

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 194**

**AN ORDINANCE AMENDING THE CITY OF ELEPHANT BUTTE CODE OF
ORDINANCES 2015, CHAPTER 154, DRAINAGE AND EROSION CONTROL**

WHEREAS, City of Elephant Butte Code of Ordinances Chapter 154, which was adopted and amended by Ordinance Nos. 77 and 157, provides for the control of drainage and erosion within the City of Elephant Butte pursuant to NMSA 1978, Section 3-18-7 and 3-41-1 et seq.; and

WHEREAS, Chapter 154 requires clarification and amendment of certain sections that reference federally designated floodplains, hazard impact areas, the designation of a certified flood plain manager, and the application of this code by qualified individuals;

WHEREAS, Chapters 151 and 155 of the Code also reference provisions adopted within Chapter 154 and require amendment to be consistent with to NMSA 1978, Section 3-18-7 and 3-41-1 et seq; and

WHEREAS, the City of Elephant Butte intends to adopt the attached revisions to Chapter 154 and any other ordinances or resolutions inconsistent with these revisions and amendments are hereby rescinded and replaced.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of Elephant Butte that:

Section One. That Chapter 151, 154, and 155 of the City of Elephant Butte Code of Ordinances be amended to be consistent with state law as reflected in Attachment A.

Section Two. References within the City Code to the “Flood Plain Administrator” shall be understood to refer to the individual designated or contracted by the City as its flood plain administrator and who is certified to enforce this Code under state law pursuant to NMSA 1978, Section 3-18-7(C).

Section Three. Designation of “red lots” shall occur through the collaboration between the Flood Plain Administrator and the City Engineer and their recommendation to the City Council. Pursuant to the Flood Plain Administrator and City Engineer’s recommendation, the City Council may, by resolution, designate properties as “red lots.”

Section Four. Any provisions of the City Code or resolutions adopted by the City Council that are inconsistent with these amendments are hereby superseded, amended, and replaced by this Ordinance.

Section Five. That City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

Section Six. *Effective Date.* This ordinance shall be effective five days following publication after adoption.

PASSED, APPROVED AND ADOPTED by the governing body of the City of Elephant Butte on this 16th day of December 2020.


Edna Trager
Mayor

ATTEST:



Rani Bush
Clerk-Treasurer



Ordinance 194

Attachment A

CHAPTER 151: SUBDIVISIONS

Section

- 151.01 Title
- 151.02 Authority and jurisdiction
- 151.03 Purpose
- 151.04 Interpretation
- 151.05 Prior penalties, actions, liabilities, or rights
- 151.06 Definitions
- 151.07 Pre-application contact and sketch plat
- (151.08 Preliminary plat)
- 151.09 Final plat

(3) Existing zoning and land use of the proposed subdivision and immediately adjacent areas;

(4) A summary of the total number of acres, number of lots, acreage of commercial or industrial areas; acreage of open space; and amount of land in rights-of-way, and other descriptive material useful in reviewing the proposed subdivision;

(5) A master utility plan, which shall contain a general outline of the proposed utility routing plans for the development, to include, but not be limited to, the following information:

- (a) Existing and proposed utility locations;
- (b) Sizes of existing and proposed utilities and system loads;
- (c) Locations of proposed connections to existing utilities; and
- (d) Proposed off-site improvements necessary to connect to existing utilities;

(6) Master drainage study:

(a) The purpose of the master drainage study is to identify major drainage ways, ponding areas, locations of culverts, bridges, open channels and drainage basins that are contributory to the proposed study area. In addition, the ability of downstream drainage facilities to pass the developed runoff from the proposed development must be analyzed in the master drainage study;

(b) The master drainage study shall contain a general outline of the proposed drainage routing plans for the development;

(c) The report shall include, but not be limited to, the following information and calculations:

- 1. Calculation for peak flow from all off-site tributary drainage areas;
- 2. Calculations for peak flow within the proposed development for all drainage basins larger than 20 acres;
- 3. Preliminary analysis of 100-year floodplain and major drainage ways;
- 4. Closed sub-basin analysis of 100-year floodplain and major drainage ways;
- 5. Discussion and analysis of downstream drainage facilities; and
- 6. Discussion of anticipated drainage problems within the proposed development and possible solutions;

(d) Drawings for the master drainage study shall include, but not be limited to, the following:

- 1. Any and all floodplains and flood ways must be identified. A copy of applicable F.E.M.A. floodplain map is required indicating limits of current study;
- 2. Existing topography;
- 3. For land that slopes less than approximately 5%, show contour lines at intervals of not more than 2 feet;
- 4. For land that slopes more than 5%, show contour lines at intervals of not more than 5 feet;
- 5. Location and size of existing and proposed open channels, storm drains, retention/detention areas, and other drainage structures;
- 6. Identification of all drainage basins in the development;
- 7. Location of all streets in/adjacent to the proposed development;
- 8. Identification of all drainage basins tributary to the proposed development; and
- 9. Basin maps may be scaled as small as one inch = 2,000 feet. Orthophoto maps at scale of one inch = 200 feet are preferred. (Use the most appropriate scale available);

