

# Chapter 37 FLOODPLAIN AND STORMWATER REGULATION\*

---

**\*Editor's note:** Ord. No. 3333, § 1, adopted Sept. 5, 2000, amended the title of Ch. 37 to read as herein set out. Formerly, Ch. 37 was entitled Floodways and Floodplains. See the Code Comparative Table.

**Charter references:** General power of city over floodways, etc., art. 1, § 3.

**Cross references:** Buildings and building regulations, Ch. 31; planning, development and fees, Ch. 46; subdivisions, Ch. 48; basic zoning ordinance, App. B.

- 
- Art. I. In General, §§ 37-1--37-15
  - Art. II. Floodplain Developments, §§ 37-16--37-57
    - Div. 1. Generally, §§ 37-16--37-40
    - Div. 2. Regulations, §§ 37-41--37-48
    - Div. 3. Drainage Facility Development Fees, §§ 37-49--37-57
  - Art. III. Stormwater Quality Protection, §§ 37-58--37-94
    - Div. 1. Generally, §§ 37-58--37-70
    - Div. 2. Violations and Penalties, §§ 37-71--37-78
    - Div. 3. Abatement of Violations, §§ 37-79--37-94

## ARTICLE II. FLOODPLAIN DEVELOPMENTS

### DIVISION 1. GENERALLY

#### Sec. 37-16. Purpose; title.

(a) It is the purpose of this article to establish requirements and regulations pertaining to the use and development of land in the city which will minimize the occurrence of losses, hazards and conditions adversely affecting the public health, safety and general welfare which might result from flooding caused by the surface runoff of rainfall.

(b) This article may be referred to as "the floodplain and stormwater ordinance."

(Code 1972, § 5-611; Ord. No. 1993, 2-29-88; Ord. No. 3333, § 2, 9-5-00)

#### Sec. 37-17. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application. The definitions in Arizona Revised Statutes section 48-3601 shall apply.

*Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this article or a request for a variance.

*Area of shallow flooding* means a designated AO and/or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one (1) to three (3) feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.

*Base flood* means the flood having a one-percent chance of being equalled or exceeded in any given year. This is also called a one-hundred-year flood.

*Base flood water surface elevation* means the following:

- (1) In regulatory floodways and special flood hazard areas as shown on the FIRM or on other maps adopted by the floodplain board, the base flood water surface elevations shall be those elevations shown on the FIRM or adopted maps. When the city floodplain administrator determines that more accurate base flood water surface elevation data is available, than the data shown on the FIRM, the more accurate data shall be used.
- (2) In special flood hazard areas adopted by the floodplain board, the base flood water surface elevations shall be those elevations established in accordance with subsection 37-18(c)(2).
- (3) In a regulatory floodway not shown on the FIRM, the base flood water surface elevations shall be those elevations established in accordance with subsection 37-18(c)(2).
- (4) For those areas of the city which are not within a regulatory floodway or a special flood hazard area, the base flood water surface elevations shall be those which are established by a drainage report submitted in accordance with the criteria contained herein.

*Basement* means the lowest level or story of a structure which has its floor subgrade on all sides.

*Breakaway wall* means a wall that is not part of the structural support of the foundation and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building support or foundation system.

*Construction* means new construction of or substantial improvements to a structure.

*Critical feature* means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.

*Depressed floor area* is a portion of the first floor of a residential structure, such as a sunken living room or a conversation pit, which is lower than the surrounding floor area, and which has no floor-level access to areas outside the structure. (This is not a multilevel first floor which is stepped to conform to site slope conditions).

*Detention basin* means a hydraulic structure similar to a reservoir that intercepts and retards or detains storm water and is specifically designed to attenuate or dampen peak discharge rates.

*Development* means any man-made change to improved or unimproved real estate, including, but not limited to, construction, mining, excavation, filling, grading, or paving.

*Environmentally sensitive lands* means environmentally sensitive lands as defined in Ordinance Numbers 1881 and 1883.\*

---

**\*Editor's note:** Ordinance No. 1881 is included in this Code as Ch. 46, Art. III, Div. 1, §§ 46-61--46-65; Ord. No. 1883 is included as Ch. 46, Art. III, Div. 2, §§ 46-73--46-77.

---

*Financial assistance* means any form of loan, grant, guarantee, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance, other than general or special revenue sharing or formula grants made to states.

*Flood* or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of floodwaters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source, and/or;
- (3) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

*Flood boundary floodway map* means the official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

*Flood hazard boundary map (FHBM)* means an official map of a community issued by the Federal Emergency Management Agency where the boundaries of the flood, mudslide (i.e. mudflow) and related erosion areas having special hazards have been designated as zones A, M, and/or E.

*Flood insurance rate map (FIRM)* means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*Flood hazard zones A, AE, AO, AH, A1-30 and, A99* are the areas shown on a FIRM which the Federal Emergency Management Agency has determined will be inundated during a one-hundred-year flood. These areas are called, collectively, "special flood hazard areas."

