

**HANSON COUNTY
DRAINAGE
ORDINANCE #58**

**A REVISION OF THE HANSON
COUNTY DRAINAGE
ORDINANCE #48**

ADOPTED

COUNTY OFFICERS AND ADOPTION PROCESS

The County Officers

County Commissioners:

Gary Schoenrock, Chairman, Commissioner for District 3

Bruce Kjetland, Commissioner for District 1

Curtis Fox, Commissioner for District 5

Richard Waldera, Commissioner for District 2

John Bumgardner, Commissioner for District 4

County Auditor: Lesa Trabing

County Drainage Administrator: Ronnie Roth

Adoption Timeline:

- a. First Reading:
- e. Second Reading and Adoption:
- f. Published:
- g. Effective Date:
(20 days after publication)

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HANSON COUNTY DRAINAGE ORDINANCE #48

ARTICLE I – ADMINISTRATIVE PROVISIONS

Section 1.01. – Title The title of this ordinance is: “Hanson County Drainage Ordinance #48”.

Section 1.02. – Authority This ordinance is adopted pursuant to the authority given under South Dakota laws at SDCL 7-8-20, SDCL 7-18A, and SDCL 46A, and acts amendatory thereof and supplemental thereto.

Section 1.03. – Purpose

- [A] The purpose of this ordinance is to provide for an orderly development and enhancement of water usage and surface water controls in Hanson County, South Dakota, to the extent permitted by state law.

- [B] Unfortunately, drainage issues between landowners can lead to conflicts between neighbors that eventually end up in the court system. The purpose of this ordinance is to facilitate communication and corporation between landowners involved in a drainage project or disagreement, thus reducing the potential of conflict. Dealing with informed neighbors increases the likelihood that the final drainage action will minimize adverse effects to downstream landowners and will benefit all parties involved.

- [C] Hanson County does not incur any liability with this Ordinance. State law take precedence over this Ordinance. The applicable state regulations are found in SDCL 46A-10A and acts amendatory thereof and supplemental thereto.

Section 1.04. – Repealer All ordinances or sections of ordinances in conflict with this ordinance are hereby repealed.

Section 1.05. – Interpretation and Abrogation Interpretation, Abrogation and Severability: These regulations are the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. There is no intent to repeal, abrogate, or impair any existing easements, covenants or deed restrictions which conflict or overlap; the more stringent restrictions are to prevail.

All other county regulations inconsistent with this ordinance are hereby repealed to the extent of the inconsistency.

Section 1.06 - Severability If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

Section 1.07 - Catch Heads Purpose of Catch Heads: The catch heads appearing with the sections of this ordinance are inserted for convenience. The catch heads will be disregarded in construing the terms and provisions of the ordinance.

Section 1.08 - Saving Clause Saving Clause: These regulations shall not affect pending actions, civil or criminal, founded on regulations hereby repealed. These regulations do not affect the rights or causes of action, civil or criminal, which have already accrued.

Section 1.09 - Disclaimer of Liability Disclaimer of Liability: The degree of public and environmental protection offered by this ordinance is considered reasonable for regulatory purposes and is based on the best available scientific and engineering considerations. The application of this ordinance creates no liability on the part of Hanson County, or any officer or employee thereof.

ARTICLE II – ADMINISTRATION AND ENFORCEMENT

Section 2.01. – Powers and Duties The Administrative Official is authorized and directed to enforce provisions of this ordinance and establish rules for its administration. With County Commission approval, the Administrative Official may designate technical officers, inspectors, or other employees that may be authorized to assist in the administration and enforcement of this ordinance.

Section 2.02. – Right of Entry When necessary to make an inspection to enforce provisions of this ordinance, or when the Administrative Official or an authorized representative has reasonable grounds to believe that there exists an ordinance violation, on any premises the Administrative Official or an authorized representative may enter the premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrative Official by this ordinance, provided that if the property is occupied, the Administrative Official will first present proper credentials and request entry; and if the property is unoccupied, the Administrative Official will first make a reasonable effort to locate the owner or other persons having charge of the property and request entry. If entry is refused, the Administrative Official or an authorized representative will have recourse to every remedy provided by law to secure entry.

When the Administrative Official or an authorized representative has first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant or any other persons having charge, care or control of any property shall deny entry, after proper request is made as herein provided, for the purpose of inspection and examination pursuant to this ordinance.

Section 2.03. – Activities Without Notice Those activities which the Drainage Administrator has the authority to approve without having the matter presented to the Drainage Board may be done without notice is appropriate.