(7) List of suggested street names;

(8) A statement describing the development and maintenance responsibility for any private streets, ways or open space;

(9) The recommendations of a qualified professional engineer of the affected soil conservation district regarding soil suitability, erosion control, sedimentation and ~~flooding~~ drainage problems;

with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural effects of buoyancy. A registered professional engineer or architect shall develop and or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this division. A record of the certification which includes the specific elevation (in relation to mean sea level) to which the structures are flood proofed shall be maintained by the Floodplain Administrator.

(D) *Manufactured homes.* Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(Ord. 76, passed 11-17-2004) Penalty, see § 10.99

§ 153.42 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with §§ 153.02 , 153.03, and 153.04 of this chapter.

(B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of § 153.06 (C); § 153.22 ; and the provisions of §§ 153.40 , 153.41, and § 153.42 of this chapter.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to § 153.06 (B) or § 153.21 (H) of this chapter.

(D) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(E) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. 76, passed 11-17-2004) Penalty, see § 10.99

CHAPTER 154: DRAINAGE AND EROSION CONTROL

Section

General Provisions

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- 154.02 Title
- 154.03 Purpose
- 154.04 Definitions
- 154.05 General provisions

Potential Hazard Impact Areas Drainage and Erosion Control

- 154.10 ~~Potential hazard impact areas~~ Drainage and Erosion Control

Specific Regulations

- 154.20 Use of streets for drainage and ~~flood-erosion~~ control purposes

- 154.21 Crossings
- 154.22 Bar ditches or drainage ditches
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GENERAL PROVISIONS

§ 154.01 STATUTORY AUTHORIZATION.

The Legislature of the State of New Mexico has in NMSA Ch. 3, Art. 41 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City of Elephant Butte, of Elephant Butte, New Mexico does ordain as follows.

(Ord. 77, passed 1-5-2005)

§ 154.02 TITLE.

This chapter shall be known as the Drainage and Erosion Control Ordinance of the City of Elephant Butte.

(Ord. 77, passed 1-5-2005)

§ 154.03 PURPOSE.

(A) *Purpose.* The purpose of this chapter is to:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood, drainage, and erosion control projects;
- (3) To minimize the need for relief and rescue efforts associated with flooding-drainage and erosion and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business and traffic interruptions;
- (5) To minimize damage to public and private facilities;
- (6) Prevent, to the extent feasible, the discharge of storm runoff from public facilities onto private property; and

(7) Provide for timely and effective construction and maintenance of storm drainage facilities.

(B) *Methods of reducing ~~flood-drainage~~ and erosion losses.* In order to accomplish its purposes, this chapter includes methods and provisions to:

(1) Restrict or prohibit uses and practices which are dangerous to health, safety, and property in times of flooding or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to ~~flood and~~ erosion, including facilities which serve the uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Control filling, grading, dredging, and other development activities which may increase ~~flood-drainage~~ or erosion damage within the flood plain areas, floodways, and erosion prone areas; and

(5) Prevent or regulate the construction of flood barriers which will unnaturally divide runoff waters or which may increase flood or erosion hazards in other areas.

(Ord. 77, passed 1-5-2005)

§ 154.04 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context indicates or requires a different meaning.

CHANNEL. Any arroyo, creek bed, stream, swale, ditch, bar ditch, diversion, or water course that conveys storm runoff, including man-made facilities.

CHANNEL STABILITY. A condition in which a channel neither degrades to the degree that structures, utilities, or private property are endangered, nor aggrades to the degree that flow capacity is significantly diminished as a result of 1 or more storm runoff events or moves laterally to the degree that adjacent properties are endangered.

CHANNEL TREATMENT MEASURE. The physical alteration of a channel for any purpose.

CIP. The City of Elephant Butte's Capital Improvement Plan.

CITY. The City of Elephant Butte, New Mexico.

CITY ENGINEER. The engineer or engineering firm designated or retained by the City of Elephant Butte to perform engineering services for the city.

COMPREHENSIVE PLAN. The City of Elephant Butte Comprehensive Plan and amendments thereto.

CONCEPTUAL GRADING AND DRAINAGE PLAN. A plan prepared in graphical format showing existing and proposed grading, drainage ~~control, flood control,~~ and erosion control information in sufficient detail to determine project feasibility.

DESIGN STORM. A storm which deposits a stated amount of precipitation within a stated period over a defined area and which is used in calculating storm runoff and in designing drainage control, flood control, and erosion control measures.

