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**ORDINANCE NO. 2023-1**

**AN ORDINANCE ADOPTING THE “CODE OF ORDINANCES OF EMMET COUNTY, IOWA, 2023”**

**BE IT ORDAINED** by the Board of Supervisors of Emmet County, Iowa that:

**SECTION 1.** Pursuant to published notice and following public hearing on the 19<sup>th</sup> day of September, 2023, so required by Section 33.1302(10.a)(2) Code of Iowa, there is hereby adopted by Emmet County, Iowa, the “CODE OF ORDINANCES OF EMMET COUNTY, IOWA, 2023.”

**SECTION 2.** All of the provisions of the “CODE OF ORDINANCES OF EMMET COUNTY, IOWA, 2023.” Shall be in force and effect on and after the effective date of this ordinance.

**SECTION 3.** All ordinances or parts thereof in force on the effective date of this ordinance are hereby repealed from and after the effective date of this ordinance, except as hereinafter provided.

**SECTION 4.** The repeal provided for in the preceding section of this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this ordinance; nor shall such repeal affect any ordinance or resolution promising the guaranteeing the payment of money by the County or authorizing the issuance of any bonds of said County or any evidence of said County’s indebtedness or any contract or obligation assumed by said County; nor shall said repeal affect the administrative ordinances or resolutions of the Board of Supervisors not in conflict or inconsistent with the provisions of “THE CODE OF ORDINANCES OF EMMET COUNTY, IOWA, 2023.” Nor shall it affect and other right or franchise conferred by any ordinance or resolution of the Board of Supervisors or any other person or corporation; nor shall it affect any ordinance naming, establishing, relocating or vacating any street or public way, whether temporary or permanent; nor shall it affect and ordinance establishing building lines, establishing and changing grades, or dedicating property for public use; nor shall it affect any prosecution, suit or other proceeding pending or any judgement rendering on or prior to the effective date of this ordinance.

**SECTION 5.** An official copy of the “CODE OF ORDINANCES OF EMMET COUNTY, IOWA, 2023.” Adopted by this ordinance, including a certificate of the Emmet County Auditor as to its adoption and the effective date, is on the file in the office of the Emmet County Auditor, and shall be kept available for public inspection.

**SECTION 6.** The Emmet County Auditor shall furnish a copy of the “CODE OF ORDINANCES OF EMMET COUNTY, IOWA, 2023” to the Judicial Magistrates serving Emmet County, Iowa.

**SECTION 7.** This ordinance shall be in full force and effect from and after the publication of this ordinance, as required by law.

Passed by the Board of Supervisors of Emmet County, Iowa on the 3<sup>rd</sup> Day of October 2023.

EMMET COUNTY BOARD OF SUPERVISORS

  
\_\_\_\_\_  
Todd Glasnapp, Chairperson

ATTEST:

  
\_\_\_\_\_  
Amy M. Sathoff, County Auditor

First Reading Passed: September 19, 2023

Second Reading Passed: September 26, 2023

Third Reading Passed: October 3, 2023

**AUDITOR'S CERTIFICATE**

I hereby certify that the foregoing Ordinance No. 2023-1 was published as a required by law on the 12<sup>th</sup> day of October, 2023 in the Estherville News and October 11<sup>th</sup>, 2023 in the Armstrong Journal & Ringsted Dispatch.

EMMET COUNTY, IOWA,

  
\_\_\_\_\_  
Amy M. Sathoff, County Auditor

## CHAPTER 1 - CODE OF ORDINANCES

**1.01 PURPOSE.** This code of ordinances shall be known and may be cited as the Code of Ordinances of Emmet County, Iowa 2016.

**1.02 DEFINITIONS.** Where words and phrases used in the Code of Ordinances are defined by state law, such definitions apply to their use and are adopted by reference. Those definitions so adopted which require further definition or are reiterated, and other words and phrases used herein, have the following meanings, unless specifically defined otherwise in another portion of the Code of Ordinances:

1. "Assessor" shall mean the County Assessor of Emmet County, Iowa.
2. "Auditor" shall mean the County Auditor of Emmet County, Iowa.
3. "Board," "Board of Supervisors," or "Supervisors" shall mean the Board of Supervisors of Emmet County, Iowa.
4. "Board of Health" shall mean the Board of Health of Emmet County, Iowa.
5. "Code" shall mean the specific chapter of the Code of Ordinances in which a specific subject is covered and bears a descriptive title word.
6. "Code of Ordinances" shall mean the Code of Ordinances of Emmet County, Iowa.
7. "County" shall mean the County of Emmet, Iowa.
8. "County Attorney" shall mean the Emmet County Attorney.
9. "County Engineer" shall mean the Emmet County Engineer.
10. "Measure" shall mean an ordinance, amendment of an ordinance, resolution or motion.
11. "Month" shall mean a calendar month.
12. "Oath" shall include an affirmation in all cases in which by law an affirmation may be substituted for an oath, and in such cases the words "affirm" and "affirmed" are equivalent to the words "swear" and "sworn."
13. "Occupant" or "tenant", applied to a building or land, shall include any person who occupies the whole or part of such building or land, whether alone or with others.
14. "Ordinances" shall mean the ordinances of Emmet County, Iowa, as embodied into the Code of Ordinances, ordinances not repealed by the ordinance adopting the Code of Ordinances, and those enacted thereafter.

15. "Person" shall mean an individual, firm, partnership, domestic or foreign corporation, company, association of joint stock association, trust, or other legal entity, and includes a trustee, receiver, assignee, or similar representative thereof.
16. "Preceding" or "following" shall mean next before and next after, respectively.
17. "Property" shall include real property and tangible and intangible personal property unless clearly indicated otherwise.
18. "Property owner" shall mean a person owning private property in the County as shown by the County Auditor's plats of the County.
19. "Public place" shall include in its meaning, but is not restricted to, any County-owned open place, such as parks and squares.
20. "Public property" shall mean any and all property owned by the County or held in the name of the County by any of the departments, commissions or agencies within county government.
21. "Public way" shall mean any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.
22. "Real property" includes lands, tenements and hereditaments.
23. "Recorder" shall mean the County Recorder of Emmet County, Iowa.
24. "State" shall mean the state of Iowa.
25. "Statutes" or "laws" shall mean the latest edition of the Code of Iowa, as amended.
26. "Street" or "highway" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this County which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state and shall also mean 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.
27. "Tenant" and "occupant" applied to a building or land, includes any person who occupies whole or a part of such building or land, whether alone or with others.
28. "Title of Office". Use of the title of any officer, employee, board or commission means that officer, employee, department, board or commission of the County;
29. "Writing" or "written" shall include printing, typing, lithographing, or other mode of representing words and letters.
30. "Year" shall mean a calendar year.

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such other as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

**1.03 GENERAL POWERS.** The County may, except as expressly limited by the Iowa Constitution, and if not inconsistent with the laws of the Iowa General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the County and of its residents, and preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents and each and every provision of the Code of Ordinances shall be deemed to be in the exercise of the foregoing powers and the performance of the foregoing functions.

(Code of Iowa, Sec. 331.301)

**1.04 INDEMNITY.** An applicant for any permit or license under this Code of Ordinances, by making such application, assumes and agrees to pay for all injury to or death of any person or persons whomsoever, and all loss of or damage to property whatsoever, including all costs and expenses incident thereto, however arising from or related to, directly, indirectly or remotely, the issuance of the permit or license, or the doing of anything there under, or the failure of such applicant, or the agents, employees or servants of such applicant, to abide by or comply with any of the provisions of the Code of Ordinances or the terms and conditions of such permit or license. Such applicant, by making such application, forever agrees to indemnify the County and its officers, agents and employees, and agrees to save them harmless from any and all claims, demands, lawsuits or liability whatsoever for any loss, damage, injury or death, including all costs and expenses incident thereof, by reason of the foregoing. This section shall apply even though the County, or its officers, agents and employees, may have knowledge of any act, omission or condition which caused or contributed to such loss, damage, injury or death. The provisions of this section shall be deemed to be a part of any permit or license issued under the Code of Ordinances or any other ordinance of the County whether or not expressly recited therein.

**1.05 RULES OF CONSTRUCTION.** In the construction of the Code of Ordinances the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Board or repugnant to the context of the provisions.

1. Tense. Words used in the present tense include the future.
2. May. The word "may" confers a power.
3. Must. The word "must" states a requirement.
4. Shall. The word "shall" imposes a duty.
5. Gender. The masculine gender shall include the feminine and neutral genders.

6. **Number.** All words in the plural shall include the singular and all words in the singular include the plural unless the natural construction of the wording indicates otherwise.
7. **Interpretation.** All general provisions, terms, phrases, and expressions contained in the Code of Ordinances shall be liberally construed in order that the true intent and meaning of the Board may be fully carried out.
8. **Extension of Authority.** Whenever an officer or employee is required or authorized to do an act by a provision of the Code of Ordinances, the provision shall be construed as authorizing performance by a regular assistant, deputy, subordinate or a duly authorized designee of said officer or employee.

**1.06 AMENDMENTS.** All ordinances which amend, repeal or in any manner affect the Code of Ordinances shall include proper reference to title, division, chapter, section and subsection to maintain an orderly codification of ordinances of the County.

(Code of Iowa, Sec. 331.302 [4])

**1.07 EFFECTIVE DATE OF AN ORDINANCE.** Upon final passage of an ordinance or amendment to an existing ordinance or code and upon a majority of the Board of Supervisors signing the ordinance, or the amendment to the existing ordinance, it will become effective upon publication, unless a subsequent effective date is provided within the ordinance or amendment.

**1.08 COUNTY AUDITOR.** The county auditor shall:

1. Promptly record each ordinance, or amendment to an existing ordinance, code, section or subsection passed by the Board with a statement of how the members of the Board voted.
2. Publish all proposed ordinances and all amendments in the manner required by the Code of Iowa, as amended, and by the ordinances of Emmet County in at least one newspaper having general circulation within the county.
3. Authenticate all ordinances with his/her signature and certification as to the time and manner of publication. The county auditor's certification is presumptive evidence of the facts stated therein.
4. Maintain for public use copies of all effective county ordinances and codes.

**1.09 CATCH LINES AND NOTES.** The catch lines of the several sections of the Code of Ordinances, titles, headings, (chapter, division, section and subsection), editor's notes, cross references and State law references, unless set out in the body of the section itself, contained in the Code of Ordinances, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.



**1.10 ALTERING CODE.** It is unlawful for any unauthorized person to change or amend by additions or deletions, any part or portion of the Code of Ordinances, or to insert or delete pages or portions thereof, or to alter or tamper with the Code of Ordinances in any manner whatsoever which will cause the law of the County to be misrepresented thereby.

(Code of Iowa, Sec. 718.5)

**1.11 EXTENSION OF AUTHORITY.** Whenever an officer or employee is required or authorized to do an act by a provision of this Code of Ordinances, the provision shall be construed as authorizing performance by a regular assistant, deputy, subordinate or a duly authorized designee of said officer or employee.

**1.12 RIGHT OF ENTRY.** Whenever necessary to make an inspection to enforce any Ordinance, or whenever there is reasonable cause to believe that there exists an Ordinance violation in any building or upon any premises within the jurisdiction of the County, any authorized official of the County may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same and to perform any duty imposed upon such official by Ordinance; provided that, except in emergency situations, such official shall first give the owner and/or occupant, if they can be located after reasonable effort, twenty-four (24) hour written notice of the authorized official's intention to inspect. In the event the owner and/or occupant refuses entry, the official is empowered to seek assistance from any court or competent jurisdiction in obtaining such entry.

**1.13 MAINTAINING CODE OF ORDINANCES.**

1. At least once every five (5) years, the board shall compile a code of ordinances containing all of the county ordinances in effect.
  - a. If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the board may adopt the code by ordinance.
  - b. If a proposed code of ordinances contains a proposed new ordinance or amendment, the board shall hold a public hearing on the proposed code before adoption. The auditor shall publish notice of the hearing as provided in Code of Iowa section 331.305. Copies of the proposed code of ordinances shall be available at the auditor's office and the notice shall so state. Within thirty days (30) after the hearing, the board may adopt the proposed code of ordinances which becomes law upon publication of the ordinance adopting it. If the board substantially amends the proposed code of ordinances after a hearing, notice and hearing shall be repeated.
2. Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as a supplement to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

3. An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the auditor's certification of the ordinance adopting the code or supplement.

(Code of Iowa, Sec. 331.302 [10])

**1.14 COUNTY ORDINANCE BOOK.** All ordinances adopted by the Board of Supervisors shall be maintained in a separate book known as the Emmet County Ordinance Book. The County Attorney, the County Sheriff, the Clerk of Court, the County Auditor and the Board of Supervisors shall maintain a copy of the Ordinance Book in each respective office. The county auditor shall provide final copies of each ordinance or amendment thereto to each office for placement in the County Ordinance Book maintained in each office.

Upon the request of any other county officer, the Auditor will provide a copy of the Ordinance Book to that office which copy will be maintained in the same manner as the copies in the office of the county auditor are maintained.

**1.15 COPIES OF CODE.**

1. The Board of Supervisors by resolution will set the fee which persons must pay for copies of all or part of the Emmet County ordinances.
2. The Auditor will provide one free copy of the County Ordinance Book to each incorporated municipality and each public library within the limits of Emmet County which requests a copy of the ordinance book. The Auditor also shall provide free copies of any changes or additions to the ordinances to each municipality and library that received a copy of the county ordinance book.

**1.16 SEVERABILITY.** If any section, provision, or part of the Code of Ordinances is adjudged invalid or unconstitutional, such adjudication will not affect the validity of the Code of Ordinances as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

## CHAPTER 2 - PENALTIES

**2.01 STANDARD PENALTY.** Unless another penalty is expressly provided by this Code of Ordinances for any particular provision, section or chapter, any person violating any provision of this Code of Ordinances or any rule or regulation adopted herein by reference shall, upon conviction, be subject to the penalty for a simple misdemeanor, as set forth in Section 903.1 of the Code of Iowa. The crime services surcharge required by section 911.1 shall be added to a county fine and is not a part of the County's penalty.

(Code of Iowa, Sec. 331.302 [2])

**2.02 COUNTY INFRACTIONS – CIVIL PENALTY.** A violation of this Code of Ordinances or any ordinance or code herein adopted by reference or the omission or failure to perform any act or duty required by the same, with the exception of those provisions specifically provided under State law as a felony, an aggravated misdemeanor, or a serious misdemeanor, or a simple misdemeanor under Chapters 690 through 732 of the Code of Iowa, is a county infraction punishable by civil penalty as provided herein.

(Section 331.307 of the Code of Iowa).

1. Penalties. A county infraction is punishable by the following civil penalties:

A. First Offense – Not to exceed \$750.00.

B. Each Repeat Offense – Not to exceed \$1,000.00.

Each day that a violation occurs or is permitted to exist constitutes a repeat offense.

2. Civil Citations. Any officer authorized by the County to enforce this Code of Ordinance may issue a civil citation to a person who commits a county infraction. The citation may be served by personal service as provided in Rule of Civil Procedure 1.305, by certified mail addressed to the defendant at defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in Rule of Civil Procedure 1.310 and subject to the conditions of Rule of Civil Procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the Clerk of the District Court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

a. The name and address of the defendant.

b. The name or description of the infraction attested to by the officer issuing the citation.

c. The location and time of the infraction.

d. The amount of civil penalty to be assessed or the alternate relief sought, or both.

e. The manner, location, and time in which the penalty may be paid.

f. The time and place of court appearance.

- g. The penalty for failure to appear in court.
3. **Alternative Relief.** Seeking a civil penalty as authorized in this chapter does not preclude the County from seeking alternative relief from the court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief.
  4. When judgment has been entered against a defendant, the court may do any of the following:
    - a. Impose a civil penalty by entry of a personal judgment against the defendant.
    - b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.
    - c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.
    - d. Authorize the county to abate or correct the violation.
    - e. Order that the county's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.
  5. **Criminal Penalties.** This section does not preclude a peace officer from issuing a criminal citation for a violation of this Code of Ordinance or regulation if criminal penalties are also provided for the violation. Nor does it preclude or limit the authority of the County to enforce the provisions of this Code of Ordinances by criminal sanctions or other lawful means.
  6. **Contempt of Court.** If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.
  7. This section does not preclude a peace officer from issuing a criminal citation for a violation of a county code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted by the defendant to exist, constitutes a separate offense.

## CHAPTER 3 – VOTING PRECINCTS

**3.01 PURPOSE.** The purpose of this Chapter is to establish voting precincts for Emmet County.

**3.02 DEFINITIONS.** For use in this Chapter, the following terms or words shall be interpreted or defined as follows:

1. “Voting precinct” or “precinct” shall mean a county or municipal subdivision devised for casting and counting votes in elections.
2. Township” shall mean a civil and political subdivision of the county, consisting of a parcel or territory six miles on each side.

