

ORDINANCE MC16-179-23

AN ORDINANCE OF MINNEHAHA COUNTY, SD, AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY AMENDING ARTICLE 3.00, A-1 AGRICULTURE DISTRICT, ARTICLE 4.00, RR RURAL RESIDENTIAL DISTRICT, ARTICLE 5.00, R-1 RESIDENTIAL DISTRICT, ARTICLE 6.00, C COMMERCIAL DISTRICT, ARTICLE 7.00, I-1 LIGHT INDUSTRIAL DISTRICT, ARTICLE 8.00, I-2 GENERAL INDUSTRIAL DISTRICT, ARTICLE 9.00, RC RECREATION/CONSERVATION DISTRICT, ARTICLE 12.00, ADDITIONAL USE REGULATIONS, ARTICLE 24, FEES; AND ARTICLE 26.00, DEFINITIONS.

WHEREAS, pursuant to SDCL Chpt 11-2, the Minnehaha County Board of County Commissioners has the authority to adopt for Minnehaha County a comprehensive county plan and zoning ordinance: to protect and guide the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources; and

WHEREAS, pursuant to SDCL Chpt 11-2, the Minnehaha County Board of County Commissioners has the authority to amend, supplement, change, modify, or repeal the comprehensive plan and existing zoning ordinances to further the comprehensive plan's goals and objectives and in furtherance of the best interests of the County; and

WHEREAS, the traditional and predominant land uses within the unincorporated portions of Minnehaha County have been agricultural, residential, recreational, and above ground light and general industrial uses; and

WHEREAS, the proposed establishment of the bulk transportation of toxic, hazardous and regulated substances and gases by Transmission Pipeline (as defined below) through the County would constitute a new land use, which has never been a traditional land use within the County, and which will significantly impact future development of the County's land-use planning vision; and

WHEREAS, new and expanded land use and facilities for the bulk transportation of toxic, hazardous and regulated substance and gases through Minnehaha County would adversely impact the traditional and predominant mixed-uses throughout Minnehaha County; and

WHEREAS, the establishment, development and expansion of Transmission Pipelines for the bulk transportation of toxic, hazardous and regulated substances and gases in Minnehaha County would be inconsistent with the 1990 Revised Zoning Ordinance for Minnehaha County ("Comprehensive Plan") which provisions are a vital part of the County's policies and goals for future economic development; and

WHEREAS, the purpose of this ordinance is to implement Article 12.18 in a manner that (a) is not inconsistent with federal or state law, (b) treats all Transmission Pipelines in a similar manner, to the extent they are similarly situated, and (c) utilizes to the greatest extent feasible the land use and zoning regulations and processes already utilized in Minnehaha County.

NOW THEREFORE, BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC16-09, the 1990 Revised Zoning Ordinance for Minnehaha County is hereby amended as follows:

**Section 1. That Article 3.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(O) Transmission Pipeline in accordance with Article 12.18.

**Section 2: That Article 4.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(E) Transmission Pipeline in accordance with Article 12.18.

**Section 3: That Article 5.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(E) Transmission Pipeline in accordance with Article 12.18.

**Section 4: That Article 6.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(I) Transmission Pipeline in accordance with Article 12.18.

**Section 5: That Article 7.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(G) Transmission Pipeline in accordance with Article 12.18.

**Section 6: That Article 8.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(D) Transmission Pipeline in accordance with Article 12.18.

**Section 7: That Article 9.03 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new use as follows:**

(G) Transmission Pipeline in accordance with Article 12.18.

**Section 8: That Article 12 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by adding a new subsection (12.18) as follows:**

