

TITLE 9 2012 Revised Drainage Ordinance

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Chapter 9.01 GENERAL PROVISIONS

SECTION 101. TITLE. These regulations shall be referred to as the 2012 Revised Drainage Ordinance of Brown County.

SECTION 102. AUTHORITY. The authority for this ordinance is promulgated under SDCL 46A-10A and SDCL 46A-11.

SECTION 103. PURPOSE. These regulations shall govern the drainage of water within the unincorporated area of Brown County and are designed to enhance and promote the physical, economic and environmental management of the county; protect the tax base; prevent inordinate adverse impacts on servient properties; encourage land utilization that will facilitate economical and adequate productivity of all types of land; lessen government expenditure; conserve and develop natural resources; and preserve the important benefits provided by wetlands.

SECTION 104. INTERPRETATION, ABROGATION, AND SEVERABILITY. In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deeds restrictions. However, where these regulations and other easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. All other county regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

SECTION 105. PURPOSE OF CATCH HEADS. The catch heads appearing with the sections of this ordinance are inserted simply for convenience to serve the purpose of an index. The catch heads shall be wholly disregarded by a person, office, court or other tribunal in construing the terms and provisions of this ordinance.

SECTION 106. SAVING CLAUSE. These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal, that may have already accrued or grown out of any regulations repealed.

SECTION 107. 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 shall not create liability on the part of Brown County, or any officer or employee thereof.

SECTION 108. PRESERVATION OF LANDOWNER'S RIGHTS AND SOVEREIGN IMMUNITY. The authorization of a drainage project shall in no way affect the legal rights which may otherwise exist between a landowner and any other property (dominant or servient estate). The County, in considering project applications, shall be protected by the Doctrine of Sovereign Immunity and shall not be subject to any cause of action or

claim brought by any person alleging an impact caused by the water which is the subject of the application.

SECTION 109. COMPLIANCE WITH LAWS OR REGULATIONS NOT AFFECTED

BY PROJECT APPROVAL. A project approved under the provisions of this ordinance shall in no way remove any responsibility on the part of any landowner, tenant or contractor to comply with all applicable local, state or federal laws or regulations nor will such approval shield or abrogate the landowner from civil liability to others affected by the project.

SECTION 110. DEFINITIONS. For the purposes of this ordinance, certain terms and words are hereby defined. Unless otherwise noted, all terms contained in this ordinance are defined by their plain meaning.

- A. **ADMINISTRATIVE OFFICIAL.** The Planning Director duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.
- B. **BENEFITED AREA.** The area within a drainage district or coordinated drainage area that receives the direct benefit from the drainage projects which have been constructed, or are to be constructed, within the district or drainage area.
- C. **BOARD.** The Board of Brown County Commissioners.
- D. **CONTRACTOR.** Any individual, firm or corporation who performs excavation, grading, construction or installation work involving a drainage project.
- E. **COORDINATED DRAINAGE AREA.** A defined geographic area containing one or more parcels of real property and more than one land owner 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.
- F. **DOMINANT ESTATE.** Any parcel of real property, usually at a higher elevation, which holds a common law or statutory right to drain water onto other real property.
- G. **DRAIN.** A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, either natural, man-made or natural with man-made improvements.
- H. **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.
- I. **DRAINAGE PROJECT.** Any man-made improvements constructed or installed with the intent to drain water.
- J. **LANDOWNER OR OWNER.** Any individual, firm or corporation, public or private, or public agency, who 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 the purchaser as named in the contract for deed are deemed owners of the real property.

- K. 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.
- L. ROUTINE MAINTENANCE. Maintenance performed on a vested drain, existing non-vested drain, natural drain, or intermittent stream, in conformance with Sections herein.
- M. SERVIENT ESTATE. Any parcel of real property, usually at a lower elevation, which is subject to a legal right allowing a dominant estate to drain water onto it.
- N. VESTED DRAINAGE RIGHT. A right to drain water from one property to another which has been established on the basis of 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.

