

ORDINANCE NO. 61

AN ORDINANCE ENACTING A NEW RIGHT-OF-WAY CONTROL ORDINANCE TO REGULATE CERTAIN OCCUPANCIES AND USES OF COUNTY RIGHT-OF-WAY.

WHEREAS, pursuant to Iowa Code section 306.4(2), jurisdiction and control of the secondary roads in Mitchell County, Iowa (“County”) is vested with the County’s Board of Supervisors (“the Board”); and

WHEREAS, Iowa Code section 306.3(9) defines “secondary road” as “those roads under county jurisdiction”; and

WHEREAS, Iowa Code section 306.3(8) defines “road” as “the entire width between property lines through private property or the designated width through public property of every way or place of whatever nature if any part of such way or place is open to the use of the public, as a matter of right, for the purposes of vehicular traffic”; and

WHEREAS, Iowa Code section 321.1(78) defines “street” or “highway” as “the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic”; and

WHEREAS, Iowa Code section 306.3(7) defines “public road right-of-way” as “an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the county board of supervisors of the respective counties”; and

WHEREAS, the terms “road” and “highway” have overlapping definitions, references, and uses within the Iowa Code, and both terms are characterized by a public right-of-way being both open and intended for vehicular traffic; and

WHEREAS, secondary roads encompass highways within the County; and

WHEREAS, by statutory grant of jurisdiction and control over secondary roads within the unincorporated areas of the County, the Board is also a highway authority over the secondary roads qualifying as highways within the unincorporated areas therein; and

WHEREAS, the County holds 781 miles of road and highway right-of-way open and intended for vehicular purposes as secondary roads throughout the unincorporated areas of Mitchell County, either by easement or in fee simple, and is the relevant highway authority thereover; and

WHEREAS, the County, as a highway authority over secondary roads throughout the unincorporated areas of Mitchell County, holds these said 781 miles of right-of-way in trust for the public and, therefore, has a responsibility to maintain the roads in a condition “free from

obstructions and nuisances” for public travel, *Callahan v. City of Nevada*, 170 Iowa 719, 153 N.W. 188, 189 (1915); and

WHEREAS, pursuant to Iowa Code sections 318.1(4), 318.4, and 331.362(7) (2024), as the relevant authority over the County’s secondary roads, including highways, the Board also maintains a statutory duty to cause all obstructions in a highway right-of-way to be removed and to ensure right-of-way is free of impediments or hindrances; and

WHEREAS, pursuant to Iowa Code section 318.8, the Board, as a highway authority, may issue permits for the excavation, fill, or other physical change within a highway right-of-way; and

WHEREAS, pursuant to Iowa Code section 318.9, the Board may locate certain utility facilities within the right-of-way, and may order certain utility facilities out of the right-of-way; and

WHEREAS, the County currently maintains a “Permit to Perform Work in County Road Right-of-Way,” as a permit requirement applicable to parties seeking to perform certain work in the County’s road and highway rights-of-way, the subject matter of which it now intends to further legislate in this Ordinance; and

WHEREAS, the occupancy and use of road and highway rights-of-way open and intended for vehicular, or other purposes, by non-municipal parties pose risks of disrupting or interfering with ongoing maintenance and upkeep of the County’s road and highway rights-of-way; and

WHEREAS, pursuant to Iowa Code section 331.301(1), the County maintains police powers over its road and highway rights-of-way, and may exercise powers and perform functions it deems appropriate over those rights-of-way, so long as such exercise or performance is not inconsistent with the laws of the State of Iowa; and

WHEREAS, the Board finds regulating the occupancy and use of its road and highway rights-of-way, preventing obstructions, hindrances, and impediments in the road and highway rights-of-way, and requiring permits for any occupancy and use, and excavation, fill, or any other physical changes to its road and highway rights-of-way to be a well-suited use of its powers to protect and preserve the rights, privileges, and property of the County and its residents, to protect the primary purpose of the County’s road and highway rights-of-way for vehicular passage and use by the traveling public, and to preserve and improve the general welfare of its residents; and

WHEREAS, the Board finds the exercises of its powers and performance of its functions set out in this Ordinance to be in the best interests of the County and to be in accord with all applicable provisions of federal, state, and local laws and requirements.

NOW THEREFORE, BE IT ENACTED BY THE SUPERVISORS OF MITCHELL COUNTY, IOWA:

SECTION 1: REPEALER. All ordinances, resolutions, parts of such ordinances or resolutions, motions, measures, rules, or policies adopted heretofore that conflict with this ordinance are hereby repealed insofar as they conflict with this ordinance.

SECTION 2: TITLE. This Ordinance No. 61 shall be entitled "AN ORDINANCE ENACTING A NEW RIGHT-OF-WAY CONTROL ORDINANCE TO REGULATE CERTAIN OCCUPANCIES AND USES OF COUNTY RIGHT-OF-WAY."

SECTION 3: LEGISLATIVE FINDINGS. The Board of Supervisors hereby finds:

- A. That the road and highway rights-of-way within the County are valuable public property acquired by the County and maintained at great expense to the taxpayers; and
- B. That the County's secondary roads, including road and highway rights-of-way, are owned or held by the County for the primary purposes of vehicular passage for business or pleasure; the County's provision of essential services; and the preservation and provision of a farm-to-market road system within the County; and, therefore, these interests are always paramount in case of a conflict with third-party uses of road and highway rights-of-way; and
- C. That the County's proper management of its road and highway rights-of-way is necessary to maximize the efficiencies and public benefits of right-of-way uses; and to minimize the costs to the taxpayers from various non-vehicular uses; to minimize the inconvenience to the public from non-vehicular uses of the rights-of-way; and to prevent foreclosure of future uses of available rights-of-way within the County; and
- D. That the County's road and highway rights-of-way may be partially occupied by utilities, private industry, and other persons whose facilities are used in the delivery, conveyance, or transmission of services to the benefit of the health, welfare, or general economic well-being of the County and its residents.

SECTION 4: PURPOSES. The Board of Supervisors adopts this Ordinance to better:

- A. Establish a policy and procedure to manage, control, and maintain the County's road and highway rights-of-way for the long-term public benefit, including adopting provisions for the regulations and inspection of various right-of-way occupancies and uses; and
- B. Establish rules and procedures for permitting the occupancy and use of the County's road and highway right-of-way by private industry or other third parties for their facilities, as well as for permitting subsequent work on said facilities; and
- C. Recover and allocate costs associated with permitting the occupancy and use of the County's road and highway rights-of-way; and

- D. Mitigate inconvenience to the public occasioned by the emplacement and maintenance of facilities in the County's road and highway rights-of-way; and
- E. Enact penalties for violators and recourse by the County for the improper use, crossing, presence, or other violation of this Ordinance, within County road and highway rights-of-way.

