

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 157**

AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO, AMENDING CHAPTERS 154, 155 AND ORDINANCE NO. 140, ESTABLISHING A PROCESS FOR DESIGNATING LOTS IDENTIFIED AS BEING IMPACTED BY DRAINAGE, RUNOFF, EROSION, POOR SOIL AND/OR FLOODING CONDITIONS OR IMPACTING ADJACENT LOTS IN THE SAME MANNER AND PROVIDING A PENALTY FOR NON-COMPLIANCE.

WHEREAS, The drainage, erosion, soil and flood hazard areas of the City of Elephant Butte are subject to periodic degradation and inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures of hazard protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, These hazards and damages are created by the cumulative effect of obstructions in natural and man-made drainage courses, vulnerable soil types and degraded landscapes which in-turn increase potential risk of flood and erosion hazards in other Potential Hazard Impact Areas; and

WHEREAS, The City of Elephant Butte identified the observed and potential threats posed by these conditions and took proactive and reactive measures to mitigate their effects through collective action following the City Council's adoption of the City Drainage Master Plan and its three constituent studies in November 2004; and

WHEREAS, In light of the adoption of the City Drainage Master Plan, certain lots were specifically designated as potential hazard impact areas, or "Red Lots", due to the evidence contained within the Plan and have been subject to additional land development review and permit requirements since that time; and

WHEREAS, Currently, no formal process has been established to update the existing list of properties requiring additional engineered plans for "Red Lots", even when new evidence is provided; and

WHEREAS, The Legislature of the State of New Mexico has in NMSA 1978, §§ 3-18-1-31, 3-21-1 and 3-41 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses; and

WHEREAS, amendments to the zoning code may be authorized upon review of the proposed amendments by the Planning & Zoning Commission and after the governing body has conducted a public hearing on the proposed amendments; and

WHEREAS, the proposed amendments were reviewed and favorably recommended by the Planning & Zoning Commission on July 20, 2015 and the governing body did conduct a duly advertised public hearing on August 5, 2015.

NOW THEREFORE, BE IT ORDAINED By The Governing Body Of The City Of Elephant Butte that Sections 155.04, 154.10, 155.005, 155.006, and 155.026 – 155.032 of the Code of Ordinances be amended as follows:

Section One. Sections 154.04, “Definitions” and 155.005, “Definitions”, are amended by adding the following definition to both sections:

POTENTIAL HAZARD IMPACT AREAS (“RED LOTS”). A lot or lots designated by the City Council as drainage runoff, erosion or flooding zones when they have been determined that drainage runoff, erosion or flooding conditions are present or there exists potential impacts to the property itself, adjacent or downstream properties based upon criteria established within Chapters 154 and 155. Such lots shall be identified on an official City list/map and be referred to as “Red Lots”, having the same definition of “Potential Hazard Impact Areas”.

Section Two. All other provisions of Sections 154.04 and 155.005 not specifically amended in Section One herein, shall remain unchanged and in full force and effect as written.

Section Three. Chapter 154 is amended as follows, with the additions of Section 154.10 “Potential Hazard Impact Areas”:

Section 154.10 POTENTIAL HAZARD IMPACT AREAS

- (1) **Statutory Authority.** The Legislature of the State of New Mexico has in NMSA 1978, §§ 3-18-1-31, 3-21-1 and 3-41 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.
- (2) **Red Lot designation established; Process.**
 - (a) **Authorization.** The City shall be authorized to designate certain lots as drainage and/or erosion “Red Lot” zones when they have been determined to possess drainage and/or erosion impacts to the property itself, adjacent or downstream properties as defined herein.
 - (b) **Designation by Resolution.** A designation may be initiated by City staff, the City Planning & Zoning Commission or City Councilor upon a finding being made that the lot meets any of the criteria defined further herein. A lot may be so designated upon the approval of a resolution by City Council which includes the legal description of the property, its current owner, a physical address (if assigned) and a finding of all applicable criteria within this section.
 - (c) **Designation Criteria.** Such designation shall be based upon any one or combination of the following criteria:
 - i. The suitability of development within a flooding or erosion zone.