Section 2.04. – Stop Order and Injunction Whenever work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by serving written notice on any persons engaged in or causing the work to be done, and these persons shall immediately stop the work until authorized by the Administrative Official to proceed. The Board may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of a drainage work if there is a violation or threatened violation of this ordinance.

Section 2.05. – Violation and Penalty Any person draining water without a permit is **guilty of a Class 2 misdemeanor and may be subject, in addition to any criminal penalty, a civil penalty up to \$1000 per day of violation.** Any person violating any other provisions of this ordinance is guilty of a misdemeanor and may be subject to a fine of \$500.00, thirty (30) days in jail or both. Each day the violation continues may constitute a separate offense. Each day is deemed to start at 12:01 o'clock A.M.

ARTICLE III – DRAINAGE PERMITS

All surface water drainage or alteration of direction, rate or amount of flow thereof in Hanson County requires a permit prior to the work being done.

Section 3.01. – Permits Required

[A] A drainage permit is required prior to commencing the excavation for, or the construction or installation of, a drainage project including, but not limited to the following:

- 1) Any draining or filling, in whole or in part, of a pond, wetland or lake;
- 2) Construction of any drain; or
- 3) Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size of any drainage tile, or extending or rerouting any drainage work.
- 4) Routine maintenance of an existing drainage system which maintenance does not increase the original capacity of the drainage system.
- 5) Installation of any plug, dam or filling of a preexisting drain.

[B] Permits are required to replace an existing culvert in either a driveway or roadway, establishing a new driveway or field access, with or without a culvert, installing a culvert in an existing driveway or field access, and widening a field access or driveway.

[C] Exception: No drainage permit is required for tiling or draining done around a personal residence and within 100 feet of that residence.

Section 3.02. – Application for a Drainage Permit

- [A] A person requesting a drainage permit will file an application with the Drainage Administrator on a form provided by the County and pay the filing fee with the Administrative Official.
- [B] The applicant must provide a detailed site plan showing the location of the proposed construction. The site plan must include a description of the type and size of the drain, and the location of the proposed outlet. The proposed outlet may be located in a natural

watercourse, draw, ditch, non-blue-line channel, or other outlet approved by the Drainage Administrator and the Drainage Board, provided the Board determines that the outlet is adequate and will not cause unreasonable harm to downstream properties.

Any application for a proposed drainage project that empties into an existing drainage system must include a copy of any recorded vested drainage records or a copy of the U.S. Natural Resources Conservation Service or NRCS-CPA-026 with certified drainage systems and reference wetland maps.

The applicant must obtain written approval of the governing agency for any drainage into a road right-of-way and must obtain written notification or approval from all adjacent and downstream landowners from the point of discharge to the first mapped blue-line watercourse. Such approvals or notifications shall indicate that the adjacent and downstream landowners have no objection to the proposed drainage project.

- [C] If the Administrative Official determines that the application is incomplete or if the information contained therein is insufficient upon which to make an informed decision about the application, the application will be returned to the applicant for revision. The Administrative Official may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor.
- [D] The applicant will also provide copies of the complete application to other affected counties if the application is determined by Drainage Board to be of statewide or inter-county significance.
- [E] All downstream landowners, including established municipalities,

riparian to the watercourse into which water will be drained, for a distance extending from the point of outlet to the nearest blue line "blue line" watercourse shown on the official map. Additional notification may be required at the discretion of the Board.

Section 3.03. – Notification to Other Parties For all hearings required pursuant to this article, the County will, at the applicant's expense, publish notice in the County legal newspaper once a week for two consecutive weeks. The final published notice must be published not more than 15 days, or less than 5 days, before the date set for the hearing. At the county's direction, the applicant shall prominently post the property in a manner most visible to the nearest public right-of-way, giving notice for the permit hearing. The County will also give notice, at the applicant's expense, by postage prepaid, certified mail, not more than 30 days nor less than ten days from the date set for hearing to:

- 1) An adjoining county which should be directly affected by the water to be drained, if the Drainage Administrator deems it advisable.
- 2) The South Dakota Departments of Game, Fish & Parks and Environment & Natural Resources, if the Drainage Administrator deems it advisable.
- 3) The State Highway Department, County Highway Department, Boards of Township Supervisors, for any proposed drainage which will affect the right-of-way of any highway or roadway, if the Drainage Administrator deems it advisable.

- 4) Any person who has notified the County in writing of the person's objection to the drainage project proposed, and who has requested, in writing notification of the hearing on the drainage project proposed.