**3.03 GENERAL PROVISIONS.** All voting precincts shall be designated as follows:

PRECINCT 1:

City of Armstrong, Armstrong Grove Township and Iowa Lake Township

PRECINCT 2:

City of Gruver, Center Township and Swan Lake Township

PRECINCT 3:

City of Ringsted, Denmark Township and Jack Creek Township

PRECINCT 4:

City of Dolliver, Ellsworth Township and Lincoln Township

PRECINCT 5:

Emmet Township and Estherville Township

PRECINCT 6: Estherville Ward 1

PRECINCT 7: Estherville Ward 2

PRECINCT 8: Estherville Ward 3

PRECINCT 9: Estherville Ward 4

PRECINCT 10: Estherville Ward 5

PRECINCT 11:

City of Wallingford, High Lake Township and Twelve Mile Lake Township

PRECINCT 12: Absentee Voting

**3.04 EFFECTIVE DATE.** This ordinance and the precinct boundaries provided herein shall become effective September 4, 2001

First Reading August 21, 2001

Second Reading August 28, 2001

Third Reading September 4, 2001

Passed by the Board of Supervisors this 4<sup>th</sup> day of September, 2001.

[Next Chapter is 15, Page 36]

**TITLE II - TRANSPORTATION**

## **CHAPTER 15 - SNOW AND ICE REMOVAL ON SECONDARY ROADS**

- 15.01 TITLE.** An ordinance establishing the policy and level of service in respect to clearance of snow or ice and maintenance of this county's secondary roads during the winter months.
- 15.02 PURPOSE.** Purpose. The purpose of this ordinance is to establish Emmet County's policy and level of service in respect to clearance of snow or ice and maintenance of its secondary road system during the winter months pursuant to the provisions of Section 309.67, Code of Iowa. This policy and level of service are to be implemented within the amount of money budgeted for this service, and as contained in this County's secondary road budget as submitted to and approved by the Iowa Department of Transportation and adopted by the Board of Supervisors. The clearance of roads at any cost, under any circumstances, day or night, is not the County's policy.
- 15.03 LEVEL OF SERVICE.** Clearance of snow or ice and maintenance of the secondary road system during the winter months is primarily for the benefit of the local residents of this County. Each storm has individual characteristics and must be dealt with accordingly. The portion of the roadway improved for travel will have upon it snow and ice in a compacted condition. These conditions may be continuous, or they may be more concentrated on hills, in valleys, curves, and/or intersections. The County's existing snow removal equipment will be utilized for this purpose. Except for "emergencies" as determined by the County Engineer's professional judgment, or his/her designee acting in his/her absence, on a case-by-case basis, all clearance of snow and ice, sanding, salting, and other maintenance respecting winter conditions shall be accomplished within the amount of money budgeted for this service and as practicable. The entire width of that portion of the road improved for travel may not be cleared of snow, ice, compacted snow and ice, or frost. Snow cleared from that part of the roadway improved for travel shall be placed on or in the adjacent shoulder, ditch, or right of way. Snow can be expected to accumulate adjacent to the traveled portion to the extent that a motorist's sight distance to both the left and right may be greatly reduced or impaired. The snow removed from intersections will be piled in its corners in piles of unequal height. The lines of sight, sight distance, or visibility of motorists approaching these intersections may be greatly reduced or impaired. The County shall not be responsible for snow pushed or otherwise placed on the roadway or shoulders by others. Motorists shall drive their vehicles during these conditions with additional caution and watchfulness, especially in respect to the surface of the roadway, and reduced or impaired visibility, and are advised to reduce their speed at least 25 miles per hour below that legally permitted or advised under normal conditions. In respect to roadways that have only one lane open, further extreme watchfulness and caution should be exercised by the motorist, and their speed should not exceed 10 miles per hour. During these conditions no additional warning or regulatory signs will be placed warning of impaired sight distances, visibility at intersections, road blockages, one-lane conditions, or that the road surface is slick or slippery, or what the advised speed should be.



**15.04 SEQUENCE OF SERVICE.** In the implementation of snow and ice removal and other maintenance of the county's secondary road system during the winter months, the County Engineer shall select the actual sequence of roads to be cleared as provided for in this Section of this Ordinance, and shall determine when drifting, wind velocity, and additional snow or snowstorms require that the snow removal equipment be removed from the roadway or, that additional clearance of paved routes be accomplished prior to the clearance of gravel and dirt roads. The County Engineer's professional judgment shall prevail unless it is clearly erroneous:

**A. PAVED ROUTES.**

1. The initial effort will be to get all routes open to one-lane traffic as soon as possible and/or practicable. Some unpaved routes may be plowed for one-lane traffic before paved routes are plowed. During initial snow removal operations, paved roads may only have one lane plowed for a period of time.
2. After one-lane travel is possible, subsequent snow removal will be carried on during normal working hours.
3. Motor graders and/or truck-mounted snowplows and spreaders will not normally be in operation between dusk to dawn. The motor graders and trucks may be called off the road if snow and/or wind reduce visibility to hazardous working conditions, in the professional judgment of the Engineer or his/her delegated representative.
4. When required, due to drifting snow, motor graders and/or truck plows may be used to keep the paved roads open and the opening of gravel roads may be delayed.
5. It is not the policy of the County to provide a "dry" pavement condition.
6. After roads have been plowed, as provided in this Section, intersections, hills, and curves may, but not necessarily, have placed on them, salt, sand or other abrasives. These intersections, hills and curves may not be re-sanded, re-salted, or have other abrasives replaced on them between snowstorms or snow drifting episodes.

**B. UNPAVED ROADS.**

1. The initial effort will be to get all routes opened to one-lane traffic as soon as possible after cessation of the storm and subject to the limitation of hours of operation specified in paragraph 3 of this subsection.
2. After one-lane travel is possible, subsequent snow removal will be carried on during normal working hours.

3. Motor graders and/or truck plows will not normally be in operation between dusk to dawn. Motor graders and/or truck plows may be called off the road if snow and/or wind reduce visibility to hazardous working conditions, in the professional judgment of the Engineer or his/her delegated representative. Gravel roads may not be plowed if the wind is causing continual drifting.
4. Snow may not be removed from roads designated at Level B or roads where there are no homesteads.
5. The placing of salt, sand or other abrasives upon roads due to freezing precipitation will not normally be performed.

C. PRIVATE DRIVES.

The County will not clear snow from private drives. Normal snow removal operations may result in snow being deposited in private drives. Snow from private drives shall not be placed on the roadway or shoulders.

D. MAILBOXES.

The County will not replace or repair any mailboxes destroyed or damaged during snow removal operation, however, the owner shall file with Emmet County a claim of damages within 60 days which in turn will be turned over the County's Liability insurance carrier.

E. TIME LIMITS.

This sequence of service may usually be performed between dawn to dusk each day, exclusive of Saturdays, Sundays, and legal holidays observed by County employees. There is no time limit after a snowstorm or snow drifting episode in which any of the above sequences of clearance, on paved or unpaved roads, shall take place.

**15.05 LIMITATION OF SERVICE.** Notwithstanding anything else stated in this ordinance, the policy and level of service provided for in this ordinance shall not include the following, and the following services shall not be performed:

- A. Sanding, salting, or placing or other abrasives upon the roadway that are slick, slippery, and dangerous due to the formation of frost, except if requested by Emmet County Sheriff or his designated representative and only at the location requested.
- B. Sanding, salting, or placing other abrasives upon paved roadways due to freezing precipitation that occurs outside the County's usual working hours.
- C. Placing of additional warning or regulatory signs warning of impaired sight distances, visibility at intersections, road blockages, one-lane conditions, or that the road surface is slick or slippery, or what the advised speed should be.

- D. Sanding, salting, or placing abrasives upon any road, except for paved roads. If in the opinion of the County Engineer, or his/her designee, an "emergency" exists, abrasive material may be applied at locations on the gravel system where dangerous conditions from snow or ice that has built up on intersections, or on hills that slope down to another road, or on other hills, curves and stretches of the roads. Abrasive material may be applied at these locations as crew and equipment availability allows, and as a last resort. Abrasive material will also only be placed after other mechanical means have been tried and failed.
- E. Removing of sand, salt, or other abrasives.

**15.06 EMERGENCY CONDITIONS.**

- A. Service, or the level or sequence of service, may be suspended during "Emergency" conditions. An "Emergency" condition shall be considered as one where a loss of life is probable, where a serious injury is imminent, or has occurred, or where extensive loss of property is imminent. The County may respond to all "Emergency" conditions, either during or after an ice or snowstorm. Emergency conditions can also originate or be verified through the 911 dispatcher or Sheriff's Office. Any person who makes a false report of an "Emergency" to an officer, official, or employee of Emmet County or who causes a false report to be so made shall, upon conviction of a simple misdemeanor, be subject to a penalty as outlined in Section 2.01 of this Code of Ordinances.
- B. Service, or the level or sequence of service, shall be further suspended in the event the Governor, by proclamation, implements the State Disaster Plan, or the Chairman of the Board of Supervisors, by proclamation, implements the County Disaster Plan. If such occurs, the County personnel and equipment shall be immediately subject to the direction of the Governor or the Chairperson of the Board of Supervisors.

**Editor's Note: Approved by Ordinance IV-I Effective the 3<sup>rd</sup> day of December, 2002**

## CHAPTER 16 - AREA SERVICE B ROADS

**16.01 PURPOSE.** The purpose of this ordinance is to classify certain roads on the area service system in Emmet County to provide for a reduced level of maintenance.

**16.02 DEFINITIONS.** For use in this ordinance, certain terms or words used herein shall be interpreted or defined as follows:

A. "Area Service System" includes those public roads outside of municipalities not otherwise classified.

1. "Area Service System A" roads shall be maintained in conformance with applicable state statutes.

2. "Area Service System B" roads shall not require standards of maintenance equal to trunk, trunk collector, or area service system A roads. Area Service System B roads shall not mean what is construed in the normal sense as a driveway or a private lane to a farm building or dwelling.

B. "Board" shall mean the Board of Supervisors of Emmet County.

C. "Engineer" shall mean the County Engineer of Emmet County.

**16.03 POWERS OF THE BOARD.** All jurisdiction and control over Area Service System B roads as provided by this ordinance shall rest with the Board of Supervisors of Emmet County.

**16.04 AUTHORITY TO ESTABLISH.** The Board of Supervisors is empowered pursuant to Iowa Code Section 309.57 to classify secondary roads in the Area Service system to provide for a reduced level of maintenance on roads so designated.

**16.05 NOTICE OF HEARING, HEARING, AND RESOLUTION.** On the day fixed for the hearing or any day to which the hearing has been adjourned, upon proof to its satisfaction made by affidavit of due publication and posting of the notice of hearing, the Board shall consider any and all relevant evidence and if the Board finds that the proposed area service system B road is practicable, it may establish it by proper resolution.

Prior to the establishment of an Area Service System B and after consultation with the County Engineer, the Board shall adopt a resolution, which resolution shall describe the roads proposed to be classified in Area Service System B, shall establish the time, date and place of hearing on the resolution, and shall provide that the resolution will not become effective until after such hearing. Publication of notice of such hearing shall comply with Iowa Code Section 331.305. In addition, such resolution may provide for notice of hearing specifically directed to persons who may be directly affected by the proposed classification. At the completion of such hearings and after further consultation

with the County Engineer, the Board may, by motion, declare that the resolution as originally proposed or as amended, is finally adopted.

**16.06 MAINTENANCE POLICY.** Only the minimum effort expense and attention will be provided to keep area service system B roads open to traffic. Bridges may not be maintained to carry legal loads but will be posted as appropriate to advise of any load limitations. For the various maintenance activities, the minimum maintenance on an Area Service Level B roads will be as follows:

- A. Blading - Blading or dragging will not be performed on a regular basis.
- B. Snow and Ice Removal - Snow and ice will not be removed nor will the road surface be sanded or salted.
- C. Signing - Except for load limit, posting for bridges and low water crossing signs, signing will not be continued or provided. However, all Area Service System B roads shall be identified as such with a sign at all points of access to warn the public of the lower level of maintenance.
- D. Weeds, Brush and Trees - Mowing or spraying weeds, cutting brush, and tree removal will not be performed on a routine or regular basis, but may be performed at the discretion of the County Engineer or the Engineer's designee. Adequate sight distances will not be maintained.
- E. Structures - Bridges and culverts may not be maintained to carry legal loads. Upon failure or loss, the replacement structure will be appropriate for the degree and extent of traffic on the structure. Handrails on bridges may not be replaced.
- F. Road Surfacing - There will be no surfacing materials applied to area surface system B roads.
- G. Shoulders - Shoulders will not be maintained.
- H. Crown - A crown will not be maintained.
- I. Repairs - There will be no road repair on a regular basis.
- J. Uniform Width - Uniform width for the traveled portion of the road will not be maintained.
- K. Inspections - Regular inspections will not be conducted.

**16.07 EXEMPTION FROM LIABILITY.** As provided in Iowa Code Section 309.57, Emmet County, its officers, agents and employees are not liable for injury to any person or for damage to any vehicle or equipment which occurs proximately as a result of the maintenance of a road which is classified as Area Service System B, if the road has been maintained as provided in Section 16.06 of this Chapter.

1st reading - April 17, 1985

2nd reading - May 15, 1985

3rd reading - June 5, 1985

Adopted June 5, 1985, EMMET COUNTY ORDINANCE IV-II

## CHAPTER 17 - ROAD CLASSIFICATION/AREA SERVICE SYSTEM C

**17.01 PURPOSE.** The purpose of this Chapter is to classify certain roads on the Area Service System in the county as Area Service C roads so as to provide for a reduced level of maintenance effort and restricted access, pursuant to Iowa Code Section 309.57.

**17.02 DEFINITIONS.** For use in this ordinance, certain terms or words used herein shall be defined as follows:

1. Board: shall mean the Board of Supervisors of Emmet County, Iowa.
2. County: shall mean Emmet County.
3. County Engineer: shall mean the County Engineer of Emmet County.

**17.03 HOW ESTABLISHED.**

1. Resolution: Roads may only be classified as Area Service C by resolution of the Board of Supervisors after consultation with the County Engineer. The resolution shall specify the level of maintenance effort and the persons who will have access rights to the road. The resolution shall allow access to the road only to the owner, lessee, or person in lawful possession of any adjoining land; an agent or employee of the owner, lessee, or person in lawful possession; an agent or employee of any public utility; or any peace officer, magistrate, or public employee whose duty it is to supervise the use or perform maintenance of the road.
2. Notice of Action: The Board shall conduct a hearing prior to acting on a resolution to establish an Area Service C Road. Notice of the hearing, including a description of the proposed action, the location of the prospective area service road, and the time, date, and place of the hearing shall be published as provided in Iowa Code Section 331.305.
3. Board Action: At the hearing, the Board shall receive any oral or written objection to the proposed action. After all objections have been received and considered, the Board, at the hearing or at an adjournment thereof, may take action on the proposal by resolution.

**17.04 ACCESS.** Access to any Area Service C Road shall be restricted by means of a gate or alternative barrier approved by the County Engineer. The County Engineer may, at his or her discretion, bill the owner or owners of the land adjoining the Area Service C Road for the cost of any such gate or alternative barrier, or replacement of such gate or alternative barrier.

**17.05 SIGNS.** The County install and maintain signs conforming to the Iowa State Sign Manual at all access points to Area Service C roads from other public roads, to warn the public of the presence of a section of road which has a lesser level of maintenance effort than other public roads, and to warn the public that access to such road is limited.

- 17.06 TRESPASS.** Entering an Area Service C road without justification after being notified or requested to abstain from entering or to remove or vacate the road by any person lawfully allowed access shall be deemed a trespass as defined in Iowa Code Section 716.7.
- 17.07 RECLASSIFICATION.** A road with an Area Service C classification shall retain such classification until such time as a petition for reclassification is submitted to the Board. The petition shall be signed by one or more adjoining landowners. The Board shall approve or deny the request for reclassification within 60 days of receipt of the petition.
- 17.08 POWERS OF THE BOARD.** All jurisdiction and control over Area Service C roads shall rest with the Board of Supervisors, pursuant to Iowa Code Section 309.67.
- 17.09 EXEMPTION FROM LIABILITY.** As provided in Iowa Code Section 309.57, the County and its officers, agents and employees are not liable for injury to any person or for damage to any vehicle or equipment, or contents of any vehicle or equipment which occurs proximately as a result of the maintenance of a road which is classified as Area Service C, if the road has been maintained to the level of maintenance effort described in the establishing resolution.



## **CHAPTER 18 - UNIFORM RURAL ADDRESS SYSTEM ORDINANCE OF EMMET COUNTY, IOWA**

**18.01 PURPOSE.** This ordinance mandates the establishment and use of a uniform address system for residents of Emmet County in unincorporated areas in order to promote the safety, convenience and general welfare of all residents and public and private service providers. This ordinance also provides for violations and penalties.

**18.02 DEFINITIONS.** For use in this ordinance, the following terms or words shall be interpreted or defined as follows:

1. "Person" shall mean any individual, partnership, firm, corporation, unincorporated association or other entity.
2. "Base Map" shall mean the map used by the County Engineer who coordinates the uniform rural address system in Emmet County.
3. "Engineer" shall mean the Emmet County Engineer.
4. "Zoning Administrator" shall mean the Emmet County Zoning Administrator.