*Flood hazard zone B or X* is an area shown on a FIRM which is an area of moderate flood hazards.

*Flood hazard zone C or X* is an area shown on a FIRM which is an area of minimal hazards.

*Flood hazard zone D* is an area shown on a FIRM which has undetermined but possible flooding hazards.

*Flood hazard zone E* is an area of special flood-related erosion hazards.

*Floodplain administrator* means the city manager or designee who is authorized by this article to administer its provisions.

*Floodplain* or *flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of "flooding").

*Floodplain board* means the city council of the city at such times as they are engaged in the enforcement of this article.

*Floodproofing* or *floodprotection* means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. The structure must be watertight, with walls which are substantially impermeable to the passage of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

*Grading* is any excavation or filling of land or combination thereof.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-

resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.

*Manufactured home* means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for more than one hundred eighty (180) consecutive days.

*Manufactured home park (subdivision)* means a parcel or contiguous parcels of land which have been divided into two (2) or more lots for rent or sale and the placement of mobile homes.

*Natural areas* shall mean those areas within environmentally sensitive areas which are required to be retained in a natural state, including areas stipulated as such through the zoning process. Special conditions relating to environmentally sensitive lands will apply to such "natural areas."

*Regulatory base flood elevation* means an elevation one (1) foot above the "base flood water surface elevation."

*Regulatory floodway* means the channel of a wash or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without raising the water surface elevation.

*Residential structure* means a place of residence and may be a single-family or multifamily dwelling.

*Retention basin* means an hydraulic structure similar to a reservoir that intercepts and stores stormwater and is specifically designed to be drained to the underground or to be emptied by evaporation to the atmosphere.

*Special flood hazard area* means an area having flood and/or flood related erosion hazards as shown on a FHBM or FIRM as zone A, AO, A1-30, AE, A99, AH, or E, and those areas identified as such by the floodplain administrator, delineated in accordance with subsection 37-18(b) and adopted by the floodplain board.

*Start of construction*, for purposes of this article only, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

*Structure* means a walled and roofed building or a gas or liquid storage tank that is principally above the ground. This term includes, but is not limited to, houses, commercial buildings, factories, storage buildings, mobile homes, and similar structures.

*Substantial improvement* means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either before the improvement is started or before the damage occurred, if the structure has been damaged and is being restored. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term "substantial improvement" does not, however, include any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations which are solely necessary to assure safe living conditions.

*Variance* means a grant of relief from some of the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

*Waste disposal system* means any system of disposing of worthless materials and useless by-products, either sanitary or commercial or industrial, except existing single-family septic systems and sanitary sewer pipe lines.

*Watercourse* means a natural or man made lake, river, creek, stream, wash, arroyo, channel, culvert, pipes or any other topographic feature, through, on or over which waters flow at least periodically. Watercourses include specifically designated areas in which substantial flood damage may occur.

(Code 1972, § 5-612; Ord. No. 1993, 2-29-88; Ord. No. 3333, § 3, 9-5-00)

## **Sec. 37-18. Basis for establishment of special flood hazard areas and regulatory floodways.**

(a) The city is a participant in the National Flood Insurance Program (NFIP). The special flood hazard areas and the parts of those areas which are designated as regulatory floodways are identified and delineated by the federal

emergency management agency (FEMA) in an engineering report titled "Flood Insurance Study, Scottsdale, Arizona" with accompanying flood insurance rate maps (FIRM) and flood hazard boundary maps (FHBM). Such studies and maps are prepared for communities participating in the NFIP. The first study and maps for Scottsdale were dated June 1972, and there have been several revisions. The current flood insurance study and flood insurance rate maps for Scottsdale are on file at the city clerk's office, and they are hereby adopted by reference and declared to be a part of this article.

(b) A special flood hazard area shall be those areas of the city identified on the FIRM including, but not limited to, zone A, zone A1-30, zone AE, zone AO, zone AH, zone A99, and zone E; and those areas which have been identified by the floodplain administrator, adopted by the floodplain board, and have been delineated in accordance with Arizona Revised Statutes, sections 48-3609 and 48-3610; and which are compatible with criteria developed by the state director of water resources for defining the extent of flooding and the base flood water surface elevations.

(c) The regulatory floodways shall be:

(1) Those areas of the city identified on the FIRM as flood hazard zones, including, but not limited to, zone AE, and zone A.

(2) Those other areas shown on the FIRM and those areas not shown on the FIRM which have been adopted by the floodplain board as special flood hazard areas and require the definition of regulatory floodways.