Section 3.04. –Grant by Administrator Without Hearing. The following Drainage Permits may be granted by the Drainage Administrator without further approval or steps once he determines that the application is in order and appropriate:

- [A] A request to clean out an existing recorded drainage ditch or waterway;
- [B] A request to replace an existing culvert in a road or driveway where the culvert size is not over eighteen (18) inches;
- [C] A request to establish or create a driveway or field approach which contains a culvert;
- [D] A request to widen an existing driveway or field approach and extend the culvert they are under; and
- [E] A request to put a culvert in an existing driveway or field approach.
- [F] A request to drain into a blue line where the blue line and the entirety of the drainage is located on the applicant's property.

The Administrative Official does not have the authority to grant a drainage permit for a proposed project which would have inter-county or interstate significance.

Section 3.05. – Hearing by Drainage Board Following notification in accordance with this ordinance, the Board will conduct a public hearing on a drainage permit application or of the appeal of an administrative decision.

Section 3.06. – Evaluation of Permit Applications The minimum factors considered in evaluating the impact of a proposed drainage project are:

- 1) Flood hazards, floodplain values;
- 2) Erosion potential;
- 3) Water quality and supply;
- 4) Agricultural production;
- 5) Environmental quality;
- 6) Aesthetics;
- 7) Fish and wildlife values; and
- 8) Considerations of downstream landowners and the potential adverse effect thereon including the following criteria:
 - a) Uncontrolled drainage into receiving watercourses which do not have sufficient capacity to handle the additional flow and quantity of water will be considered an adverse effect;
 - b) Drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.
 - c) The amount of water proposed to be drained.
 - d) The design and physical aspects of the drain.

- e) The impact of sustained flows.

Section 3.07. – Appeals of Decisions Made by the Drainage

Administrator A decision of the Administrative Official may be appealed to the Board. A person aggrieved by a decision must file a written appeal with the Administrative Official within 5 working days of the official’s decision. When filed, the Administrative Official will forward the appeal to the Board.

Section 3.08. – Official Maps The official for use relating to all surface waters drainage matters are:

- [A] Primary map: US Geological survey topographical map, 7.5 minute, size 1:24,000, dated 1973, or as updated by the US Geological services from time to time;
- [B] Wetlands: The National Conservation Reserve Services (NCRS) wetlands maps; and
- [C] Hanson County Highway Map.

These maps listed above are listed in the order of their priority for use.

Section 3.09. – Fees The following fees will be charged for matters relating to the drainage processes in Hanson County:

- [A] The fee for a drainage permit approved by the Administrator without board action will be \$25.00. The fee for all other permits will be the sum of one hundred dollars (\$100.00);
- [B] Special Board Meeting fee: in the event where an application requires a special board meeting or County Commissioner’s

meeting to be held for the purpose of accommodating the landowner/permit applicant's needs and is requested by the landowner/permit applicant, applicant will pay per diem and mileage expenses for the board members and any publication costs for the special meeting.

Section 3.10. – Conditions to Permits Permit applications may have additional conditions added thereto as follows:

- [A] Permits granted and approved by the administrator may have conditions added thereto by the administrator; and
- [B] Permits approved after a hearing by the Drainage Board/Commission may have additional conditions placed thereon by the Drainage Board as a condition of granting the permit.

Section 3.11. – Expiration of Drainage Permits A drainage permit expires and becomes void if the authorized construction is not commenced within 365 days of the effective date of the permit *unless written approval of the extension is given by the issuing authority.*

ARTICLE IV – DRAINAGE COMPLAINTS

Section 4.01. – Jurisdiction on Drainage Disputes A party may take a drainage dispute directly to circuit court. However, pursuant to SDCL 46A-10A-34, the Board may address any drainage disputes in the unincorporated area of Hanson County. The Board may decline to hear any dispute or issue brought before it and let the parties proceed directly to circuit court.

Section 4.02. – Filing a Complaint Any landowner, in the county may file a drainage complaint by setting forth the facts of the dispute in writing and

submitting it to the Administrative Official. The complaint will include the name and address of the complainant, the location of the property which has suffered damage or may suffer damage and the location of the property against which the complaint is being registered. When possible, the complaint should detail the type and location of work, and when the work occurred. The Board may require a drainage dispute to include expert reports designated persons.

Section 4.03. – Hearing on Complaint The Board will notify all affected parties of the time date, and place of the hearing. Any interested individual will have the opportunity to appear and be heard. The Board may make a decision regarding the drainage dispute at the hearing, may defer the item pending to obtain additional information from any of the disputing parties, or may hold additional hearings on the dispute.

Section 4.04. – Appeal of Board Decision Any affected party may appeal the Drainage Board’s decision on a dispute to circuit court.

