

ORDINANCE No. 25-38

AN ORDINANCE ESTABLISHING PERMIT REQUIREMENTS FOR THE SURVEYING OF CERTAIN PARCELS OF LAND IN THE COUNTY

WHEREAS, the Supervisors of Guthrie County, Iowa (“the County”), under the authority of IA CONST ART. 3, § 39A, and Iowa Code § 331.301 may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents; and

WHEREAS, the County may by Ordinance lawfully regulate and restrict within the county the use of land, trade and commercial activities, and the establishment of businesses; and

WHEREAS, the surveying of land by private land surveyors is a commercial activity; and

WHEREAS, the surveying of land frequently involves the entry by land surveyors upon the land of others; and

WHEREAS, the County deems reasonable permit requirements for land surveying necessary and appropriate (1) to protect and preserve the rights, privileges, and property of the county or of its residents; and (2) to preserve and improve the peace, safety, health, welfare, comfort, and convenience of the county or of its residents;

NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE SUPERVISORS OF GUTHRIE COUNTY, IOWA:

SECTION 1. – PURPOSE. The purpose of this Ordinance is to protect and preserve the rights, privileges, and property of the county or of its residents; and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of the county or of its residents, by requiring land surveyors to register their business with the County and to obtain permits prior to conducting surveying activities on Covered Parcels in the County.

SECTION 2. – DEFINITIONS. For purposes of this Ordinance, the following terms have the following meanings:

1. “Applicant” means any person who submits an application or is granted a permit pursuant to this Ordinance.
2. “Covered Parcel” means any parcel of land for which a land surveyor does not have the permission of the landowner or the tenant in possession to enter the land but for which the land surveyor has a right to enter for purposes of surveying pursuant to Iowa Code § 354.4A or another Iowa statute.

SECTION 3. – PERMIT AND BOND REQUIRED.

1. Any person engaging in the surveying of Covered Parcels in the County without first obtaining a permit as provided herein is in violation of this Ordinance.

2. No permit shall be issued until the Applicant has delivered to the County Auditor a cash bond in an amount not less than \$1,000.00 for each Covered Parcel to be surveyed.
 - a. Use of Bond. The bond shall be held to indemnify and pay the County any penalties or costs incurred in the enforcement of any of the sections of this chapter, and to indemnify or reimburse any landowner for damages recovered pursuant to a judgment of the court as a result of the entry upon land of another, provided however that the action by the landowner must be commenced within six months from the date of entry.
 - b. Release of Bond. The balance of the bond shall be released by the County Auditor and returned to the applicant or employer upon request by the applicant or employer at any time more than seven months after expiration of the license for which the cash bond was provided. Except as otherwise provided by court order, the County Auditor shall not release any bond during the pendency of any action in state or federal court seeking a judgment upon a claim eligible for payment from the bond.

SECTION 4. – APPLICATION FOR PERMIT. An application in writing shall be filed with the County Auditor for a permit under this chapter. Such application shall be filed at least thirty (30) days prior to commencing to survey a Covered Parcel, be accompanied by a \$100.00 application fee, and contain the following information:

1. A copy of Applicant's land surveyor certificate issued by the Engineering and Land Surveying Board pursuant to Iowa Code § 542B.19 attached to the application. Land surveyors not required to obtain a license pursuant to Iowa Code chapter 542B shall not be required to submit this information.
2. Applicant's name, e-mail address, if any, permanent and local address, and local phone number or cell phone number.
3. Business address, business e-mail address, if any, and business phone number, if any.
4. The location, and the names of the owners or occupants, of all Covered Parcels sought to be surveyed pursuant to the permit.
5. Applicant's federal identification number and the federal identification number of any person, business, or corporation for which Applicant claims to be surveying.
6. A certificate of insurance for liability coverage in an amount not less than \$10,000,000. The certificate of insurance shall name as an additional insured all owners or tenants in possession of a Covered Parcel.
7. A list and description of other permits required of the Applicant or already issued by the County, as well as a statement of compliance, if requested by the County Auditor.
8. Proof that the bond required pursuant to this Ordinance has been delivered to the County Auditor.

SECTION 5. – PERMIT ISSUED. If the County Auditor finds that the application is complete and in conformance with the requirements of this Ordinance, that the facts stated therein are correct, that the application fee has been paid, that the Applicant is in compliance with other applicable county ordinances, and that the bond has been delivered, then a permit shall be issued to Applicant.

SECTION 6. – PERMIT DISPLAYED. Each land surveyor shall keep a copy of a valid permit in possession at all times while surveying Covered Parcels in the County and shall, upon request by any person, exhibit the permit as evidence of compliance with all requirements of this Ordinance.