(d) If a development is proposed on land designated as a special flood hazard area, the development shall:

(1) Be designed and constructed in a manner which complies with the requirements in section 37-41, and in a manner which raises the developed land to an elevation which is at or above the regulatory base floodwater surface elevation;

(2) Upon completion of the grading and flood protection features of the development, the developer shall provide the floodplain administrator as built grading plans and other engineering data prepared and signed by a professional engineer or registered land surveyor, which demonstrates compliance with this ordinance; and

(3) If the development lies within a special flood hazard zone, with the exception of zone AO as shown on the FIRM, the developer shall provide the floodplain administrator the appropriate engineering data and certification showing that the development no longer lies within a special flood hazard zone. The developer shall also provide to the administrator an application to the Federal Emergency Management Agency requesting a letter of map amendment or letter of map revision. The administrator will forward the application with appropriate recommendations to the federal emergency management agency for action.

(e) The requirements described in paragraph (d)(3) above, of this section do not apply to the construction of:

(1) An individual, single-family residential structure, or

(2) An individual, multifamily residential or nonresidential structure on a parcel of land under one-half acre in size, however, the community development general manager or designee will notify the property owner that appropriate insurance will be required by federally insured lending agencies.

(f) If the requirements in subsection (d), do not apply to a development, the lowest floor elevation requirements described in section 37-42 paragraphs (6) and (7) are applicable.

(Code 1972, § 5-614; Ord. No. 1993, 2-29-88; Ord. No. 3333, § 4, 9-5-00)

## **Sec. 37-19. Floodplain administrator.**

(a) *Designated.* The city manager or designee shall be the floodplain administrator.

(b) *Responsibilities.* It is the responsibility of the floodplain administrator or his authorized representative to do the following:

(1) Review all applications for development permits and insure that the requirements of this article are enforced.

(2) Provide the Federal Emergency Management Agency (FEMA) information needed to update the FIRM's and serve as the city's agent for handling revisions of the FIRM's.

(3) Coordinate the provisions of this article with all other interested and affected political subdivisions, federal and state agencies as required by Arizona Revised Statutes sections 48-3609 and 48-3610, and 44 CFR parts 60.2 (e) and 60.3 (b)(6).

(4) Make interpretations where needed as to the exact location of the flood hazard zone boundaries and, when requested, provide the public with information concerning these interpretations and the content of the FIRM.

(5) Take action on violations of the regulations in this article.

(6) Submit an annual reports to FEMA as required by 44 CFR parts 59-77 and 60.2 (f), and the coordinating agency for the state concerning the city's management of development in special flood hazard areas.

(7) Review proposed development documents to assure that necessary permits required by section 404 of the Clean Water Act (33 USC 1344) have been obtained for such development prior to issuance of any development permits required by the city or state statute.

(8) Notify FEMA of any annexations to the incorporated areas of the city and of any de-annexations.

(9) Maintain the following records and, upon request, provide the public with information concerning the content of these records:

a. A current copy of the FIRM and of any letters of map amendment or any letters of map revision issued by FEMA for development in the city.

b. Certificates provided by builders pertaining to lowest floor elevations and floodproofing in the special flood hazard areas.

c. Floodplain and drainage management permits.

(10) Administer the processing of requests for a variance from the requirements of this article, maintain records of all actions taken, and report the variances that have been issued in the annual report to FEMA.

(Code 1972, § 5-616; Ord. No. 1993, 2-29-88; Ord. No. 3333, § 5, 9-5-00)

### **Sec. 37-20. Appeals and variances.**

(a) A person may appeal to the floodplain board for a variance or for a judgment on the interpretation of this article. The floodplain board may grant a variance if conditions would not be created by the variance which would result in danger or damage to persons or property and if strict application of the regulations would deprive the property owner of privileges enjoyed by similar property in the floodplain. The following subsections describe the conditions applicable to the granting of a variance.

(b) A variance shall not be granted for property within a regulatory floodway if any increase in the water surface elevation during a base flood discharge would result.

(c) A variance may be granted in conformance with subsections (d), (e) and (f) of this section for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures with lowest floors constructed below the base flood level.

(d) A variance shall only be granted upon the determination of the following:

(1) A good and sufficient cause exists.

(2) Failure to grant the variance would result in exceptional hardship to the applicant.

(3) Granting the variance will not allow conditions to be created which result in increased floodwater heights, additional threats to public safety, extraordinary public expense, the creation of nuisances, the causing of fraud or victimization of the public, or conflict with other laws or ordinances.

(e) A variance shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief for the applicant.

(f) The floodplain administrator shall notify the applicant in writing that the following conditions will exist as a result of the variance:

(1) Construction of a lowest floor below the base flood level will result in increased premium rates for flood insurance.

(2) Construction below the base flood level increases risks to life and property.

(g) While the granting of variances generally is limited to a lot size less than one-half acre, deviations from this limit may be considered by the floodplain board; however, as the lot size is increased beyond one-half acre, the technical justifications required for a variance must be more detailed and comprehensive.

(Code 1972, § 5-617; Ord. No. 1993, 2-29-88)

**Sec. 37-21. Interpretation.**

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the council; and
- (3) Deemed neither to limit nor repeal any other powers granted under law.