**18.03 ESTABLISHMENT BY RESOLUTION.** The Board shall, by resolution, establish a uniform rural address system as the address system to be used in Emmet County.

**18.04 EXTENT OF SYSTEM.** The uniform address system shall extend over the entire unincorporated area of Emmet County except for those roads utilizing the system of a nearby incorporated area. All such roads will be identified on the base map and shall be subject to the provisions of this ordinance. Emmet County will extend its cooperation to any incorporated area that may desire to use part of the County's uniform rural address system. It will be the incorporated area's responsibility to assign all addresses within their Jurisdiction.

**18.05 INTERSECTION MARKERS.** The Secondary Road Department under the direction of the County Engineer shall be responsible for the installation, maintenance and replacement of the signs which mark the intersections of all public roads within the County. The Secondary Road Department will be reimbursed from Rural Services funds for all labor, equipment and material costs associated with this responsibility.

Intersections between private roads shall be marked, and the markers shall be installed, maintained and replaced by the person who is charged with the responsibility of the road.

All intersection markers shall meet the minimum standards as established by the County Engineer.

**18.06 SUBDIVISIONS.** The official street designations within a new subdivision shall comply with the standard set forth in this ordinance. Any final plat shall show the assigned road name or number prior to recording. Only those names/numbers assigned by the Board of Supervisors are allowed on private road intersections. Any other roadway designations are in violation of this Chapter and shall be removed.

**18.07 LOCATION MARKERS.** Emmet County shall supply a permanent marker displaying the assigned number at the premises for any existing house, business and any location with phone service, at the time of the enactment of this ordinance, provided that the premises can be serviced from any public road. Any existing location marker which is different from the newly assigned number shall be removed at the time the new number is installed.

The provisions of this ordinance are not mandatory for accessory buildings, but the ordinance may be applied to such buildings located on a separate unit of frontage if requested by the owner. The property owner shall purchase such separate building site markers from the County.

**18.08 NEW STRUCTURES.** Every person erecting a building or newly inhabiting or using a house or business after the date of this ordinance shall, within seven (7) days of commencement of construction, habitation or use, notify the Zoning Administrator who shall within fourteen (14) days give the person the number assigned to such structure. The property owner shall purchase the location marker from the County.

**18.09 INSTALLATION, MAINTENANCE AND REPLACEMENT OF LOCATION MARKERS.** The property owner shall install and maintain the location marker and replace it if it is removed or if it becomes illegible or is no longer reflective or color contrasting, whether it be due to damage or ordinary wear and tear. The property owner shall purchase new markers from the County. The location markers shall be installed in an easily visible location on private property off the road right of way, unless permitted by the Jurisdiction which governs the right of way. The property owner may consult with the Engineer about the proper placement of the markers.

**18.10 TENANTS.** If a property owner has leased property to a tenant, the tenant instead of the owner shall be responsible for all provisions concerning location markers. The tenant shall also be subject to the criminal and civil penalties of Section 18.12 for any violation of this ordinance.

**18.11 MAINTENANCE OF UNIFORM RURAL ADDRESS SYSTEM.** The County Engineer shall assign numbers for new addresses, coordinate distribution of markers for new addresses, replace intersection markers as needed, update, correct and verify the accuracy of the Base Map which shall be used in the assignment of addresses, arrange purchases of marker assembly materials and distribute the markers. The Engineer may adopt regulations to ensure the consistent and logical maintenance of the Uniform Rural Address System and to achieve the purpose of this ordinance.

The Zoning Administrator shall inform the dispatcher and post office of newly assigned addresses within seven days of the assignment, receive reports from the Secondary Road Department and the Sheriff concerning maintenance of signs and violations of this ordinance, facilitate the sales of new and replacement location markers, and perform any other duties necessary to insure the continued maintenance of the Uniform Rural Address System of Emmet County.

**18.12 PENALTY.** It is a simple misdemeanor for a person to fail to perform an act required by this ordinance. Whenever there has been a violation of this ordinance, the Zoning Administrator, Sheriff or designee of either shall give notice to the property owner of the violation. The notice shall be by certified mail or by personal service. The notice shall give the property owner ten days to arrange to correct the violation. If the property owner fails to make such arrangements, there shall be an inference that the owner's failure to perform was intentional. Any person who violates any provision of this Ordinance, upon conviction a simple misdemeanor and is subject to a penalty as outlined in Section 2.01 of this Code of Ordinances. In addition, any violation of this ordinance is punishable by a civil penalty as outlined in Section 2.02 of this Code of Ordinances.

**Editor's Note: Passed as Ordinance V-III on March 3, 1993.**

10-3-2023

Repealed &

Replaced with →

**CHAPTER 19 - UTILITIES IN PUBLIC RIGHTS-OF-WAY**

**19.01 PURPOSE.** The purpose of this ordinance is to adopt provisions for the inspection and regulation of utility line installations, including the issuance of permits and the collection of inspection fees, and to provide penalties for the violation of this ordinance in order to protect public safety, health, and welfare.

**19.02 DEFINITIONS.** For use in this ordinance, certain terms and words used herein shall be interpreted or defined as follows:

1. Applicant. Includes a person, persons, company, corporation, or governmental entity desirous of placing a utility line on or under the county's secondary road system.
2. Board of Supervisors. The Emmet County Board of Supervisors.
3. County. Emmet County, Iowa.
4. Utility Line. Refers to a telecommunications, electric, gas, water, or sewer line.

**19.03 POWERS OF THE BOARD OF SUPERVISORS.** An applicant shall not place a utility line on or under the secondary road system without a utility permit issued by Emmet County. An applicant shall not place a utility line on or under the secondary roads system which violates a utility permit issued by Emmet County. All jurisdiction and control over the issuance of a utility permit shall rest with Emmet County.

**19.04 COUNTY ENGINEER TO ADMINISTER.** The County Engineer shall perform the issuance and approval of utility permits. The County Engineer may make rules and regulations, not inconsistent with this ordinance, as are necessary to carry out the administration of this ordinance. The utility permit form, and all amendments thereto, shall be adopted by the Board of Supervisor's resolution.

**19.05 AUTHORITY TO ESTABLISH.** The Board of Supervisors is empowered to establish and require a utility permit under the authority of Iowa Code Chapters 306, 319, 320, 331, 477, 478, 479, 479A, and 480.

**19.06 PENALTY.** Unless another penalty is expressly provided by this Code of Ordinances for any particular provision, section or chapter, any person violating any provision of this Code of Ordinances or any rule or regulation adopted herein by reference shall, upon conviction of a simple misdemeanor be subject to a penalty as outlined in Section 2.01 of this Code of Ordinances.

(Code of Iowa, Sec. 331.302 [2])

**ORDINANCE NO. 2023-2**

**AN ORDINANCE REPEALING AND REPLACING EMMET COUNTY CODE OF ORDINANCES CHAPTER 19, UTILITIES IN PUBLIC RIGHTS-OF-WAY, AND ENACTING A NEW RIGHT-OF-WAY CONTROL ORDINANCE TO REGULATE UTILITY AND OTHER 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 Emmet 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 591 miles of road and highway right-of-way open and intended for vehicular purposes as secondary roads throughout the unincorporated areas of Emmet 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 Emmet County, holds these 591 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) (2023), 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 has also previously enacted Emmet County Code of Ordinances Chapter 19, Utilities in Public Rights-of-Way, which it now intends to repeal and replace with this regulatory Ordinance for the control of its road and highway rights-of-way within the County; and

WHEREAS, the occupancy and use of road and highway rights-of-way open and intended for vehicular, or other purposes, by utilities, private industry, or other third parties may pose risks to the general welfare of citizens either traveling upon the County’s roads and highways or living nearby, or disturb the 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 EMMET COUNTY, IOWA:

**SECTION 1: CHAPTER 19 REPEALED AND REPLACED.** Emmet County Code of Ordinances, Chapter 19, Utilities in Public Rights-of-Way, is hereby amended by repealing and replacing it in its entirety by the passage, adoption, and enactment of this Emmet County Ordinance No. 2023-2.

**SECTION 2: TITLE.** This Ordinance No. 2023-2 shall be entitled “AN ORDINANCE REPEALING AND REPLACING EMMET COUNTY CODE OF ORDINANCES CHAPTER 19, UTILITIES IN PUBLIC RIGHTS-OF-WAY, AND ENACTING A RIGHT-OF-WAY CONTROL ORDINANCE TO REGULATE UTILITY AND OTHER 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 utilities, private industry, or other third parties for

their facilities, or other purposes, as well as for permitting subsequent work on said facilities; and

- C. Allocate and recover costs associated with permitting 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 Emmet County, Iowa, its officers, or a representative person or entity as may be designated to act on its behalf.

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

**ENGINEER:** The Emmet County Engineer, or their 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 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 type of road right-of-way.

**UTILITY:** A 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 consent to and impose conditions upon the placement of 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 those under Iowa Constitution, article III, section 39A, and Iowa Code chapters 306, 318, and 331 (2023).

**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: AUTHORIZATION FOR OCCUPANCY AND USE REQUIRED.

- A. Persons shall first obtain from the County 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.
- B. All persons seeking to place or maintain facilities in the County's road or highway right-of-way for utility, private commercial, agricultural, 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 and any applicable authorization from the Iowa Utilities Board, or other appropriate regulatory authority, and all other necessary authorizations as may be required by law.
- C. 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. The creation of an obstruction in County road and highway right-of-way is prohibited.

**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 Hazardous Liquid Pipeline, an electric transmission line, or another project that may cross one or more 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 may run parallel or longitudinally within the County's road or highway right-of-way interest, the applicant shall obtain a permit for each mile of proposed occupancy and use 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 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. Permit fees; costs.**

- i. **A person applying for a 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. **In addition to the fees set forth in this section, the person shall also pay all costs attributable to administrative and 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.

**D. Application for a permit.**

- i. **A person desiring to obtain a Right-of-Way Occupancy and Use Permit 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

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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 Board. In instances where an applicant must seek a permit from the Iowa Utilities Board, 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 and where applicant is not a public utility.
  - 6. Any applicable approvals, decisions, or permits from the Iowa Utilities Board.
  - 7. Any additional information that the County Engineer in their discretion may require to be made via written request.

E. Issuance 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(E)(ii). 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. The following shall constitute grounds for denying an application for an initial Right-of-Way Occupancy and Use Permit 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 in connection with its 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.
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 for the purposes of Pipeline Construction or maintaining a Hazardous Liquid Pipeline crossing County road or highway right-of-way, a failure of the proposed Hazardous Liquid 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 shall constitute grounds for refusal to issue 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 Hazardous Liquid Pipeline at a terminus in the County.
  - a. All separation requirement distances shall be measured from the centerline of the proposed Hazardous Liquid Pipeline to the portion of the existing use nearest the centerline of the proposed Hazardous Liquid Pipeline. The minimum separation distances for a Hazardous Liquid 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.

- iii. The County Engineer shall provide an applicant notice of their recommendation to deny issuance or 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 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 without undue delay. 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 by regular mail 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 by certified mail, return receipt requested, or by actual service or delivery thereof.
- iv. 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 unless permitted to abandon its facilities in place, 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 may be suspended during the pendency of any court appeal taken by a permittee.
- v. 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 or comply.

- i. Any person who fails to secure 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 without County's consent; change in use of facility without County's consent.

- i. A Right-of-Way Occupancy and Use Permit issued pursuant to this Ordinance shall not be transferred to any other person without prior notification to the Board of Supervisors. A permittee shall notify the Board of Supervisors in writing submitted to the County Engineer at least sixty (60) days prior to the proposed transfer. In such notification, 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.
- 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(E)(ii), 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 occupying or using the County's road or highway right-of-way 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 PERMITS.**

- A. Permit Required. Following approval 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 obtaining 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.

**B. 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.

**C. 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.

**D. 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.

**E. 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.

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. Construction Season.** 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 and with the written consent of the County Engineer.

**B. 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 Board, 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. If construction occurs on an emergency basis, the person shall notify the County Engineer of such work within five (5) 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 under this Ordinance.
- C. 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.
- D. Prevention of Failures and Accidents. An owner, operator, or permittee shall at all times employ at least ordinary care and shall 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.
- E. Inspections. The permittee shall provide full-time inspection services throughout construction upon, across, beneath, or over the road or highway right-of-way. The 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 or permittee's contractor(s).
- F. 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 of Iowa 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.

- G. 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.
- H. Boring Required. Boring shall be required for all pipe installations crossing beneath County road or highway right-of-way. Open-cut installation methods shall be prohibited unless this requirement is expressly waived by the County Engineer. All boring shall meet and comply with standards set by the Iowa Department of Transportation for similar work in rights-of-way under its jurisdiction.
- I. 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. All backfilling shall meet and comply with standards set by the Iowa Department of Transportation for similar work in rights-of-way under its jurisdiction.
- J. Non-conforming Work. The County Engineer may halt construction at any time if inspections reveal the permittee is performing non-conforming work.
- K. Construction Schedule. Every permittee shall, at least forty-five (45) 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. The County Engineer may waive this requirement upon request of the permittee.
- L. 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 therefor has been received from the County.

- M. **Coordination of Construction with Third Parties.** Developers or other parties planning the construction 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.
- N. **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 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.
- E. Minimum bore depth below culvert flow line shall be specified in an applicable Work Permit but shall not be less than sixty inches (60").
- 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 crossing 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 Hazardous Liquid Pipeline at a terminus in the County.
- i. All separation requirement distances shall be measured from the centerline of the proposed Hazardous Liquid Pipeline to the portion of the existing use nearest the centerline of the proposed Hazardous Liquid Pipeline. The minimum separation distances of the Line Location with which a Hazardous Liquid Pipeline must comply when 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. 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.

- I. A permittee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A permittee may not erect or install 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.
- J. The County Engineer may develop and institute a standardized cross-section location protocol for new or reconstructed rights-of-way.
- K. 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.
- L. 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 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(E)(ii) and 10(E)(iii), 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 ten (10) 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 and Work Permit under this Ordinance as

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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 in accordance with those set by separate resolution of the Board of Supervisors, unless the Board of Supervisors approves alternative minimum coverage amounts for good cause shown.

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 the maximum civil penalty permitted under Iowa Code section 331.307. 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 assigns, 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.

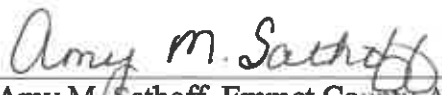
First Reading Passed:	<u>September 19, 2023</u>
Second Reading Passed:	<u>September 26, 2023</u>
Third Reading Passed:	<u>October 3, 2023</u>

Passed and adopted this 3<sup>rd</sup> day of October, 2023.



Todd Glasnapp, Emmet County Board of Supervisors, Chairperson

ATTEST:

  
Amy M. Sathoff, Emmet County Auditor

**AUDITOR'S CERTIFICATE**

I hereby certify that the foregoing Ordinance No. 2023-2 was published as required by law on the 12<sup>th</sup> day of October 2023 in the Estherville News and October 11<sup>th</sup>, 2023, in the Armstrong Journal.

EMMET COUNTY, IOWA,

  
Amy M. Sathoff, County Auditor

Handwritten scribble or signature

## **CHAPTER 20 – VACATION OF CERTAIN ROAD**

### **Vacation of Certain Road Located in Emmet County, Iowa**

An ordinance abandoning and vacating a certain road known AS that portion of 500<sup>th</sup> Avenue being 33 feet each side of the Section line (road and road right-of-way) between 200<sup>th</sup> Street and 220<sup>th</sup> Street located in Sections 2 and 3 of Township 98 North and Sections 34 and 35 of Township 99 North, Range 32, Emmet County, Iowa.

WHEREAS, on the 27th day of August, 2013, pursuant to published notice as required by law, the Emmet County Board of Supervisors has held a public hearing on a proposal to abandon and vacate a certain road which is known as that portion of 500<sup>th</sup> Avenue being 33 feet each side of the Section line (road and road right-of-way) between 200<sup>th</sup> Street and 220<sup>th</sup> Street located in Sections 2 and 3 of Township 98 North and Sections 34 and 35 of Township 99 North, Range 32, Emmet County, Iowa and more specifically described as shown on Exhibit “A”; and

WHEREAS, as said road was created by Easement or Road Record, the underlying fee title remained with the property owner; and

WHEREAS, said road was acquired through Road Record Number 55, Road Record Number 100 and Road Record Number 184; and

WHEREAS, the Board of Supervisors of Emmet County, Iowa has determined that it is in the best interest of the County to abandon and vacate said road.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Emmet County, Iowa as follows:

That certain road known as that portion of 500<sup>th</sup> Avenue being 33 feet each side of the Section line (road and road right-of-way) between 200<sup>th</sup> Street and 220<sup>th</sup> Street located in Sections 2 and 3 of Township 98 North and Sections 34 and 35 of Township 99 North, Range 32, Emmet County, Iowa and more specifically located in:

The East Half of the South Half of Section 3, Township 98 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa.