SECTION 5: DEFINITIONS. For the purposes of this Ordinance the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated.

BOARD OF SUPERVISORS, or BOARD: The principal governmental body of Mitchell County, Iowa, its officers, or a representative person or entity as may be designated to act on its behalf.

COUNTY: Mitchell County, Iowa, and any agency, department, or agent thereof.

ENGINEER: The Mitchell County Engineer, or that person's designee.

FACILITY OR FACILITIES: Any tangible asset in the road or highway right-of-way used to provide or otherwise transport sanitary sewage or storm water, gas, hazardous liquid, electricity, water, or communication/information services, including any cables, conduits, wire, pipe, casing pipe, supporting poles, guys, and other material and equipment used for the provision or transportation of such goods or services.

HAZARDOUS LIQUID: Hazardous Liquid means the same as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

HAZARDOUS LIQUID PIPELINE: Hazardous Liquid Pipeline means a Pipeline intended to transport Hazardous Liquids, and also includes Class 3, Class 6, Class 8, or Class 9 hazardous materials, as defined by 49 C.F.R. § 173.120, et seq., with any portion proposed to be located within the County.

LANDOWNER: Landowner means a Person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and includes a farm tenant.

LINE LOCATION: Line Location means the location or proposed location of a Hazardous Liquid Pipeline or other Pipeline within the County.

OCCUPIED STRUCTURE: Occupied Structure means a building or structure that has been inhabited or used for residential, commercial, educational, healthcare, industrial, or agricultural purposes at any time during the twelve (12) months preceding an application for a Right-of-Way Occupancy and Use Permit pursuant to this Ordinance.

OBSTRUCTION: Obstruction means anything that is placed in a County road or highway right-of-way by persons other than persons authorized to do so by the Board of Supervisors. It includes but is not limited to property such as unapproved or non-permitted facilities, fences, growing crops, rocks, trash, corn cobs, piles of brush, abandoned vehicles or machinery, billboards, advertising signs or devices, open ditches, and dikes, tile and tile outlets, and includes the cultivation of the right-of-way.

PERMITTEE: A person who has received a Right-of-Way Occupancy and Use Permit from the County to locate a facility or facilities within the road or highway right-of-way, or received a subsequent Work Permit from the County to perform work on a facility or facilities located or to be located within the road or highway right-of-way.

PERMITTEE OWNING OR OPERATING A FACILITY; or OWNER OR OPERATOR OF A FACILITY: Any Person with a permit issued under this Ordinance who has a possessory interest in such facility or which controls or is responsible for, through any arrangement, the management and operation of such facility.

PERSON: Any individual, corporation, partnership, association, joint stock company, trust, governmental entity, or any other legal entity, but not the County.

PIPELINE: Pipeline means the same as defined in Iowa Code § 479B.2 and, unless otherwise defined there, means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids. Pipeline also includes a pipeline as defined in Iowa Code § 479.2.

PIPELINE CONSTRUCTION: Pipeline Construction means the same as defined in Iowa Administrative Code 199—9.1(2) and, unless otherwise defined in that rule, 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.

PUBLIC ROAD RIGHT(S)-OF-WAY, OR RIGHT(S)-OF-WAY; OR HIGHWAY RIGHT(S)-OF-WAY: Public Road Right(s)-of-Way, or

Right(s)-of-Way, or Highway Right(s)-of-Way means the same as defined in Iowa Code section 306.3(7), and means an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the Board of Supervisors. A highway right-of-way is considered a subcategory of road right-of-way.

PUBLIC UTILITY: A public utility means a public utility as defined in Iowa Code section 476.1, and shall also include waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under Iowa Code chapter 357A or Iowa Code chapter 504, cooperative water associations, electric transmission owners as defined in Iowa Code section 476.27 primarily providing service to public utilities as defined in Iowa Code section 476.1, and natural gas transmission owners primarily providing service to public utilities as defined in Iowa Code section 476.1.

RIGHT-OF-WAY OCCUPANCY AND USE PERMIT: An authorization issued by the County to place facilities in the Right-of-Way on permanent or semi-permanent basis, and distinct from a Work Permit.

WORK PERMIT: An authorization issued by the County to enter upon a public right-of-way at specified times and places to install, erect, hang, lay, bury, burrow, draw, emplace, construct, maintain, reconstruct any facility upon, across, beneath, or over any road or highway right-of-way in the County, other than for emergency repair or emergency maintenance, required when such work involves excavation, fill, or another physical change to facilities or road or highway right-of-way, or where proposed work poses apparent risk of damage to road or highway right-of-way, and distinct from a Right-of-Way Occupancy and Use Permit.

SECTION 6: AUTHORITY. This Ordinance is adopted pursuant to the County's powers, including, but not limited to, those under Iowa Constitution, article III, section 39A, and Iowa Code chapters 306, 318, and 331 (2024).

SECTION 7: RESERVATION OF RIGHTS AND POWERS. All rights and privileges of parties using or seeking to use the County's public rights-of-way are subject to the police powers of the County and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate an applicant or permittee and the construction, operation and maintenance of the permittee's facility, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the County shall find necessary in the exercise of its police powers; the right to adopt and enforce applicable zoning, building, permitting and other ordinances and regulations; the right to adopt and enforce ordinances and regulations relating to equal employment opportunities; the right to impose a condition in a permit issued pursuant to this Ordinance that requires compliance with other County ordinances and regulations; and the right to adopt and enforce ordinances and regulations containing right-of-way provisions. Further, nothing

in this Ordinance shall be construed as limiting the right of the County to exercise its police powers. And nothing in this Ordinance shall prevent the County from constructing, repairing or replacing sewers; grading, paving, repairing, replacing or altering any right-of-way; or constructing, repairing, replacing or altering any other public work or facility.

SECTION 8: APPLICABILITY AND REQUIREMENT OF AUTHORIZATION FOR OCCUPANCY AND USE.

- A. This Ordinance shall apply to all persons seeking to place or maintain facilities in the County's public Road Rights-of-Way, Highway Rights-of-Way, or other Rights-of-Way. However, notwithstanding the foregoing, this Ordinance shall not apply to Public Utilities.
- B. All persons seeking to place or maintain facilities in the County's road or highway right-of-way for private commercial, non-public utility purposes, private industrial purposes, private agricultural purposes, or other private purposes, or otherwise occupy and use the County's road or highway right-of-way, shall first obtain a permit from the County.
- C. Persons required to obtain a permit under this Ordinance shall first obtain the necessary authorizations required under local municipal, county, state or federal laws, franchise rules, and regulations prior to embarking to install, erect, hang, lay, bury, burrow, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any road or highway right-of-way in the unincorporated areas of the County or other County property.
- D. In enacting this Ordinance requiring authorization for occupancy and use of County road and highway rights-of-way, the County seeks to protect property and the general welfare of the public at large on or around County road and highway rights-of-way. This Ordinance shall not create any special duty to any registrant, permittee, franchisee, licensee, lessee, or other third party, nor shall any special duty be created by the acceptance of private use or by issuance of a permit or license.