(Code 1972, § 5-619; Ord. No. 1993, 2-29-88)

**Sec. 37-22. Warning and disclaimer of liability.**

The degree of flood protection provided by the requirements in this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Floods larger than the base flood can and will occur on rare occasions. Floodwater heights may be increased by manmade or natural causes. This article shall not create liability on the part of the city, any officer or employee thereof, or the federal government for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Code 1972, § 5-620; Ord. No. 1993, 2-29-88)

Secs. 37-23--37-40. Reserved.

## DIVISION 2. REGULATIONS

### Sec. 37-41. Prohibited development.

(a) A development is prohibited if it would create hazards to life or property by increasing the potential for flooding either on the property to be developed or on adjacent property or to any other property. Further: A watercourse may not be altered. Alteration within the meaning of this section includes, but is not limited to, encroachments, fill, new construction, substantial improvements to existing developments, and other construction, within a watercourse. A watercourse may be altered if a professional engineer certifies that the alterations do not increase the flood levels, and will not increase flooding hazards within, upstream or downstream of the altered portion of the watercourse.

(b) Waste disposal systems shall not be installed wholly or partially in a floodway and or a regulatory floodway. Replacement of existing systems will be reviewed on an individual basis and may be granted a variance if approved by the Arizona Department of Water Resources.

(Code 1972, § 5-615(A); Ord. No. 1993, 2-29-88; Ord. No. 3333, § 6, 9-5-00)

### Sec. 37-42. Development requirements to be met for permit issuance.

Prior to the issuance of a permit by the city for development on private property or for work in the public rights-of-way, the applicant for the permit shall furnish the floodplain administrator and the project review manager information as required to determine that all proposed building sites will be reasonably safe from flooding and sufficient data to enable the city staff to determine that the proposed work is not of such a scope that it would be prohibited in accordance with subsections (a) and (b) of this section. Reports, construction plans, and other data submitted in support of an application for a permit shall comply with the following criteria:

(a) *Drainage reports.* When a drainage report is required, it must be prepared and sealed by a civil engineer registered as a professional engineer in the state and it must be prepared in accordance with the criteria established by the city. The purpose of the report is to analyze the effect that a proposed development would have upon the rainfall runoff in the vicinity of the development, to provide data to insure that the development is designed to be protected from flooding, to provide data to insure that the development is to be designed to minimize flooding and to provide data supporting the design of facilities to be constructed for the management of rainfall runoff. Each drainage report must consider rainfall runoff from storms with a return frequency up to and including a one-hundred-year storm. The complexity of the report depends upon the nature of the development and the site on which the development will occur. A drainage report shall be submitted by an applicant requesting one of the following:

- (1) Approval of a subdivision plat, condominium, townhouse, or a lot split.
- (2) A permit for grading, unless the requirement is waived by the floodplain administrator.
- (3) A permit to construct right-of-way improvements.
- (4) A permit to construct any structure, except that a report will not be required if the structure is to be a single-family residential structure to be built without a basement outside of a special flood hazard area and to be located at a site which the floodplain administrator has determined will not be in the vicinity of a watercourse in which the flow of rainfall runoff might be hazardous to the structure or its occupants.

(b) *Drainage characteristics.* Rainfall runoff from storms of all return frequencies should enter and depart from property after its development in substantially the same manner as under pre-development conditions. Any proposals to modify drainage characteristics must be fully justified by engineering data which shall demonstrate to the floodplain administrator that hazards to life and property will not be increased by the proposed modifications. As a minimum, drainage and flood control easements will be dedicated to the city to the extent of the estimated one-hundred-year flood for all watercourses having a capacity of twenty-five (25) cubic feet per second or greater, and the development shall be responsible for the maintenance of the watercourse. Exceptions to this regulation will be for environmentally sensitive lands covered under section 37-42 (14) and other areas covered by master drainage plans, council stipulations or other provisions of this article which insure that the standards established by this section are met. Any proposed modification must be compatible with environmentally sensitive lands criteria.

(c) *Street crossings at natural or man-made drainage channels.*

(1) The crossing structure requirements listed herein will normally apply; however, the engineer may depart from these requirements if he can demonstrate to the Floodplain Administrator's satisfaction that they are inappropriate because of the type of development or the nature of the terrain or because the requirements violate environmentally sensitive land ordinances. In extreme cases it may be necessary to allow for the entire channel flow to pass over the road.

a. Local and minor collector streets shall have a culvert or bridge which is capable of carrying all of the peak flow of runoff from a ten-year-frequency storm beneath the roadway and which is also capable of carrying enough of the peak flow of runoff from a twenty-five-year-frequency storm beneath the road so that the portion of the flow over the road is no more than six (6) inches deep.

b. Major collector and major or minor arterial streets shall have a culvert or bridge which is capable of carrying all of the peak flow of runoff from a fifty-year-frequency storm beneath the roadway and which is also capable of carrying enough of the peak flow of runoff from a one-hundred-year-frequency storm so that the portion of the flow over the road is no more than six (6) inches deep.

c. Watercourse crossings for roads shall be designed so that all lots and structures within a development will be accessible from the boundary of that development by at least one (1) route during the period of peak flow of runoff from a one-hundred-year-frequency storm. The boundary shall include any adjacent street or streets. Accessibility will be considered to exist if it can be demonstrated by the engineer that at the time of the peak flow the depth of flow over the road will be no greater than one (1) foot.