The Northeast Quarter of Section 3, Township 98 North of Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa

The East Half of the Northeast Quarter and the East Half of the Southeast Quarter of Section 34, Township 99 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa

The Northwest Quarter of Section 35, Township 99 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa. Except a tract described as: Commencing at the Northwest corner of Section 35, thence 470 feet East along the North line of said Section 35, thence South parallel with the West line of said Section 35, 765 feet; thence West parallel with the North line of said Section 35, 470

feet; thence North along the West line of said Section 35, 765 feet to the point of beginning.

Commencing at the Northwest corner of Section 35, Township 99 North, Range 32, West of the 5<sup>th</sup> P.M., thence 470 feet East along the North line of said Section 35, thence South parallel with the West line of said Section 35, 765 feet; thence West parallel with the North line of said Section 35, 470 feet; thence North along the West line of said Section 35, 765 feet to the point of beginning.

The Southwest Quarter of Section 35, Township 99 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa

The Northwest Fractional Quarter of Section 2, Township 98 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa, containing 157 acres more or less.

The Southwest Quarter of Section 2, Township 98 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa, subject to public highways. Except for that portion of 500<sup>th</sup> Avenue where it intersects with 200<sup>th</sup> Street, 210<sup>th</sup> Street and 220<sup>th</sup> Street, which streets are not vacated and continue as Emmet County right of way.

SECTION 1. The Board of Supervisors of Emmet County, Iowa, hereby vacates that certain road known as that portion of 500<sup>th</sup> Avenue being 33 feet each side of the Section line (road and road right-of-way) between 200<sup>th</sup> Street and 220<sup>th</sup> Street located in Sections 2 and 3 of Township 98 North and Sections 34 and 35 of Township 99 North, Range 32, Emmet County, Iowa and more specifically located in:

The East Half of the South Half of Section 3, Township 98 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa.

Now owned by: Donald E. Halseth, an und. 50%; David Halseth and Nancy Halseth, Trustees under the Halseth Family Trust Dated July 27, 2005, an und. 50%

The Northeast Quarter of Section 3, Township 98 North of Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa

The East Half of the Northeast Quarter and the East Half of the Southeast Quarter of Section 34, Township 99 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa

Now owned by: Dale C. Opheim

The Northwest Quarter of Section 35, Township 99 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa. Except a tract described as: Commencing at the Northwest corner of Section 35, thence 470 feet East along the North line of said Section 35, thence South parallel with the West line of said Section 35, 765 feet; thence West parallel with the North line of said Section 35, 470 feet; thence North along the West line of said Section 35, 765 feet to the point of beginning.



Now owned by: Carol M. Berven, a single person

Commencing at the Northwest corner of Section 35, Township 99 North, Range 32, West of the 5<sup>th</sup> P.M., thence 470 feet East along the North line of said Section 35, thence South parallel with the West line of said Section 35, 765 feet; thence West parallel with the North line of said Section 35, 470 feet; thence North along the West line of said Section 35, 765 feet to the point of beginning.

Now owned by: David C. Berven and Lecia G. Berven, husband and wife as Joint Tenants

The Southwest Quarter of Section 35, Township 99 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa

Now owned by: The Glen E. Olson Revocable Trust dated the 26<sup>th</sup> day of April, 2002

The Northwest Fractional Quarter of Section 2, Township 98 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa, containing 157 acres more or less

Now owned by: Undivided 50% interest in: The Glen E. Olson Revocable Trust dated the 26<sup>th</sup> day of April 2002; and an undivided 50% interest in: The Twila J. Olson Revocable Trust dated the 26<sup>th</sup> day of April, 2002

The Southwest Quarter of Section 2, Township 98 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa, subject to public highways.

Now owned by: Undivided 50% interest in: The Glen E. Olson Revocable Trust dated the 26<sup>th</sup> day of April 2002; and an undivided 50% interest in: The Twila J. Olson Revocable Trust dated the 26<sup>th</sup> day of April, 2002

Except for that portion of 500<sup>th</sup> Avenue where it intersects with 200<sup>th</sup> Street, 210<sup>th</sup> Street and 20<sup>th</sup> Street, which streets are not vacated and continue as Emmet County right of way.

SECTION 2: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall be in effect upon its passage, approval and publication as provided by law.

PASSED and approved this 17th day of September, 2013.

PUBLISHED IN: Estherville News on August 10, 2013	1 <sup>ST</sup> Con: August 27, 2013
PUBLISHED IN: Armstrong Journal on August 14, 2013	2 <sup>ND</sup> Con: September 10, 2013
PUBLISHED IN: Ringsted Dispatch on August 14, 2013	3 <sup>RD</sup> Con: September 17, 2013

EXHIBIT "A"

That certain road known as that portion of 500<sup>th</sup> Avenue being 33 feet each side of the Section line (road and road right-of-way) between 200<sup>th</sup> Street and 220<sup>th</sup> Street located in Sections 2 and 3 of Township 98 North and Sections 34 and 35 of Township 99 North, Range 32, Emmet County, Iowa

More specifically located in:

The East Half of the South Half of Section 3, Township 98 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa.

The Northeast Quarter of Section 3, Township 98 North of Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa

The East Half of the Northeast Quarter and the East Half of the Southeast Quarter of Section 34, Township 99 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa

The Northwest Quarter of Section 35, Township 99 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa. Except a tract described as: Commencing at the Northwest corner of Section 35, thence 470 feet East along the North line of said Section 35, thence South parallel with the West line of said Section 35, 765 feet; thence West parallel with the North line of said Section 35, 470 feet; thence North along the West line of said Section 35, 765 feet to the point of beginning.

Commencing at the Northwest corner of Section 35, Township 99 North, Range 32, West of the 5<sup>th</sup> P.M., thence 470 feet East along the North line of said Section 35, thence South parallel with the West line of said Section 35, 765 feet; thence West parallel with the North line of said Section 35, 470 feet; thence North along the West line of said Section 35, 765 feet to the point of beginning.

The Southwest Quarter of Section 35, Township 99 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa.

The Northwest Fractional Quarter of Section 2, Township 98 North, Range 32, West of the 5<sup>th</sup> P.M., Emmet County, Iowa, containing 157 acres more or less

The Southwest Quarter of Section 2, Township 98 North, Range 32 West of the 5<sup>th</sup> P.M., Emmet County, Iowa, subject to public highways.

Except for that portion of 500<sup>th</sup> Avenue where it intersects with 200<sup>th</sup> Street, 210<sup>th</sup> Street and 220<sup>th</sup> Street, which streets are not vacated and continue as Emmet County right of way.

**Editor's Note: Passed as Ordinance No. IV-V**

[Next Chapter is Chapter 27, Page 76]

**TITLE III – COMMUNITY SERVICES**

**CHAPTER 27 – Reserved for Future Use**

[Next Chapter is 32, Page 102]

**TITLE IV – PUBLIC ORDER AND SAFETY**

## CHAPTER 32 – HAZARDOUS SUBSTANCES

**32.01 SCOPE AND PURPOSE.** In order to reduce the danger to public health, safety and welfare from the spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills within the county limits, and provide criminal penalties for certain violations.

**32.02 DEFINITIONS.** For the purpose Of this ordinance these words have the following meanings:

1. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.  
(Code of Iowa, Sec. 455B.381 (1))
2. "Hazardous Condition" means the same as set out in Section 455B.381, subsection 4, Code of Iowa.
3. "Hazardous Substance" means any substance as defined in Section 455B.381, subsection 5, Code of Iowa.
4. "Hazardous Waste" means those wastes which are included by the definition in Section 455B.411, subsection 3, and paragraph (a), Code of Iowa.
5. "Person having control over a hazardous substance or hazardous waste" means any person, corporation, partnership, firm, associate, cooperative or government agency or any kind, who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous waste, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance or hazardous waste when a hazardous condition occurs, whether the persons owns the hazardous substance or hazardous waste, or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or hazardous waste.
6. "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste or substance so as to neutralize it or to render the substance nonhazardous, safer for transport, amenable for recover, amenable for storage, or to reduce it in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste or substance to render it nonhazardous.
7. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, cleanup, treat, disperse, remove, or dispose of a hazardous substance or hazardous waste.

**32.03 CLEANUP REQUIRED.** Whenever a hazardous condition is created by the deposit, injection, dumping, spilling, leaking or placing of a hazardous waste or substance, so that the hazardous waste or substance or constituent of the hazardous waste or substance may enter the environment or be emitted into the air, or discharged into any waters, including ground waters, the person having control over the hazardous substance or hazardous waste shall cause the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition.

If that person does not cause the clean up to begin in a reasonable time in relation to the hazard and circumstances of the incident, the County may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition, said notice setting a deadline for accomplishing the cleanup, and stating that the County will proceed to procure clean up service, and bill the person having control over a hazardous substance or hazardous waste.

The County or an authorized officer of authorized agency shall direct the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition. The costs of cleanup shall be borne by the responsible person. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the County may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition. Said notice setting a deadline for accomplishing to procure cleanup services and bill the responsible person for all personal equipment and disposal costs associated with the cleanup.

If the bill for those services is not paid within thirty (30) days of billing, the County may authorize the County Attorney to proceed to obtain payment by all legal means. If the cost of the cleanup is beyond the capacity of the County to finance, the authorized officer shall report through the County Auditor or to the Board of Supervisors and may seek any state or Federal funds available for said cleanup or treatment. The Board of Supervisors may at any time authorize the County Attorney to seek injunctive relief concerning the hazardous conditions from a Court or agency.

**32.04 LIABILITY FOR CLEANUP COSTS.** The person having control over a hazardous substance or hazardous waste shall be strictly liable to the County for all of the following.

1. The reasonable cleanup costs incurred by the County as a result of the failure of the person having control over a hazardous substance or hazardous waste, to clean up pursuant to this Ordinance or any State or Federal law or regulation, the hazardous substance or hazardous waste involved in the hazardous condition.
2. The reasonable costs incurred by the County to evacuate people from the area threatened by the hazardous substance or hazardous waste involved in the hazardous condition.
3. The reasonable damages to the County for the injury to, destruction of, or loss of, any

and all County property, including parks and roads, caused by the hazardous substance or hazardous waste involved in a hazardous condition.

4. All other reasonable costs or damages incurred by the County caused by the hazardous substance or hazardous waste involved in a hazardous condition or the cleanup of it.

All persons having control over a hazardous substance or hazardous waste shall be jointly and severally liable under this Ordinance.

#### **32.04 NOTIFICATIONS.**

1. A person having control over a hazardous substance or hazardous waste shall notify the Emmet County Emergency Management Coordinator and the Emmet County Sheriff of the occurrence of a hazardous condition as soon as possible, but no later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The Emmet County Emergency Management Coordinator shall notify the proper State Office in the manner established by the State of Iowa.
2. Any County employee or any member of a law enforcement agency who discovers a hazardous condition shall notify the Emmet County Emergency Management Coordinator and the Emmet County Sheriff. The Emmet County Emergency Management Coordinator shall notify the appropriate County Departments and the proper State Office in the manner established by the State.

**32.05 POLICE AUTHORITY.** If the circumstances reasonably so require, the Emmet County Sheriff or the Emmet County Emergency Management Coordinator, or any other peace officer or law enforcement officer may:

1. Order the evacuation of persons from their homes to areas away from the site of the hazardous condition.
2. Order the establishment of perimeters or other boundaries at or near the site of a hazardous condition, and limit access to cleanup personnel.
3. Issue any other reasonable order to ensure the safety of persons or property or the containment of the hazardous condition.

No person shall disobey a lawful oral or written order issued under this section by the Emmet County Emergency Management Coordinator, Emmet County Sheriff, or any other peace officer or law enforcement officer issued under this section.

**32.06 PENALTY.** Any person, corporation, partnership, firm, associate, cooperative, or government agency of any kind, who violates the provisions of this Ordinance upon conviction of a simple misdemeanor be subject to a penalty as outlined in Section 2.01 of this Code of Ordinances.



**32.07 ONGOING OFFENSES.** Any person who violates this ordinance shall be deemed to have committed a separate violation of this ordinance for each twenty-four (24) hour period thereafter during which said violation continues and shall be subject to like penalties provided under this ordinance. At the discretion of the County attorney, any violation of the provisions of this ordinance may be pursued as a county infraction.

**32.08 ALTERNATIVE RELIEF.** Seeking a criminal penalty as authorized in this ordinance does not preclude the County from seeking alternative relief from the Court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief.

**32.09 LIABILITY.** The County shall not be liable to any person for claims of damages, injuries or losses resulting from any hazardous condition, except if the County is the person having control over a hazardous substance or hazardous waste.

**Editor's Note: Ordinance No. V-VI was passed and approved by the Board of Supervisors on January 25, 1989.**

Dated this 25th day of January, 1989.

1st and 2nd reading waived January 25, 1989.

3rd reading January 25, 1989.

Publication date March 1, 1989.

## **CHAPTER 33 – UNLAWFUL POSSESSION OF DRUG PARAPHERNALIA**

**33.01 UNLAWFUL POSSESSION OF DRUG PARAPHERNALIA.** No person shall use or possess with the intent to use drug paraphernalia as defined in Chapter 33.02, to plant, cultivate, grow or harvest, manufacture convert, produce, process or prepare; test, analyze, package, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce to the human body a substance in violation of Uniform Control Substance Acts as codified in Iowa Code Section 124.

**33.02 MANUFACTURE, DELIVERY OR OFFERING FOR SALE OF DRUG PARAPHERNALIA.** It is unlawful for any person to deliver, possess with the intent to deliver, manufacture with intent to deliver, or offer for sale drug paraphernalia, intending that the drug paraphernalia will be used, or knowing or having reasonable cause to believe that it will be used, or knowing that it is designed for use to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of Iowa Code Chapter 124.

**33.03 DEFINITIONS.** Where words or phrases used in this Section are defined by state law, such definitions shall apply to their use in this Chapter and are adopted by reference. These terms so adopted that need further definition and other words used herein, shall have the following meanings.

1. The term "controlled substance" as used in this ordinance shall be defined as the term controlled substance as it now exists or is hereinafter amended as set forth in Chapter 124 of the Iowa Code.
2. The term "drug paraphernalia" as used in this ordinance shall mean all equipment, products and materials of any kind which are used or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substance Act, Chapter 124 of the Code of Iowa. This includes, but is not limited to:
  - A. Kits used and intended for use or designed for planting, growing, harvesting, or packaging any species of plant which is a controlled substance from which a controlled substance be derived.
  - B. Kits used or intended or designed for the use in the manufacturing, compounding, converting, processing, preparing or packaging of a controlled substance.
  - C. Isomerization devices used or intended for use or designed for use in

increasing the potency of any species of plant which is or may be used as a controlled substance or any equipment used in the testing or intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of a controlled substance including scales and balances used or intended for use or designed for use in weighing or measuring controlled substances.

- D. Separation gins or sifters used or intended for use in separating twigs and seeds from or cleaning of refined marijuana or bowls, blenders or containers, spoons or mixing devices intended for use or designed for use in compounding any controlled substances.
- E. Diluents and adulterants such as quinine hydrochloride, mannitol, mannite, dextrose or lactose or other chemicals used or intended for use or designed for the use in cutting or dilution of a controlled substance.
- F. Containers or other objects used or intended for use or designed to use in the storing and concealing of controlled substances including capsules, balloons. Envelopes or other containers intended for or designed for the use in packaging small quantities of controlled substance.
- G. Hypodermic syringes, needles and other objects intended for or designed primarily for injecting controlled substances into the human body or any other object used or intended for use designed for ingesting, inhaling or otherwise introducing heroin, marijuana, cocaine, hashish or hashish oil or any other controlled substance into the human body such as:
  - 1. Metal, wooden, acrylic, glass, plastic, paper, or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls or similar items homemade or manufactured, or straws or razor blades;
  - 2. Water pipes, chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bongs, ice pipes or chillers, or similar homemade manufactured devices;
  - 3. Carburetor tubes, devices, and masks, primarily used for smoking or inhaling burning materials or concentrating vapors or chemicals to be inhaled or ingested;
  - 4. Roach clips, main objects or devices used to hold or altered to hold burning material such as marijuana cigarettes.
  - 5. Miniature or cocaine spoons, cocaine vials, or any other spoons or vials altered or adapted for use of storage or ingesting controlled substances.