- ii. Soil type and stability, level of compacted earth suitable for development and/or geotechnical condition or where the integrity of the compaction where the soil surface or subsurface has been compromised.
- iii. When a natural drainage channel or arroyo is present and presents a potential hazard.
- iv. The property is susceptible to lateral erosion or evaluation of the level of erosion relative to soil conditions or a determination of erosion envelope.
- v. Lack of vegetative cover to secure soil stability and/or reduce velocity and impact of runoff.
- vi. The potential for adverse impacts to adjacent or downstream properties.
- vii. Reliance upon the information contained within the adopted City Drainage Master Plan and its updates, accompanying studies and successors.
- viii. Any plans, studies or reports, either commissioned privately or by a governmental agency - including the City - for a single lot or larger study area, which identify any of the aforementioned conditions being present on the area of study.
 - i. A plan, study or report shall include any of the following types of engineering, developed conditions assessment, geotechnical, hydrological, soil conditions, erosion assessment, Comprehensive Plan, floodplain or flood hazard plan, subdivision plan, or plans for grading, clearing or drainage.

(3) Administration and Enforcement.

- (a) The City Floodplain Administrator shall administer and enforce the provisions of this subsection. All lots designated as Red Lots shall conform to the general zoning permit requirements, Chapter 153, 154 and Section 155.050 in addition to the requirements contained herein, which are specifically adopted to minimize the potential impacts posed by the development of the lot.
 - i. When engineered plans are required to be submitted as part of a development plan and/or zoning permit application, the Floodplain Administrator shall refer the plans to the City Engineer or designated engineering firm for review and comment.
- (b) Upon designation of a lot as a Potential Hazard Impact Area, an official "Red Lot" list and/or map will be updated and retained in the Planning & Code Enforcement Department office itemizing each lot that has been so designated.
 - i. Such designated lots may be situated outside of FEMA's Flood Insurance Rate Map (FIRM) and/or Flood Hazard Boundary Map

(FHBM) and are not necessarily reliant upon federal or state designations and criteria.

- ii. The official list and map shall additionally be referenced in the City's Comprehensive Plan and reviewed during such times as the Comprehensive Plan is updated, although the provisions of this subchapter shall take legal precedence.

- (c) *Penalties.* Failure to adhere to the requirements of this ordinance shall be subject to the penalty procedures contained elsewhere within Chapter 154.

Section Four. All other provisions of Chapter 154 not specifically amended in Section Three herein, shall remain unchanged and in full force and effect as written.

Section Five. Section 155.006 "Administration of the Code", including the amendments adopted by Ordinance No. 140 as they relate to Section 155.006(E) are amended as follows:

Section 155.006(E) ZONING PERMITS

[Sections 155.006(E)(1) and (2) remain unaltered as adopted in Ordinance No. 140.]

....

(3) Approval of Permits.

(a) Issuance of permit; double permit fee for violation. Upon approval of the application by the zoning administrator or the planning and zoning commission, as applicable, and as subject to appeal, the zoning administrator shall issue a zoning permit. The zoning administrator shall notify the applicant in writing if the application has been denied, and the time for appeal shall run from the date of the notice. Any construction commenced prior to issuance of a zoning permit shall result in imposition of a permit fee in double the amount of the regular permit fee. Imposition of the double fee shall be in addition to, and not in lieu of, other penalties and enforcement remedies available to the city.

(b) Building permit.

