

ORDINANCE NO. 33-2023

AN ORDINANCE AMENDING CHAPTER 3, "SUBDIVISION REGULATIONS," ARTICLE II, "SUBDIVISION STANDARDS," DIVISION 11. "STORMWATER MANAGEMENT REQUIREMENTS," OF THE ABILENE LAND DEVELOPMENT CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY

WHEREAS, FEMA requirements necessitate certain updates to the city's stormwater management ordinance; and

WHEREAS, needed updates include designations for areas of special flood hazard, adding a definition for "manufactured home," amending the date of the most recent flood insurance study, and specifying instances in which base flood elevation data shall be required.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 3, Article II, Division 11, Section 3.2.11.1 of the Abilene Land Development Code be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That all subsequent definitions be renumbered accordingly.

PART 3: That Chapter 3, Article II, Division 11, Section 3.2.11.2 of the Abilene Land Development Code be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 4: That Chapter 3, Article II, Division 11, Section 3.2.11.3 of the Abilene Land Development Code be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 5: That any persons, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine in accordance with Chapter 1 (Section 1-9) of this Code. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 22nd day of June, 2023.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 9th day of July, 2023, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 13th day of July, 2023, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 13th day of July, 2023.

ATTEST:

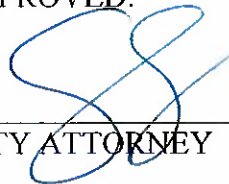


CITY SECRETARY



MAYOR

APPROVED:



CITY ATTORNEY



Exhibit A

Section 3.2.11.1 Purpose, Definitions, and Methods

- (a) *Purpose.* It is the purpose of this Division 11 to promote the public health, safety, and welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to achieve the following:
- (1) Protect human life and health;
 - (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
 - (5) Help maintain a stable tax base by providing for the sound use and development of all areas in such a manner as to minimize future flood blight areas;
 - (6) Insure that potential buyers are notified that property is in a flood area;
 - (7) Secure review and approval of the method for handling and disposing of stormwater runoff in the City of Abilene and its extraterritorial jurisdiction, and securing review, analysis, and approval by the appropriate authority of the design, construction, and maintenance of drainageway facilities in conformance with the Abilene Stream Management Plan and Abilene Drainage Standards;
 - (8) Impose standards and conditions upon the excavating, grading, filling, berming, and diking of the land within the City of Abilene in conformance with the Abilene Stream Management Plan and Abilene Drainage Standards;
 - (9) Minimize the danger that materials may be swept onto other lands causing injury to others;
 - (10) Insure the safety of access to property in time of flood for ordinary and emergency vehicles; and
 - (11) Minimize prolonged business interruptions.
- (b) *Definitions.* Unless specifically defined below, words or phrases used in this Division 11 shall be interpreted to give them the meaning they have in common usage and to give the provisions of this Division their most reasonable application.
- (1) *Abilene Drainage Standards.* The criteria, standards and specifications for storm drainage, streets, and earth change adopted by the City of Abilene.
 - (2) *Appeal.* A request for a review of the Floodplain Administrator's interpretation of any provisions of this ordinance or a request for a variance.
 - (3) *Area of Shallow Flooding.* A designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of

flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

- (4) *Area of Special Flood Hazard.* The land in a floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FIRM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1–30, AE, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1–30, VE, or V. For purposes of these regulations, the term “area of special flood hazard” is synonymous in meaning with the phrase “Special flood hazard area”.
- (5) *Base Flood.* The flood having a one percent chance of being equaled or exceeded in any given year.
- (6) *Base Flood Elevation (BFE).* The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1—A30, AR, V1—V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year, also called the Base Flood.
- (7) *City.* The City of Abilene and all lands located within the extraterritorial jurisdiction.
- (8) *Critical Feature.* An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.
- (9) *Detention.* The temporary storage and controlled release of stormwater runoff.
- (10) *Detention Facility.* A facility that provides temporary storage of stormwater runoff and controlled release of this runoff.
- (11) *Development.* Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.
- (12) *Drainage Facilities.* Includes all elements necessary to convey stormwater runoff from its initial contact with earth to its disposition in an existing drainageway, and said drainageway facilities shall consist of both public and private storm sewers (closed conduits), improved channel constructed in conformity with adopted Abilene Drainage Standards, unimproved drainageways left in their natural condition, areas covered by restricted drainageways, easements for the purpose of providing overland flow and all appurtenances to the foregoing, including inlets, manholes, junction boxes, headwalls, dissipators, culverts, etc.
- (13) *Drainage Plan.* A plan which consists of engineering drawings, contour maps, and all supporting engineering calculations, as applicable to the land area covered by the plan, which are required to demonstrate full compliance with the Stormwater Management Requirements and the Abilene Drainage Standards.
- (14) *Earth Change.* Excavating, grading, filling, berming, or diking of land.
- (15) *Elevated Building.* A nonbasement building: (i) built, in the case of a building in Zones A1—30, AE, A, A99, AO, B, C, X, and D, to have the top of the elevated floor

elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water; and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1—30, AE, A, A99, AO, B, C, X, D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

