

*Craft to
W. C. C. Dept.
P. O. Box
City
S. D. Park*

ORDINANCE NO. 55

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, CALLING A PUBLIC HEARING; AMENDING CHAPTER 52 OF THE CODE OF THE CITY OF ABILENE, TEXAS, 1957, AS AMENDED, BY DEFINING CERTAIN TERMS; PROHIBITING THE DUMPING, PLACING OR STORING OF TRASH, GARBAGE, RUBBISH, JUNK, SCRAP METAL, DEBRIS OR WASTE BUILDING MATERIALS IN THE CHANNELS OF BIG ELM, LITTLE ELM, CATCLAW, BUTTONWILLOW, CEDAR, LYTLE OR RAINEY CREEKS WITHIN THE CORPORATE LIMITS OF THE CITY OF ABILENE; PROHIBITING THE DUMPING, PLACING OR STORING OF FILL MATERIAL OR THE CONSTRUCTION OF IMPROVEMENTS WITHIN THE CHANNELS OF THE ABOVE NAMED CREEKS WITHOUT A CERTIFICATE ISSUED BY THE CITY ENGINEER OF THE CITY OF ABILENE; REQUIRING PROPERTY OWNERS ABUTTING THE ABOVE NAMED CREEKS TO CLEAR THEIR PORTIONS OF SAID CHANNELS OF GROWTHS OF TREES, BRUSH AND WEEDS WHICH MATERIALLY OBSTRUCT OR DIVERT THE FLOW OF WATER IN SAID CREEKS UNLESS A DRAINAGE MAINTENANCE EASEMENT HAS BEEN GRANTED TO THE CITY OF ABILENE; DECLARING THE ABOVE NAMED OBSTRUCTIONS IN SAID CREEK CHANNELS TO BE A PUBLIC NUISANCE; AUTHORIZING THE CITY ATTORNEY TO ENFORCE THE PROVISIONS OF THIS ARTICLE; DECLARING A PENALTY; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, the City of Abilene is located topographically so that Big Elm,

Little Elm, Catclaw, Buttonwillow, Cedar, Lytle and Rainey Creeks meander

through the corporate limits of said City from a southerly direction to a generally northerly direction and terminate in Lake Fort Phantom Hill, a public water supply reservoir, which is the principal source of water for the cities of Abilene, Tye and Merkel, and other communities situated within the watersheds of the above named creeks; and,

WHEREAS, it is necessary in the interest of the public health and safety that said creeks remain as free of contamination and pollution as reasonably possible in order to properly protect the quality of the water in Lake Fort Phantom Hill; and,

WHEREAS, the average annual rainfall within the corporate limits of the City of Abilene is approximately twenty-five inches (25") per year but it is common for said rain to fall at high intensity in short intervals in great volumes, and in many instances the capacities of the above named creeks has not proved sufficient to permit the storm water channeled into the creeks to run off at a sufficient rate of flow and serious flooding has resulted within the corporate limits of the City of Abilene, resulting in great property damage and danger to life; and,

WHEREAS, from data collected from studies of the United States Corps of

Engineers, the Consulting Engineering firm of Forrest and Cotton, and studies made by the City Engineer, it has been found that the channels of the above named creeks contain heavy growths of trees, brush and weeds, garbage, trash, rubbish, junk, scrap metal, debris, waste building materials and various improvements which impede the rate of flow of the storm waters when rainfall falls on the watershed of said creeks, and the presence of such objectionable material so obstructs the passage of water therein as to cause, at various points, a diversion of storm waters so that creeks overflow their banks, resulting in flooding; and,

WHEREAS, the above studies also reflect that the banks of the above named creeks are, in places, well defined, and in other places are ill defined, but the normal rainfall common to this area requires at least fifty feet (50') of area on either side of the centerlines of said creeks to transport said storm waters through the City of Abilene into Lake Fort Phantom Hill; and,

WHEREAS, the City Council, based on said studies, finds that the presence of the above named conditions in the channels of the creeks constitute obstructions to the stream and sources of pollution and contamination and that it is necessary to preserve the public health, safety and welfare to enact an ordinance to reasonably eliminate and minimize said dangers; now, therefore,

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

Section 1: That Chapter 52 of The Code of The City of Abilene, Texas, 1957, as amended, be, and the same is hereby further amended by adding thereto a new article to be designated "Article III - Creeks and Waterways", which shall hereafter read as follows:

"ARTICLE III - CREEKS AND WATERWAYS

"Sec. 52-51: Definitions:

- "a. Garbage: Shall include, among other similar matter, all animal or vegetable matter, such as waste material and refuse from kitchens, residences, groceries stores, butcher shops, restaurants, cafes, hotels, rooming houses and boarding houses, and other deleterious substances.
- "b. Trash: Shall mean rubbish such as feathers, coffee grounds, ashes, tin cans, paper boxes, glass, shrubs, yard cleaning, yard clippings, leaves, tree trimmings and similar matter.