SECTION 9: IMPROPER USE OF RIGHTS-OF-WAY.

All private occupancy or use of County road and highway rights-of-way shall be prohibited, unless the occupant or user first obtains a Right-of-Way Occupancy and Use Permit issued by the County pursuant to this Ordinance. Further, the creation of an obstruction in County road and highway right-of-way is prohibited and shall be considered a public nuisance.

SECTION 10: PERMITTING OCCUPANCY AND USE OF SPACE WITHIN THE RIGHT-OF-WAY AND ORDINANCE ADMINISTRATION.

- A. County authorization for occupancy and use of road or highway rights-of-way under this Ordinance is provided for in the form of a Right-of-Way Occupancy and Use Permit. Under said permit, the permittee may occupy and use a road or highway right-of-way held by the

County to construct or install facilities under, across, over, along, within, or through the right-of-way. A Right-of-Way Occupancy and Use Permit provides preliminary approval but does not authorize specific work. Specific construction, installation, repair, or maintenance necessary for the occupancy and use of the rights-of-way shall require separate Work Permits provided for by this Ordinance. Certain requirements for Right-of-Way Occupancy and Use Permit applications and permits concerning County road and highway rights-of-way are as follows:

- i. Application. An application for a Right-of-Way Occupancy and Use Permit shall be filed with the County Engineer on a form developed and provided by the County Engineer.
- ii. Perpendicular Occupancy and Use. In the case of horizontal or linear infrastructure facilities, such as a pipeline, an electric transmission line, or another project that proposes to excavate, occupy, use, or cross more than one road or highway right-of-way in the County, the applicant shall obtain a permit for each individual road or highway right-of-way crossing.
- iii. Parallel Occupancy and Use. In the case of horizontal or linear infrastructure facilities, such as a pipeline, an electric transmission line, or another project that proposes to excavate, occupy, use, or run or trace along or within the County's road or highway right-of-way interest in a parallel or longitudinal manner, the applicant shall obtain a permit for each mile of proposed excavation, occupancy, use, running or tracing of County road or highway right-of-way. The applicant shall identify all points where the horizontal or linear infrastructure or facilities meet an intersection, entrance, point of ingress or egress, or otherwise encounters a point of special consideration (e.g., bridge, culvert, drainage structure, etc.). The County Engineer may impose conditions or special requirements at any intersection, entrance, point of ingress or egress, or other point of special consideration within the one-mile permit application.
- iv. Single Application. An applicant may make a request of the County Engineer to submit a single application for multiple perpendicular or parallel Right-of-Way Occupancy and Use Permits. However, approval of such request shall not waive fees associated with each individual permit, shall not prevent the County Engineer from reviewing each crossing or one-mile section individually, and further shall not prevent the Board of Supervisors from approving or denying permits for each crossing or occupancy section individually.
- v. No Exclusive Use. The County shall not grant a permit that allows exclusive occupancy or use of the right-of-way.

B. Authority to issue permit; and form of permit.

- i. Permits for occupancy and use of road and highway rights-of-way required by this Ordinance shall be approved by the Board of Supervisors. The County

Engineer shall review each permit application for compliance with the requirements of this Ordinance and, upon completion, submit to the Board of Supervisors for approval or denial, along with the County Engineer's recommendation. In approving a Right-of-Way Occupancy and Use Permit, the Board of Supervisors or County Engineer may require a change in the proposed location of the applicant's proposed facilities where necessary to avoid interference: with other existing facilities already placed within the public right-of-way; with present or future uses in the right-of-way or adjacent areas; or with other land uses, property owners, occupied structures or public facilities in the vicinity, if the applicant's facilities could reasonably be expected to cause such interference. The Board of Supervisors may approve a Right-of-Way Occupancy and Use Permit conditioned upon the applicant's compliance with other applicable federal, state, county, or municipal laws, rules, or regulations.

- ii. Right-of-Way Occupancy and Use Permits issued pursuant to this Ordinance shall be in writing and shall be executed by the permittee and the County. The form of permits to be issued pursuant to this section shall be uniform but shall be subject to periodic review and modification.

C. Limits on permit duration.

The County shall not issue a Right-of-Way Occupancy and Use Permit for a term of more than ten (10) years. Upon expiration of a permit's term, a permittee shall seek renewal of its Right-of-Way Occupancy and Use Permit from the County for an additional term not to exceed ten (10) years.

D. Permit fees; costs.

- i. A person applying for an initial Right-of-Way Occupancy and Use Permit in accordance with this Section shall pay a non-refundable application review fee in an amount to be set by resolution of the Board of Supervisors and to be paid upon submission of the Right-of-Way Occupancy and Use Permit application to the County.
- ii. A person applying to renew an existing Right-of-Way Occupancy and Use Permit in accordance with this Section shall pay a non-refundable application review fee in an amount to be set by resolution of the Board of Supervisors and to be paid upon submission of the Right-of-Way Occupancy and Use Permit Renewal application to the County.
- iii. In addition to the fees set forth in this section, the person shall also pay all costs attributable to inspection services rendered by the County in connection with the person's Right-of-Way Occupancy and Use Permit. The inspection costs shall be calculated as shown on the schedule adopted by resolution of the Board of Supervisors. All inspection costs are due and payable within thirty (30) days after invoice by the County.