(2) Regardless of the size of the culvert or bridge, the street crossing should be designed to convey the one-year storm runoff flow under and/or over the road to the area downstream of the crossing to which the flow would have gone in the absence of the street crossing. The construction of a channel crossing must not cause the diversion of drainage flows except when that diversion is part of an approved plan for modification of drainage patterns.

(d) *Streets as water carriers.* It is expected that streets will carry water from adjacent property and from local areas, but they are not to be used as major water carriers in lieu of natural washes or man-made channels. The maximum depth for water flowing in any street shall be eight (8) inches during the peak runoff from a one-hundred-year-frequency storm. The above requirements imply that in some cases water may flow deeper than a normal vertical curb height and may flow for a short distance over sidewalk or other back-of-curb areas, but the flow of the water shall always be confined to the road right-of-way or to drainage easements. Particular care must be taken in street sag locations to insure that these requirements are met. Catch basins, scuppers, or similar facilities, together with the necessary channels, must be provided at appropriate locations to remove water flowing in the streets so as not to exceed the above described depth limit.

(e) *Design procedures and criteria.* The design procedures and criteria to be used shall be in accordance with those prepared and published by the city.

(f) *Lowest floor elevations in residential structures.*

(1) In regulatory floodways, a new residential structure or the substantial improvement of an existing residential structure shall have its lowest floor constructed above the regulatory base flood elevation in the vicinity of the proposed construction site. In the regulatory floodway known as the Indian Bend Wash, a lowest floor elevation must also be above the water surface elevation calculated for floodwater flowing at the rate established by the U.S. Army Corps of Engineers' Indian Bend Wash Project design criteria.

(2) In special flood hazard areas, a new residential structure or the substantial improvement of an existing residential structure shall have its lowest floor constructed at least one (1) foot above the base flood elevation.

(3) In flood hazard zone AO, a new residential structure or the substantial improvement of an existing residential structure shall have its lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified on the FIRM (at least two (2) feet if no depth number is specified).

(4) In areas outside of special flood hazard areas which are not in a regulatory floodway, a new residential structure (single- or multi-family) shall be constructed according to one (1) of the two (2) following requirements, except when the conditions in subsection (6) apply:

a. The lowest floor shall be constructed at an elevation which is above the base flood water

surface elevation.

b. The lowest floor may be constructed below the base flood water surface elevation, but flood proofing shall be provided for the structure to an elevation which is at least one (1) foot above the base flood water surface elevation.

(5) In areas outside of special flood hazard areas those single-family residential structures which are to be built without a basement and located at a site which the floodplain administrator has determined will not be in the vicinity of a watercourse in which the flow of rainfall runoff might be hazardous to the structure or its occupants, the elevation of the lowest floor may be established by one (1) of the methods described in the following subsections:

a. If the structure is to be located in flood hazard zone B, C, D or X, the lowest floor may be set at an elevation which is fourteen (14) inches above the highest adjacent grade.

b. The floor elevation(s) chosen for the residence may be indicated on a topographic plan of the building site parcel which shows the construction pad site and any grading proposed on the parcel. This plan must be prepared and sealed by a civil engineer or architect registered as a professional engineer or architect in the state. The floor elevation(s) indicated on the plan are to be elevations certified by the engineer or architect sufficiently high to provide protection during the base flood in the event of flooding caused by a one-hundred-year storm. This method may be appropriate for residences to be built in environmentally sensitive areas and where the floor levels are stepped to conform with natural grade conditions.

(6) A residential structure to be built adjacent to but not within a regulatory floodway that will have its lowest floor at an elevation lower than the regulatory base flood elevation must be floodproofed to an elevation at least one and five tenths (1.5) feet above the regulatory base flood elevation.

(7) In regulatory floodways and in special flood hazard areas a depressed floor area shall be considered the lowest floor unless there is a basement.

(8) In areas outside special flood hazard areas which are not in a regulatory floodway, a depressed floor area does not have to be considered as the lowest floor if there is no door opening directly to the outside which could admit flood water into the depressed floor area and if the depressed area walls and floor are sealed to prevent the infiltration of water into the depressed area.