"c. Channel: That area within fifty feet (50') of each side of the centerline of any creek named in this Article.

"Sec. 52-52: That no person, or officer, employee or agent of an association of persons, corporate or otherwise, shall, within the corporate limits of the City of Abilene, dump, place or store any trash, garbage, rubbish, junk, scrap metal, debris or waste building materials into the channel of any of the following named creeks, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle or Rainey.

"Sec. 52-53: That no person or officer, employee or agent of an association of persons, corporate or otherwise, shall, within the corporate limits of the City of Abilene, dump, place or store any fill material of any nature whatsoever or shall construct any improvements within the channel of any of the following named creeks, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle or Rainey, without being issued a certificate from the City Engineer of the City of Abilene that the dumping, placing or storing of said fill material or the construction of said improvements will not reduce the cross-sectional area of the channel or obstruct or impede the flow of water in said channel. This section shall not apply to the State of Texas, the Counties of Taylor or Jones, the City of Abilene, or their agents or employees in the discharge of their official duties in connection with the construction or maintenance of public improvements.

"Sec. 52-54: That each owner of property who derives his ownership from an instrument of title which provides that the boundaries of his property extend into the channel of any of the following named creeks, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle or Rainey, within the corporate limits of the City of Abilene shall clear that portion of his property extending into the channel of said creek of all growths of trees, brush and weeds which materially obstruct or divert the flow of water in said channels. In the event said property owner, or his predecessor in title, has granted the City of Abilene a drainage maintenance easement in the channel of any such creek, said owner shall not be required to clear such trees, brush or weeds within any such easement granted to the City of Abilene. In the event of failure or refusal by a property owner to remove the growth of trees, brush and weeds which materially obstruct or divert the flow of water from the channel of any of the above named creeks, the City shall be authorized to remove and clear such obstructions and the reasonable expense of said clearing shall be charged against abutting properties respectively. The City Attorney is hereby authorized and directed to proceed to collect said reasonable expenses and to affix them as a lien against the property affected in the manner and mode provided by law.

"Sec. 52-55: That the City of Abilene, its agents and employees shall have right of access to inspect, within the corporate limits of the City of Abilene, the channels of the following named creeks, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle and Rainey. No owner of property abutting the above named creeks, after being given reasonable notice, shall refuse an employee or agent of the City of Abilene in the discharge of his official duties, access to inspect the channels of the above named creeks.

"Sec. 52-56: That the City Council hereby finds and declares that the dumping, placing or storing of trash, garbage, rubbish, junk, scrap metal, debris or waste building materials in the channels of the following named creeks, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle and Rainey, and the dumping, placing or storing of fill material or the construction of improvements which reduce the cross-sectional area of said channels which obstruct or divert the flow of water therein, and the presence of trees, brush and weeds, which materially obstruct or divert the flow of water in the above named creeks, to be a public nuisance. The City Attorney is hereby directed to enforce the provisions of this Article by the appropriate procedure in the Corporation Court of the City of Abilene or through

civil action in a Court of appropriate jurisdiction, which shall include mandamus and injunction."

Section 2: That any person, firm or corporation violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred Dollars (\$200.00). Each such violation which shall continue or be permitted to continue shall be deemed a separate offense.

Section 3: That if any provision of this Article or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the ordinance are declared to be severable.

Section 4: That upon passage of this ordinance on first reading, the City Council did give notice that a public hearing will be held in the Council Chamber of City Hall, Abilene, Texas, at 8:30 a.m., on Thursday, December 19, 1963, to permit the public to be heard prior to consideration of this ordinance on second and final reading.

PASSED ON **FIRST** READING this 12th day of December, A.D. 1963.

After said passage, a public hearing was held on Thursday, the 19th day of December, A. D. 1963; after such opportunity for the public to be heard, said ordinance was passed on its second and final reading.

PASSED ON **SECOND** AND **FINAL** READING on the 19th day of December,

A.D. 1963.

ATTEST:

Lila Jean Martin
CITY SECRETARY

Walter Byrd
MAYOR

APPROVED:
JOHN W. DAVIDSON, City Attorney

John W. Davidson