E. Application for a permit.

- i. Review and Approval. A person desiring to obtain a Right-of-Way Occupancy and Use Permit as required in this Ordinance shall make application for a permit for such proposed occupancy and use. Upon submission of an application for the initial issuance of a Right-of-Way Occupancy and Use Permit, the County Engineer shall complete their initial review for compliance with this Ordinance within 120 days, except for those applications also falling under permitting jurisdiction of the Iowa Utilities Commission. In instances where an applicant must seek a permit from the Iowa Utilities Commission, the County Engineer shall not be required to begin their review of an application under this Ordinance until the applicant has received such permit, and any and all final appeals of such permit have been exhausted. Following the County Engineer's review, the permit application shall be considered for approval by the Board of Supervisors.
- ii. The application shall include, at a minimum, the following information:
 1. The name, address, and telephone number of the applicant.
 2. The name, address, and telephone number of a responsible person who the County may notify or contact at any time or in case of emergency arising from the applicant's occupancy and use.
 3. A statement of the purpose for the facility proposed for installation in the road or highway right-of-way, the type of use, and the intended customers which it will serve, if any.
 4. Plans and specifications for the facility proposed for installation in the road or highway right-of-way in sufficient detail to identify the exact type of facility to be constructed or installed in the right-of-way, and the horizontal and vertical location of such facility within the right-of-way, with respect to right-of-way, property lines, and established monuments, which location shall be established on such plans according to available existing records.
 5. Proof of right or requisite consent to occupy and use the subject road or highway right-of-way as intended where County does not hold title to the road or highway right-of-way in fee simple.
 6. Any applicable approvals, decisions, or permits from the Iowa Utilities Board.
 7. Information useful to the County's response in the event of a failure or malfunction of applicant's facilities.

8. Any additional information that the County Engineer in their discretion may require to be made via written request.

F. Issuance and renewal of permits; permit revocation.

- i. In conjunction with the County Engineer's review of an application for issuance of a Right-of-Way Occupancy and Use Permit, the County Engineer shall conduct a review of the applicant's background to determine the applicant's ability to meet the requirements stated in Section 10(F)(iii). If, on the basis of such review, the County Engineer determines that it would not be appropriate to issue the permit, the County Engineer shall provide the Board of Supervisors with their recommendation to deny the application on this basis.
- ii. To renew a Right-of-Way Occupancy and Use Permit, the permittee shall file a renewal application with the County Engineer on the form provided by the County and submit the associated renewal fee. The renewal application shall be filed with the County Engineer not less than 180 days prior to the expiration of the initial, or any renewal term, of the permit. Upon receipt of the renewal application, the County Engineer shall conduct a review of the permittee and the permittee's prior use of the road or highway right-of-way to determine the permittee's continued compliance with the requirements stated in Section 10(F)(iii). If on the basis of such review the County Engineer determines that the permittee and the permittee's prior use of the road or highway right-of-way comply with all requirements, the County Engineer shall submit the renewal application to the Board of Supervisors with a recommendation to approve the permit for a subsequent renewal term. If on the basis of such review the County Engineer determines that the permittee or the permittee's occupancy and use of road or highway right-of-way do not comply with one or more of the requirements, the County Engineer shall submit the renewal application to the Board of Supervisors with a recommendation to deny the permit's renewal.
- iii. The following shall constitute grounds for denying an application for an initial Right-of-Way Occupancy and Use Permit or an application to renew an existing Right-of-Way Occupancy and Use Permit, for revocation of a Right-of-Way Occupancy and Use Permit, or, if applicable, for a requirement to move or relocate the new or existing facilities:
 1. There is insufficient space in the right-of-way to accommodate the proposed use, given the other existing uses thereof.
 2. The proposed facility's service connection would interfere with or conflict with existing or planned County equipment or other facilities or equipment located or to be located in the right-of-way.

3. Such use is incompatible with adjacent public or private uses of that right-of-way.
4. Such use would involve an unacceptably high frequency of repair or maintenance to the facility thereby requiring excessive excavation in or obstruction of the right-of-way.
5. The construction or installation of such facility would interfere with a public improvement undertaken or to be undertaken by the County or with an economic development project in which the County has an interest or investment.
6. The applicant or permittee's failure to pay the County fees owed.
7. The applicant or permittee's failure to comply with the terms of this Ordinance.
8. The applicant or permittee's existing or prior use of County road or highway right-of-way failed to comply with all applicable laws, ordinances, regulations, and permits.
9. The applicant's or permittee's commission of any of the following acts:
 - a. The applicant or permittee has made a misleading statement or a material misrepresentation in connection with an application for a permit or permit renewal for its occupancy and use of road or highway right-of-way; or
 - b. The permittee has transferred or attempted to transfer its facilities, its business, or its permit to another person or has made a change in use of its facilities, without giving the County notice thereof and obtaining County consent thereto, as may be required by Section 10(H) of this Ordinance.
10. The permittee's continued use of the public right-of-way will unduly burden the County or the public in its use of that property.
11. The permittee's facilities at a particular location will interfere with the public's use of the right-of-way for ordinary travel.
12. The public welfare requires it.
13. In addition to the above, if an applicant is seeking a Right-of-Way Occupancy and Use Permit or permit renewal for the purposes of Pipeline Construction or maintaining a Hazardous Liquid Pipeline or other Pipeline within the right-of-way, a failure of the proposed

Hazardous Liquid Pipeline's or other Pipeline's Line Location to comply with necessary separation requirements at the point of crossing of County road or highway right-of-way at the time of the permit application or renewal application shall constitute grounds for refusal to issue or renew a permit, for revocation of a Right-of-Way Occupancy and Use Permit, or for a requirement to move or relocate the new or existing facilities. However, the County Engineer, with the approval of the Board, may modify the separation requirements to the extent necessary for an applicant or permittee to acquire or deliver the substance transported by the Pipeline at a terminus in the County.

- a. All separation requirement distances shall be measured from the centerline of the proposed Pipeline to the portion of the existing use nearest the centerline of the proposed Pipeline. The minimum separation distances for a Hazardous Liquid Pipeline's or other Pipeline's Line Location crossing County road or highway right-of-way, or intending to do so, are:
 - (A) From any intersection with another County road or highway right-of-way, not less than 495 feet.
 - (B) From any point of private ingress or egress, not less than 495 feet.
 - (C) From any County bridge with guardrails, not less than 250 feet from the guardrail's final point on the same side of land as the proposed occupancy and use.
 - (D) From any County bridge without guardrails, not less than 250 feet from the bridge abutment on the same side of land as the proposed occupancy and use.
 - (E) From any culvert or tile crossing, not less than 250 feet from the culvert's or tile crossing's centerline.
- iv. The County Engineer shall provide an applicant notice of their recommendation to deny issuance or renewal of or to revoke a Right-of-Way Occupancy and Use Permit, as well as a recommendation to order the relocation facilities. Notice of a recommendation shall be given to the applicant or permittee either by certified mail, return receipt requested, or by actual service or delivery thereof. Any notice hereunder shall set forth the grounds for recommending denial or revocation of a permit or permit renewal, or the grounds for recommending the Board order the relocation of facilities. Further, any notice shall inform the applicant or permittee of the right to appear before the Board of Supervisors for a hearing prior to their decision on the County Engineer's recommendation. An applicant or permittee shall request said hearing in writing with the County Engineer within ten (10) days of service of the notice, and the hearing shall be scheduled with the Board within fourteen (14) calendar days after the County Engineer receives a hearing request from the applicant or permittee. At the

hearing, the applicant or permittee shall have the burden of establishing by clear and convincing evidence that the grounds asserted in the County Engineer's recommendation and notice do not exist. The Board of Supervisors shall provide notice of a decision to approve or deny a Right-of-Way Occupancy and Use Permit, or permit renewal, by certified mail, return receipt requested, or by actual service or delivery thereof to the address provided in the applicant's or permittee's original permit application, unless otherwise requested. The Board of Supervisors shall provide notice of a decision to revoke a Right-of-Way Occupancy and Use Permit or an order to relocate facilities in the same manner that original notices are required to be served.