ARTICLE V – DEFINITIONS

Section 5.01. – Definitions

Unless otherwise noted, all terms in this ordinance are defined by their plain meaning.

The following specific definitions apply:

1. **ADMINISTRATIVE OFFICIAL.** The Drainage Administrator duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.

2. BLUE LINE. Will be based upon the data shown on the US Geological survey map adopted by Hanson County as the official map for drainage purposes. This solid blue line indicates what has been deemed as a flowing waterway.
3. BOARD. The Hanson County Board of Commissioners.
4. CONTRACTOR. Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.
5. COORDINATED AND DRAINAGE AREA. A defined geographic area containing one or more parcels of real property and more than one landowner which is established via a public election to provide a planned network or method of natural or man-made drainage and funded through an assessment on the benefited properties.
6. DOMINANT ESTATE. Any parcel of real property, which holds a common law or statutory right to drain water onto other real property.
7. DRAIN. A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, natural, man-made or natural with man-made improvements including:
 - a. CLOSED DRAIN. A man-made drain or drainage scheme utilizing pipes, tiles or other material and constructed so the flow of water is not visible.
 - b. LATERAL DRAIN. A drain constructed after the establishment and construction of the original drain or

drainage system and which flows into the original drain or drainage system.

- c. NATURAL DRAIN. A drainage system on the surface of the ground which operates as part of a natural water course.
 - d. SURFACE DRAIN. A man-made drain on the surface of the ground.
8. DRAINAGE DISTRICT. A drainage area with multiple owners that was established under state law prior to July 1, 1985 in which all planning, construction and maintenance of the drainage system conform with a master plan for the district and are funded through an assessment on the benefited acres within the district.
 9. DRAINAGE PROJECT. Any man-made improvements constructed or installed to drain water.
 10. HYDRIC SOIL. Soil types which are formed under saturated conditions.
 11. HYDROPHITIC VEGETATION. Vegetative types adapted for life in saturated soil conditions.
 12. INTERMITTENT STREAM OR WATERWAY or STREAM INTERMITTENT. A natural drainage channel indicated by a dot and dash blue line on the most recently published USGS 7.5-minute quadrangle maps

13. LANDOWNER OR OWNER. Any individual, firm or corporation, public or private, or public agency, which has title to real property as shown by the records of the Register of Deeds. If the real property is sold under a contract for deed and the contract is of record in the office of the Register of Deeds, both the recorded owner of the real property and purchaser as named in the contract for deed are owners of the real property.
14. MEANDERED LAKE. Any pond, slough, or lake which has had its boundaries established by metes and bounds in the documents or record or in the survey of public lands by the government of the United States.
15. NAMED WATER COURSE. The mainstream beds of Bloom Creek, Elm Creek, Enemy Creek, James River, Johnson Creek, Pierre Creek, Plum Creek, Rock Creek, Twelve-mile Creek, and Wolf Creek are the named water courses in Hanson County.
16. PERSON. An individual, firm, partnership, association, corporation, contractor or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.
17. REGISTERED DRAINAGE: any ditch, drain, or system that has been recorded in the office of the Hanson County Register of Deeds.
18. SERVIENT ESTATE. Any parcel of real property, which is subject to a legal right allowing a dominant estate to drain water onto it.

19. STREAM PERMANENT. A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5-minute quadrangle maps.
20. VESTED DRAINAGE RIGHT. A right to drain water from one property to another which has been established based on SDCL 46A-10A or 46A-11A. Any natural right acquired before July 1, 1985 is deemed vested. Drainage with man-made origins or improvements acquired prior to July 1, 1985 is deemed vested if recorded at the register of deeds office before July 1, 1992. Drainage districts are exempt from the recording requirements.
21. WATERSHED. The area of land which drains, directly or indirectly, into a slough, pond, lake, stream or water course.
22. WETLAND. Means land that (1) has predominance of hydric soils; (2) is inundated or saturated by surface or groundwater as a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) under normal circumstances does support a prevalence of such vegetation.
23. WATER COURSE. A fixed and determinant route, natural or man-made, by which water flows from one parcel of real property to another and by which water is discharged upon a servient estate for a period of time, on such a regular basis and in such quantities that it is (becomes) a predictably continuous activity. It is not necessary that the force of the flow of water be sufficient to form a channel having a well-defined bed or banks.

24. REGISTERED AND RECORDED DRAINAGE SYSTEMS. Any drainage system that has been property filed at the Hanson County Courthouse with the Administrative Official.

First Reading: February 3, 2026

Second Reading & Adoption: February 17, 2026

Published: February 26, 2026

Effective 20 days after publication.