Chapter 9.02 DRAINAGE DISTRICTS, COORDINATED DRAINAGE AREAS,

DRAINAGE PROJECTS AND DRAINAGE BASIN UTILITY DISTRICTS

SECTION 201. APPLICATION FOR REPAIR WORK ON A DRAINAGE DISTRICT. In the event that maintenance is required in a drainage district in which three or more landowners have voluntarily contributed to the cost of previous maintenance, at least sixty percent of the resident landowners served by the drain may file a petition with the County Auditor requesting the Board to take action regarding the necessary repairs. Such petition shall include a map which shows the boundaries of the benefited area of the district in which assessments will be made to cover the cost of the proposed work, the official name or number of the district, the initial and terminal points and general or exact course of the drain, a description of the proposed maintenance, a site plan showing the location of the maintenance, and a statement that the owners agree to future maintenance and assessment of the drain by the Board. The petition shall also detail the type or types of drainage projects that will be included in the proposed area. All maintenance work and assessments shall be completed in accordance with SDCL 46A-10A and 46A-11.

SECTION 202. COUNTY ACTION ON MAINTENANCE PETITION. Upon receipt of a petition to maintain an existing drainage district, the Board shall set a date for a public hearing upon the request. The hearing shall be held within 30 days of the receipt of the petition. Any interested person may appear at the hearing in regard to the petition.

SECTION 203. APPLICATION WHEN DRAINAGE DISTRICT EXTENDS INTO MORE THAN ONE COUNTY. When the drainage district extends into more than one county, the application shall be made to the county which had jurisdiction over the original drainage district. If the original county with jurisdiction is unknown, application for repair work shall be made to all counties affected.

SECTION 204. ABANDONMENT OF DRAINAGE DISTRICT. Any drainage district established prior to July 1, 1985, may be abandoned and abolished after a petition has been filed with the County Auditor by not less than 25 percent of the drainage district property owners. The petition shall include the name of the drainage district. The Board shall publish notice and hold a hearing in conformance with SDCL 46A-10A. If less than a majority of drainage district owners petition for the abandonment of a drainage district, the Board shall schedule an election in accordance with 46A-10A-43 at which the property owners within the district shall decide the fate of the district.

SECTION 205. PETITION FOR COORDINATED DRAINAGE AREA. When the landowners of an area propose to develop a coordinated network of drainage projects, a petition shall be filed with the County Auditor requesting the formation of a coordinated drainage area. The petition shall be signed by not less than 25 percent of the landowners within the area and shall conform to the requirements set forth in SDCL 46A-10A-49. The petition shall include an accurate survey and map verified by a licensed surveyor which shows the boundaries and area of land included within the limits of the proposed coordinated drainage area. The petition shall also detail the type or types of drainage projects that will be included in the proposed area. The Board shall place the proposed coordinated drainage area map in a convenient public office for at least twenty days for examination by those having an interest in the application, and shall set a date for a hearing on the petition.

SECTION 206. HEARING ON COORDINATED DRAINAGE AREA. The Board, after publishing notice of the hearing, shall hold a hearing on the proposed coordinated drainage area at which any interested person may appear. If the Board is satisfied that the proposed drainage area is in the public interest and that all requirements of SDCL 46A-10A have been met, it may approve the creation of the coordinated drainage district pending the assent of a majority of the landowners within the drainage area at an election to be held within one month of the hearing. However, if the landowners signing the petition represented a majority of the resident landowners in the proposed district, no election need be held.

SECTION 207. NOTICE OF HEARING. The Board, prior to holding a hearing on a petition to establish a coordinated drainage area, shall publish notice of the hearing in a newspaper of general circulation in the area affected. The notice shall be published at least 14 days in advance of the hearing date.

SECTION 208. COORDINATED DRAINAGE AREA ELECTION. Any election regarding a coordinated drainage area shall be held in conformance with SDCL 46A-10A-50 through 46A-10A-54. The board or commission shall give ten days' notice of an election by publication in an official newspaper in the proposed coordinated drainage area. The vote shall be taken by ballot in a form provided by the Board. The ballot shall include the question on whether a coordinated drainage area should be established and a notice informing voters that all costs of the drainage area will be paid by the landowners within the area. Establishment of the area shall be effective upon the approval of a majority of landowners within the district. If a majority vote against the establishment of the drainage area, no further proceedings may be taken on a similar request for a period of two years.