DEVELOPED LAND. Any lot or parcel of land occupied by any structure or improvement that is allowed by the zoning regulations for that property.

DOWNSTREAM CAPACITY. The ability of downstream major facilities to accept and safely convey runoff generated from contributing upstream areas.

DRAINAGE. Storm drainage.

DRAINAGE CONTROL. The treatment and/or management of surface runoff.

DRAINAGE PLAN. A detailed graphical plan including detailed grading plan information addressing on-site and off-site drainage ~~and control, flood control, and~~ erosion control issues for lots or parcels each less than 5 acres.

DRAINAGE REPORT. A comprehensive analysis of the drainage, ~~flood control~~, and erosion control constraints on and impacts resulting from any proposed platting, development, or construction project.

EROSION CONTROL. Treatment measures for the prevention of damages due to soil movement and to deposition.

EROSION CONTROL PLAN. A plan for the mitigation of damages due to soil erosion and to deposition.

FIFTY-YEAR DESIGN STORM. That storm for a given watershed in which the precipitation as defined by the NOAA Atlas 2, Precipitation-Frequency Atlas of the Western United States, New Mexico, current volume has a 2% chance of being equaled or exceeded in any given year. The rainfall distribution shall be a 24 hour SCS TYPE 11-60 distribution such that the 1 hour rainfall is set at 60% of the 24-hour rainfall.

~~***FLOOD CONTROL.*** The treatment measures necessary to protect life and property from the design storm runoff.~~

~~***FLOOD HAZARD AREA.*** An area subject to inundation from the 100-year design storm runoff.~~

~~***FLOODWAY.*** The channel of a river, arroyo, or other water course and adjacent land areas that must be reserved in order to safely discharge the 100-year design storm runoff.~~

FULLY DEVELOPED WATER SHED. A hydrological condition in which all areas upstream and downstream of a point in question are assumed completely developed, including any undeveloped areas which are assumed to be developed in accordance with mid-range development densities as established by the Comprehensive Plan, appropriate area plans or sector plans, adopted by the facilities master plans and the hydraulic and hydrologic standards established by this subchapter.

GRADING PLAN. A plan describing the existing topography and proposed grading, including retaining wall locations and details, interfaces with adjacent properties, streets, alleys, and channels referenced to mean sea level, and showing sufficient contours, spot elevations, and cross sections to allow a clear understanding by reviewers, contractors, and inspectors.

MAINTENANCE. The cleaning, shaping, grading, repair, and minor replacement of drainage, ~~flood control~~, and erosion control facilities.

MAJOR ARROYO. Any channel whose watershed exceeds 160 acres whether the watershed is in its natural or unaltered state or has been altered by development, runoff diversion, or detention facilities.

MAJOR FACILITY. Any natural or man-made drainage facility, including a street or alley, which would collect, divert, or convey a peak discharge of more than 50-cubic feet per second (cfs) or store more than 2.0 acre feet of runoff in the event of a design storm.

MASTER PLANNED FACILITY. Any drainage control and, ~~flood control~~, or erosion control facility recommended in the Elephant Butte Comprehensive Plan or by the City of Elephant Butte Drainage Master Plan, amendments thereto, or any voter-approved, general obligation bond financed drainage control and, ~~flood control~~, or erosion control facility.

MINOR FACILITY. Any facility which would collect, divert, or convey a peak discharge of 50-cubic feet per second (50 cfs) or less in the event of the 100-year design storm.

MULTIPLE USE FACILITY. A drainage ~~control, flood control, or and~~ erosion control facility in which other secondary uses are planned or allowed, including but not limited to recreation, open space, transportation, and utility location.

NUISANCE WATERS. Those waters leaving a site and entering a public street which do not result from precipitation, such as landscaping, over watering, or car washing.

ONE HUNDRED YEAR (100) DESIGN STORM. That storm for a given watershed in which the precipitation as defined by the NOAA Atlas 2, Precipitation-Frequency Atlas of the Western United States, New Mexico, current volume has a 1% chance of being equaled or exceeded in any given year. The rainfall distribution shall be a 24-hour SOS TYPE 11-60 distribution such that the 1-hour rainfall is set at 60% of the 24-hour rainfall.

~~***POTENTIAL HAZARD IMPACT AREAS ("RED LOTS").*** A lot or lots designated by the City Council as drainage runoff or, erosion or flooding zones when they have been determined that drainage runoff or, 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."~~

TEMPORARY DRAINAGE FACILITY. A non-permanent drainage ~~control, flood control, or and~~ erosion control facility constructed as part of a phased project to serve until the time that a permanent facility is in place, including but not limited to

berms, diversions, channels, detention ponds, bank protection, and channel stabilization measures.