(g) *Lowest floor elevations in nonresidential structures.*

(1) In regulatory floodways and in special flood hazard areas a new nonresidential structure or the substantial improvement of an existing nonresidential structure shall be constructed according to one (1) of the two (2) following requirements:

a. The lowest floor shall be constructed at an elevation which is above the regulatory base flood elevation in the vicinity of the proposed construction site. In the regulatory floodway known as the Indian Bend Wash, a lowest floor elevation must also be above the water surface elevation calculated for floodwater flowing at the rate established by the U.S. Army Corps of Engineers' Indian Bend Wash Project design criteria, or

b. The lowest floor may be constructed below the regulatory base flood elevation, or floodproofing shall be provided for the structure to an elevation which is at least one (1) foot above the regulatory base flood elevation, or two (2) feet above the base flood water surface elevation. In the regulatory floodway known as the Indian Bend Wash, floodproofing shall be provided for the structure to an elevation which is one (1) foot above the water surface elevation calculated for floodwater flowing at the rate established by the U.S. Army Corps of Engineers' Indian Bend Wash Project design criteria.

(2) In flood hazard zone AO, a new nonresidential structure or the substantial improvement of an existing nonresidential structure shall be constructed according to one (1) of the two (2) following requirements:

a. The lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number shown on the FIRM (at least two (2) feet if no depth number is specified).

b. The lowest floor may be constructed below the minimum lowest floor elevation specified in subsection (a), above, but floodproofing shall be provided for the structure to an elevation which is at least as high as the minimum lowest floor elevation determined by the method in subsection (a), above.

(3) In areas outside of special flood hazard areas, new nonresidential structure or the substantial

improvement of an existing nonresidential structure shall be constructed according to one (1) of the two (2) following requirements:

- a. The lowest floor shall be constructed at an elevation which is at or above the base flood water surface elevation.
- b. The lowest floor may be constructed below the elevation of the base flood water surface elevation but floodproofing shall be provided for the structure to an elevation which is at least as high as the base flood water surface elevation.

(4) In flood hazard zones AH, and AO, adequate drainage paths must be constructed to guide floodwaters around and away from the structures.

(h) *Manufactured homes and manufactured home parks.*

(1) The new installation of a manufactured home in an area other than a manufactured home park, the construction of a new manufactured home park, or the enlargement of an existing manufactured home park within a regulatory floodway is prohibited.

(2) The new installation of a manufactured home or the replacement of an existing manufactured home outside the special flood hazard areas must be done in a manner that assures that the manufactured home is anchored to the earth so as to prevent flotation, collapse or lateral movement in the event of flooding.

(3) A manufactured home to be installed in a new location or as a replacement for an existing manufactured home in a special flood hazard area and a manufactured home to be installed as a replacement for an existing manufactured home located within a regulatory floodway shall be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors. The following specific requirements must be met:

- a. Over-the-top ties must be provided at each of the four (4) corners of the manufactured home. Manufactured homes fifty (50) feet or more in length must have two (2) additional over-the-top ties per side at intermediate locations, and mobile manufactured homes less than fifty (50) feet in length must have one (1) additional over-the-top tie per side.
- b. Frame ties must be provided at each of the four corners of the manufactured home. Manufactured homes fifty (50) feet or more in length must have five (5) additional frame ties per side, and manufactured homes less than fifty (50) feet in length must have four (4) additional frame ties per side.
- c. All components of the anchoring system must be capable of resisting forces of at least four thousand eight hundred (4,800) pounds.
- d. Any additions to a manufactured home must be similarly anchored.

(4) The owners of manufactured home parks that are located within special flood hazard areas shall have evacuation plans prepared indicating alternate vehicular access and escape routes. These plans shall be filed with the Maricopa County Department of Civil Defense and Emergency Services and with the city's field services director.

(5) If an existing manufactured home park within a regulatory floodway must undergo repair, reconstruction or improvement of the streets, utility systems and pads at a cost which equals or exceeds fifty (50) percent of the value of the streets, utility systems and pads before the repair, reconstruction, or improvement has commenced, the following requirements must be met:

- a. All manufactured homes are placed on pads or lots elevated on compacted fill or on pilings so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation.
- b. Adequate surface drainage and access for a hauler must be provided.
- c. If the stands are elevated on pilings, the lots must be large enough to permit steps, the pilings must have foundations on stable soil and be no more than ten (10) feet apart, and reinforcement must be provided for pilings more than six (6) feet above the ground.

(6) A manufactured home which is located in a regulatory floodway or in a special flood hazard area may be replaced by another manufactured home only if:

- a. The manufactured home which is to be replaced was not damaged by a flood to more than fifty (50) percent of its value before the flood.

b. The replacement manufactured home is elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is above the regulatory base flood elevation.

(i) *Reference to regulatory base flood water surface elevations on development plans.* The grading and drainage plans for any development adjacent to a regulatory floodway and the grading and drainage plans for any development which proposes to modify an existing regulatory floodway as a part of the development must indicate the base flood water surface elevations.