- v. In the event of a revocation of a Right-of-Way Occupancy and Use Permit or an order to relocate facilities, the Board of Supervisors' decision to revoke or order to relocate shall include an effective date. An order to relocate facilities or remove facilities due to a permit revocation shall comply with Chapter 318 of the Code of Iowa Code. Upon the effective date of revocation of a permit as provided in the Board of Supervisor's decision, the permittee shall be required to cease its occupancy and use of the right-of-way and to remove or relocate its facilities therefrom, as provided in the decision. Facilities not removed or relocated from the right-of-way as required in such decision shall become an obstruction and may be removed in accordance with Section 318.5 of the Code of Iowa. Except in emergency circumstances, the requirement to relocate, remove, or cease use of equipment shall be suspended during the pendency of any court appeal taken by a permittee.
- vi. A permit denial or revocation or order to relocate may be appealed under the applicable processes specified in state or federal law.

G. Failure to secure, renew, or comply.

- i. Any person who fails to secure or renew a permit required under this Ordinance or any permittee who fails to comply with the requirements of its respective permit, or this Ordinance, or with any other applicable legal requirements shall, upon notification of such failure by the County Engineer, immediately act either to correct its failure or abate its violation, or to cease its use and occupancy of the right-of-way and remove its facility from the right-of-way.
- ii. The County reserves the right either to remove or to disconnect and render inoperative any equipment, facilities, system, or other objects in the right-of-way under permit which is used or maintained contrary to this Ordinance, provided, however, that the County will give written notice of its intent to take such action, including the date upon which such action will be taken, to the affected permittee in accordance with Chapter 318 of the Code of Iowa, except in cases of an emergency. The costs of such removal or disconnection shall be assessed to the owner or operator of the facilities or to the permittee.

H. Transfer of permit, lease, business, facility, or equipment; change in use of facility.

- i. A Right-of-Way Occupancy and Use Permit issued pursuant to this Ordinance shall not be transferred to any other person who shall continue the facility's existing use without notifying the Board of Supervisors at least sixty (60) days in advance. A Right-of-Way Occupancy and Use Permit issued pursuant to this Ordinance shall not be transferred to any other person who shall change the facility's then-existing use without prior approval of the Board of Supervisors. A permittee shall seek the Board of Supervisors' approval by submitting a written request to transfer the permit to the County Engineer for the Board's consideration at least sixty (60) days prior to the proposed transfer. In such request, the permittee shall clearly identify the proposed transferee, giving the name and address of a representative of the transferee who is authorized to discuss and provide information to the County regarding the transfer and facility's proposed changed use. A permittee providing notice to the Board of Supervisors shall provide the same information.
- ii. A permittee shall not change the use of its facilities under a previously issued Right-of-Way Occupancy and Use Permit. In the event a permittee wishes to change the use of its facilities, the permittee shall submit a new Right-of-Way Occupancy and Use Permit application subject to the provisions of Section 10 of this Ordinance. In such application, the permittee shall clearly and completely set forth the proposed change in use of facilities, equipment, or system, how it would be accomplished, including any excavations required to accomplish such change, and projections as to the future maintenance implications of such change in use. In addition to the provisions of Section 10(F)(iii), issuance of a permit for a proposed change of use may be denied by the Board of Supervisors if the proposed use at that location: (i) would be incompatible with or would likely damage or endanger other uses of the right-of-way, (ii) would involve a higher level of maintenance activities than the present use, or (iii) would involve more road excavation or greater traffic disruption than the present use.

I. Amendment to permit.

If a permittee with a current Right-of-Way Occupancy and Use Permit issued pursuant to this Section 10 proposes to expand, reduce, relocate or modify any portion of its facilities within County road or highway right-of-way, the permittee shall file an application for an amendment to the current permit with the County Engineer, shall pay the application review fee, and shall further comply with all other applicable requirements of this Ordinance. An application for an amendment to a current permit shall include relevant new information of the form and type required in connection with the initial application for a permit. The County Engineer shall review an application and the Board of Supervisors shall act on the proposed amended Right-of-Way Occupancy and Use Permit in the same manner as the original permit.

J. Duties of permittee.

- i. The permittee shall be responsible for repairing or reimbursing other permitted or franchised utilities or other persons or entities lawfully using the right-of-way for any damage to their property caused by negligence of the permittee or its agents, employees or contractors in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of the permittee's facilities.
- ii. If a permittee's facility is subject to federal or state safety regulations or federal or state operational regulations, the permittee shall notify the County of any violations of such regulations within seven (7) days and shall submit copies of all safety verifications, reports, or certifications required to be submitted to the federal or state governments under the applicable regulations.

SECTION 11: BUSINESS LICENSE. Any permittee under this Ordinance must maintain any generally applicable business license for the privilege of transacting and carrying on a business within the County.

SECTION 12: WORK NOTIFICATIONS AND PERMITS.

- A. Notification Required. Following approval or renewal of a Right-of-Way Occupancy and Use Permit by the Board of Supervisors, no person shall install, erect, hang, lay, bury, burrow, draw, emplace, construct, maintain, or reconstruct any facility upon, across, beneath, or over any road or highway right-of-way in the County, or enter into the public rights-of-way to work on a facility, other than emergency repair or emergency maintenance, without first notifying the County Engineer in writing of the intended work. Upon notification, the County Engineer, or their designee, shall require the person submit a Work Permit request for any proposed work involving excavation, fill, or other physical change to facilities or road or highway right-of-way, or where proposed work poses apparent risk of damage to road or highway right-of-way.
- B. Permit. If so required by the County Engineer, or their designee, at the time of Work Notification, a person seeking to install, erect, hang, lay, bury, burrow, draw, emplace, construct, maintain, or reconstruct any facility upon, across, beneath, or over any road or highway right-of-way in the County, or enter into the public right-of-way to work on a facility, other than emergency repair or emergency maintenance, shall seek the relevant Work Permit therefor from the County Engineer. The County Engineer may issue a single Work Permit for a project that involves multiple Right-of-Way Occupancy and Use Permits under this Ordinance in their discretion. Issuance of Work Permits are conditioned upon satisfaction of Section 18 of this Ordinance and of other applicable County requirements as determined by the County Engineer in their discretion.
- C. Permit Denial or Postponement. The County Engineer may deny or postpone a Work Permit for any of the following reasons:

- i. Failure to meet the requirements of this Ordinance;
- ii. Failure to meet monetary obligations to the County; or
- iii. To protect the road or highway right-of-way and its current use.