TEN-YEAR DESIGN STORM. That storm for a given watershed in which the precipitation as defined by the NOAA Atlas 2, Precipitation-Frequency Atlas of the Western United States, New Mexico, current volume has a 10% chance of being equaled or exceeded in any given year. The rainfall distribution shall be a 24-hour SOS TYPE 11-60 distribution such that the 1-hour rainfall is set at 60% of the 24-hour rainfall.

(Ord. 77, passed 1-5-2005; Am. Ord. 157, passed 8-5-2015)

§ 154.05 GENERAL PROVISIONS.

(A) This chapter shall apply to all lands within the jurisdiction of the City of Elephant Butte, which includes its extraterritorial planning and platting jurisdiction.

(B) All developed land within the City of Elephant Butte shall be provided with adequate drainage, ~~flood control~~, and erosion control facilities. The protection of life and property shall be the primary consideration in the planning, design, construction, and maintenance of drainage ~~control, flood control~~, and erosion control facilities, but other concerns such as channel capacity, watershed characteristics, channel stability, maintenance, transition between treatment types, multiple use goals, and appearance shall also be considered. The needs of the community in transportation, utility services, open space areas, and recreation shall be considered in planning, design, construction and maintenance (especially in the selection of channel and slope treatment measures). These needs shall always be considered subsidiary to the primary function of the drainage ~~control, flood control~~, and erosion control facilities.

(C) All major facilities shall be constructed within dedicated right-of-ways or recorded drainage easements granted to and accepted by the City of Elephant Butte. Minor facilities may also require dedicated rights-of-way or easements.

(D) Whenever ~~flood control~~, drainage ~~control~~, and erosion control improvements are necessary within dedicated public open space, the improvements shall be designed and constructed in a manner reasonably consistent with the natural surroundings.

(E) The City Engineer is responsible for establishing or reviewing criteria, procedures, and standards for the design, construction, and maintenance of drainage ~~control, flood control~~, and erosion control improvements within the City of Elephant Butte. The City Engineer shall provide for variance from normal criteria and standards; when a variance is required or requested, the City Engineer shall document the justification for his or her decision and place in the Public Records with the City Clerk-Treasurer the actions and justifications. Appeal of the City Engineer's variance decisions is as provided in § 154.47 of this chapter.

(Ord. 77, passed 1-5-2005)

~~POTENTIAL HAZARD IMPACT AREAS~~ DRAINAGE AND EROSION ZONES

§ 154.10 ~~POTENTIAL HAZARD IMPACT AREAS~~ RED LOTS

~~(A) Statutory authority. The Legislature of the State of New Mexico has in NMSA 1978, §§ 3-18-1-31, 3-21-1 and 3-41-1 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.~~

~~(B)~~ (A) Red Lot designation established; process.

(1) *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.

(2) *Designation by resolution.* A designation may be initiated by city staff, the city Planning and Zoning Commission or City Council or 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.

(3) *Designation criteria.* Such designation shall be based upon any one or combination of the following criteria:

(a) The suitability of development within a ~~flooding drainage or~~ erosion zone.

(b) 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.

(c) When a natural drainage channel or arroyo is present and presents a ~~potential hazard~~drainage or erosion condition.

(d) The property is susceptible to lateral erosion or evaluation of the level of erosion relative to soil conditions or a determination of erosion envelope.

(e) Lack of vegetative cover to secure soil stability and/or reduce velocity and impact of runoff.

(f) The potential for adverse impacts to adjacent or downstream properties.

(g) Reliance upon the information contained within the adopted City Drainage Master Plan and its updates, accompanying studies and successors.

(h) 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.

~~(C)~~(B) Administration and enforcement.

(1) 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 § 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.

(a) 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.

(2) Upon designation of a lot as a ~~potential hazard impact~~drainage and erosion zone area, an official "Red Lot" list and/or map will be updated and retained in the Planning and Code Enforcement Department office itemizing each lot that has been so designated.

(a) 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.

(b) 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.

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

(Ord. 157, passed 8-5-2015)

SPECIFIC REGULATIONS

§ 154.20 USE OF STREETS FOR DRAINAGE AND ~~FLOOD-EROSION~~ CONTROL PURPOSES.

(A) The surface of streets (those with curb and gutter) and the parallel bar ditches of those streets without curb and gutter may be used for drainage and ~~flood-erosion~~ control purposes, to the extent the use does not interfere with the safe transportation of people and vehicles.

(B) The 10-year design storm runoff shall not exceed a depth greater than .5 feet in any arterial or collector street, except at designed dip crossings, and shall flow such that one 10 foot driving lane is free of flowing or standing water. Arterial and collector streets that are in the State Highway system shall meet current New Mexico Department of Transportation (NMDOT) criteria.

(C) The product of the depth times velocity shall not exceed 6.5 at any location in any street in the event of a 10-year design storm (with velocity calculated as the average velocity measured in feet per second and depth measured at the gutter flow line in feet).