(i) No construction shall be permitted until a copy of the approved building permit and the construction drawings for such permit have been submitted to the zoning administrator. The zoning permit shall automatically expire ninety (90) days after issuance unless the building permit and construction plans have been submitted to the zoning administrator with receipt acknowledged. Construction of any accessory building shall not commence prior to commencement of construction of the principal building, and neither the principal building nor any accessory building shall be occupied prior to issuance of a certificate of occupancy for the principal building. Issuance of a zoning permit shall constitute agreement by the applicant to site visits by the zoning administrator to determine compliance with these provisions. Construction or occupancy in violation of any of these provisions shall result in automatic voidance of the zoning permit. Upon such automatic voidance, the city may take such action as is necessary to abate the violation, including, but not limited to, issuance of a stop work order, filing of a complaint in municipal court, and application for injunctive relief in a court of competent jurisdiction.

(ii) Expiration of permits. A zoning permit that authorizes construction shall expire at the end of 12 months if construction has not been completed, and a certificate of occupancy issued, provided, that the planning commission may extend the period for good cause shown and with agreement by the applicant upon a reasonable completion schedule. The applicant shall provide a copy of the certificate of occupancy to the zoning administrator prior to occupancy of any of the improvements. In the case of placement of a manufactured housing unit, the applicant shall provide the administrator with a copy of the approval of final inspection provided by the New Mexico Manufactured Housing Division of the Construction Industries Division.

(c) Manufactured housing permit. In addition to all other provisions of this section, an application for a zoning permit for placement of a manufactured home, a mobile home or a recreational vehicle shall require issuance of a placement permit by the zoning administrator. The applicant shall submit such surveys, site plans and other documents as deemed necessary by the administrator to assure compliance with the provisions of this chapter. For placement of mobile homes or recreational vehicles, the applicant shall obtain a final approval from the administrator prior to occupancy. The administrator shall be satisfied that placement, grading and utility connections are in compliance with applicable provisions of this code prior to final approval.

(4) *Development of Red Lots; Additional Regulatory Requirements and Engineered Development Plan for Zoning Permit Required.*

- (a) *Conformity with Zoning Permit Process.* Zoning, Grading or Drainage permits may only be issued for areas which have been designated suitable by the City Drainage Master Plan or other adopted or accepted studies and changes in existing uses or proposed new uses must conform to the requirements of the Comprehensive Plan and applicable studies, reports, and Drainage Master Plan's recommendations. Development within designated Potential Hazard Impact Areas, also referred to as Red Lots, shall require conformance with these studies and meet the development requirements contained herein in addition to the general zoning, grading, drainage, clearing and other land use regulations contained elsewhere in this Code.
- (b) *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this subchapter and other applicable regulations.
- (c) *Abrogation and greater restrictions.* This subchapter is not intended to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this subchapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (d) *Interpretation.* In the interpretation and application of this subchapter, all provisions shall be:
- i. Considered as minimum requirements;
 - ii. Liberally construed in favor of the governing body; and

iii. Deemed neither to limit nor repeal any other powers granted under State Statutes.

(e) *Warning and disclaimer or liability.* The degree of erosion and flood protection required by this subchapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater erosion impacts and floods can and will occur and flood heights may be increased by manmade or natural causes. This subchapter does not imply that land outside the areas of erosion envelopes, special flood hazards, potential hazard impact area or uses permitted within the areas will be free from drainage, erosion, flooding or flood damages. This subchapter shall not create liability on the part of the community or any official or employee thereof for any drainage, erosion or flood damages that result from reliance on this subchapter or any administrative decision lawfully made thereunder.

(f) *Applications for Zoning Permits.*

i. When an application for a Zoning, Grading and/or Drainage permit is made, the burden of proof of appropriateness of the plan for property designated as a Potential Hazard Impact Area, or "Red Lot", is on the applicant.

ii. Prior to the issuance of a zoning permit, the Floodplain Administrator, upon consulting the City Engineer, shall examine the plans and administer the provisions of this subchapter as described within the subchapter and Chapter 154 and render a determination of compliance or non-compliance to the Zoning Administrator. Cost for engineering services will be an additional cost of the zoning permit and will be borne by the applicant. The building, structure, or activity must be found to conform to each of these provisions:

