

Election Center
Emmetsburg, Iowa
January 16, 2024, 6:30 p.m.

The Palo Alto County Board of Supervisors met in a special session. Members present: Craig Merrill, Chair; Linus Solberg, Keith Wirtz, Ronald Graettinger, Roger Faulstick.

Present: Sue Kelly, Ed Kelly, Aletha King, Diane Weiland, Reporter/Democrat; Laura Winter, Mary Moser, Randy Loomis. Summit Carbon Solutions: Grant Terry, Richard Dove, Kaylee Langrell. Present on conference call: Anna Ryon, Attorney; Julie Goebel, Michelle Marcum.

Craig Merrill, Chair, called the meeting to order and led the Pledge of Allegiance.

Craig opened the public meeting at 6:30 p.m. The Board met for the purpose of Amending Various Sections of the Palo Alto County Zoning Ordinance Dated 08/09/1995 with Amendments, for the Purpose of Regulating and Restricting the Use of Land for the Transport of Hazardous Liquid Through a Hazardous Liquid Pipeline.

Legal Notice was published in the paper on December 28, 2023. Copies of the draft ordinance were available on the county website and at the county auditor's office.

The Board held the first public hearing on Wednesday, January 3; 2nd hearing January 9; and third hearing January 16. The Board voted to adopt the ordinance on January 9.

A new draft ordinance was provided with the changes made on January 9.

Anna Ryon explained that the ordinance is in legal context consistent with the Palo Alto County comprehensive land use plan and zoning ordinance.

Linus Solberg read the Resolution 1-16-2024 not enforcing County Ordinance 2024-0001

The Board had an open discussion, and anyone present was given an opportunity to speak and ask questions.

Motion by Graettinger, 2nd by Faulstick to approve and adopt Ordinance 2024-0001, Amending Various Sections of the Palo Alto County Zoning Ordinance Dated 08/09/1995 with Amendments, for the Purpose of Regulating and Restricting the Use of Land for the Transport of Hazardous Liquid Through a Hazardous Liquid Pipeline presented on January 16, 2024. Motion Carried. Ayes: All. Motion Carried.

Motion by Graettinger, 2nd by Wirtz to introduce and approve Resolution 1-16-2024 not enforcing County Ordinance 2024-0001. Ayes: Roger Faulstick, Linus Solberg, Keith Wirtz, Ron Graettinger, Craig Merrill. Resolution Passed.

RESOLUTION NO. 1-16-2024
NOT ENFORCING COUNTY ORDINANCE 2024-0001

WHEREAS, On January 16, 2024, Palo Alto County Board of Supervisors passed Ordinance 2024-0001, desiring to require conditional use permits for hazardous liquid pipelines and create setback requirements for hazardous liquid pipelines that are consistent with Palo Alto County's current zoning ordinance and Comprehensive Land Use Plan; and

WHEREAS, on September 15, 2023, the Federal Pipeline and Hazardous Materials Safety Administration issued a letter reiterating the role of local governments in the regulation of hazardous liquid pipeline siting as it relates to land use and setback distances; and

WHEREAS, litigation is currently pending in the United States District Court for the Northern District of Iowa (*Courser, et al. v. Emmet County, Iowa, et al.*, Docket No. 3:2023-cv-03007) on the question of whether Emmet County may lawfully enforce an ordinance containing setbacks for hazardous liquid pipelines; and

WHEREAS, on December 4, 2023, Judge Rose issued an order in a similar case in the United States District Court for the Southern District of Iowa (*Courser, et al. v. Shelby County et al.*, Docket No. 1:22-cv-00020) determining that Shelby County's ordinance containing hazardous liquid pipeline setbacks was preempted by state and federal law; and

WHEREAS, Judge Rose enjoined Shelby County from enforcing its pipeline setback ordinance and ordered Shelby County inform all county employees with enforcement responsibilities or oversight of enforcement that they are not to enforce that law.

THEREFORE, BE IT RESOLVED, that given the legal uncertainty about the enforceability of Ordinance 2024-0001, Palo Alto County will not enforce Ordinance 2024-0001 until litigation regarding the enforceability of county pipeline setback requirements has reached a Final Judgment confirming the county's authority to enforce pipeline setbacks. Final Judgment means the expiration of the appeals period without appeal from a decision of a state or federal court having jurisdiction over the enforceability of Palo Alto County ordinances; and

FURTHER BE IT RESOLVED, that the following sections of Palo Alto County's zoning ordinance are included in Ordinance 2024-0001 and subject to the provisions of this resolution:

- SECTION 4, ARTICLE 3 DISTRICTS, DISTRICT MAPS, AND GENERAL REGULATIONS: Subsection 3.10 Hazardous Liquid Pipelines
- SECTION 5, ARTICLE 4, DISTRICT REGULATIONS: **SECTION 10. "HLPL" HAZARDOUS LIQUID PIPELINE**; and

FURTHER BE IT RESOLVED, that if the Final Judgment in any litigation related to hazardous liquid pipeline setbacks in any state or federal with jurisdiction over Palo Alto County does not allow full enforcement of Ordinance 2024-0001, Palo Alto County will amend or rescind Ordinance 2024-0001 in accordance with the Final Judgment; and

FURTHER BE IT RESOLVED, that despite the lack of jurisdiction of the United States District Court for the Southern District of Iowa over Palo Alto County, Palo Alto County will voluntarily comply with the ordering clauses of Judge Rose's order in *Courser, et al. v. Shelby County et al.* by providing a copy of this resolution to all county employees with enforcement responsibilities or oversight of enforcement with instructions that they are not to enforce Ordinance 2024-0001 in any manner until otherwise ordered.

Passed and approved this 16th day of January 2024.

The vote thereon being as follows:

Ayes: Roger Faulstick, Linus Solberg, Keith Wirtz, Ron Graettinger, Craig Merrill.

Nays: None. Resolution Passed.

Craig Merrill, Chair, Palo Alto County Board of Supervisors

Attest: Carmen Moser, Palo Alto County Auditor

Motion by Solberg, 2nd by Faulstick to adjourn the public hearing at 7:07 p.m. Motion Carried.

Craig Merrill, Chairman

Carmen Moser, County Auditor