(D) The discharge of nuisance waters to public streets shall be discouraged.

(B) The principal spillway pipe shall have a minimum diameter of 24 inches.

(C) Detention ponds shall be designed with a hardened (lined) emergency overflow spillway whose invert is placed at or above the pond's 10-year water surface elevation.

(D) The emergency spillway shall be designed to safely pass the 100-year storm event with a minimum of 1 foot of freeboard, assuming the principal spillway is completely blocked.

(E) Detention ponds shall include Best Management Practices (BLIPS) to contain floatables and other debris.

(Ord. 77, passed 1-5-2005)

§ 154.25 OPEN CHANNELS.

(A) Manmade channels shall be designed and sized to safely convey the 100-year design storm with a minimum of 1 foot of freeboard for sub-critical flow conditions and a minimum of 2 feet of freeboard for supercritical flow conditions.

(B) Right-of-way or easements shall be granted to the city to fully contain the channel plus 15 feet for maintenance/access on each side of the channel.

(C) Development abutting natural unimproved channels shall be setback from the arroyo centerline a prudent distance to allow the arroyo to degrade, a grade and meander. This prudent distance also referred to as the lateral erosion envelope (LEE) line shall be determined by a New Mexico registered engineer based upon proven sediment transport analysis procedures. Rights-of-way or easements shall be granted to the City of Elephant Butte for the arroyo up to the LEE line.

(Ord. 77, passed 1-5-2005)

§ 154.26 FINANCIAL RESPONSIBILITY.

(A) The City of Elephant Butte may participate in the construction of permanent ~~flood drainage and erosion~~ control facilities to the extent that public benefits are derived from the facilities and are consistent with Capital Improvement Program (CIP) priorities.

(B) Drainage facilities for crossing of major arroyos by arterial and collector streets (major streets) shall be at public expense. Drainage facilities for crossings of arroyos by streets other than arterial and collector streets (minor streets) shall be at developer expense and shall meet the design standards established by the City Engineer.

(C) All temporary crossings required for access, including those on major streets, shall be constructed at developer expense. Where feasible, temporary crossings shall be designed so they may be incorporated into the future permanent crossing structure so that they meet street design standards established by the City Engineer.

(D) The City of Elephant Butte will not participate in the costs of channel crossing structures for major streets which are required for sole access to a development.

(E) The City of Elephant Butte shall not participate in the funding of ~~flood drainage and erosion~~ control facilities in which the sole intent is the reclamation of undeveloped land located within a flood hazard area for private development purposes.

(F) The dedication of land for public purposes does not relieve a developer of responsibilities for the construction of drainage-~~control, flood control~~, and erosion control facilities that would otherwise be necessary. The dedication of rights-of-way or easements for drainage ~~control, flood control~~, or erosion control facilities does not relieve a developer of responsibilities that would otherwise exist for the construction of other public infrastructure.

(Ord. 77, passed 1-5-2005)

§ 154.27 MULTIPLE USE OF RIGHTS-OF-WAY AND EASEMENTS.

(A) Multiple use is encouraged for drainage rights-of-way and drainage easements, e.g., for utility corridors and for recreation trails. Where multiple use is planned by the city, another public agency, or a public utility, the city may require that dedication statements include language which permits the use(s) in addition to the primary drainage function. However, land required to be dedicated for drainage rights-of-way and easements shall be limited to those land areas necessary for drainage ~~and control, flood control~~,

erosion control, and necessary appurtenances.

(B) Drainage rights-of-way and easements may be credited for open space, except for any area which is exclusively used for the drainage ~~control or flood~~and erosion control function.

(Ord. 77, passed 1-5-2005)

§ 154.28 MAINTENANCE RESPONSIBILITY.

(A) Except as otherwise noted herein, all permanent major facilities shall be maintained by the city or other public body. The maintenance of multiple use facilities to which the general public is denied access shall be the responsibility of the owners and shall be performed to standards prescribed by the City Engineer. The City Engineer may allow private maintenance within public rights-of-way or easements, provided that adequate guarantees and indemnifications are supplied.

(B) Minor facilities, including driveway culverts, shall be maintained by their owners to the City Engineers standards.

(C) The maintenance of temporary facilities constructed at private expense is the responsibility of the developer until permanent facilities are in place and accepted by the city.

(Ord. 77, passed 1-5-2005)

ADMINISTRATION AND ENFORCEMENT

§ 154.45 GENERAL ADMINISTRATION.

(A) The design, construction, and maintenance of all drainage, natural, ~~flood control~~, and erosion control facilities within the City of Elephant Butte shall be performed in accordance with procedures, criteria, and standards formulated by the City Engineer and in accordance with the policies established by this chapter.

(B) All construction activities within the jurisdiction of the City of Elephant Butte shall conform to the requirements of the City Engineer with respect to drainage ~~control, flood control~~, and erosion control. Original construction and modifications and or additions to existing structures or facilities constituting less than 500-square feet in plain view are excluded.