- (16) *Existing Construction*. For the purpose of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."
- (17) *Existing Manufactured Home Park or Subdivision*. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of floodplain management regulations adopted by a community.
- (18) *Expansion to an Existing Manufactured Home Park or Subdivision*. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).
- (19) *Flood or Flooding*. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation of runoff of surface waters from any source.
- (20) *Flood Hazard Boundary Map (FHBM)*. An official map of a community, issued by the Federal Emergency Management Agency, where the areas within the boundaries of special flood hazards have been designated as Zone A.
- (21) *Flood Insurance Rate Map (FIRM)*. An official map of a community on which the Federal Emergency Management Agency has determined both the areas of special flood hazards and the risk premium zones applicable to the community.
- (22) *Flood Insurance Study*. The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, as well as the Flood Hazard Boundary Map.
- (23) *Floodplain Administrator*. The official designated by the City Manager to administer this ordinance, or an authorized representative.
- (24) *Floodplain or Flood-prone Area*. Any land area susceptible to being inundated by water from any source (see definition of flooding).
- (25) *Flood Protection System*. Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding.

Such as system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

- (26) *Floodway Development Permit*. A permit required prior to building construction or earth change of any property within a designated floodway.
- (27) *Floodway (Regulatory Floodway)*. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- (28) *Habitable Floor*. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used for storage purposes only (such as storage of cars) is not a "habitable floor."
- (29) *Highest Adjacent Grade*. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- (30) *Historic Structure*. Any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;
or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior,
or
 2. Directly by the Secretary of the Interior in states without approved programs.
- (31) *Impervious Surface*. Any surface with a runoff coefficient based on the Rational Method of runoff calculation with a value equal to or greater than 0.85. Examples of impervious surfaces include roofs, pavement, and compacted base material.
- (32) *Levee*. A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
- (33) *Levee System*. A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices. At a minimum, they are to meet all Federal Emergency Management Agency Requirements.

- (34) *Lowest Floor*. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.
- (35) *Major Drainage System*. The 100-year frequency flood shall be contained within the right-of-way or dedicated easement of all major drainage systems. These facilities include floodways, improved channels, detention reservoirs, and overland swales.
- (36) *Manufactured Home*. See Chapter 5, Article 1, Division 1, Section 5.1.1.3, Paragraph (a)(59) *DWELLING, MANUFACTURED HOME (HUD-CODE)*. The term "manufactured home" does not include a "recreational vehicle".
- (37) *Mean Sea Level*. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
- (38) *Natural*. The cover and topography of land before any man-made changes, or in areas where there have already been man-made modifications, the state of the area and topography of land on April 30, 1983.
- (39) *New Construction*. For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.
- (40) *New Manufactured Home Park or Manufactured Home Subdivision*. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after April 30, 1983.
- (41) *Recreational Vehicle*. A vehicle which is:
- a. Built on a single chassis;
 - b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
 - c. Designed to be self-propelled or permanently towable by a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (42) *Regulatory Flood*. The flood having a one percent chance of being equaled or exceeded in any given year based upon the existing conditions, adopted Floodwater Management Policies, and the Stormwater Management Requirements of the Subdivision Regulations.
- (43) *Sedimentation Facilities*. Including but not limited to land terraces, hay bales, and vegetation groundcovers used to reduce transport of suspended solids.

- (44) *Start of Construction*. Includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation or addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (45) *Structure*. A walled and roofed building that is principally above ground, as well as a manufactured home.
- (46) *Substantial Damage*. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
- (46) *Substantial Improvement*. Within a regulatory floodplain or floodway, any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:
- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
 - b. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure,"
 - c. Routine maintenance, minor repairs, painting, or similar improvements.
- (47) *Variance*. A grant of relief to a person from the requirements of this Division 11 when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Section.
- (48) *Violation*. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance with these requirements is presumed to be in violation until such time as that documentation is provided.