**12.18 TRANSMISSION PIPELINES.** Transmission Pipelines in accordance with the following:

- (A). Application Required.
  - (1). Any person who has filed an application (“Applicant”) with the South Dakota Public Utilities Commission (PUC) for a permit to construct, maintain, and operate a new Transmission Pipeline along, over, or across land in the jurisdiction of Minnehaha County shall apply to the Office of Planning and Zoning to permit the Planning Director to verify Applicant’s conformance with the conditions prescribed in this Article. The Applicant shall submit a written notice of such application to the Office of Planning and Zoning within thirty (30) days of filing the application with the PUC, unless the application was filed with the PUC prior to the effective date of this Article in which case the Applicant shall submit written notice under this Article within thirty (30) days of the effective date of this Article.
  - (2). Upon receiving a written notice set forth in Article 12.18(A)(1), the Planning Director shall and request sufficient documentation to evaluate the project according to requirements set forth in this Article 12.18.
- (B). Application Requirements for Pipeline Companies. Every Transmission Pipeline application pursuant to this Article shall submit the following documents and information to the Office of Planning and Zoning at the request of the Planning Director:
  - (1). All required forms prescribed by the Planning Director, in addition to all proposed surveyed route information prepared by a professional land surveyor licensed in South Dakota clearly indicating the center line of the Transmission Pipeline.
  - (2). A complete copy of the application for a permit filed with the PUC pursuant to or within applicable statutory provisions, and as the application for the PUC permit is amended or changed, the Applicant shall simultaneously provide updated information and documents to the County.
  - (3). A map identifying each entry into the County’s right-of-way, and each proposed crossing of a County road or other County property.
  - (4). A map and a list containing the names and addresses of all Affected Property Owners in the County.
  - (5). A set of plans and specifications showing the dimensions and locations of the Transmission Pipeline, including plans and specifications for all related facilities, and above-ground structures, including without limitation: pumps, valve sites and shutoff valves.
  - (6). A copy of Applicant’s emergency response and hazard mitigation plan as may be required pursuant regulations adopted by PHMSA emergency preparedness, emergency response, and hazard mitigation.
  - (7). A statement identifying any confidential information in the application and a request, if any, to withhold such information from public examination or disclosure. Any request to withhold such information

from public examination or disclosure shall include the statutory basis for such claimed exemption. A failure to identify confidential information in the application may result in the County treating such information as a public record.

- (8). Applicant will be notified of a determination of its project as a special permitted use or the need to apply for a conditional use permit as soon as practicable but in no event more than 30 days after receiving approval of its permit by the PUC.
- (9). Should Applicant’s application to the PUC for a permit to construct, maintain, and operate a new Transmission Pipeline along, over, or across land in the jurisdiction of Minnehaha County be denied, Applicant’s application pursuant to this Article will be denied as moot.
- (C). Separation Criteria. The minimum separation criteria in Table 1 shall be used in the routing and siting of a Transmission Pipeline. For the purposes of Article 12.18, a “dwelling” shall include any structure that includes residential living quarters within it.

<b>TABLE 1: TRANSMISSION PIPELINE MINIMUM SEPARATION CRITERIA</b>	
Dwellings, Churches, and Businesses	330 ft
Public Parks and Schools	1,000 ft
Municipal Boundaries By the Following Municipal Classifications as of the most recent Census Data	
First Class (Population of 5,000 and over)	5,280 ft (1 mile)
Second Class (Population between 500 and 5,000)	3,960 ft (3/4 mile)
Third Class (Population of less than 500)	2,640 ft (1/2 mile)

- (D). Measurement of separation. The separation distance set forth in Table 1 is to be measured from the center line of the proposed pipeline to the closest parcel boundary of a use or municipal boundary set forth in Table 1.
- (E). Reduction of Separation Criteria for Dwellings and Businesses.
  - (1). A property owner may grant a waiver of the minimum setback distance from the Transmission Pipeline in the same manner and with the same effect as a conveyance of an interest in real property.
  - (2). A waiver under this section shall be created in writing, and the waiver or a memorandum thereof shall be filed, duly recorded, and indexed in the office of the Minnehaha County Register of Deeds. Any such waiver runs with the land or lands benefited and burdened and terminates upon the conditions stated in the waiver.
  - (3). Any such waiver is void if the Transmission Pipeline fails to obtain the necessary permit(s) and authorization from the South Dakota Public Utilities Commission or other applicable federal agency for the construction of such Transmission Pipeline within five years after the effective date of the waiver.
- (F). Setback Reduction for Municipalities. In accordance with municipal extraterritorial jurisdiction (e.g. SDCL 9-29-1), a waiver from the minimum setback requirements may be obtained in the form of a signed resolution from the affected municipality’s elected body.

- (G). Contact Information. Applicant shall provide to the Minnehaha County Office of Emergency Management:
- (1). The exact content and all known dangers of the Regulated Substance, the flammable, toxic or corrosive gas or substance being transported in the Transmission Pipeline; and
  - (2). A copy of Applicant's emergency response and hazard mitigation plan as may be required pursuant regulations adopted by PHMSA emergency preparedness, emergency response, and hazard mitigation.
  - (3). The names, phone numbers, and contact information of the Applicant's emergency response personnel and personnel authorized by the Applicant to receive service and respond to all notices, demands, complaints, concerns or other requests; and
  - (4). Applicant shall notify the Minnehaha County Office of Emergency Management within ten (10) days if any of the information required under this Section changes.
- The requirements of this Section shall be binding upon Applicant's heirs, successors, assigns and agents.
- (H). Any term used in Article 12 which is not defined in Article 26.02 shall have the same meaning and definition as set forth in SDCL 49-41B-2, as in effect on July 1, 2023, and ARSD 20:10:22:01 as in effect on July 1, 2023.