(j) *Information pertaining to flood protection to be placed on building plans.* The following subsections describe requirements for information which shall be placed on building plans for both residential and nonresidential structures. Depending upon the type of structure and its location, one (1) or more of the subsections will apply:

(1) The proposed elevation of the lowest floor must be shown, regardless of the type of structure or its location.

(2) If the structure is to be built in a regulatory floodway or in a special flood hazard area, the base flood water surface elevation must be shown.

(3) If the structure is to be built in flood hazard zone AO, the elevation of the highest ground adjacent to the structure and the depth number for the AO zone must be shown.

(4) If the structure is to be floodproofed, the elevation to which the floodproofing will be provided must be shown.

(k) *Minimizing potential for flood damage.* Within any area of the city where the floodplain administrator determines that the land is subject to flooding, including, but not limited to, the special flood hazard areas, all development, including substantial improvements to structures, must meet the following requirements:

(1) All structures shall be anchored to their foundations to prevent flotation, collapse, or lateral movement.

(2) Building construction materials and utility system equipment shall be resistant to flood damage.

(3) The construction methods and practices shall be those which minimize flood damage.

(4) Multiple occupancy developments such as subdivisions, shopping centers, etc. shall have their public utility systems such as sewer, water, gas and electrical lines and their associated facilities located and constructed in a manner to minimize or eliminate the potential for flood damage. The developments must be constructed with drainage systems which will minimize the exposure to flood damage.

(5) New and replacement water supply systems shall be designed and constructed to minimize or eliminate infiltration of floodwater into the systems.

(6) New and replacement sanitary sewage systems shall be designed and constructed to minimize or eliminate infiltration of floodwaters into the systems and the discharge of sewage into the floodwaters.

(l) *Storm water storage facilities.*

(1) Except as noted below, development of all land within the city must include provisions for the management of stormwater runoff from the property which is to be developed. This management shall consist of constructing storm water storage facilities, which includes detention basins. Stormwater storage facilities will provide reduced peak rates of outlet flow from the developed property onto downstream property in comparison to the peak rates of runoff flow from the same property under natural conditions withno development. As a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred-year two-hour duration event. If a suitable outlet for a detention basin is not available, or if engineering analysis indicates that available outlet systems would be overtaxed by a detention basin outflow, or groundwater recharge is indicated by an approved master groundwater recharge plan a retention basin shall be constructed in lieu of a detention basin. The requirement for construction of a detention system or a retention basin and/or other types of stormwater storage facilities may be waived in the following cases:

a. The runoff has been included in a storage facility at another location.

b. An application for a building permit to construct a single-family residential structure.

- c. Development adjacent to a regulatory floodway or a watercourse drainage channel which has been determined by the development quality/compliance division director using engineering analyses provided by the development to have been designed and constructed to handle the additional runoff flow without increasing the potential for flood damage on any other downstream property.
- d. Development of a parcel under one-half acre in an area where it can be demonstrated by engineering analyses that no significant increase in the potential for flood damage will be created by the development.

If storage is waived, the development shall be required to contribute to the cost of drainage works on the basis of runoff contribution.

(2) Stormwater storage facilities shall be designed and constructed according to the procedures and criteria established by the city including the following:

- a. The extent of the area to be used to estimate development storage requirements is the entire proposed development including: streets, alleys, easements and rights-of-way, and one-half or other fractional parts of streets, alleys, easements and rights-of-way.
- b. If possible, storage facilities are to be located so they can intercept the flow from the entire development;
- c. If portions of the area cannot drain to a primary storage facility then additional facilities are to be added for these areas as approved by the director of project review;
- d. Individual lot facilities are prohibited except when a clear unobstructed access from a public rights-of-way, for maintenance purposes, is conveyed by dedication or easement to the city;
- e. No stormwater storage facility shall detain or retain standing water longer than thirty-six (36) hours if the basin has not been designed and constructed to be a permanent body of water with appropriate health, safety, and water quality measures for such a body of water.

(3) Stormwater storage facilities are to be drained by either controlled bleed-off, discharge pump and, in limited cases, by infiltration or dry well or injection wells. Controlled bleed-off or pumping to a recognized water course is the preferred method. Methods which discharge stored stormwater to the underground must be in accordance with the approved groundwater master plan and approved by the floodplain administrator, the development quality/compliance division director and the water resources director. In addition, the development must provide the development quality/compliance division with the state and federal permits required to discharge stormwaters to the underground prior to the issuance of any other development permit.

(4) Stormwater storage facilities shall be maintained so as not to cause or contribute to the creation of a public nuisance as defined in section 37-60. At a minimum, maintenance shall include the removal of all debris and sediment from stormwater storage facilities immediately following a storm event.

(m) *Parking in flood hazard areas.* Parking areas shall be permitted within regulatory floodways and special flood hazard areas provided that there will be no overnight parking, that there will be no unattended vehicle(s), and that there will be no obstruction to the natural flow of water.

