.

(2) Applications for the variance shall be considered with the Pipeline Construction Permit application, and the Planning and Zoning Committee will render their decision on the applied-for variance no later than thirty (30) days after the meeting at which the proposed Pipeline project application and request for variance was submitted.

**Section 6.3. Conditions.**

(1) In granting any variance, modification, and approvals, the Planning and Zoning Committee may require such conditions as will, in their judgment, secure substantially the objectives or the standards and requirements so varied, modified, or approved. In granting any variance, the Planning and Zoning Committee shall prescribe only conditions that they deem necessary to, or desirable for, the public interest. These conditions may include, without being limited to personal, surety, performance, or maintenance bonds, or other legal instruments.

(2) In making their findings, as required herein, the Planning and Zoning Committee shall take into account the nature of the existing use of the land in the vicinity of the Pipeline right-of-way or easement area, and any probable effects of the proposed Pipeline on the health, safety and welfare of the surrounding residents and environment.

(3) The Planning and Zoning Committee must ensure the preservation and enjoyment of the property rights of the Property Owner.

**Section 6.4. Requirements for Granting a Variance.**

The Board of Supervisors shall have the final authority to grant or deny a variance under this section. For each variance application, the Planning and Zoning Committee shall report to the Holt County Board of Supervisors their findings and recommendations. The Holt County Board of Supervisors, in conjunction with their regularly scheduled monthly meetings, shall set aside time for a public hearing on all proposed variances under this Section.

**Section 7. Severability and Separability.**

Should any portion of this act be deemed unlawful for any reason or conflict with any existing state or federal law, that fact shall not affect any other portion or section of this act and any unaffected sections or portions of this act shall stand in effect.

**Section 8. Effective Date.**

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