(1) Construction, grading, or paving on any lot within the jurisdiction of the City of Elephant Butte shall not increase the damage potential to upstream, downstream, or adjacent properties or public facilities. Damages shall be defined as those caused by flooding from the 100-year design and all smaller storms and from erosion and sedimentation resulting from the 10-year design storm and all smaller storms.

(2) Any grading within or adjacent to a major water course shall provide for erosion control and the safe passage of the 10-year design storm runoff during the construction phase.

(3) Grading, cut, fill or importation of materials in excess of 500-cubic yards or grading of any area of 1 acre or more shall conform to drainage ~~control, flood control~~, and erosion control policies and to standards, criteria, and procedures established by the City Engineer. A grading permit, issued by the City Engineer, shall be required for projects involving more than 500-cubic yards of material or 1 acre or more in area. Applications for development of areas known to have been sanitary landfills shall be accompanied by a report which discusses potential health and soil mechanics problems and their solutions. The reports shall be prepared by a registered New Mexico professional engineer, competent in soil mechanics and related health hazards.

(4) Paving or repaving an area larger than 1,000 square feet shall require a paving permit. Applications for a paving permit shall be accompanied by a drainage plan, except for repaving of existing paved areas in which no grading is planned.

(5) The City Engineer shall not issue a grading or paving permit unless the proposed grading or paving is in compliance with the policies and standards of this subchapter or other criteria established as good practices by the industry or the City Engineer.

(C) The city may participate with the private sector, other public bodies, and agencies operating within the jurisdiction of this policy, in order to accomplish the goals and implement the policies adopted in the subchapter. This includes, but shall not be limited to, the development and adoption of master plans, participation in the construction of projects, and exercising control through the planning, platting, zoning, and permitting processes. Projects involving city funding shall be prioritized, funded and scheduled within the guidelines

of the CIP and with CIP projects.

(D) It shall be the responsibility of the City Engineer to produce, approve, make, and retain records of all drainage plans, drainage reports, design analysis, design drawings, as-built drawings, and maintenance schedules related to all drainage control, flood control, and erosion control facilities constructed within city rights-of-way or easements.

(E) Applications for all land use changes shall address drainage ~~control, flood control,~~ and erosion control in terms of the interactions of these parameters with other requirements and needs produced by the proposed land use changes.

(F) Requests for the platting of land for the purpose of subdivision or development shall be accompanied by appropriate drainage-~~control, flood control,~~ and erosion control information.

(G) Storm drainage is a critical element in the planning and development of the city and the following measures are to be taken to insure controlled drainage.

(1) The City Engineer shall not approve any plan or report pertaining to proposed construction, platting, or other development where the proposed activity or change in the land affected would result in downstream capacity being exceeded.

(2) Downstream capacity is determined based on the assumption of fully developed watersheds. This assumption prevents "the first come, first served" approach where downstream development unduly constrains upstream development. Parameters used in the determination of downstream capacity include, but are not limited to:

- (a) Channel-stability;
- (b) Crossing hydraulic capacity;
- (c) Retention pond capacity;
- (d) Hydraulic capacity of street, drainage ditches, or channels;
- (e) Public safety; and
- (f) Maintenance constraints.

(3) Planned public storm drainage facilities are assumed as in place in determining downstream capacity, only if construction funds are available and design has progressed to the point where capacity can be ascertained.

(H) Temporary facilities are only allowed and/or required on a case by case basis as determined by the City Engineer. The level of protection provided by temporary facilities shall be determined by considering:

- (1) The likelihood and consequences of a failure;
- (2) Length of time until permanent facilities will be in place: and
- (3) The acceptance of maintenance responsibilities and legal liabilities.

(I) Requests for approval of development and/or platting proposals to the City Engineer shall be accompanied by drainage ~~control,~~ ~~flood control,~~ and erosion control information and/or commitments. The particular nature, location and scope of the proposed development defines the degree of detail. One or more of the following levels of submittal may be required based on the following:

(1) *Conceptual grading and drainage plan.* A graphic representation of existing and proposed grading, drainage, ~~flood control,~~ ~~and~~ erosion control information. The information should be of sufficient detail to determine project feasibility. The purposes of this plan are to check the compatibility of the proposed development within grading, drainage, flood hazard, and erosion control constraints as dictated by on-site physical features as well as adjacent properties, streets, alleys, and channels. Modifications to the Comprehensive Plan and the development of area plans, sector plan, site development plans, and landscaping plans on tracts of 5 acres or more are appropriate applications of conceptual grading and drainage plans.

