

**EDMUNDS COUNTY ORDINANCE NO. 2024-3-1
AN ORDINANCE SETTING FORTH GUIDELINES
FOR HAZARDOUS LIQUID PIPELINES WITHIN THE COUNTY**

BE IT ORDAINED by the Board of County Commissioners of Edmunds County that the Zoning Ordinances of Edmunds County are hereby amended by adding new Ordinance No. 2024-3-1 as follows:

**CHAPTER 5.34
HAZARDOUS LIQUID PIPELINE (HLP)**

Hazardous Liquid Pipeline (HLP)

Intent. The intent of this Ordinance is to set forth guidelines for routing or location of HLP as allowed by 49 U.S.C. 60104€.

Applicability. The requirements of this Ordinance shall apply to all HLPs proposed after the effective date of this Ordinance. HLPs for which a permit has been issued prior to the effective date of this ordinance by the South Dakota Public Utilities Commission under South Dakota Codified Law Chapter 49-41B shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing HLP, which does not provide transportation services for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing transportation services.

More Stringent Standards Required. In the event that a permit granted by the South Dakota Public Utilities Commission imposes a similar standard to a County standard, an HLP owner or operator shall comply with the more stringent standard, unless the Public Utilities Commission expressly finds under South Dakota Codified Law Section 49-41B-28 that the County standard is unreasonably restrictive.

Conditional Use Permit Required. A Pipeline Company that has filed a verified petition with the PUC, Public Utility Commission, asking for a permit to construct, maintain, and operate a new HLP along, over, or across land in Edmunds County shall submit an Application to the County Zoning Administrator for a Conditional Use Permit.

Conditional Uses. After notice, the Board of Adjustment (BOA) may permit a Hazardous Liquid Pipeline as Conditional Uses in the following Districts:

1. Ag District
2. Commercial Industrial District

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Minimum Setback Requirements.

1. An HLP shall be setback a minimum of a half-mile or 2,640 feet from the following: schools, daycares, churches, residential dwelling, livestock facilities, or any structure that has residential living quarters within.
 - a. The setback distance shall be measured from the center line of the proposed HLP to the nearest measurement of the dwelling/structure.
2. The setback distance for High Consequences Areas shall be a minimum of one (1) mile measured from the center line of the proposed HLP to the parcel property line of the High Consequence Area.
3. An HLP shall be setback a minimum of 500 feet from the following: wells, which are not located or adjoining any of the structures or areas listed hereinbefore.

Pipeline Depth of Cover

1. The depth of cover of any HLP shall meet all local, state, and federal requirements.
2. The depth of cover of any HLP shall be measured from the top of the pipeline, or other appurtenances, to the surface on a vertical line directly above the Hazardous Liquid Pipeline.
3. The depth of cover for any HLP in Right of Ways and County Property shall be:
 - a. Bottom of a Ditch: Depth of the Pipeline shall be at least six (6) feet from the ground surface to the top of the Pipeline.
 - b. Maintained Drivable Surfaces: Depth of the Pipeline shall be at least eight (8) feet from the ground surface to the top of the Pipeline. It is required that the pipeline be bored under any maintained drivable surface, and not cut or trenched in.
 - c. Non-Maintained Drivable Surfaces: Depth of the Pipeline shall be at least eight (8) feet from the ground surface to the top of the Pipeline.
4. Level of Cultivation in Edmunds County shall be to promote the health, convenience, order, and welfare of the present and future inhabitants of Edmunds County, including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.
 - a. Not less than two (2) feet below all tile lines and drainage pipes and equipment on any cultivated agricultural land.
 - b. As agreed to by land owner, but not less than four (4) feet below the surface of all cultivated and non-cultivated agricultural land.

Depth Requirement Waiver

1. In any easement granting right-of-way over cultivated agricultural land, the grantor of the easement may waive the minimum level of cultivation requirement with respect to all or part of cultivated agricultural land. A waiver of the level of cultivation requirement shall be effective only if the waiver:

- a. Is separately and expressly stated in the easement agreement and included an express statement by the grantor acknowledging that the grantor has read and understood the waiver.
 - b. Is printed in capital letter and in language understandable to an average person not learned in law.
 - c. Is separately signed or initialed by the grantor.
2. Any Political subdivision authorized by law to approve the use of the right-of-way of any public drainage facility or any public street or highway for a pipeline may:
 - a. Waive the minimum level of cultivation requirement if the level of cultivation or other means approved the use of the right-of-way adequately protects the health and safety of the public.
 - b. Adopt and enforce by ordinance or resolution reasonable rules or regulations establishing a greater level of cultivation than the minimum required and other measures for protection of public roads and drainage facilities under their jurisdiction.