**33.04 DETERMINING FACTORS.** In determining whether an object is drug paraphernalia for the purpose of enforcing this ordinance the following factors should be considered in addition to all other locally relevant factors:

- A. **Statements.** Statements made by the owner or by anyone in control of the object concerning its use or any instructions, oral or written, provided with the object concerning its use.
- B. **Proximity to the Violation.** The proximity of the object to controlled substances.
- C. **Residue.** The presence of any residue of controlled substances on the object.
- D. **Prior Convictions.** Prior convictions, if any, of the owner, or anyone in control of such object, under a state or federal law relating to controlled substances.
- E. **Evidence of Intent.** Direct or circumstantial evidence of the intent of any owner or of anyone in control of the object to deliver it to persons whom he knows or should reasonably intend to use such and object to facilitate a violation of Chapter 124 of the Code of Iowa.
- F. **The proximity of the object in time and space to a direct violation of the Uniform Controlled Substances Act, Chapter 124 of the Iowa Code.**
- G. **Innocence of an Owner.** The innocence of an owner, or of anyone in control of the object, of a direct violation of Chapter 124 of the Iowa Code shall not by itself preclude a finding that the object is intended for use, or designed for use as drug paraphernalia.
- H. **Instructions.** Instructions, oral or written, provided with the object concerning its use.
- I. **Descriptive Materials.** Descriptive materials accompanying the object which explain or depict its use.
- J. **Advertising.** National and local advertising concerning its use of the object.
- K. **Displayed.** The manner in which the object is displayed for sale.
- L. **Licensed Distributor or Dealer.** Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
- M. **Sales Ratios.** Direct or circumstantial evidence of ratio of sales of the object(s) to the total sales of the business enterprise.

- N. Legitimate Uses. The existence and scope of legitimate uses for the object in the community.
- O. Expert Testimony. Expert testimony concerning use of the object.
- P. Each item so identified may be deemed a separate violation of purposes of enforcement of this Chapter.

**33.05 LEGISLATIVE INTENT.** It is the purpose and intent of the Board of Supervisors to promote the health, safety, and morals of the citizens of Emmet County, Iowa. The use or administration of controlled substances is clearly illegal. The banning of all objects is closely associated with and adopted for the use of controlled substances is desirable because of the lack of social or practical purposes of such objects or paraphernalia, whether the use be by adults or minors. It is also the strong public policy of Emmet County to protect children from unsupervised exposure to and familiarity with drug paraphernalia. In addition to education about such items in school and at home, it is also essential to discourage open use, possession, manufacture, and commerce in these drug related items.

**33.06 PENALTIES.** Any person, firm or corporation violating any provision, section, or paragraph of this Chapter shall, upon conviction of a simple misdemeanor be subject to a penalty as outlined in Section 2.01 of this Code of Ordinances. Each day a violation occurs shall constitute a separate offense.

**33.07 NUISANCE.** In addition to the above, or in lieu thereof, violation of this Chapter shall constitute a nuisance which may be abated in the manner provided in Iowa Code Section 331.384 or by injunction in the Iowa District Court.

## **CHAPTER 34 - SMOKING IN COUNTY OWNED OR LEASED BUILDINGS AND VEHICLES**

### **34.01 DEFINITIONS.**

1. "Smoking" means the carrying of or control over a lighted cigar, cigarette, pipe or other lighted smoking equipment.
2. "County owned or leased building or vehicle" means any and all structures, buildings owned, used or occupied by Emmet County, Iowa, any of its agencies, offices and any vehicle owned or leased by Emmet County, Iowa, and any of its agencies or offices. This definition does not include those areas where Emmet County would be prohibited by state or federal law from imposing smoking restrictions.

**34.02 SMOKING PROHIBITION.** No person shall smoke in any County owned or leased building or vehicle at any time.

**34.03 SIGNING.** All County owned or leased buildings and vehicles shall be signed to advise employees and members of the general public that the area is one in which smoking is prohibited.

**34.04 EXCEPTIONS.** An exemption is made for individuals who reside on County owned or leased property. The agency, authority or person in charge of this property may designate an area or areas approved for smoking. This exception applies only to residence and not to the facility staff or county employees. Additionally, this exemption does not apply to prisoners at the Emmet County Correctional Center.

**34.05** Pursuant to Sections 331.307, 142D.9, and 805.8C(3), Code of Iowa, person who smokes in an area prohibited by this Chapter shall pay a civil fine in the amount of one hundred dollars (\$100) for the first offense, two hundred dollars(\$200) for the second offense, and five hundred dollars (\$500) for each additional violation in excess of the second violation within one year. The civil penalty paid pursuant to this Ordinance, shall be deposited in the County General Fund.

**34.06 EFFECTIVE DATE.** This Chapter shall become effective upon passage at two (2) meetings (unless waived) and publication in accordance with the requirements of Section 331.302, Code of Iowa.

**34.07** All applicable provisions of the applicable sections of Iowa Code 331.307, 142D.9, and 805.8C (3) are adopted by reference.

## **CHAPTER 35 – ESTABLISHING SPEED LIMITS**

**35.01 Purpose.** The Board of Supervisors is empowered under authority of Sections 321.255 and 321.285 of the Code of Iowa, to determine, upon the basis of an engineering and traffic investigation, that the speed limit of any secondary road is greater than is reasonable and proper under the conditions existing, and may determine and declare a reasonable and proper speed limit. Such an investigation has been completed by the County Engineer's Office.

**35.02 SPEED LIMITS.** Speed limits are established and appropriate signs shall be erected at the locations described as follows:

**A. Twenty (20 mph).**

1. Twenty miles per hour (20 mph) speed zone for eastbound traffic on Iowa County secondary road West 14th Avenue North from a point approximately 920 feet east of the northwest corner of Section 10, T 100N, R34W, (Estherville Township), Emmet County, Iowa, and thence terminating at its intersection with Estherville City street West North Second Street.

**B. Twenty-Five (25 mph).**

1. 385th Avenue from Estherville's north City Limits to 150th Street 25 miles per hour on 385th Avenue from the north Estherville City Limits northerly approximately 2,300 feet to a point 400 feet north of the north quarter-corner of Section 2, Township 99 North, Range 34 West of the Fifth P.M. (Estherville Township), Emmet County, Iowa, and thence terminating.
2. 108th Street through Huntington from 400th Avenue east to Hwy 4 25 miles per hour on 108th Street from a point approximately 150 feet east of the intersection of 400th Avenue and 108th Street to a point at the intersection of 108th Street and Highway 4, and thence terminating, all within Section 7, Township 100 North, Range 34 West of the Fifth P.M. (Emmet Township), Emmet County Iowa.

**C. Thirty-Five (35 mph).**

1. Thirty-five miles per hour (35 mph) speed zone on Iowa County Highway P12 from the north Armstrong City Limits also referred to as the SE corner of Section 10, Township 99 North, Range 31 West of the Fifth P.M. (Armstrong Grove Township), Emmet County, Iowa, and thence terminating at a point on P12 one thousand feet (1000') north of the Armstrong City

EMMET COUNTY, ILLINOIS



**CHAPTER 36**  
**ORDINANCE NO. 2023-3**

**AN ORDINANCE REGULATING EXCAVATIONS AND OTHER SOIL DISTURBING ACTIVITIES IN EMMET COUNTY, IOWA, FOR THE PURPOSE OF PREVENTING OR MINIMIZING THE DISTURBANCE AND TRANSPORT OF SEDIMENT INTO DRAINAGE DISTRICTS AND DRAINAGE DISTRICT INFRASTRUCTURE**

WHEREAS, Emmet County (“the County”) has certain distinctive or uncommon soil types that are uniquely suited to cultivation and production of agricultural activities but which often require draining, tiling, or other similar infrastructure to achieve and maintain the soil’s productivity and usefulness; and

WHEREAS, such draining, tiling, and other similar infrastructure is constructed and maintained at great expense to the County and its landowners and is deserving of preservation and protection from damage or disturbance; and

WHEREAS, in accordance with the home rule powers granted to the County by Iowa Const. Art. III, § 39A, the County may by ordinance lawfully regulate and restrict excavations and other soil disturbing activities in order to minimize the disturbance, erosion, and transport of sediment into Drainage Districts and Drainage District Infrastructure; and

WHEREAS, the County intends to protect, maintain, and enhance the public health, safety, and welfare by protecting water quality, preventing erosion, preserving soil health, increasing agricultural productivity, and maintaining the integrity of drainage systems within its jurisdiction; and

WHEREAS, the County intends to establish a process for permitting Excavation or Soil Disturbing Activities in Emmet County for the purpose of preventing or minimizing the disturbance, erosion, and transport of Sediment into Drainage Districts and Drainage District Infrastructure located within Emmet County and governed by Iowa Code chapter 468.

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

**SECTION 1: TITLE.** This Ordinance No. 2023-3 shall be entitled “AN ORDINANCE REGULATING EXCAVATIONS AND OTHER SOIL DISTURBING ACTIVITIES TO PREVENT OR MINIMIZE THE DISTURBANCE AND TRANSPORT OF SEDIMENT INTO DRAINAGE DISTRICTS AND DRAINAGE DISTRICT INFRASTRUCTURE.”

**SECTION 2: DEFINITIONS.** For the purposes of this Ordinance the following terms shall have the meanings given herein, unless otherwise expressly stated.

- a) "Applicant" means the person or entity requesting a permit to engage in excavations and other soil disturbing activity under this Ordinance.
- b) "Application" means an application for a Permit for Excavation or Other Soil Disturbing Activity.
- c) "Board" means the Board of Supervisors of Emmet County, Iowa.
- d) "County" means Emmet County, Iowa.
- e) "County Engineer" means the County Engineer of Emmet County, or its designee.
- f) "Drainage District" means any drainage district, levee district, multi-county drainage district, or multi-county levee district created under Iowa Code chapter 468, and located within the County.
- g) "Drainage District Infrastructure" means improvements and infrastructure owned, controlled, or associated with drainage districts, levee districts, multi-county drainage districts, and multi-county levee districts including but not limited to underground tiles, open ditches, pumping stations, levees, and related facilities.
- h) "Excavation" or "Soil Disturbing Activity" means an activity or use of land, other than cultivation or ordinary agricultural activity, that has a significant likelihood of disturbing Sediment and causing its transport into a Drainage District or Drainage District Infrastructure. Common activities contemplated under this definition include, but are not limited to, grading, excavation, compaction of the soil, or the creation of fills and embankments to prepare a site for the construction or perform construction. Such disturbance or transport of Sediment may cause a slowing of or blockage to the outlet of the Drainage District, or other damage or disruption to a Drainage District or Drainage District Infrastructure. The transport of Sediment resulting from Excavation or Soil Disturbing Activity includes transportation or relocation of Sediment by private tile, runoff, lakes, rivers or natural streams that drain into the Drainage District or Drainage District Infrastructure.
- i) "Permit" means written authorization by the Board granting permission to engage in Excavation or Soil Disturbing Activity.
- j) "Sediment" means silt, soil, or any type of debris derived from soil erosion, construction activities, or other land disturbance that can be transported by water.

### SECTION 3: APPLICABILITY AND REQUIREMENT OF EXCAVATION OR SOIL DISTURBING ACTIVITY PERMIT

- a) The permit requirement pursuant to this Ordinance shall apply to all persons or entities engaging in any Excavation or Soil Disturbing Activity within the Drainage District. However, notwithstanding the foregoing, the permit requirement pursuant to this

Ordinance shall not apply to Excavation or Soil Disturbing Activity by the Drainage District or land owners within the Drainage District.

- b) No person or entity shall engage in any Excavation or Soil Disturbing Activity without obtaining a Permit from the Board. An Application for a Permit shall be filed with the County Engineer at least 30 days in advance of conducting the Excavation or Soil Disturbing Activity.
- c) The Permit application shall include the following information:
  - 1. Project Details:
    - i. Location of the Excavation or Soil Disturbing Activity
    - ii. Purpose and Scope of the Excavation or Soil Disturbing Activity
    - iii. Duration of the Excavation or Soil Disturbing Activity
    - iv. Estimated total area of land to be disturbed
  - 2. Site Plans and Maps
    - i. Detailed site plan or map showing the project area and its surroundings
    - ii. Existing natural or artificial drainage features, including streams, rivers, ditches and drainage tiles
    - iii. Location of any Drainage Districts or Drainage District Infrastructure that would be impacted by the Excavation or Soil Disturbing Activity
  - 3. Erosion and Sediment Control Measures
    - i. Description of erosion and sediment control measures to be implemented in preparation for, during, and after the Excavation or Soil Disturbing Activity
      - A) Any temporary and permanent erosion control practices, such as sediment barriers, silt fences, sediment basins, or sediment traps
      - B) Proposed stabilization measures for disturbed areas, including seeding, mulching, or other appropriate methods
  - 4. Additional information
    - i. Any additional information as the Board or County Engineer may deem necessary for the purposes of this Ordinance.

#### SECTION 4: FEES

Any Applicant seeking a Permit under this Ordinance shall pay a fee set by resolution after final reading. Such fee shall be due and paid at the time the Applicant submits their Application and prior to any review or consideration of the Application by the Board, the County Engineer, or other County personnel.

## SECTION 5: WAIVER

- a) In response to a request, the Board may grant a waiver from the Permit requirement, in whole or in part, as applied to the specific circumstances giving rise to such waiver request, if the Board concludes the following:
  - 1. The proposed Excavation or Soil Disturbance Activity would not pose a substantial risk to any Drainage District or Drainage District Infrastructure, if the Board approved the request to waive regulations or requirements of this Ordinance;
  - 2. Application of the regulations in this Ordinance would pose an undue hardship on the person for whom the waiver is requested;
  - 3. The waiver would not prejudice the substantial legal rights of any person;
  - 4. The provisions of the Ordinance subject to a waiver request are not specifically mandated by statute or another provision of law; and
  - 5. 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 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 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 may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the Ordinance. The Board may at any time cancel or modify the terms of a waiver after providing appropriate notice and opportunity for hearing.

## SECTION 6: INSPECTIONS AND ENFORCEMENT

- a) The Board, or its authorized representatives, shall have the authority to conduct inspections to verify compliance with this Ordinance.
- b) A violation of this Ordinance is a county infraction punishable by a civil penalty. A violation of this Ordinance may also result in further enforcement action, including but not limited to, revocation of Excavation or Soil Disturbing Activity Permits, fines for cost of repair, or other legal action as deemed appropriate by the Board.

**SECTION 7: SEVERABILITY AND REPEAL**

- a) If any provision of this Ordinance or its application to any person is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.
- b) All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 8: EFFECTIVE DATE**

This Ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading Passed: November 21, 2023

Second Reading Passed: Waived

Third Reading Passed: Waived

Passed and adopted this 21<sup>st</sup> day of November, 2023.



\_\_\_\_\_  
Todd Glasnapp, Chairperson

ATTEST:



\_\_\_\_\_  
Heidi Goebel, County Auditor

**AUDITOR'S CERTIFICATE**

I hereby certify that the foregoing Ordinance No. 2023-3 was published as required by law on the 7<sup>th</sup> day of December 2023 in the Estherville News and the 6<sup>th</sup> day of December 2023 in the Armstrong Journal.

EMMET COUNTY, IOWA,



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Heidi Goebel, County Auditor



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**TITLE V- TAXES**

## CHAPTER 45 – LOCAL OPTION SALES AND SERVICE TAX ORDINANCE

**45.01 LOCAL OPTION SALES AND SERVICES TAX.** There is imposed a local option sales and services tax applicable to transactions within Emmet County, Iowa.

The rate of the tax shall be one (1) percent upon the gross receipts taxed under Chapter 422, Division IV, of the Iowa Code in Emmet County.

The local sales and services tax is imposed on transactions occurring on or after July 1, 1999 in all of Emmet County. The tax shall be collected by all persons required to collect state gross receipts taxes. However, the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in Chapter 324 of the Iowa Code, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under Chapter 422A of the Iowa Code during the period the hotel and motel tax is imposed, on the gross receipts from the sale of natural gas or electric energy in a city or county where the gross receipts are subject to a franchise fee or user fee during the period the franchise or user fee is imposed, on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to Chapter 99E of the Iowa Code, and on the sale or rental of tangible personal property described in section 422.45, subsections 26 & 27 of the Iowa Code.

All applicable provisions of the appropriate sections of Chapter 422, Division IV, of the Iowa Code are adopted by reference.

Effective Date. This ordinance shall be in effect after its final passage, approval and publication as provided by law.

First Reading April 20, 1999

Second Reading April 27, 1999

Third Reading May 4, 1999

Passed by the Board of Supervisors on this 4th day of May, 1999 as Ordinance No. II-II.



**CHAPTER 46 - ORDINANCE ESTABLISHING A LOCAL OPTION SALES AND SERVICES TAX APPLICABLE TO TRANSACTIONS WITHIN THE INCORPORATED AREAS OF ESTHERVILLE, DOLLIVER, GRUVER, AND WALLINGFORD AND ALL THE UNINCORPORATED AREAS OF EMMET COUNTY, IOWA EMMET COUNTY ORDINANCE**

Be it enacted by the Board of Supervisors of Emmet County, Iowa:

**46.01 LOCAL OPTION SALES AND SERVICES TAX.** There is imposed a local option sales and services tax applicable to transactions within the incorporated areas of Estherville, Dolliver, Gruver, and Wallingford and all the unincorporated areas of Emmet County, Iowa.