**Section 9: That Article 24 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by amending and adding the following terms as follows:**

24.05 CONDITIONAL USE.

- (A). Except as required in Section 24.05(b) below, Aa fee of \$250.00 shall be charged for filing an application for a conditional use permit in any district.
- (B). Transmission Pipeline:
- (1). A fee of \$25,000.00 shall be charged for filing an application for a conditional use permit for a Transmission Pipeline.
  - (2). If a conditional use is granted for a Transmission Pipeline, the Applicant or actual operator or their successors, assigns and agents shall pay to the County an annual fee of \$300 per linear mile of pipeline within the County. The fee shall be used to defray the direct and indirect costs associated with general administration and enforcement of this section. The fee shall be payable by January 20th of each year and deposited in the general fund of the County.
- (C). If any use, for which a conditional use permit is required, is commenced prior to the application for a conditional use permit, the application fee shall be double the regular fee.

**Section 10: That Article 26.02 of the 1990 Revised Zoning Ordinance for Minnehaha County, is hereby amended by amending and adding the following terms and definitions in alphabetical order:**

306. GAS PIPELINE FACILITY. A pipeline, a right of way, a facility, a building, or equipment used in transporting gas or a Regulated Substance or for treating such gas or Regulated Substance during its transportation. This term does not include gas pipeline facilities used to transport “natural gas” as defined by the Natural Gas Act, 15 U.S.C. §717 et seq, as in effect on July 1, 2023.
327. HAZARDOUS LIQUID PIPELINE FACILITY. A pipeline, a right of way, a facility, a building or equipment used or intended to be used in transporting a hazardous liquid or a Regulated Substance.
575. REGULATED SUBSTANCE. A regulated substance shall include:
- a. ~~pesticides and fertilizers,~~ All toxic and hazardous and toxic substances as defined designated by the United States Environmental Agency (EPA) pursuant to thru any of the following; Clean Water Act (CWA), Toxic Substances Control Act (TSCA), Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA) or Comprehensive Environmental Response Compensation and Liability Act (CERCLA);
  - b. All petroleum and petroleum substances, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, additives used in refining oils and gasoline;
  - c. Hazardous materials as defined by the United States Department of Transportation (DOT) and/or the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to the Pipeline Safety Act, 49 U.S.C. §60101 et seq, and as defined by 49 C.F.R. Subtitle B, et seq, as in effect on July 1, 2023;
  - d. This term does not include sewage and sewage sludge or “natural gas” as defined by the Natural Gas Act, 15 U.S.C. §717a(5), as in effect on July 1, 2023.
672. TRANSMISSION PIPELINE. A transmission pipeline shall include:
- a. A Hazardous Liquid Pipeline Facility;
  - b. A Gas Pipeline Facility;
  - c. A “transmission facility” as defined by SDCL 49-41B-2.1, as in effect on July 1, 2023, used exclusively for the distribution, transportation or gathering of a hazardous liquid or a Regulated Substance;
  - d. A “modified facility” as defined by SDCL 49-41B-2.2, used exclusively for the distribution, transportation or gathering of a hazardous liquid or a Regulated Substance; and,
  - e. This term also includes a pipeline that transports hazardous liquid or Regulated Substance within a storage field or transports hazardous liquid or Regulated Substance from an interstate pipeline or storage facility to a distribution main.

**Section 11: Severability Clause.**

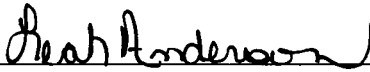
The provisions of this Ordinance are severable. If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

Adopted this 6 day of June, 2023.  
Effective: July 13, 2023

MINNEHAHA COUNTY

By: Jean Bender  
Chair, Board of County Commissioners

ATTEST:

  
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County Auditor

1 <sup>st</sup> Reading	May 2, 2023
Legal Ad. – Argus Leader, Brandon Valley Journal, Garretson Gazette, Minnehaha Messenger	May 9, 2023 May 10, 2023 May 11, 2023 May 12, 2023
2 <sup>nd</sup> Reading & Final Adoption	June 6, 2023
Fact of Adoption – Argus Leader, Brandon Valley Journal, Garretson Gazette, and Minnehaha Messenger	June 13+20, 2023 June 14+21, 2023 June 15+22, 2023 June 16+23, 2023
Effective Date	July 13, 2023