Setback Waiver or Variance.

1. With the exception of setbacks from High Consequence areas, the developer of an HLP may apply for a reduction of the minimum setback, in the form of a setback waiver or setback variance.
2. Variance from Setback Distance. The developer of an HLP may apply for a setback variance as part of its application for a conditional use permit. The setback variance must be submitted as part of the developer's application for a conditional use permit. The procedure for requesting a setback variance as part of an HLP is as follows:
 - a. After a review of all project plans, and the presentation to the Board of Adjustment, the Board of Adjustment will make a decision regarding each setback variance.
 - b. The Board of Adjustment may approve or deny each submittal of a setback variance based on the project location, area, size, and the property use.
 - c. If the HLP project is approved, any setback variance submitted and approved as part of the conditional use permit application must be filed at the Edmunds County Register of Deeds Office by the developer towards each individual parcel's legal description for a setback variance to be approved, final and permanent.
3. Setback Waiver. The developer of an HLP may obtain a setback waiver from an individual property owner. The setback waiver must be submitted as part of the developer's application for a conditional use permit. The procedure for submitting a setback waiver is as follows:
 - a. After a review of all project plans and the presentation to the Board of Adjustment, the Board of Adjustment will make a decision regarding each setback waiver.
 - b. The Board of Adjustment may approve or deny each individual submittal of a setback waiver based on the project location, area, size, and the property use.

- c. If the HLP project is approved, any setback waiver submitted and approved as part of the conditional use permit application must be filed at the Edmunds County Register of Deeds Office by the owner towards each individual parcel's legal description for a setback waiver to be approved, final and permanent.

Permit Application Requirements for HLP

1. An HLP Company applying for a Conditional Use Permit for an HLP pursuant to this Article shall submit the following documents and information to the Zoning Officer:
 - a. The information required for a Conditional Use Permit as described in Section 6.05.01.
 - b. A complete copy of the application for a permit filed with the PUC. This requirement is an ongoing requirement, and as the application for the PUC permit is amended or changed, the Pipeline Company shall provide updated information and documents to Edmunds County.
 - c. A map identifying each proposed crossing of any road or property located in Edmunds County.
 - d. A map and a list containing the names and addresses identifying each landowner of proposed HLP crossing in Edmunds County. The map and list shall include and identify all Property Owners who have executed an Easement, Waiver from Setback or who have been or will be contacted about the execution of a Waiver from Setback.
 - e. A map showing locations for all related facilities and above-ground structures, such as pumps, lift-stations, or substations.
 - f. All application fees for the Conditional Use Permit, Building Permit, or any other fees associated with HLP permit, must be paid at time of filing.
2. Complete Application Required. Upon receipt of an application, the Zoning Officer will review the information provided and follow the guidelines set forth in Section 6.05.01. In the event the application is deficient, the Zoning Officer will reject the application and provide applicant with a list of deficiencies. Applicant may submit a revised application including the omitted information within 10 days of notification.
 - a. No HLP may be constructed in Edmunds County until the County has approved a Conditional Use Permit for the HLP.
 - b. A Conditional Use Permit granted to an HLP Company pursuant to this Article is not transferrable to any Person. A Pipeline Company, or its successors in interest, shall apply for a new Conditional Use Permit whenever the Hazardous Liquid Pipeline is transferred, or its use is materially or substantially changed or altered.

TITLE DEFINITIONS (For HLP)

Hazardous liquids. Hazardous liquids includes petroleum or a petroleum product, nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive; or would be harmful to the environment if released in significant quantities; carbon dioxide transported by a hazardous liquid pipeline facility; and any substance the Secretary of Transportation decides

may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state and not subject to the Natural Gas Act (15 U.S.C. 717 et seq.)

Hazardous liquid pipelines: Hazardous liquid pipelines are defined per U.S. 49 CFR 195 as all parts of a pipeline facility through which a hazardous liquid moves in transportation, or transports hazardous liquid from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

High Consequence Areas. All Municipalities as defined in SDCL 9-2-1, Lake Front Residential, and Town Districts.

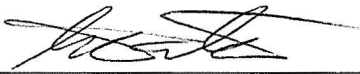
Livestock Facilities: Agricultural Facility that is listed as a Class A concentrated animal feeding operation (CAFO).

Setback Waiver. An agreement signed by the landowner to waive the required setback distance to their property for an application of a Hazardous Liquid Pipeline.

Dated the 9th day of April, 2024 at Ipswich, South Dakota.

Attest: 
Keith Schurr
Edmunds County Auditor




Timothy Thomas
Edmunds County Commission Chairman

First Reading: March 19, 2024
Second Reading: April 9, 2024
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