The rate of the tax shall be one percent (1%) upon the gross receipts taxed under Iowa Code Chapter 423, subchapter II, within the incorporated areas of Estherville, Dolliver, Gruver, and Wallingford, and all the unincorporated areas of Emmet County, Iowa. However, the tax shall not be imposed on the sales or purchase price of transactions exempted from the tax by Iowa Code Section 423B.5

The local option sales and services tax is imposed on transactions occurring on or after January 1, 2009, within the incorporated areas of Estherville, Dolliver, Gruver, and Wallingford, and all the unincorporated areas of Emmet County, Iowa. All persons required to collect State gross receipts taxes shall collect the local option sales and services tax.

All applicable provisions of the appropriate sections of Iowa Code Chapter 423B are adopted herein by reference.

**46.02 REPEAL OF THIS ORDINANCE.** The tax imposed herein shall be effective until repealed pursuant to the provisions of Iowa Code Section 423B.6.

First Reading: 12-02-08  
Second Reading: 12-09-08  
Third Reading: Waived  
Adopted: 12-09-08

**Passed as Ordinance II-IV on December 09, 2008**

**CHAPTER 47 - AN ORDINANCE RELATING TO SPECIAL PROPERTY TAXATION FOR WIND ENERGY CONVERSION PROPERTY**

**47.01 PURPOSE.** The purpose of this Ordinance is to provide special property assessment and taxation for wind energy conversion property as set forth in Iowa Code Section 427B.26 in lieu of the valuation and assessment provisions in Iowa Code Sections 441.21(8) and 428.24 through 428.29 for property which is first assessed for property taxation on or after the effective date of this ordinance.

**47.02 DEFINITIONS.** For purposes of this Ordinance, the following terms shall have the following definitions:

- (a) Net acquisition cost means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.
- (b) Wind energy conversion property means the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.

**47.03 SPECIAL ASSESSMENT PROVISIONS.** Wind Energy Conversion Property first assessed on or after the effective date of this Ordinance shall be assessed for property taxation purposes as follows:

- (a) For the first assessment year, at zero percent of the net acquisition cost.
- (b) For the second assessment year, at 5% of the net acquisition cost.
- (c) For the third assessment year, at 10% of the net acquisition cost.
- (d) For the fourth assessment year, at 15% of the net acquisition cost.
- (e) For the fifth assessment year, at 20% of the net acquisition cost.
- (f) For the sixth assessment year, at 25% of the net acquisition cost.
- (g) For the seventh and succeeding assessment years, at 30% of the net acquisition cost.

**47.04 DECLARATION OF INTENT IN ORDER TO QUALIFY.** In order to qualify for the Special Assessment Provisions of this Ordinance, the taxpayer shall file with the Emmet County Assessor, by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined under this Ordinance in lieu of the valuation and assessment provisions contained in Iowa Code Sections 331.21(8) and 428.24 through 428.29.

**47.05 DOCUMENTATION REQUIRED.** The declaration of intent as outlined in Section 47.04 above shall be accompanied by the following documents;

- (a) Engineering Report: A copy of the engineering report reflecting the breakdown of the component parts of the property.
- (b) Ledger Sheet: A copy of the asset ledger sheet submitted to the Internal Revenue Service for the property.

- (c) An item and cost breakdown showing the net acquisition cost and all qualifying property components (this may be shown by the Ledger Sheet).
- (d) Leased Equipment: A listing of all leased equipment along with the name of the company it is leased from and a copy of the lease agreement showing which party is responsible for the property tax on the leased equipment.
- (e) Contact Person: The name, address, telephone number, fax number of any person representing the taxpayer on tax matters or a statement from the taxpayer that all tax matters be referred to the taxpayer.

**47.06 REPEAL OF THIS ORDINANCE.** If in the opinion of the Emmet County Board of Supervisors, continuation of the special valuation provided under this Ordinance ceases to be of benefit to Emmet County, the Emmet County Board of Supervisors may repeal this Ordinance. In that event, all property specially valued under this Ordinance prior to repeal of this Ordinance shall continue to be valued under the provisions of this Ordinance until the end of the nineteenth assessment year following the assessment year in which the property was first assessed.

1<sup>st</sup> reading: 1-30-07

2<sup>nd</sup> reading: 2-6-07

3<sup>rd</sup> reading: 2-13-07

Adopted: 2-20-07

**Editor's Note: Passed as Ordinance No. VI-IV on February 20, 2007**

**CHAPTER 48 - AN ORDINANCE RELATING TO A PARTIAL EXEMPTION FROM PROPERTY TAXATION OF THE ACTUAL VALUE ADDED TO INDUSTRIAL REAL ESTATE**

**48.01 PURPOSE.** The purpose of this Ordinance is to provide a partial exemption from property taxation of the actual value added to industrial real estate by the new construction of industrial real estate, research-service facilities, warehouses, distribution centers and the acquisition of or improvement to machinery and equipment assessed as real estate pursuant to Iowa Code Section 427A. 1(1) (e). This Ordinance is being adopted pursuant to authority contained in Division I of Iowa Code Chapter 4271B. The provisions of this Ordinance shall apply to all non-incorporated areas of Emmet County, Iowa.

**48.02 DEFINITIONS.** For purposes of this Ordinance, the following terms shall have the following definitions:

- a. *New Construction* means new buildings and structures and includes new buildings and structures which are constructed as additions to existing buildings and structures.
- b. *New Construction* does not include reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required for the owner of the building or structure to continue to competitively manufacture or process those products which determination shall receive prior approval from the Board of Supervisors upon the recommendation of the Iowa department of economic development.
- c. *Acquisition of or Improvement to machinery and equipment assessed as real estate* does not include normal replacement which is part of an operating process to maintain or expand the existing operational status.
- d. *Research-service facilities* means a building or group of buildings devoted primarily to research and development activities, including, but not limited to, the design and production or manufacture of prototype products for experimental use, and corporate-research services which do not have a primary purpose of providing on-site services to the public.
- e. *Warehouse* means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code Chapter 554, Article 7, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail.

- f. *Distribution Center* means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets.
- g. *Distribution Center* does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods.
- h. *Actual value added* means the actual value added as of the first year for which the exemption is received, except that actual value added by improvements to machinery and equipment means the actual value as determined by the assessor as of January 1 of each year for which the exemption is received.

**48.03 PERIOD OF PARTIAL EXEMPTION.** The actual value added to industrial real estate for the reasons specified in Section 48.03 above is eligible for a partial exemption from property taxation for a period of five (5) years. However, if property ceases to be classified as industrial real estate or ceases to be used as a warehouse or distribution center, the partial exemption for the value added shall not be allowed for subsequent years. The amount of actual value added which is eligible to be exempt from property taxation shall be as follows:

- For the first year, seventy-five (75) percent.
- For the second year, sixty (60) percent.
- For the third year, forty-five (45) percent.
- For the fourth year, thirty (30) percent.
- For the fifth year, fifteen (15) percent.

The granting of the exemption under this section for new construction constituting complete replacement of an existing building or structure shall not result in the assessed value of the industrial real estate being reduced below the assessed value of the industrial real estate before the start of the new construction added.

**48.04 APPLICATION FOR EXEMPTION BY PROPERTY OWNER.** In order to qualify for the partial exemption, the owner of the property shall file an application with the Emmet County Assessor not later than February 1 of the assessment year in which the value added is first assessed for property taxation. An application shall be filed for each project resulting in actual value added for which an exemption is claimed on forms prescribed by the Iowa director of revenue and shall contain information pertaining to the nature of the improvement, its cost, and other information deemed necessary by the director of revenue.

**48.05 DUAL EXEMPTIONS PROHIBITED:** A property tax exemption under this Ordinance shall not be granted if the property for which the exemption is claimed has received any other property tax exemption authorized by law.

**48.06 REPEAL OF THIS ORDINANCE.** If in the opinion of the Emmet County Board of Supervisors, continuation of the exemption granted by this Ordinance ceases to be of benefit to Emmet County, the Emmet County Board of Supervisors may repeal this Ordinance. In that event, all prior approved or existing exemptions under this Ordinance shall continue until their expiration.

First Reading:	July 31, 2012
Second Reading:	August 7, 2012
Third Reading:	August 14, 2012
Adopted:	August 21, 2012
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**Editor's Note: Passed as Ordinance No. 12-05 (VI-V) on August 21, 2012**

**CHAPTER 49 – LOCAL OPTION SALES TAX APPLICABLE TO TRANSACTIONS WITHIN INCORPORATED AREAS OF ARMSTRONG, DOLLIVER, RINGSTED, & WALLINGFORD**

**49.01 LOCAL OPTION SALES AND SERVICE TAX.** There is imposed a local option sales and services tax applicable to transactions within the incorporated areas of Armstrong, Dolliver, Ringsted and Wallingford of Emmet County, Iowa.

The rate of the tax shall be one (1) percent upon the gross receipts taxed under Chapter 422, Division IV, of the Iowa Code in the following Cities: Armstrong, Dolliver, Ringsted and Dolliver, Ringsted, Wallingford, Emmet County, Iowa

The local sales and services tax is imposed on transactions occurring on or after January 1, 1998 within the incorporated areas of Armstrong, Dolliver, Ringsted and Wallingford, Emmet County, Iowa. The tax shall be collected by all persons required to collect state gross receipts taxes. However, the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 324 of the Iowa Code, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A of the Iowa Code during the period the hotel and motel tax is imposed, on the gross receipts from the sale of natural gas or electric energy in a city or county where the gross receipts are subject to a franchise fee or user fee during the period the franchise or user fee is imposed, on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E of the Iowa Code, and on the sale or rental of tangible personal property described in section 422.45, subsections 26 & 27 of the Iowa Code.

All applicable provisions of the appropriate sections of Chapter 422, Division IV, of the Iowa Code are adopted by reference.

Section 2. Effective Date. This ordinance shall be in effect after its final passage, approval and publication as provided by law.

First Reading: September 23, 1997  
Second Reading: September 30, 1997  
Third Reading: October 7, 1997

Passed by the Board of Supervisors on this 7th day of October, 1997 as Ordinance II-I.

**[Next Chapter is 60, Page 160]**



**TITLE VI – HEALTH AND SANITATION**

## CHAPTER 60 - GROUND WATER PROTECTION

- 60.01 PURPOSE.** The purpose of this ordinance is to adopt Iowa Administrative Code Chapters 567-38, 567-39, 567-49 and 567-69 which provide regulations for well permitting, well construction, well closure, and on-site disposal systems in order to protect the ground water of Emmet County and to qualify for state grant funds for ground water protection.
- 60.02 WELL PERMITTING.** The provisions of Chapter 567-38 shall apply and be met for issuance of well construction permits.
1. Each Application Fee Shall be \$125.00
- 60.03 WELL CONSTRUCTION.** The provisions of Chapter 567-49 shall apply and be met for all well construction in Emmet County. The permit fee shall be established by the Board of Health with notice to be provided to the Board of Supervisors and the County Auditor.
- 60.04 WELL CLOSURE.** The provisions of Iowa Code 455B.190 and Iowa Administrative Code 567, Chapter 39 shall apply and be met for all well closures in Emmet County.
- 60.05 PRIVATE WELL SAMPLING AND ABANDONMENT – GRANTS TO COUNTIES.** The provisions of Iowa Administrative Code 641, Chapter 24 shall apply to the administration of the grants to counties by the Department of Natural Resources in accordance with Iowa Code sections 135.11(29) and 455E.11 (2)(b)(3)(b), for the purpose of testing private water wells, reconstructing private water wells, and the proper plugging of abandoned private water wells (including cisterns that present a contamination risk to groundwater), within the jurisdiction of the County's Board of Health.
- 60.05 ON-SITE DISPOSAL SYSTEMS.** The provisions of Chapter 567-69 shall apply and be met for all on-site disposal systems in Emmet County. The permit fee shall be established by the Board of Health with notice to be provided to the Board of Supervisors and the County Auditor.
1. Each Application Fee Shall be \$100.00
- 60.06 COUNTY INFRACTION.** A violation of this ordinance shall be a county infraction pursuant to Iowa Code Section 331.307.
- 60.06 PENALTY.** Any person who violates any provision of this Ordinance, upon conviction of a simple misdemeanor be subject to a penalty as outlined in Section 2.01 of this Code of Ordinances. This section does not preclude a peace officer from the County from issuing a criminal citation for a violation of a County code or regulation.

## **CHAPTER 61 - ON-SITE WASTEWATER TREATMENT AND DISPOSAL SYSTEM INSTALLER REGULATIONS**

**61.01 PURPOSE.** The purpose of this ordinance is to impose on installers of on-site wastewater treatment systems regulations in addition to those imposed by Chapter 60 of the County's Code of Ordinances, and Iowa Administrative Code 567-69, and provide penalties for violations thereof.

**61.02 DEFINITIONS.** All terms defined in Chapter 69 of the Iowa Administrative Code 567, shall be defined the same for these regulations with the following changes and additions.

1. "Administrative Authority" means Emmet County Board of Health or employees of the board.
2. "Authorized Agent" means any person who has been designated by the local board to act in its name in implementing these regulations.
3. "Department" means the Environmental Health Department of the Emmet County Board of Health.
4. "Local Board" means Emmet County Board of Health as authorized by Chapter 137 of the Code of Iowa.
5. "On-site wastewater installer" means any person meeting the qualifications set by this ordinance to install a System.
6. "System" means an on-site wastewater treatment and disposal system or any part thereof.

**61.03 Reserve for Future Use.**

**61.04 Reserve for Future Use.**

### **61.05 INSPECTION OF ON-SITE WASTEWATER SYSTEMS.**

- A. The onsite wastewater installer shall notify the Administrative Authority, orally by telephone, e-mail, answering machine, or in writing not later than 24 hours before start of installation.
- B. During the inspection of the System an employee of agent of the Department shall be permitted access to the site of the installation to inspect the installation for compliance with the terms of the Chapter 60 of the County's Code, and IAC 567-69.
- C. No part of any System shall be covered before the mandatory inspection by the

Department.

- D. When the System has been completed, a drawing must be made, by the On-site wastewater installer, showing the exact layout of the septic tank, all distribution boxes, the secondary treatment and location of the structure to be served by the system. This drawing shall include reference to two (2) fixed corners of the dwelling or other structure to each lid of the septic tank and distribution boxes. Such drawing shall be filed with the Department within 30 days of completion of the installation of the System.

**61.06 COUNTY INFRACTION.** A violation of this ordinance shall be a county infraction pursuant to Iowa Code Section 331.307.

**61.07 PENALTY.** Any person who violates any provision of this Ordinance, upon conviction of a simple misdemeanor be subject to a penalty as outlined in Section 2.01 of this Code of Ordinances. This section does not preclude a peace officer from the County from issuing a criminal citation for a violation of a County code or regulation.

**[Next Chapter is 75, Page 186]**

**TITLE VII – RECREATION AND CULTURAL**

## **CHAPTER 75 - AN ORDINANCE ESTABLISHING GENERAL RULES AND REGULATIONS FOR EMMET COUNTY CONSERVATION BOARD PROPERTIES**

**75.01 RULES AND REGULATIONS.** Be it enacted by the Emmet County Conservation Board that the following rules and regulations for the protection, regulation and control of all parks, preserves, parkways, playgrounds, recreation centers and other property under its control, and hereafter coming under its control be enacted, to wit:

1. It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure or deface plant life, trees, buildings or other natural or material property, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees, buildings, sand, gravel, ice, earth, stone, wood or any other natural material or to operate vehicles within the boundaries of any county park, preserve or stream or any other land and/or waters under the jurisdiction of the Emmet County Conservation Board for any purpose whatsoever, except upon the terms, conditions, limitations, and restrictions as set forth by said County Conservation Board, the County Conservation Director or duly designated representatives.
2. Possession or use of illegal drugs or underage drinking is prohibited. Violators will immediately be evicted from the county area and charged to the full extent of the law.
3. All shotgun shells shot on county conservation hunting areas and property must meet the US Fish & Wildlife Service definition of non-toxic shot (excluding deer & wild turkey).
4. It shall be unlawful for any person to hunt, or in any manner intentionally take, capture, kill, wound or attempt to kill or wound any animals, including: game birds, waterfowl, any other birds, mammals, reptiles, and amphibians in the Emmet County Conservation Board's Areas, except in designated hunting areas.
5. No person shall enter upon portions of any park or preserve in disregard of official signs prohibiting same, except by permission of the County Conservation Board, the County Conservation Director, or duly designated representatives.
6. The County Conservation Board is hereby authorized to fix fees and admissions for the use of all County Conservation Board properties.
7. Excessively loaded vehicles shall not operate over county park or preserve drives, roads or highways. A determination as to whether the load is excessive will be made by the County Conservation Board, its employees, County Conservation Director or duly designated representatives and will depend upon the load and the road condition.
8. No person shall remove ice, sand, gravel, stone, wood or other natural material from any lands or waters under the jurisdiction of the County Conservation Board without first obtaining permission and entering into any agreement with said Board.
9. The County Conservation Board may enter into an agreement for the removal of ice, sand, gravel, stone, wood or other natural material from lands or waters under the jurisdiction of the

County Conservation Board, if after investigation it is determined that such removal will not be detrimental to the County's interest. The County Conservation Board may specify the terms and conditions under which such removal is permitted and may issue a written permit for such removal.