D. Large Capital Programs.

The County Engineer may develop and institute a special streamlined permit and inspection process for large capital programs by mutual agreement with the applicant or applicants in the case of a joint project after receiving authorization from the Board of Supervisors.

E. Work Permit Fee.

A Work Permit fee shall be charged to every person who makes application for a Work Permit. The Work Permit fee shall be in an amount to be set by resolution of the Board of Supervisors and shall be paid at the time of application.

F. Waiver. In response to a specific request, the County Engineer may grant a waiver from a Work Permit requirement provided for in Sections 13, 14, 15, or 16 of this Ordinance, in whole or in part, as applied to the specific circumstances giving rise to such waiver request for good cause shown by the party making such waiver request.

- i. A waiver request shall state the relevant facts and the reasons why the person requesting it believes a waiver is warranted.
- ii. A waiver request shall state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical.
- iii. The County Engineer shall provide a party submitting a waiver request their written decision. The County Engineer may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the Ordinance.

SECTION 13: CONSTRUCTION STANDARDS.

A. Compliance with Regulations and Worksite Practices.

- i. Construction, installation, operation, maintenance, and repair of facilities shall be in accordance with all applicable local municipal, county, state, and federal laws, franchise rules, and regulations, including but not limited to, applicable regulations of the Iowa Utilities Commission, Iowa State Department of Health, the federal Department of Transportation, the Pipeline Hazardous Materials Safety Administration, and the Iowa Department of Transportation and the Transportation Commission.

1. Construction within the County's road and highway rights-of-way shall only occur between April 15 and October 31 of each calendar year, unless in cases of an emergency or with the written consent of the County Engineer.
 2. If construction occurs on an emergency basis, the person shall notify the County Engineer of such work within three (3) days.
 - ii. Construction, operation, maintenance, and repair of facilities shall be in accordance with sound industry practice.
 - iii. All applicable worksite safety practices required by federal, state, and local law shall be used and followed during construction, maintenance, and repair of facilities.
 - iv. If the County is notified by another government entity or permitting authority of an applicant's or permittee's violation of a law or regulation described in this provision, the County may suspend, revoke, or deny a permit or permit renewal under this Ordinance.
- B. Most Stringent Standards Apply. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards). This provision shall not apply to facilities subject to permitting by another government entity or permitting authority with exclusive jurisdiction to regulate the standards applicable to the facilities and their administration and enforcement.
- C. Prevention of Failures and Accidents. An owner, operator, or permittee shall at all times employ at least ordinary care and shall install and prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public by using commonly accepted methods and devices intended for such result.
- D. Inspections. The permittee shall provide full-time inspection services throughout construction upon, across, beneath, or over the road or highway right-of-way. This includes an inspection and report to the County Engineer before initiating work and a final inspection and report to the County Engineer upon the conclusion of work for all projects. For projects lasting longer than seven (7) days, the permittee shall complete one interim inspection and report to the County Engineer on not less than every seven (7) days. Within inspection reports, inspector(s) shall certify to the County Engineer that right-of-way and road construction requirements under this Ordinance are followed. Inspections shall include all roadway structures for a determination of damages caused by work or operations of the permittee's contractor(s). A report with the results of the inspection shall be provided to the County Engineer within two (2) days of the completed inspection unless the County Engineer grants additional time. A

failure to comply with this section may result in the permittee's liability or obligation to pay for damage to the County's road or highway right-of-way that may be reasonably determined to be attributable to the permittee's work by the County Engineer.

- E. Contractors and Subcontractors. Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of facilities in the road or highway rights-of-way must be properly licensed and insured under laws of the State and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as a permittee owning or operating a facility would have if the work were performed by the permittee. A permittee shall be responsible for all activities carried out by its contractors, subcontractors and employees at the permittee's request.
- F. Excavations. No holder of any Work Permit shall dig, trench, or otherwise excavate in the road or highway rights-of-way without complying with the provisions of the Iowa One Call system, Section 480.3 et seq., of the Code of Iowa , or its successor.
- G. Backfilling. Any tunnels or trenches dug during construction shall be thoroughly compacted in layers of six inches (6") or less in depth. Backfilling of trenches within public right-of-way but not under the traveled roadway shall be tamped sufficiently to avoid settlement. All backfilling work shall be done in a workmanlike manner, and the ground left in a neat condition, satisfactory to the County Engineer or their representative. Any surfacing material removed, covered up, or mixed with earth shall be replaced by the permittee at its sole expense.
- H. Boring Required. Boring shall be required for all pipe installations crossing beneath County road or highway right-of-way. The County Engineer may waive this requirement upon request of the permittee.
- I. Construction Schedule. Every permittee shall, at least thirty (30) days prior to commencing construction activity (including a rebuild, upgrade, or repair to existing facilities) upon, across, beneath, or over any road or highway right-of-way in the County, provide to the County in writing the date on which the permittee anticipates it will begin construction and the approximate length of time required for such construction. The permittee shall further notify the County Engineer of its anticipated actual construction commencement at least three (3) days in advance of the start of work.
- J. Coordination of Construction with County. Prior to the erection, construction, installation, upgrade, or rebuild of any facilities in, upon, across, beneath, or over the public right-of-way, the permittee owning or operating such facilities shall first submit to the County for written approval a concise description of the facilities proposed to be erected or installed, including engineering drawings together with maps and plans indicating the proposed location of all such facilities, if required by the County and if not duplicative of plans and specifications supplied in the permittee's initial application for Right-of-Way Occupancy and Use Permit. The permittee shall provide the best

information it has in such reasonable format as may be specified by the County Engineer for the County's planning function. No such erection, construction, installation, upgrade, or rebuild shall be commenced by any person until approval thereof has been received from the County.