(2) *Drainage plans.* A detailed presentation required for approval of small, simple development approvals. Drainage plans are prepared in combination with the detailed grading plan and address both on-site and off-site drainage ~~control, flood control,~~ and erosion control issues. Drainage plans are required for building permits, site development plans, and landscaping plans for developments involving less than 5 acres.

(3) *Drainage report.* A drainage report is a comprehensive analysis of the drainage ~~control, flood control,~~ and erosion control constraints and impacts resulting from a proposed planning, development, or construction project. Drainage reports are required for subdivisions containing more than 10 lots or constituting 5 acres or more, platting or construction within a designated flood hazard area

(3) Each inspector shall be furnished with an identification card indicating his or her authority and must present same to the court for the purpose of this division and to other persons, when requested to do so during the performance of his or her duties. No owner or occupant or any other person having charge or control of any premises shall fail or neglect, after proper demand is made as herein provided, to promptly permit entry therein by the authorized inspector for the purpose of inspection and examination pursuant to this chapter.

(B) When, after investigation, an order has been issued by the City Engineer or inspector to the owner of the property on which a violation has occurred and the order is not complied with, within the reasonable time as may be prescribed by the City Engineer, or if the responsible party or violator cannot be found or determined, the City Engineer may cause the remedies as are necessary to be made. The reasonable cost of the remedies shall constitute a lien against the property on which the violation occurred and was remedied. The lien shall be imposed and foreclosed in the manner provided for in NMSA §§ 3-36-1 through 3-36-6, as amended.

(C) Any person or persons failing to comply with the provisions of this chapter shall be subject to a fine not to exceed \$500 or up to 90 days imprisonment or a combination thereof. Each day the violation is allowed to continue may be considered a separate offense.

(Ord. 77, passed 1-5-2005)

§ 154.47 APPEALS.

Any applicant, aggrieved by a decision as to action, provided for in § 154.05 and § 154.45 of this chapter, of the City Engineer or absence of the decision, may appeal the decision to the governing body of the City of Elephant Butte. The appeal shall be made by notice of appeal in writing addressed to the Municipal Clerk and delivered, or received in the office of the City Clerk-Treasurer within 30 days after the date of the decision was mailed to the applicant. The City Clerk-Treasurer shall notify the applicant and the City Engineer of the date, time, and place of the appeal hearing at least 5 days prior to the hearing date. The hearing shall be conducted not earlier than 10 days or later than 30 days after final review of the engineering reports. At the hearing, the governing body may consider the facts, exhibits, and engineering principles as may be presented by the applicant or City Engineer or his or her designee, or of which the members may have knowledge or experience, and may affirm, reverse, or modify the decision appealed from, and attach as conditions to their decision the requirements as in their opinion may be necessary or appropriate in compliance with the policies of this chapter to safeguard persons and property from storm water runoff. The city may choose to have the engineering reports submitted by the City Engineer and the applicant's engineer reviewed by a neutral engineer. In that event, the time for deciding the appeal will be tolled for a reasonable period of time until the analysis from the neutral engineer is received. If the city chooses to refer the engineering report to a third party engineer, the person shall not have performed engineering work for either the applicant or the city within the previous 12 months. Any expense incurred by a third party engineer will be borne by the property owner. Each decision of the governing body shall be in writing and shall state reasons thereof. A copy of the decision shall be promptly mailed to the applicant and to the City Engineer.

(Ord. 77, passed 1-5-2005)

§ 154.48 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This chapter does not imply that outside flood hazard areas or uses permitted within the areas will be free from ~~flooding or flood~~ damages. ~~This chapter shall not create liability on the part of the City of Elephant Butte or on any officer or employee thereof for any flood drainage and erosion~~ damages that result from reliance of this chapter or any administrative decision lawfully made thereunder.

(Ord. 77, passed 1-5-2005)

§ 154.49 INTERPRETATION.

In the interpretation and application of this chapter, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the City of Elephant Butte;
- (C) Deemed neither to limit or repeal any other powers granted under state statutes; and

(D) Not deemed to limit or repeal any other ordinance, or portion thereof adopted by the governing body, unless expressly so stated herein.

(Ord. 77, passed 1-5-2005)

CHAPTER 155: ZONING

Section

General Provisions

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- 155.003 Statutory authority and jurisdiction
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- * 155.005 Definitions
- 155.006 Administration of the code
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District Regulations

- 155.25 Establishment of official zoning district map, zoning districts, and boundaries
- 155.26 R-1-A Single-family residential
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- 155.31 Establishment of official residential-agricultural zoning district map, zoning district and boundaries
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Clearing and Grading of Land

- 155.50 Title
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MOBILE HOME. A movable or portable housing structure larger than 40 feet in body length, 8 feet in width or 11 feet in overall height, designed for and occupied by no more than 1 family for living and sleeping purposes but does not include structures built to the standards of any municipal code or other technical codes.