10. No watercraft shall be operated on any body of water under the jurisdiction of County Conservation Board, except for those bodies of water specifically designated by the County Conservation Board for watercraft usage. Some restrictions may apply. All watercraft must be seaworthy and may be inspected. All watercraft must meet the approval of the County Conservation Board, the County Conservation Director, or duly designated representatives.
11. The maximum speed limit of all vehicles on county park roads and preserve drives, roads and highways, shall be 10 miles per hour. All driving shall be confined to designated roadways.
12. No animal shall be hitched or tied to any tree, shrub or post; in any manner whatsoever.
13. No person shall in any manner remove, destroy, injure or deface trees, shrubs, plants, flowers, or the fruit thereof, or disturb or injure any structure of natural attraction, without the written permission of the County Conservation Board or Director. Certain specimens may be removed for scientific purposes with permission.
14. The use by the public of firearms, fireworks, explosives, and weapons of any kind is prohibited in all County Conservation Board managed areas, except in area hereafter designated by the County Conservation Board as hunting areas or specifically set apart as a firing, archery, or trap shoot ranges. Paintball guns, BB or pellet guns, water balloons and/or launchers, potato guns of any description are strictly prohibited.
- 14A. Water cannons, water guns, etc. are permitted up to the discretion of the County Conservation Director, or duly designated representatives. Water cannons, water guns, etc. deemed endangering the safety of others, or people with such objects causing a disturbance will have said object confiscated and will be evicted.
15. Unless a weapon or firearm is being used in an established hunting area, approved demonstration, archery range or trap shoot range, no person shall have or carry any weapon or firearm on his/her person or in or on any vehicle brought or driven on any property under the jurisdiction of the County Conservation Board unless such weapon or firearm be taken down or contained in a secured case and the barrel and magazine thereof be unloaded, except that a weapon or firearm carried or transported by a peace officer or a person legally granted a permit to carry such weapon or firearm under the provision of the statutes of the State of Iowa.
16. The County Conservation Board is hereby authorized to fix fees for camping and other special privileges which shall be in such amounts as may be determined by the County Conservation Board upon the basis of the costs of providing same and the reasonable value of such privileges.



16A. Camping registration must be completely fill out and clearly displayed, all fees must be paid in full at the beginning of camping stay.

Failure to do so will lead to a simple misdemeanor charge and surcharge being assessed to the individual/s. One (1) camper per site. (See subsection 27 below in this chapter)

17. No person shall camp in any portion of a County Park or Preserve except in portions prescribed or designated by the County Conservation Board, without prior approval from the Board or Director.

18. No person shall be permitted to camp for a period longer than that designated by the County Conservation Board, its Director, or their representative for the specific County Park or Preserve, and in no event longer than for a period of two (2) consecutive weeks. If a person or persons plan to camp in a County Park for longer than the allotted two (2) week time period, they must move their camping unit to a different site within the park. All camping must be paid in full at the beginning of the camping stay.

19. No person shall place any waste, refuse, litter, glass, cans or foreign substance in any areas or receptacle except those provided for that purpose. No outside garbage allowed. If you fail to clean up, upon departure you will be assessed a fee and sent a bill.

19A. No person shall place or dispose of waste water (gray or sewage) in any area except in those facilities designated for such purpose by the County Conservation Board.

20. Privately owned animals will be permitted in County Parks only when under control. Said pets will be restricted to being on a maximum 6' leash at all times and owners and/or escorts will be responsible to "pick-up" after their pets in all areas. Any unattended or uncontrolled animals will be impounded; if unclaimed after 7 days the animal will be euthanized, with all expenses being incurred payable by owner. The County Conservation Director, or duly designated representatives, shall be the sole judge as to whether said animals are under control.

21. Except by arrangement or permission granted by the County Conservation Board, the County Conservation Director, or his authorized representative, all non-registered persons shall vacate County Parks by 10:30 p.m. The County Parks will reopen at 5 a.m.

21A. Provisions of this section shall allow that Quiet Time commences in all County Park campgrounds at 10:30 p.m. and that such Quiet Time will be enforced by the discretion of the County Conservation Director, or duly designated representatives so as to prevent excessive noise or disturbance.

21B. All playground equipment and areas, shelter houses, ball fields, basketball and volleyball courts will be closed at 10:30 p.m. No exceptions. These areas will reopen each morning at 7 a.m.

22. Large gatherings such as family reunions or other special occasions shall be arranged with ECCB staff before the scheduled event is scheduled to begin.

23. All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any county park or preserve drive, road or highway, except in the case of emergency. Visitor vehicles shall be parked in the overflow parking areas. All additional vehicles, watercraft and other trailers shall be parked in overflow parking area.
- 23A. Camper and/or tow vehicle plus one other vehicle allowed per site. Camping registration must be completely filled out at the beginning of stay and displayed and visible at all times. Only vehicles belonging to registered campers are permitted on the site; up to the discretion of the County Conservation Director, or duly designated representatives.
24. All county park roads are “public highways” as defined by State Law, off-road vehicles(ATVs, UTVs, dirt bikes etc.) and vehicles not licensed by the State of Iowa for on-road use (except units to transport a physically disabled person, and being used by disabled person. Handicapped placard must be displayed at all time on the vehicle. All travels are restricted from point A to B.) shall not be allowed in any county conservation board managed area.
25. Any battery or motor powered units not specifically designated as modes of transportation for disabled persons and being used by disabled persons; shall not be allowed in any county conservation board managed area.
26. No fires shall be built, except in a place provided therefore; and such fire shall be extinguished when site is vacated. No fire shall be left unattended. All wood burned must be of the quality to burn. No construction lumber with nails, staples or other non-wood materials will be permitted. One burner per unit unless prior approval has been granted by the County Conservation Director, or duly designated representatives. No two or more burners are allowed to be slid together.
27. Each additional tent per site shall be subject to separate camping fees. Any tent placed in a 50 amp site without camper will be subject to the full camping rate.
28. Clothesline will be permitted by the discretion of the County Conservation Director, or duly designated representatives.
29. One (10' x 10') camping rug is the maximum size allowed per camp site. Rubber mats or rubber-backed carpet is not allowed. All rugs are to be rolled-up when not in use.
30. If camper, vehicle, or any other object is used to occupy or save a spot, that object must have a completely filled out camping registration tag visible and will be charged for each day it occupies a camping site.
31. ECCB Director, ECCB Park attendants and any certified law enforcement agency are given authority to refuse camping privileges and to rescind any and all camping permits/privileges for cause, pursuant to Ordinances and/or ECCB Iowa Code 350.5.

32. Failure to follow any ECCB ordinances, state or federal laws shall lead to immediate eviction and/or prosecution. Any ECCB ordinance violation/s will lead to a simple misdemeanor charge/s and prosecution.

**Approved 03/07/2013 by Emmet County Board of Supervisors**

**CHAPTER 76 - ORDINANCE REGULATING USE OF THE JIM HALL HABITAT AREA**

WHEREAS, Emmet County, Iowa has acquired real property described on attached Exhibit "A", locally known as the Jim Hall Habitat Area; and

WHEREAS, the area will best be used by the public if certain restrictions are imposed; and

WHEREAS, Emmet County desires to enact and enforce these restrictions by incorporating them into this Ordinance.

Now, therefore, BE IT ORDAINED by Emmet County, Iowa as follows:

**76.01 RULES**

1. The following rules shall govern the Jim Hall Habitat Area:
  - A. No swimming.
  - B. No hunting.
  - C. No gas powered watercraft.
  - D. No camping.
  - E. No all-terrain vehicles, dirt bikes or snowmobiles.
  - F. Vehicles may not travel outside of marked areas.
  - G. Open fires may be set only at burners provided by Emmet County.
  - H. No Littering.
  - I. All persons must vacate the premises by 10:30 P.M. each day, or other posted time.
2. The violation of any of the above provisions shall constitute a simple misdemeanor punishable by imprisonment of not more than 30 days in jail or a fine of up to \$625.00 for each offense.
3. This ordinance shall be in full force and effect upon publication.

Passed, adopted and approved on this 11<sup>th</sup> day of August, 1993.

July 28, 1993, First Reading  
August 4, 1993, Second Reading  
August 11, 1993, Third Reading

Passed as Ordinance VIII-I

EXHIBIT "A"

A parcel of land in the NW 1/4, NE 1/4 and SE 1/4 of Section 32, Township 98 North, Range 33, West of the 5th P.M., Emmet County, Iowa, described as follows:

Beginning at the Northeast corner of the NW 1/4 of said Section 32; thence West along the North line of said Section 32, 1640 feet, more or less, to a line parallel with and 50 feet Northeasterly of the centerline of the Chicago, Rock Island and Pacific Railroad Company's main track; thence Southeasterly along said parallel line 3865 feet, more or less, to a line parallel with and 317 feet Easterly of the West line of the SE 1/4 of said Section 32; thence Northerly along said parallel line 650 feet, more or less, to the East-West centerline of said Section 32; thence East along said centerline 343 feet, more or less, to a line parallel with and 660 feet Easterly of the West line of the NE 1/4 of said Section 32; thence Northerly along said parallel line 1330 feet, more or less, to the North line of the SW 1/4 of the NE 1/4 of said Section 32; thence Northwesterly 800 feet to a line parallel with and 752 feet North of the North line of the SW 1/4 of the NE 1/4 of said Section 32; thence Westerly along said parallel line 330 feet to the West line of the NE 1/4 of said Section 32; thence North along the West line of said NE 1/4 630 feet, more or less, to the point of beginning.

**[Next Chapter is 85, Page 210]**

**TITLE VIII – PHYSICAL ENVIRONMENT**

## CHAPTER 85 – FLOODPLAIN MANAGEMENT ORDINANCE

### 85.01 DEFINITIONS.

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

1. APPURTENANT STRUCTURE — A structure which is on the same parcel of the property as the principal structure to be insured and the use of which is incidental to the use of the principal structure
2. BASE FLOOD - The flood having one (1) percent chance of being equaled or exceeded in any given year. (Also commonly referred to as the "100-year flood").
3. BASE FLOOD ELEVATION (BFE) — The elevation floodwaters would reach at a particular site during the occurrence of a base flood event.
4. BASEMENT - Any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see "lowest floor."
5. DEVELOPMENT - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. "Development" does not include "minor projects" or "routine maintenance of existing buildings and facilities" as defined in this section. It also does not include gardening, plowing, and similar practices that do not involve filling or grading.
6. ENCLOSED AREA BELOW LOWEST FLOOR — The floor of the lowest enclosed area in a building when all the following criteria are met:
  - A. The enclosed area is designed to flood to equalize hydrostatic pressure during flood events with walls or openings that satisfy the provisions of Section 85.07(2)(D)(1) of this Ordinance, and
  - B. The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage, and
  - C. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the base flood elevation, and
  - D. The enclosed area is not a "basement" as defined in this section.



7. **EXISTING CONSTRUCTION** - Any structure for which the "start of construction" commenced before the effective date of the first floodplain management regulations adopted by the community.
8. **EXISTING FACTORY-BUILT HOME PARK OR SUBDIVISION** - A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management regulations adopted by the community.
9. **EXPANSION OF EXISTING FACTORY-BUILT HOME PARK OR SUBDIVISION** - The preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
10. **FACTORY-BUILT HOME** - Any structure, designed for residential use which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this Ordinance factory-built homes include mobile homes, manufactured homes, and modular homes; and also include "recreational vehicles" which are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.
11. **FACTORY-BUILT HOME PARK OR SUBDIVISION** - A parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.
12. **FIVE HUNDRED (500) YEAR FLOOD** — A flood, the magnitude of which has a two-tenths (0.2) percent chance of being equaled or exceeded in any given year or which, on average, will be equaled or exceeded at least once every five hundred (500) years.
13. **FLOOD** - A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.
14. **FLOOD INSURANCE RATE MAP (FIRM)** - The official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.
15. **FLOOD INSURANCE STUDY (FIS)** — A report published by FEMA for a community issued along with the community's Flood Insurance Rate Map(s). The study contains such background data as the base flood discharge and water surface elevations that were used to prepare the FIRM.
16. **FLOODPLAIN** - Any land area susceptible to being inundated by water as a result of a flood.
17. **FLOODPLAIN MANAGEMENT** - An overall program of corrective and preventive measures

for reducing flood damages and promoting the wise use of floodplains, including but not limited to emergency preparedness plans, flood control works, floodproofing and floodplain management regulations.

18. **FLOODPROOFING** - Any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.
19. **FLOODWAY** - The channel of a river or stream and those portions of the floodplains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one (1) foot.
20. **FLOODWAY FRINGE** - Those portions of the Special Flood Hazard Area outside the floodway.
21. **HIGHEST ADJACENT GRADE** — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
22. **HISTORIC STRUCTURE** - Any structure that is:
  - A. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;
  - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
  - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either i) an approved state program as determined by the Secretary of the Interior or ii) directly by the Secretary of the Interior in states without approved programs.
23. **LOWEST FLOOR** - The floor of the lowest enclosed area in a building including a basement except when the criteria listed in the definition of Enclosed Area below Lowest Floor are met.
24. **MAXIMUM DAMAGE POTENTIAL DEVELOPMENT** — Hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; power installations needed in emergency or other buildings or building complexes similar in nature or use.

25. **MINOR PROJECTS** - Small development activities (except for filling, grading and excavating) valued at less than \$500.
26. **NEW CONSTRUCTION** - (new buildings, factory-built home parks) - Those structures or development for which the start of construction commenced on or after the effective date of the first floodplain management regulations adopted by the community.
27. **NEW FACTORY-BUILT HOME PARK OR SUBDIVISION** - A factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management regulations adopted by the community.
28. **RECREATIONAL VEHICLE** - A vehicle which is:
  - A. Built on a single chassis;
  - B. Four hundred (400) square feet or less when measured at the largest horizontal projection;
  - C. Designed to be self-propelled or permanently towable by a light duty truck; and
  - D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.
29. **ROUTINE MAINTENANCE OF EXISTING BUILDINGS AND FACILITIES** — Repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building permit, provided they are not associated with a general improvement of the structure or repair of a damaged structure. Such repairs include:
  - A. Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
  - B. Exterior and interior painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
  - C. Basement sealing;
  - D. Repairing or replacing damaged or broken window panes;
  - E. Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.
30. **SPECIAL FLOOD HAZARD AREA (SFHA)** — The land within a community subject to the "base flood". This land is identified on the community's Flood Insurance Rate Map as Zone A, A1-30, AE, AH, AO, AR, and/or A99.
31. **START OF CONSTRUCTION** - Includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement, was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of

pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

32. **STRUCTURE** - Anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, grain storage facilities and/or other similar uses.
33. **SUBSTANTIAL DAMAGE** - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Volunteer labor and donated materials shall be included in the estimated cost of repair.
34. **SUBSTANTIAL IMPROVEMENT** - Any improvement to a structure which satisfies either of the following criteria:
  - A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (i) before the "start of construction" of the improvement, or (ii) if the structure has been "substantially damaged" and is being restored, before the damage occurred.

The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions. The term also does not include any alteration of an "historic structure", provided the alteration will not preclude the structure's designation as an "historic structure".
  - B. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after the effective date of the first floodplain management regulations adopted by the community shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.
35. **VARIANCE** - A grant of relief by a community from the terms of the floodplain management regulations.
36. **VIOLATION** - The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

**85.02 STATUTORY AUTHORITY, FINDINGS OF FACT AND PURPOSE.**

1. The Legislature of the State of Iowa has in Chapter 335, Code of Iowa, as amended, delegated the power to counties to enact zoning regulations to secure safety from flood and to promote health and the general welfare.

2. Findings of Fact

- A. The flood hazard areas of Emmet County are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare of the community.
- B. These flood losses, hazards, and related adverse effects are caused by: (i) The occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding and (ii) the cumulative effect of obstructions on the floodplain causing increases in flood heights and velocities.
- C. This ordinance relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources.

3. Statement of Purpose

It is the purpose of this Ordinance to protect and preserve the rights, privileges and property of Emmet County and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses described in Section 85.02(2)(A) of this Ordinance with provisions designed to:

- A. Reserve sufficient floodplain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.
- B. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.
- C. Require that uses vulnerable to floods, including public facilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.
- D. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.
- E. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.

## **85.03 GENERAL PROVISIONS.**

### **1. Lands to Which Ordinance Apply**

The provisions of this Ordinance shall apply to all lands within the jurisdiction of Emmet County shown on the Official Floodplain Zoning Map as being within the boundaries of the Floodway, Floodway Fringe, and General Floodplain (Overlay) Districts, as established in Section 85.05.

### **2. Establishment of Official Floodplain Zoning Map**

The Flood Insurance Rate Map (FIRM) for Emmet County and Incorporated Areas, dated September 24, 2021, which was prepared as part of the Flood Insurance Study for Emmet County, is (are) hereby adopted by reference and declared to be the Official Floodplain Zoning Map. The Emmet County Flood Insurance Study is hereby adopted by reference and is made a part of this ordinance for the purpose of administering floodplain management regulations.