SECTION 209. ASSESSMENT OF COSTS TO COORDINATED DRAINAGE DISTRICT. All costs associated with the coordinated drainage area shall be paid by the landowners within the district. The County may perform necessary construction and/or maintenance and recover the costs by assessing the benefited landowners within the coordinated drainage area.

SECTION 210. DRAINAGE PROJECT NOTIFICATION REQUIREMENTS. Any person constructing a new drainage project or modifying an existing drainage project shall be required to notify the Drainage Administrator prior to commencement of the drainage project. Notification shall be required for, but not limited to the following:

- 1) Construction or installation of a surface or closed drain.
- 2) Any draining or filling, in whole or in part, of a pond, wetland, or lake.
- 3) Construction of any lateral drain.
- 4) Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size of any drainage tile, or the extending or rerouting any drainage work.
- 5) Repairing, replacing or improving any drain.
- 6) Improvements to a drainage district or a coordinated drainage area which were not included in the original plans.

The notification shall be filed on a form provided by the County and shall be filed with the Drainage Administrator. The notice shall provide a detailed site plan showing the location of the proposed construction, and a description of the type and size of the drain, and the location of the proposed outlet. The notice for a proposed drainage project which would empty into an existing drainage system shall include a description of the type and general location of the existing system.

The contractor, installer or landowner shall also provide to the Drainage Administrator GPS data for installed drain tile in decimal degrees or degrees-minutes seconds electronic format. Contractors or installers without GPS capabilities shall provide an as-installed map for the tile. This information shall be provided no less than 30 days prior to the final date of installation.

Chapter 9.03 DRAINAGE COMPLAINTS

SECTION 301. JURISDICTION ON DRAINAGE DISPUTES. Any landowner 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 Brown County. The Board may further provide by Resolution that certain types or categories of drainage disputes will not be heard by the Board and must be taken directly to Circuit Court.

SECTION 302. FILING A COMPLAINT. Any landowner in the county may file a drainage complaint by setting forth the facts of the drainage dispute in writing and submitting it to the Administrative Official. The complaint shall 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 that a drainage dispute include expert reports from a professional engineer or surveyor.

SECTION 303. ADMINISTRATIVE OFFICIAL TO OFFER POSSIBLE RESOLUTION, DECISION ON JURISDICTION BY BOARD. Upon receipt of a drainage complaint the Administrative Official shall make an investigation of the facts, offer a recommendation for resolution to the parties involved and, if requested by any affected party, forward the complaint to the Board for a hearing. The Board shall make a determination whether they will accept jurisdiction over the particular type or category of drainage which is set forth in the complaint. If the Board does not accept jurisdiction, the dispute may be taken to Circuit Court. If the Board does accept jurisdiction, a date for a public hearing on the drainage complaint shall be set.

SECTION 304. HEARING ON COMPLAINT. When a hearing has been scheduled the Board shall notify all affected parties of the date and time for the hearing. Any interested individual shall 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 additional information from either of the disputing parties, may hold additional hearings on the dispute, or refer the matter to Circuit Court.

SECTION 305. APPEAL OF BOARD DECISION. Any affected party may appeal the Board's decision on a drainage dispute to Circuit Court.

Chapter 9.04 ADMINISTRATION AND ENFORCEMENT

SECTION 401. POWERS AND DUTIES. The Administrative Official is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Administrative Official may designate technical officers and/or inspectors or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

SECTION 402. RIGHT OF ENTRY. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Administrative Official or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Administrative Official or an authorized representative may enter such 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 such property be occupied, the Administrative Official shall first present proper credentials and request entry; and if such property be unoccupied, the Administrative Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the property and request entry. If such entry is refused, the Administrative Official or an authorized representative shall have recourse to every remedy provided by law to secure entry.

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

SECTION 403. STOP ORDER AND INJUNCTION. Whenever any work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by notice in writing served on any persons engaged in or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Administrative Official to proceed. In the event of a violation or threatened violation of this ordinance, the Board may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of any drainage work.