

MARSHALL COUNTY, SOUTH DAKOTA  
DRAINAGE PERMIT ORDINANCE  
PURPOSE AND SCOPE

Publication Date: December 7, 2022 (1<sup>st</sup> Reading Notice)  
Publication Date (TBD): December 21, 2022 (2<sup>nd</sup> Reading Notice)  
Notice of Adoption (TBD): January 4, 2023  
Proposed Effective Date: January 24, 2023

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*The ordinance is formulated in the accordance with SDCL 46A-10A and is intended to provide the basic guidance needed by the county drainage board in carrying out the duties of that board.*

- I. **DEFINITIONS.** For the purpose of this Ordinance, certain terms and words are hereby defined, unless the context otherwise requires. The word “shall” is mandatory and not discretionary.
  - a. “Board,” Marshall County Board of Commissioners.
  - b. “Highway,” any road or highway on the Marshall County system or any township system located within Marshall County.
  - c. “Landowner,” any individual, firm or corporation, public or private, or public agency, who has legal title to real property as shown by the records of the Register of Deeds of the county in which the real property is situated. 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 for the respective county, both the record owner of the real property and the purchaser as named in contract for deed are deemed owners of the real property.
  - d. “Person,” a person, firm, partnership, association, corporation or any other type of private legal entity 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.
  
- II. **County Commission as Board of Resolution.** In accordance with SDCL 46A-10A-34, the Board shall constitute itself as the Board of Resolution. The Marshall County Drainage Administrator (hereinafter “Draining Administrator”) shall act as recorder of the official minutes of the Board but shall have no voting right. The Board shall be responsible only for drainage involving land outside of municipalities and permit applications as specified in this ordinance. Any other drainage dispute which is not resolved by the Board of Resolution can be taken directly to Circuit Court.
  
- III. **Permits Required.** It shall be unlawful to commence the excavation for, or begin the construction or installation of drainage works until a drainage permit has been issued by the Board for such work. A permit shall be required before any person may construct, cause to be constructed, modify, repair or improve any drainage or drainage ditch onto other real estate. Permits shall be required for drains along or across any highway and for construction of open ditches. A permit shall also be required before any person may modify the drainage authorized in an original permit issued by the Board. Modification of drain or the alteration of a drain from the original plans or specifications.

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- IV. **Application for a Drainage Permit.** The following is required 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 one hundred (\$100.00) 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 GPS coordinates location of the proposed outlet. Any application for a proposed drainage project which empties into an existing drainage system must include a GPS coordinates location of where it is going into that drainage system.
  - c. The applicant must obtain written approval of the governing agency for any drainage into the road right-of-way prior to submitting the drainage application.
  - d. If the Board determines that the application is incomplete or if the information therein is insufficient upon which to make an informed decision about the application, the application will be returned to the applicant for revision. The Board may also require the applicant provide a detailed survey prepared by a professional engineer or surveyor.
- V. **Emergency Drainage.** The requirement for a hearing and notice thereon may be waived by a unanimous vote of the Board in order to process applications for a temporary emergency drainage. However, a hearing shall be conducted at the earliest opportunity if the emergency drainage is to be permanent.
- VI. **Notice of Permit Hearing.** For all hearings required pursuant to this article, the Drainage Administrator shall, at the applicant's expense, publish one time, notice in a newspaper of general circulation in the area of the proposed drainage. The notice shall be published not more than fifteen days, nor less than five days, before the date set for hearing. The Drainage Administrator shall also, at the applicant's expense, give notice not less than ten days before the date set for hearing, to:
- a. Any owner of real property, including railroad right-of-way, which would be directly affected by the water to be drained.
  - b. The state highway department, county highway department, board of township supervisors or any other agency or department that might be affected by the drainage.
  - c. All utilities including gas, oil, electricity, water or communications transmission systems affected by the drainage.

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- d. Any person who has notified the Board of the person's objection to the drainage project proposed, and who has requested notification of such hearing on the drainage project proposed.
- VII. **Content of Notice of Hearing.** The notice shall be given all essential facts concerning the proposed drainage, including, but not limited to; name and address of applicant, legal description or location of the area to be drained and the area into which the water will be drained; purpose of drainage, estimated dates drainage construction will commence; the time, date and location of the hearing; and such other pertinent information as deemed necessary by the Board.
- VIII. **Time for Determination by Board.** Within thirty days after a hearing required pursuant to this article, or at the earliest opportunity in emergency situations, the Board shall make a determination on the application. For complex or unique applications this time limit may be extended by the Board.
- IX. **Consideration of Permit Application.** In evaluating a drainage permit application, the Board shall consider the following criteria:
- a. Whether the flow or quantity of water to be drained will overburden the drainage ditch capacity into which the water will be drained.
  - b. Whether the drainage will flood or adversely affect the lands or lower properties.
  - c. Whether water to be drained in the limits of or across any county right-of-way will have an adverse impact on any structures or road surface.
  - d. Whether the drainage will adversely affect any above or below ground utility, electrical, gas, oil, fuel, water or communication wires, or pipeline delivery systems.
  - e. Any other factors deemed important by the Board.
- X. **Criteria to Determine Whether Drainage Will Adversely Affect Public Right-Of-Way or Utilities.** The Board shall be guided by the following criteria in determining proposed drainage impact;
- a. Uncontrolled drainage within the limits of any county rights-of-way which do not have sufficient capacity to handle the additional flow and quantity of water shall be considered to have an adverse effect.
  - b. Whether the uncontrolled drainage will expose, or weaken communication transmission lines, pipelines, distribution lines or road structures or surfacing.
  - c. Whether drainage is accomplished by reasonable improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity or in the artificial drain system is adopted.
  - d. The amount or flow of water proposed to be drained, the design and other physical aspects of the drain, and the impact of sustained flows.

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- XI. **Approval or Denial of Drainage Permit Application.** The Board's order granting or denial of approval of the application shall be noted on the records of the Board and an approval shall be a permit to drain. The permit shall be forwarded to the applicant. A denial application shall be returned to the applicant along with a copy for the Board's reasons for denial.
- XII. **Recording Of Approved Permit.** The Board shall, at the applicant's expense, record all approved drainage permits with the Marshall County Register of Deeds.
- XIII. **Not In Effect Until All Fees Are Paid.** The approved drainage permit shall not be in effect until all the fees required to be paid by applicant are paid in full.
- XIV. **Conditions to Permit.** The Board may require as a condition to the approval of any drainage permit application, a post-construction inspection of the permitted drain. Upon approval of such inspection the Board shall designate such drain as a legal drain. The Board may attach any other conditions to the circumstances of each application. No person is authorized to use a drain which has been improperly constructed or has been built in violation of permit requirements or conditions.
- XV. **Penalty for Failure to Secure Permit for Drainage Work.** Any person draining water into a highway right-of-way or other real estate without a permit of up to \$1,000.00 per day of violation.