### **3. Rules for Interpretation of District Boundaries**

The boundaries of the zoning district areas shall be determined by scaling distances on the Official Floodplain Zoning Map. When an interpretation is needed as to the exact location of a boundary, the Zoning Officer shall make the necessary interpretation. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Officer in the enforcement or administration of this Ordinance.

### **4. Compliance**

No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations which apply to uses within the jurisdiction of this Ordinance

### **5. Abrogation and Greater Restrictions**

It is not intended by this Ordinance to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provision of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

### **6. Interpretation**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

## 7. Warning and Disclaimer of Liability

The standards required by this Ordinance are considered reasonable for regulatory purposes. This Ordinance does not imply that areas outside the designated Floodplain (Overlay) District areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of Emmet County or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made there under.

## 8. Severability

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

### **85.04 ADMINISTRATION.**

#### 1. Appointment, Duties and Responsibilities of Local Official

- A. The Zoning Officer is hereby appointed to implement and administer the provisions of this Ordinance and will herein be referred to as the Administrator.
- B. Duties and responsibilities of the Administrator shall include, but not necessarily be limited to the following:
  - 1) Review all floodplain development permit applications to assure that the provisions of this Ordinance will be satisfied.
  - 2) Review floodplain development applications to assure that all necessary permits have been obtained from federal, state and local governmental agencies including approval when required from the Department of Natural Resources for floodplain construction.
  - 3) Record and maintain a record of:
    - (i) the elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of all new or substantially improved structures or
    - (ii) the elevation to which new or substantially improved structures have been floodproofed.
  - 4) Notify adjacent communities/counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
  - 5) Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this Ordinance.
  - 6) Submit to the Federal Insurance Administrator an annual report concerning the

community's participation, utilizing the annual report form supplied by the Federal Insurance Administrator.

- 7) Notify the Federal Insurance Administrator of any annexations or modifications to the community's boundaries.
- 8) Review subdivision proposals to ensure such proposals are consistent with the purpose of this ordinance and advise the Board of Adjustment of potential conflict.
- 9) Maintain the accuracy of the community's Flood Insurance Rate Maps when;
  - a. Development placed within the Floodway (Overlay) District results in any of the following:
    - (i) An increase in the Base Flood Elevations, or
    - (ii) Alteration to the floodway boundary
  - b. Development placed in Zones A, AE, AH, and A1-30 that does not include a designated floodway that will cause a rise of more than one foot in the base elevation; or
  - c. Development relocates or alters the channel.

Within 6 months of the completion of the development, the applicant shall submit to FEMA all scientific and technical data necessary for a Letter of Map Revision.
- 10) Perform site inspections to ensure compliance with the standards of this Ordinance.
- 11) Forward all requests for Variances to the Board of Adjustment for consideration. Ensure all requests include the information ordinarily submitted with applications as well as any additional information deemed necessary to the Board of Adjustment.

## 2. Floodplain Development Permit

- A. Permit Required - A Floodplain Development Permit issued by the Administrator shall be secured prior to any floodplain development (any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, storage of materials and equipment, excavation or drilling operations), including the placement of factory-built homes.
- B. Application for Permit - Application shall be made on folis furnished by the Administrator and shall include the following:
  - 1) Description of the work to be covered by the permit for which application is to be made.
  - 2) Description of the land on which the proposed work is to be done (i.e., lot, block, track, street address or similar description) that will readily identify and locate the work to be done.



- 3) Location and dimensions of all structures and additions
  - 4) Indication of the use or occupancy for which the proposed work is intended.
  - 5) Elevation of the base flood.
  - 6) Elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of structures or of the level to which a structure is to be floodproofed.
  - 7) For structures being improved or rebuilt, the estimated cost of improvements and market value of the structure prior to the improvements.
  - 8) Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this Ordinance.
- C. Action on Permit Application - The Administrator shall, within a reasonable time, make a determination as to whether the proposed floodplain development meets the applicable standards of this Ordinance and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore. The Administrator shall not issue permits for variances except as directed by the County Board of Adjustment.
- D. Construction and Use to be as Provided in Application and Plans - Floodplain Development Permits based on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance. The applicant shall be required to submit certification by a professional engineer or land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, structure floor elevations, floodproofing, or other flood protection measures were accomplished in compliance with the provisions of this Ordinance, prior to the use or occupancy of any structure.

#### **85.05 ESTABLISHMENT OF ZONING (OVERLAY) DISTRICTS.**

The floodplain areas within the jurisdiction of this ordinance are hereby divided into the following districts:

1. Floodway (Overlay) District (FW) — those areas identified as Floodway on the Official Flood Plain Zoning Map;
2. Floodway Fringe (Overlay) District (FF) — those areas identified as Zone AE on the Official Flood Plain Zoning Map but excluding those areas identified as Floodway, and;
3. General Floodplain (Overlay) District (GF) — those areas identified as Zone A on the Official Flood Plain Zoning Map.

The boundaries shall be as shown on the Official Floodplain Zoning Map. Within these districts, all uses not allowed as Permitted Uses are prohibited unless a variance to the terms of this ordinance is granted after due consideration by the Board of Adjustment.

## **85.06 FLOODWAY (OVERLAY) DISTRICT (FW).**

### **1. Permitted Uses**

All development within the Floodway District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway District.

### **2. Performance Standards**

All Floodway District uses allowed as a Permitted Use shall meet the following standards.

- A. No development shall be permitted in the Floodway District that would result in any increase in the base flood elevation. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
- B. All development within the Floodway District shall:
  - 1) Be consistent with the need to minimize flood damage.
  - 2) Use construction methods and practices that will minimize flood damage.
  - 3) Use construction materials and utility equipment that are resistant to flood damage.
- C. No development shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch or any other drainage facility or system.
- D. Structures, buildings, recreational vehicles, and sanitary and utility systems, if permitted, shall meet the applicable performance standards of the Floodway Fringe District and shall be constructed or aligned to present the minimum possible resistance to flood flows.
- E. Structures, if permitted, shall have a low flood damage potential and shall not be for human habitation.
- F. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited. Storage of other material may be allowed if readily removable from the Floodway District within the time available after flood warning.
- G. Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Department of Natural

Resources.

- H. Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.
- I. Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

**85.07 FLOODWAY FRINGE (OVERLAY) DISTRICT FF.**

1. Permitted Uses

All development within the Floodway Fringe District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet applicable performance standards of the Floodway Fringe District.

2. Performance Standards

All development must be consistent with the need to minimize flood damage and meet the following applicable performance standards. Until a regulatory floodway is designated, no development may increase the Base Flood Elevation more than one (1) foot. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination.

A. All development shall:

- 1) Be designed and adequately anchored to prevent flotation, collapse or lateral movement.
- 2) Use construction methods and practices that will minimize flood damage.
- 3) Use construction materials and utility equipment that are resistant to flood damage.

B. Residential structures - All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation. Construction shall be upon compacted fill which shall, at all points, be no lower than 1.0 ft. above the base flood elevation and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers or extended foundations) may be allowed where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding.

All new residential structures located in areas that would become isolated due to flooding of surrounding ground shall be provided with a means of access that will be passable by wheeled vehicles during the base flood. However, this criterion shall not

apply where the administrator determines there is sufficient flood warning time for the protection of life and property. When estimating flood warning time, consideration shall be given to the criteria listed in 567-75.2(3), Iowa Administrative Code.

C. Non-residential structures - All new or substantially improved non-residential structures shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the base flood elevation, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood; and that the structure, below the base flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator.

D. All new and substantially improved structures:

- 1) Fully enclosed areas below the "lowest floor" (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:
  - a. A minimum of two (2) openings, with positioning on at least two (2) walls, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one foot above grade.
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

Such areas shall be used solely for parking of vehicles, building access and low damage potential storage. Where the distance between the floor and ceiling of the fully enclosed area below the "lowest floor" is five (5) feet or more, the applicant shall be required to sign and record with the Emmet County Recorder a Non-Conversion Agreement that ensures the lower enclosed area remains compliant with the criteria outlined in Section 85.07(2)(D)(1).

- 2) New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 3) New and substantially improved structures shall be constructed with electric meter, electrical service panel box, hot water heater, heating, air conditioning, ventilation

equipment (including ductwork), and other similar machinery and equipment elevated (or in the case on non-residential structures, optionally floodproofed to) a minimum of one (1) foot above the base flood elevation.

- 4) New and substantially improved structures shall be constructed with plumbing, gas lines, water/gas meters and other similar service utilities either elevated (or in the case of non-residential structures, optionally floodproofed to) a minimum of one (1) foot above the base flood elevation or designed to be watertight and withstand inundation to such a level.

**E. Factory-built homes:**

- 1) All new and substantially improved factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the base flood elevation.
- 2) All new and substantially improved factory-built homes, including those placed in existing factory-built home parks or subdivisions, shall be anchored to resist flotation, collapse, or lateral movement. Anchorage systems may include, but are not limited to, use of over-the-top or frame ties to ground anchors as required by the State Building Code.

**F. Utility and Sanitary Systems:**

- 1) On-site wastewater disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.
- 2) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities (other than on-site systems) shall be provided with a level of flood protection equal to or greater than one (1) foot above the base flood elevation.
- 3) New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities (other than on-site systems) shall be provided with a level of protection equal to or greater than one (1) foot above the base flood elevation.
- 4) Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

- G. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one (1) foot above the base flood elevation. Other material and equipment must either be similarly elevated or
- (i) not be subject to major flood damage and be anchored to prevent movement due to flood waters or
  - (ii) be readily removable from the area within the time available after flood warning.
- H. Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from the base flood with a minimum of 3 ft. of design freeboard and shall provide for adequate interior drainage. In addition, the Department of Natural Resources shall approve structural flood control works.
- I. Watercourse alterations or relocations must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, the Department of Natural Resources must approve such alterations or relocations.
- J. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable performance standards of this Ordinance. Subdivision proposals intended for residential use shall provide all lots with a means of access which will be passable by wheeled vehicles during the base flood. Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include base flood elevation data for those areas located within the Floodway Fringe (Overlay) District.
- K. Accessory Structures to Residential Uses
- 1) Detached garages, sheds, and similar structures that are incidental to a residential use are exempt from the base flood elevation requirements where the following criteria are satisfied:
    - a. The structure shall be designed to have low flood damage potential. Its size shall not exceed 600 sq. ft. in size. Those portions of the structure located less than 1 foot above the base flood elevation must be constructed of flood-resistant materials.
    - b. The structure shall be used solely for low flood damage potential purposes such as vehicle parking and limited storage. The structure shall not be used for human habitation.
    - c. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
    - d. The structure shall be firmly anchored to prevent flotation, collapse, and lateral movement which may result in damage to other structures.

- e. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one foot above the base flood elevation.
  - f. The structure's walls shall include openings that satisfy the provisions of Section 85.07(2)(D)(1) of this Ordinance.
- 2) Exemption from the base flood elevation requirements for such a structure may result in increased premium rates for flood insurance coverage of the structure and its contents.

#### L. Recreational Vehicles

- 1) Recreational vehicles are exempt from the requirements of Section 85.07(2)(E) of this Ordinance regarding anchoring and elevation of factory-built homes when the following criteria are satisfied:
- a. The recreational vehicle shall be located on the site for less than 180 consecutive days, and,
  - b. The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- 2) Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of Section 85.07(2)(E) of this Ordinance regarding anchoring and elevation of factory-built homes.

M. Pipeline river and stream crossings shall be buried in the streambed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.

N. Maximum Damage Potential Development — All new or substantially improved maximum damage potential development shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the elevation of the 500-year flood, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 0.2% annual chance flood; and that the structure, below the 0.2% annual chance flood elevation is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator. Where 0.2% chance flood elevation data has not been provided in the Flood Insurance Study, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determinations.

## **85.08 FLOODPLAIN MANAGEMENT ORDINANCE.**

### **1. Permitted Uses**

- A. All development within the General Floodplain District shall be permitted to the extent that they are not prohibited by any other ordinance (or underlying zoning district) and provided they meet the applicable performance standards of the General Floodplain District.
- B. Any development which involves placement of structures, factory-built homes, fill or other obstructions, storage of materials or equipment, excavation or alteration of a watercourse shall be reviewed by the Department of Natural Resources to determine (i) whether the land involved is either wholly or partly within the floodway or floodway fringe and (ii) the base flood elevation. The applicant shall be responsible for providing the Department of Natural Resources with sufficient technical information to make the determination.
- C. Review by the Iowa Department of Natural Resources is not required for the proposed construction of new or replacement bridges or culverts where:
  - 1) The bridge or culvert is located on a stream that drains less than one hundred (100) square miles, and
  - 2) The bridge or culvert is not associated with a channel modification that constitutes a channel change as specified in 567-71.2(1)b, Iowa Administrative Code.

### **2. Performance Standards**

- A. All development, or portions thereof, to be located in the floodway as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway (Overlay) District Section 85.06.
- B. All development, or portions thereof, to be located in the floodway fringe as determined by the Department of Natural Resources shall meet the applicable provisions and standards of the Floodway Fringe (Overlay) District Section 85.07.

## **85.09 Reserve for Future Use.**

## **85.10 APPOINTMENT AND DUTIES OF BOARD OF ADJUSTMENT.**

- 1. Appointment and Duties of Board of Adjustment - A Board of Adjustment is hereby established which shall hear and decide (i) appeals and (ii) requests for variances to the provisions of this ordinance, and shall take any other action which is required of the Board.
- 2. Appeals - Where it is alleged there is any error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance, the aggrieved party may appeal such action. The notice of appeal shall be filed with the Board of Adjustment and with the official from whom the appeal is taken and shall set forth the specific



reason for the appeal. The official from whom the appeal is taken shall transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

3. Variance - The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this Ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. Variances granted must meet the following applicable standards.

A. Variances shall only be granted upon: (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.

B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

C. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. In cases where the variance involves a lower level of flood protection for structures than what is ordinarily required by this Ordinance, the applicant shall be notified in writing over the signature of the Administrator that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property.

E. All variances granted shall have the concurrence or approval of the Department of Natural Resources.

4. Hearings and Decisions of the Board of Adjustment

A. Hearings. Upon the filing with the Board of Adjustment of an Appeal or a request for a Variance, the Board shall hold a public hearing. The Board shall fix a reasonable time for the hearing and give public notice thereof, as well as due notice to parties in interest. At the hearing, any party may appear in person or by agent or attorney and present written or oral evidence. The Board may require the appellant or applicant to provide such information as is reasonably deemed necessary and may request the technical assistance and/or evaluation of a professional engineer or other expert person or agency, including the Department of Natural Resources.

B. Decisions. The Board shall arrive at a decision on an Appeal or Variance within a reasonable time. In passing upon an Appeal, the Board may, so long as such action is in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, and it shall make its decision, in writing, setting forth the findings of fact and the reasons for its decision. In granting a Variance, the Board shall consider such factors as contained in this section and all other relevant sections of this ordinance and may prescribe such conditions as contained in Section 85.10(4)(B)(2).

1) Factors Upon Which the Decision of the Board of Adjustment Shall be Based. In passing upon applications for Variances, the Board shall consider all relevant factors specified in other sections of this Ordinance and:

- a. The danger to life and property due to increased flood heights or velocities caused by encroachments.
  - b. The danger that materials may be swept on to other land or downstream to the injury of others.
  - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
  - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - e. The importance of the services provided by the proposed facility to the County.
  - f. The requirements of the facility for a floodplain location.
  - g. The availability of alternative locations not subject to flooding for the proposed use.
  - h. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
  - i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
  - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - k. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.
1. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.

- m. Such other factors which are relevant to the purpose of this Ordinance.
- 2) Conditions Attached to Variances - Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Ordinance. Such conditions may include, but not necessarily be limited to:
- a. Modification of waste disposal and water supply facilities.
  - b. Limitation of periods of use and operation.
  - c. Imposition of operational controls, sureties, and deed restrictions.
  - d. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this Ordinance.
  - e. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, duration, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.
5. Appeals to the Court - Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board.

#### **85.11 NONCONFORMING USES.**

- 1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance, but which is not in conformity with the provisions of this Ordinance, may be continued subject to the following conditions:
  - A. If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this Ordinance.
  - B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

C. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this Ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

2. Except as provided in Section 85.11(1)(B), any use which has been permitted as a Variance shall be considered a conforming use.

#### **85.12 PENALTIES FOR VIOLATION.**

Violations of the provisions of this Ordinance or failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with grants of Variances) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall next call upon conviction thereof be fined not more than \$500.00 five hundred dollars or imprisoned for not more than 30 (thirty) days. Each day such violation continues shall be considered a separate offense. Nothing herein contained prevent Emmet County from taking such other lawful action as is necessary to prevent or remedy violation.

#### **85.13 AMENDMENTS.**

The regulations and standards set forth in this Ordinance may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.

**Editor's Note: Chapter 85 was repealed and replaced with a new Chapter 85 Floodplain Management Ordinance, approved by Board of Supervisors September 7, 2021.**