- (49) *Water Surface Elevation.* The height in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
- (c) *Methods for Reducing Flood Losses.* In order to accomplish its purpose, this Division 11 uses the following methods:
- (1) Limit runoff from development to a level not to exceed that runoff that would exist under natural, undeveloped conditions unless provided for in a regional detention facility. The "natural" state shall be as defined in subsection (b) Definitions above.
 - (2) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause increases in flood heights or velocities.
 - (3) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
 - (4) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.
 - (5) Control filling, grading, dredging and other development which may increase flood damage.
 - (6) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

Section 3.2.11.2 General Provisions

- (a) *Lands to Which This Section Applies.* This Division 11 shall apply to all areas within the City of Abilene and its extraterritorial jurisdiction.
- (b) *Proper Drainage, Plans, Approval.* All subdivisions shall be designed to convey the flow of stormwater without damage to persons or property. The subdivision shall be designed to ensure drainage at all points along streets and provide positive drainage away from building sites while, simultaneously, preventing discharge of runoff onto adjacent properties.
- (c) *Responsibility.* All drainage facilities required in accordance with this chapter shall be installed and paid for by the subdivider in accordance with applicable standards and specifications of the City of Abilene.
- (d) *Additional Standards and Requirements.* All plans for drainage control shall be consistent with requirements of Article 2, Division 11 of this Chapter as well as with local and regional drainage plans. All plans for drainage control shall also be subject to approval by the City Engineer or his duly authorized representative.
- (e) *Basis for Establishing the Areas of Special Flood Hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency in a specific engineering report entitled "The Flood Insurance Study for the City of Abilene," dated January 06, 2012, with accompanying Flood Insurance Rate Maps and Flood Hazard Boundary-Floodway Maps and any revision thereto are hereby adopted by reference and declared to be a part of this LDC of the City of Abilene.
- (f) *Drainage Standards.* The Floodplain Administrator shall apply standards, where applicable, for drainageway facilities and stormwater detention facilities which shall become adopted

"Abilene Drainage Standards" after the same are approved by resolution of the Abilene City Council. Said Abilene Drainage Standards shall be followed by every person, firm, corporation in the construction, installation, and maintenance of drainageway facilities and stormwater detention facilities. The Abilene Drainage Standards, as adopted, may be amended by City Council resolution. The adopted Abilene Drainage Standards shall regulate the design, installation, utilization and maintenance of all detention and drainage facilities and structures; the design, installation, utilization and maintenance of sedimentation and erosion control procedures, facilities and structures; and shall establish acceptable methods for controlling soil sedimentation and erosion.

- (g) *Establishment of Floodway Development Permit.* A Floodway Development Permit shall be required to ensure conformance with the provisions of this Division 11.
- (h) *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Division and other applicable regulations. The provisions of this Section shall apply to and be binding upon every person, firm, or corporation who seeks to develop, redevelop, grade, excavate, fill, berm, or dike land within the City of Abilene.
- (i) *Abrogation and Greater Restrictions.* The requirements of this Division are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (j) *Interpretation.* In the interpretation and application of this Division, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the purpose of this Division; and
 - (3) Deemed neither to limit nor repeal any other powers granted under State statutes.
- (k) *Warning and Disclaimer of Liability.* The degree of flood protection required by this Division is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. The requirements of this Division shall not create liability on the part of the City of Abilene or any official or employee thereof for any flood damages that result from reliance on this Division or any administrative decision lawfully made thereunder.
- (l) *Localized Flooding Areas.* A map depicting the drainage areas which contribute to localized flooding problems shall become adopted as the "Localized Flooding Areas Map" after the same is approved by resolution of the Abilene City Council. The map as adopted may be amended by City Council resolution. The map will serve as the basis for application for the stormwater management criteria to individual developments.

Section 3.2.11.3 Standards for Subdivision Plats

- (a) *Consistency Required.* All subdivision plats shall be consistent with all provisions of this Division 11.
- (b) *Requirements.* All plats for the development of subdivisions shall meet Floodway Development Permit requirements of Section 3.2.11.5, in addition to the provisions of Section 3.2.11.6 and the Drainage Plan requirements of Section 3.2.11.4.
- (c) *Base Flood Elevation Data.* Base flood elevation data shall be provided for all subdivision plats and other proposed development, if applicable. In designated special flood hazards (A Zones) where there is neither water surface elevation data nor an identified floodway or coastal high hazard area, the community shall require new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, to include within such proposals Base Flood Elevation data.
- (d) *Manufactured Home Parks and Subdivisions.*
 - (1) All subdivision plats including manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
 - (2) All subdivision plats including manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (e) *Provisions Prior to Final Approval of Plats.* Prior to final approval of a Final Plat, the developer shall provide either:
 - (1) Actual construction of all approved drainage and detention facilities required by the City of Abilene; or
 - (2) Sufficient surety bond, trust agreement, performance bond, or an irrevocable letter of credit approved by the Floodplain Administrator and City Attorney guaranteeing the developer's pro-rata share of construction of all required drainageway and detention facilities in accordance with an approved Drainage Plan (in conjunction with approved Construction Plans) and duly adopted Abilene Drainage Standards; or
 - (3) An alternative form of assurance proposed by the developer to guarantee the developer's pro-rata share of construction of all required drainageway and detention facilities in accordance with an approved Drainage Plan (in conjunction with approved Construction Plans) and the adopted Abilene Drainage Standards, said alternative form of assurance having been accepted by the Abilene Floodplain Administrator.