1. Will not constitute a hazard to persons or property;
2. Will not divert water from or obstruct the natural flow of water in or out of the parcel of land;
3. Will not cause flooding of land outside the natural drainage course; and
4. Will not reduce or endanger the water-carrying capacity of the arroyo or drainage channel.

iii. *Additional Requirements for Development of Red Lots.* In administering a review of a plan, the Floodplain Administrator shall:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to drainage runoff, erosion impacts, floods, including facilities, which serve such uses, be protected against damage at the time of initial construction;

3. Control the alteration of natural floodplains, arroyos, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development, which may increase erosion impacts and/or flood damage; and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase drainage runoff and/or flood hazards to other lands.

Section Six. All other provisions of Section 155.006, "Administration of the Code" and Ordinance No. 140, not specifically amended in Section Five herein, shall remain unchanged and in full force and effect as written.

Section Seven. Section 155.026 "R-1-A Single Family Residential" is amended by deleting Section 155.026(C)(11) in its entirety; all other provisions of Section 155.026 not specifically amended in Section Seven shall remain unchanged and in full force and effect as written.

~~[Section 155.026(C)(11) *Arroyo and drainage channel use.* Upon completion of the City Of Elephant Butte Drainage Study, zoning permits may only be issued for areas which have been designated suitable by the study.~~

~~— (a) Changes in existing uses or proposed new uses must conform to the requirements of the Drainage Study recommendations.~~

~~— (b) When an application for a zoning permit is made, the burden of proof of appropriateness of the plan for property designated as a drainage problem area is on the applicant.~~

~~— (c) Prior to the issuance of a zoning permit, the Code Enforcement Officer and/or the City Engineer must examine the plan. Cost for engineering services will be an additional cost of the zoning permit and will be born by the applicant. The building, structure, or activity must be found to conform to these provisions:~~

~~— 1. Will not constitute a hazard to persons or property;~~

~~— 2. Will not divert water from or obstruct the natural flow of water in or out of the parcel of land;~~

~~— 3. Will not cause flooding of land outside the natural drainage course; and~~

~~— 4. Will not reduce or endanger the water carrying capacity of the arroyo or drainage channel.]~~

(*et. seq.* for Sections Eight - Thirteen)

Section Eight. Section 155.027 "R-1-B Single Family Residential" is amended by deleting Section 155.027(C)(11) in its entirety; all other provisions of Section 155.027 not specifically amended in Section Eight shall remain unchanged and in full force and effect as written.

Section Nine. Section 155.028 "R-1-C Single Family Residential" is amended by deleting Section 155.028(C)(10) in its entirety; all other provisions of Section 155.028 not specifically amended in Section Nine shall remain unchanged and in full force and effect as written.

Section Ten. Section 155.029 "R-1-D Single Family Residential" is amended by deleting Section 155.029(C)(7) in its entirety; all other provisions of Section 155.029 not specifically amended in Section Ten shall remain unchanged and in full force and effect as written.

Section Eleven. Section 155.030 "R-1-P" is amended by deleting Section 155.030(C)(9) in its entirety; all other provisions of Section 155.030 not specifically amended in Section Eleven shall remain unchanged and in full force and effect as written.


Section Twelve. Section 155.031 "Establishment of Official Residential-Agricultural Zoning District Map, Zoning District and Boundaries" is amended by deleting Section 155.031(C)(10) in its entirety; all other provisions of Section 155.031 not specifically amended in Section Twelve shall remain unchanged and in full force and effect as written.

Section Thirteen. Section 155.032 "R-3 One-, Two-, and Three-Family Residential" is amended by deleting Section 155.032(C)(9) in its entirety; all other provisions of Section 155.032 not specifically amended in Section Thirteen shall remain unchanged and in full force and effect as written.

Section Fourteen. Effective date. This ordinance shall become effective five days following publication.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this 5th day of August, 2015.

BY:


Eunice Kent, Mayor

Attest:


Karen Rieth, City Clerk