SECTION 7. – PERMIT NONTRANSFERRABLE. Permits issued under the provisions of this Ordinance are not transferable under any circumstances and are valid only with respect to the person to whom the permit was issued.

SECTION 8. – PERMIT REVOCATION. The County Sheriff may summarily suspend or revoke any permit issued under this Ordinance by issuance of personal service of a Notice of Revocation on the Applicant or on an officer or employee of the Applicant or, if personal service cannot be effected, by mailing the Notice by certified mail, return receipt requested, to the licensee's last known mailing address for any of the following reasons.

1. Fraudulent Statements. The Applicant has made fraudulent statements or material misrepresentations in the application for the permit or in dealing with landowners or tenants while surveying.
2. Violation of Law. The Applicant has violated this Ordinance or another county ordinance, or has otherwise conducted the surveying in an unlawful manner.
3. Endangering Public Welfare, Health or Safety. The Applicant has conducted the surveying in such manner as to endanger the public welfare, safety, order or morals.

The permit shall stand revoked unless, within five days after receipt of the Notice of Revocation from the County Sheriff, the Applicant files a written request for a public hearing on the revocation.

SECTION 9. – NOTICE OF HEARING ON REVOCATION. A Notice of Revocation sent to or served upon the Applicant shall contain particulars of the complaints against the Applicant, the ordinance provisions or State statutes allegedly violated, and advise that the time for requesting a hearing will expire within five days of the date of service or certified mail receipt of the Notice. The Applicant shall be suspended until such time as a hearing is held by the request of the licensee.

SECTION 10. – HEARING ON REVOCATION. If timely requested in accordance with the provisions of this Ordinance, the County Sheriff shall conduct a hearing at which both the Applicant and any complainants shall be present to determine the truth of the facts alleged in the complaint and notice. Should the Applicant, or authorized representative, request a hearing and fail to appear without good cause, the County Sheriff may proceed to hold the decision to revoke the permit as final and no appeal by the Applicant will be heard.

SECTION 11. - RECORD AND DETERMINATION. The County Sheriff shall make and record findings of fact and conclusions of law, and shall revoke a permit only when upon review of the entire record the County Sheriff finds clear and convincing evidence of substantial violation of this chapter or State law.

SECTION 12. - APPEAL. If the County Auditor or the County Sheriff revokes or refuses to issue a license, the County Auditor or the County Sheriff shall make a part of the record the reasons therefor. The Applicant, shall have a right to a hearing before the Board of Supervisors at its next regular meeting. The Board may reverse, modify or affirm the decision of the County Auditor or the County Sheriff by a majority vote of the Board members present and the County Auditor or the County Sheriff shall carry out the decision of the Board. The County Auditor's or the County Sheriff's decision to revoke or refuse issuance of a permit shall stand unless and until a timely appeal is made before the Board at its next regular meeting.

SECTION 13. - EFFECT OF REVOCATION. Revocation of any permit shall bar the Applicant from being eligible for any permit under this Ordinance for a period of one year from the date of the revocation.

SECTION 14. - PERMIT EXEMPTIONS. Land surveyors employed by or performing work for the State of Iowa or its political subdivisions are exempt from the permit requirements of this Ordinance.

SECTION 15. – ADDITIONAL PERMIT CONDITIONS. An Applicant holding a permit issued under this Ordinance shall comply with the following additional conditions or restrictions:

1. An Applicant asserting a right to enter land for purposes of surveying a Covered Parcel shall comply with the requirements of Iowa Code § 354.4A unless such requirements are in irreconcilable conflict with another Iowa statute.
2. The Applicant shall make a good faith effort to comply with all applicable requirements.
3. Applicant shall only conduct surveying activities on weekdays between 8:00 a.m. and 4:00 p.m. Applicant shall not conduct surveying activities on weekends or on any federal holiday.
4. Applicant shall not survey a Covered Parcel unless the County Sheriff is present.
5. Applicant shall make a good faith effort to schedule surveying activities at a time when the landowner or tenant in possession is able to be present for the survey. The landowner's presence shall not be interpreted as consent to the entry.
6. If the Applicant is surveying the Covered Parcels on behalf of a person required to obtain other applicable county permits, Applicant acknowledges that violations of this Ordinance shall constitute grounds for denying or revoking such other permits.

SECTION 16. – VIOLATIONS CONSTITUTE COUNTY INFRACTIONS. Pursuant to Iowa Code § 331.307, a violation of this Ordinance shall constitute a county infraction and shall be subject to a civil penalty in the amount of seven hundred fifty dollars (\$750) for the first violation and one thousand dollars (\$1,000) for each additional violation.

SECTION 17. REPEALER. All Ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 18. 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 19. WHEN EFFECTIVE. This Ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading Passed: _____

Second Reading Passed: _____

Third Reading Passed: _____