- K. Coordination of Construction with Third Parties. Developers or other parties planning the construction or opening of roads in the County shall provide reasonable notice to the County and to the owners or operators of facilities subject to this Ordinance so that joint trenching and joint emplacement of facilities may be conducted wherever practicable. Such owners and operators shall similarly provide notice to each other and to any relevant developers, for the same purpose. The County shall maintain a list of owners and operators of facilities subject to this Ordinance for reference by other parties.
- L. County Engineer Stakeholder Meetings. The County Engineer may establish recurring or as-needed meetings of businesses who make use of the right-of-way for their facilities and contractors who perform such work to discuss ongoing and upcoming County road projects to further the efforts of coordinating projects within the right-of-way. The County Engineer may also establish recurring or as-needed meetings among stakeholders of a specific project, including but not limited to a permittee and its contractor(s), to review construction progress, inspection reports, or other matters.

SECTION 14: PLACEMENT OF FACILITIES.

- A. All facilities shall be installed and located to minimize interference with the rights and convenience of other property owners.
- B. A permittee owning or operating a facility shall not place facilities, equipment, or fixtures where they will interfere with any other existing facilities, or obstruct or hinder in any manner the various facilities serving the residents of the County or the use of any road or highway rights-of-way by either the County or the general public. The permittee shall use reference markers in the right-of-way boundary to locate any facilities or service lines and any changes in placement or alignment. If the permittee requests the County to stake the right-of-way boundary, the applicant shall reimburse the County for all applicable expenses, including any research required to establish road right-of-way width. The County shall make no warranties as to the accuracy of the staking of the right-of-way. The applicant assumes all risks for the staking and placement of facilities. The County at its discretion may require a professional survey to be completed when the County's research results in incomplete records. The applicant shall reimburse the County for all costs associated with the professional survey.
- C. The County may reasonably direct the specific placement of facilities to ensure that occupants and users of the public rights-of-way do not interfere with each other and that the public rights-of-way are used safely and efficiently. Such direction shall come from the County Engineer.

- D. Placement and installation of facilities shall not interfere with normal road maintenance operations, including but not limited to, the blading of granular surfaced roads, ditch cleaning operations, and erection and maintenance of signs and signposts. Installations over culverts will not be permitted. It shall be the responsibility of the applicant to research and identify all drainage structures in proposed work area. All underground facilities which encounter a drainage structure or entrance shall be bored under and in no instance will an underground facility cross over an entrance or crossroad drainage structure.
- E. Minimum depth below lowest drainage structure design flow line shall be specified in an applicable Work Permit but shall not be less than thirty-six inches (36") unless a greater depth is required by the County Engineer.
- F. An applicant shall contact all landowners affected by the installation of the facilities, including landowners affected by the boring requirement in Section 13(H). Prior to the commencement of any work relating to the facilities or their installation, including the boring requirement of this section, the applicant shall obtain a signed easement agreement for temporary access to the landowner's property from each affected landowner and shall provide a copy of each such easement to the County Engineer upon application for a Work Permit.
- G. The Line Location of Hazardous Liquid Pipelines and other Pipelines within, beneath, over, or along the County's road or highway right-of-way shall comply with separation requirements at the point of crossing of County road or highway right-of-way. However, the County Engineer, with the approval of the Board, may modify the separation requirements to the extent necessary for an applicant or permittee to acquire or deliver the substance transported by the Pipeline at a terminus in the County.
 - i. All separation requirement distances shall be measured from the centerline of the proposed Pipeline to the portion of the existing use nearest the centerline of the proposed Pipeline. The minimum separation distances for a Hazardous Liquid Pipeline's or other Pipeline's Line Location crossing County road or highway right-of-way, or intending to do so, are:
 - 1. From any intersection with another County road or highway right-of-way, not less than 495 feet.
 - 2. From any point of private ingress or egress, not less than 495 feet.
 - 3. From any County bridge with guardrails, not less than 250 feet from the guardrail's final point on the same side of land as the proposed occupancy and use.
 - 4. From any County bridge without guardrails, not less than 250 feet from the bridge abutment on the same side of land as the proposed occupancy and use.
 - 5. From any culvert or tile crossing, not less than 250 feet from the culvert's or tile crossing's centerline.

- H. No permittee owning or operating a facility shall erect new poles for aerial installation of facilities, other than to repair existing aerial installations, in or on a public right-of-way in which both electric and telephone service providers have placed their lines underground, or in an area which the County has by ordinance forbidden new aerial plant to be constructed or existing aerial plant to be maintained.
- I. If at any time the County determines that existing wires, cables or other like facilities of public utilities anywhere in the County shall be changed from an overhead to an underground installation, the permittee owning or operating the affected facility shall, at the permittee's sole expense, convert its system in that location to an underground installation pursuant to a new permit issued under this Ordinance, unless the permittee's franchise agreement, tariff or applicable state or federal law provides otherwise.
- J. A permittee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A permittee may not erect poles, conduits, pipes or other facilities in public rights-of-way without the express permission of the County. Copies of agreements for use of conduits or other facilities shall be filed with the County upon the County's request.
- K. The County Engineer may develop and institute a standardized cross-section location protocol for new or reconstructed rights-of-way.
- L. No new facilities may be installed that disturb the roadway hard surface or subsurface/subbase following construction or reconstruction of the roadway, unless authorized by the County Engineer.
- M. Every permittee that ceases operating or maintaining any facility shall, upon written request of the County within two (2) years of the cessation of operation or maintenance of such facility, promptly remove it at the permittee's sole cost and expense. Should the permittee neglect, refuse, or fail to remove such facility, the County may remove the facility at the expense of the grantee or permittee. The County Engineer may determine that it is in the best interests of the County to allow the facility to be wholly or partially abandoned in place. The obligation to remove shall survive the termination of a franchise or permit for a period of two (2) years.

SECTION 15: RELOCATION OF FACILITIES.

- A. A permittee owning or operating a facility on or within the County road or highway rights-of-way shall, at its own expense, upon written notice of an order from the County in accordance with Sections 10(F)(iv) and 10(F)(v), promptly relocate any facility located on or within the rights-of-way as the County may deem necessary or appropriate to facilitate the realignment, reconstruction, improvement, new grades, widening, or other repair of County roads or highway, as well as public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort; provided,

however, that an owner or operator may be permitted to abandon any property in place with the written consent of the County.

- B. If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the right-of-way, a permittee owning or operating a facility shall, upon thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The County may allocate the costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the road or highway rights-of-way, if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.
- C. In the event of an emergency, or where a facility creates or is contributing to an imminent danger to health, property, or general welfare, the County may remove, relay, or relocate any or all parts of that facility without prior notice. Costs of removal, relaying, or relocation shall be paid by the permittee owning or operating the affected facility upon receipt of a statement of the costs and within thirty (30) days therefrom.

SECTION 16: RESTORATION.

