

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 52 OF THE CODE OF THE CITY OF ABILENE, TEXAS, 1957, AS AMENDED, BY PROHIBITING THE DUMPING, PLACING OR STORING OF TRASH, GARBAGE, RUBBISH, JUNK, SCRAP METAL, DEBRIS OR WASTE BUILDING MATERIALS IN THE CHANNELS OF OR TRIBUTARIES TO BIG ELM, LITTLE ELM, CATCLAW, BUTTONWILLOW, CEDAR, LYTLE OR RAINY 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 OR TRIBUTARIES TO 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 OR TRIBUTARIES THERETO TO CLEAR THEIR PORTIONS OF SUCH 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 SUCH CREEK CHANNELS OR TRIBUTARIES THERETO TO BE A PUBLIC NUISANCE; AUTHORIZING THE CITY ATTORNEY TO ENFORCE THE PROVISIONS OF THIS ARTICLE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Abilene, on December 19, 1963, enacted Ordinance #55, prohibiting the dumping of specified items of debris in the channels of Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle and Rainy Creeks, and declared the obstruction of such creek channels to be a public nuisance; and,

WHEREAS, it is the opinion of the City Council that the provisions of Ordinance #55 should be extended to include all tributaries to the above named creeks, it being in the interests of the public health and safety that all such tributaries should remain as free of contamination and pollution as the creeks into which they run; and,

WHEREAS, the City Council is further of the opinion that the presence of debris of any sort in such tributaries creates as great a flood hazard as the presence of such debris in the above named creeks and it is therefore necessary to preserve the public health, safety and welfare to amend such ordinance to reasonably eliminate and minimize such debris; now, therefore,

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

TEXAS:

Section 1: That Sections 52-52 through 52-56 of The Code of The City of Abilene, Texas, 1957, as amended, be and the same are hereby further amended so as to here-

after read as follows:

"Sec. 52-52: That no person nor any 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 either the channel of any of the following named creeks or the channel of any tributary thereto, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle or Rainy.

"Sec. 52-53: That no person nor any 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 improvement within either the channel of any of the following named creeks, or the channel of any tributary thereto, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle or Rainy, 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 such improvement will not reduce the cross-sectional area of the channel of such creek or any tributary, or obstruct or impede the flow of water in such 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 either the channel of any of the following named creeks or into the channel of any tributary thereto, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle or Rainy, 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 such 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 creeks, said owner shall not be required to clear such trees, brush or weeds within any such easement granted to the City. 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 property owners 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 the right of access to inspect, within the corporate limits of the City of Abilene, the channels of the following named creeks and the channels of all tributaries thereto, to-wit: Big Elm, Little Elm, Catclaw, Buttonwillow, Cedar, Lytle and Rainy. No owner of property abutting the above named creeks or tributaries, 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 and tributaries.

"Sec. 52-56: That the City Council of the City hereby finds and declares that the dumping, placing or storing of trash, garbage, rubbish, junk, scrap metal, debris or waste building materials in either the channels of the following named creeks or the channels of any tributary thereto, to-wit: Big Elm, Little Elm, Catclaw Buttonwillow, Cedar, Lytle and Rainy, and the dumping, placing or storing of fill material or the construction of improvements which reduce the cross-sectional area of any such channel 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 or their tributaries, 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. "

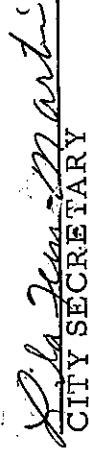
Section 2: That any person, firm or corporation violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Two Hundred Dollars (\$200.00). Each such violation which shall continue or be permitted to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

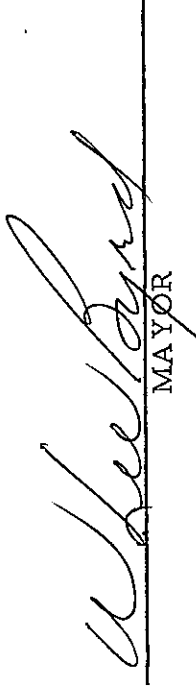
Section 3: That if any provision of this Article or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provision or application of this ordinance which can be given effect without the invalid provision or application, and to this end the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

Section 4: That the City Council hereby finds that an emergency exists requiring suspension of the rule provided in Section 18 of the City Charter requiring ordinances to be read on two separate days, in that the immediate passage of said ordinance is necessary for the minimizing and/or eliminating flood hazards for the preservation of the public peace, safety and welfare, and said rule is hereby suspended and this ordinance shall take effect and be in full force and effect from and after its passage.


PASSED this 14th day of ~~September~~^{January}, A.D. 1965.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


Les Cochran, Assistant City Attorney