MOBILE RETAIL VENDOR. Any person who engages in the sale of retail goods or services from any location other than a building that meets the requirements of the New Mexico Uniform Building Code, the International Building Code, or the New Mexico Manufactured Housing Act as applicable to commercial buildings.

MONUMENT. A structure built for commemorative or symbolic reasons rather than for any overtly functional use.

NON-CONFORMING BUILDING. A building, structure or portion thereof lawfully existing at the time this code became effective which does not meet 1 or more of the current zone requirements of the zone in which it is located. See also **GRANDFATHERING**.

NON-CONFORMING USE. The use of land or a building, or a portion thereof, which does not conform with the current land use regulations of the zoning district in which it is located. See also **GRANDFATHERING**.

OPEN SPACE. That area of a lot, tract, or parcel not devoted to any building or structure.

PAVEMENT STRUCTURE. The combination of sub-base, base course, and/or surface course placed on a sub-grade to support the traffic load and distribute it to the roadbed.

PERSON IN POSSESSION. Person in possession of real estate is the person, persons, company, or corporation having the physical responsibility via oral or written contract to perform any activity on the real estate including a private contractor.

POTENTIAL HAZARD IMPACT AREAS ("RED LOTS"). A lot or lots designated by the City Council as drainage runoff and erosion or flooding zones when they have been determined that drainage runoff and 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."

PREFABRICATED HOUSING UNIT. A structure of which the standardized integral parts (walls, roof, windows, and the like) are factory-fabricated so that construction consists mainly of assembling and uniting the standardized integral parts at the building site, designed and constructed in accordance with all applicable building codes and intended to be placed on a permanent foundation, meeting all local zoning codes.

PRIMARY PERMITTED USE. A permissive use for which a permit will be issued as a matter of right of the landowner.

PRIMARY USE. A land use, which occupies the greater portion of a lot or parcel, or is the more intense use of two uses on a lot or parcel.

PROPERTY LINE. The official boundary of a parcel, lot or tract of land as designated by either a metes or bounds description or subdivision plat filed in the records and maps of the County Clerk.

RECREATIONAL VEHICLE.

(a) Travel trailers, camping trailers, fifth-wheel trailers, and all other vehicles that are constructed to include a chassis, integral wheels and a towing hitch, and are primarily designed or constructed to provide temporary, readily moveable living quarters for recreation, camping or travel uses.

(b) Pickup campers, either mounted or non mounted, or any structure designed to be mounted in the bed of a truck and providing living quarters for recreation, camping or travel uses.

(c) Chassis mount, motor home, mini-motor homes or other recreational structures or vehicles constructed integrally with a truck or motor van chassis and incapable of being separated there from, and designed to be used for moveable living quarters for recreational, camping or travel uses.

(d) Recreational vans or converted and chopped vans or other vehicles which are either initially constructed or converted to contain living quarters for recreational, camping or travel uses.

RECREATIONAL VEHICLE PARK (RV PARK) or (CAMPER PARK). A parcel of land where travel trailers or other nonpermanent type of shelters are erected or maintained for temporary recreational camping activities. Permitted related building and facilities may include an office, delicatessen and/ or grocery store, laundry facilities, showers, bathrooms, and playgrounds to be

§. 15.5.005 Definitions

and the location of the area where the group/community septic system is located.

(d) *Infrastructure.* An evaluation of the existing infrastructures' capacities to serve the needs for potable water, liquid waste disposal and solid waste disposal.

(e) *Application fee.* The appropriate application fee as designated in the fee schedule shall accompany the application.

(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.*

1. 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 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.

2. *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.

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(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 section and other applicable regulations.

(c) *Abrogation and greater restrictions.* This section is not intended to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this section 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 section, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. 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 section 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 section 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, ~~or erosion, flooding or flood~~ damages. This section 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 section or any administrative decision lawfully made thereunder.

(f) *Applications for zoning permits.*

1. 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.

2. 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 section as described within the section 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:

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

3. *Additional requirements for development of Red Lots.* In administering a review of a plan, the Floodplain Administrator shall:

- a. 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;
- b. 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;
- c. Control the alteration of natural floodplains, arroyos, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- d. Control filling, grading, dredging and other development, which may increase erosion impacts and/or flood damage; and
- e. 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.

(F) *Application for conditional use permits.*

(1) *Application requirements.*

- (a) Legal description of the property and street address;
- (b) Proof of ownership, or when the applicant is not the owner of the property, proof of legal right to apply for the permit;
- (c) A site development plan consisting of a scaled drawing or map of the property showing the location of existing and proposed streets, driveways, parking and loading sites, pedestrian walks, structures, drainage improvements, landscaped areas, utility easements and setbacks;
- (d) An evaluation of the existing infrastructures' capacities to serve the use's needs for potable water, liquid waste disposal and solid waste disposal; and
- (e) The appropriate application fee.