- A. Any and all public rights-of-way, road and highway rights-of-way, public property, or private property that are disturbed or damaged during the excavation, construction, installation, repair, replacement, relocation, operation, maintenance, or reconstruction of a facility shall be promptly repaired and restored by the permittee owning or operating a facility at the permittee owning or operating the facility's sole expense.
- B. If a permittee owning or operating a facility within the road or highway right-of-way disturbs a pavement, sidewalk, driveway or other surfacing, or landscaping, or other structure, either on private property or in public rights-of-way, at any time during its occupancy and use of the right-of-way the permittee shall, in a manner approved by the County, replace and restore all pavement, sidewalk, driveway or other surfacing, or landscaping disturbed, in substantially the same condition and in a good, workmanlike, timely manner, in accordance with any standards for such work set by the County. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred, weather permitting, and shall be completed as soon as reasonably possible thereafter. The permittee shall guarantee and maintain such restoration for at least two (2) years against defective materials or workmanship. Further, permittees shall reimburse the County for additional granular resurfacing acquired by the County and necessary to restore the roadway to its condition of that prior to the permittee undertaking construction.
- C. In the event a permittee owning or operating a facility fails to complete any work required for the protection or restoration of the public rights-of-way, or any other work required by County law or ordinance, within the time specified by and to the reasonable satisfaction of the County, the County, following notice and an opportunity to cure,

may cause such work to be done, and the permittee owning or operating a facility shall reimburse the County for the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the County may recover such costs through any security fund provided by a permittee owning or operating a facility, pursuant to such fund's recovery procedures.

SECTION 17: REIMBURSEMENT OF COSTS. All applicants and permittees shall reimburse the County for its internal and out-of-pocket costs, including, but not limited to, attorney and consultant fees actually and reasonably incurred by the County in connection with an application for an initial Right-of-Way Occupancy and Use Permit, or renewal thereof, and Work Permit under this Ordinance as determined by the County. Any application fee submitted with the application may be credited against this amount. The applicant will remit to the County payment for such costs within thirty (30) days of its receipt of the County's invoice. A permittee owning and operating a facility in the County's road or highway right-of-way shall reimburse the County for any costs incurred as a result of County fire, emergency responders, sheriff, police, ambulance services, emergency management, 911 operators, or other County resources or departments responding to an emergency caused by or arising from a permittee's facility.

SECTION 18: INSURANCE. A permittee owning or operating a facility in the road or highway right-of-way shall maintain insurance covering its facilities and their operations in the right-of-way. A permittee owning or operating a facility in the right-of-way shall submit to the County a certificate of liability and property insurance with the minimum coverage as follows, unless the Board of Supervisors approves alternative minimum coverage amounts for good cause shown:

General Liability Insurance – Bodily Injury and Property Damage Combined,
\$1,000,000 Each Occurrence / \$3,000,000 Aggregate
Automobile Liability – \$1,000,000 Combined Single Incidents
Excess Liability – \$1,000,000 Each Occurrence / \$1,000,000 Aggregate
Worker's Compensation and Employer's Liability – Statutory Limits
Contractor Liability Insurance – In accordance with County policy
Farm Liability / General Liability Insurance – \$1,000,000, or County policy
Medical Payment Limit of \$1,000, or existing County policy

A permittee owning or operating a facility in the road or highway right-of-way shall also certify to the County that its contractors maintain adequate insurance to cover construction operations incident to completion of any work undertaken pursuant to a Work Permit issued by the County under this Ordinance.

SECTION 19: WAIVER.

- A. In response to a specific request, the Board of Supervisors may grant a waiver from a Right-of-Way Occupancy and Use Permit requirement, in whole or in part, as applied to the specific circumstances giving rise to such waiver request, if the Board of Supervisors concludes the following:

- i. The proposed right-of-way occupancy and use would not pose a substantial risk to the County or its citizens, if the Board of Supervisors approved the request to waive regulations or requirements of this Ordinance;
 - ii. Application of the regulations in this Ordinance would pose an undue hardship on the person for whom the waiver is requested;
 - iii. The waiver would not prejudice the substantial legal rights of any person;
 - iv. The provisions of the Ordinance subject to a waiver request are not specifically mandated by statute or another provision of law; and
 - v. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than those prescribed in the Ordinance for which the waiver is requested.
- B. A waiver request shall state the relevant facts and the reasons why the person requesting it believes a waiver is warranted. The burden of persuasion rests with the person who is requesting a waiver. If the above criteria are met, a waiver may be granted at the discretion of the Board of Supervisors after consideration of all relevant factors.
- C. The waiver request shall also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical. When the Board of Supervisors grants or denies a waiver request, the Board shall provide a statement of the facts and reasons upon which the decision is based. The Board of Supervisors may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the Ordinance. The Board of Supervisors may at any time cancel or modify the terms of a waiver after providing appropriate notice and opportunity for hearing.

SECTION 20: ENFORCEMENT.

- A. County Infraction. Violation of provisions of this Ordinance is a county infraction pursuant to Iowa Code section 331.307, punishable by a civil penalty for each violation.
- B. Any person found to have violated the provisions of this Ordinance shall be fined up to \$250. Each twenty-four-hour period is a separate and distinct violation.
- C. Injunctive Relief. In addition to any other remedies hereunder, the County may seek an injunction to mitigate or terminate a violation or employ any other remedy available at law or equity.
- D. Timely Performance or Compliance. Any failure of the County to insist on timely performance or compliance by any person shall not constitute a waiver of the County's right to later insist on timely performance or compliance by that person or any other person.

E. Remedies Cumulative. All remedies specified in this Ordinance are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve a person of its obligations to comply with this Ordinance.

SECTION 21: INDEMNIFICATION. Permittees under this Ordinance shall indemnify and save harmless the County against any and all claims, demands, suits at law or in equity, or other forms of liability on account of or due to acts or omissions of the permittee or the permittee's agents, representatives, officers, members, contractors, employees, or assigned, arising out of or in connection with the permittee's occupancy and use of the road or highway right-of-way under this Ordinance. Such indemnification shall include, but not be limited to, the County's reasonable attorney fees and expert fees incurred in defending against any such claim, demand, suit, or proceeding. Recovery by the County of any amounts under insurance or otherwise shall not limit in any way a permittee's duty to indemnify the County, nor shall such recovery in any respect prevent the County from exercising any other right or remedy it may have.

SECTION 22: REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 23: SEVERABILITY CLAUSE. If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 24: EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading Passed:
Second Reading Passed:

September 9, 2025
September 16, 2025

Passed and adopted this 23 day of September, 2025.

Sydney R. Hartog
Mitchell County Board of Supervisors,
Chairperson

ATTEST:

Raunel Foster
Mitchell County Auditor
4917-4627-1808-1\18715-021