(1) Overnight parking shall be considered to exist when a vehicle is left unattended during the hours from sunset to sunrise.

(2) "Unattended" shall mean that the owner or authorized driver cannot reasonably be expected to be available to remove the vehicle before flooding occurs.

Whenever parking is permitted within regulatory floodways and special flood hazard areas, warning signs shall be posted by the parking area owner to indicate that the parking area is subject to flooding.

(n) *Special considerations in environmentally sensitive land areas.*

(1) Existing watercourses with a capacity of fifty (50) cubic feet per second or greater, disregarding any estimated peak discharge values, shall be maintained in their natural state unless it is determined that alterations are required to meet other provisions of this ordinance.

(2) A drainage and flood control easement will be dedicated to the city which encompasses the area required to convey the base flood in the watercourse described in section 37-42(14)a.

(3) Road-wash crossings may disrupt the natural channel beyond the right-of-way limits if engineering investigations determine the need, and are approved by the director of project review.

(4) Stormwater storage facilities may not be required in areas zoned for environmentally sensitive development if the city staff determines that such facilities cannot be built without conflicting with the city's environmentally sensitive lands ordinance requirements. If on-site stormwater storage facilities requirements are waived, the development will be required to contribute to the cost of drainage works at another location on the basis of runoff contribution.

(5) All drainage structures and detention facilities shall be constructed in such a manner as to minimize the impact on the natural environment, promote recharge when in conformance with the approved groundwater, recharge master plan and, when finished, shall be revegetated to be compatible with nearby natural areas.

(o) *Conformance with state law.* No construction within the limits outlined in this article shall be permitted which would violate prevailing water law of the state, whether statutory or by the courts of this state.

(Code 1972, § 5-615(B); Ord. No. 1993, 2-29-88; Ord. No. 3333, § 7, 9-5-00)

### **Sec. 37-43. Requirement for certifications and required permits.**

(a) Before the city will make a final inspection and grant a utility clearance for a single-family residential structure built in a regulatory floodway, a special flood hazard area or in flood hazard zones A or AO, or before the city will grant a certificate of occupancy for a structure other than a single-family residential structure built in a regulatory floodway, a special flood hazard zone or in flood hazard zones A or AO, the builder must submit certain certificates to the floodplain administrator. The certificates which are required pertain to lowest floor elevations, adjacent ground elevations and floodproofing. The following subparagraphs describe the required certificates.

(b) Certificates pertaining to elevations shall be made by either a civil engineer or land surveyor who is registered to practice in the state.

(c) Certificates pertaining to the adequacy of floodproofing shall be made by a civil engineer or architect who is registered to practice in the state.

(d) A certificate shall be submitted stating the "as-built" elevation (in relation to mean sea level) of the lowest floor of each new structure or substantial improvement to a structure built in a regulatory floodway or in a special flood hazard area. If the lowest floor is below grade on one (1) or more sides, the certificate must also state the elevation of the floor immediately above the lowest floor. This certificate must indicate whether the structure does or does not have a basement. If a structure has been floodproofed, a statement of the elevation to which the structure was floodproofed must be included with this certificate.

(e) For those structures which have been built in a regulatory floodway or in a special flood hazard area and have been floodproofed, a certificate shall be submitted which certifies that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood conditions expected at the building site.

(f) Other permits. The city, being a participant in the National Flood Insurance Program and subject to certain federal rules associated with that program; other federal rules and directives, and; subject to the statutes of the state, establishes the following methods to manage those laws and rules when applicable:

(1) *Floodplain and drainage management permit.* Prior to issuance of a building permit, a floodplain and drainage management permit shall be obtained. The application for a permit will be on forms provided by the floodplain administrator and must include, but not be limited to, plans drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fills and excavations, drainage facilities, and; locations of the foregoing. The following information is required to be included in the application specifically:

a. In relation to mean sea level, existing ground elevations and proposed elevation of the lowest habitable floor for all structures including basements;

b. Proposed elevation in relation to mean sea level, to which any structure will be floodproofed;

c. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and

d. Any certifications required by this ordinance, state law and federal rules.

(2) *Evidence of state and federal permits.* Prior to start of construction the developer must submit

evidence to the director of project review that necessary state and federal permits have been obtained.

(Code 1972, § 5-615(C); Ord. No. 1993, 2-29-88)

#### **Sec. 37-44. Obstruction of waterway--Prohibited.**

No person in the city shall either obstruct or reduce the capacity of a watercourse, or of a pipe, conduit or any other conveyance through, on or over which stormwaters flow at least periodically, by any use or by filling, dumping, or constructing or by any other means, except as provided in this chapter. Any person who violates this section shall be liable to the city for the penalties and restitution specified in sections 37-72 and 37-78, respectively.

(Code 1972, § 5-618(A); Ord. No. 1993, 2-29-88; Ord. No. 3333, § 8, 9-5-00)

#### **Sec. 37-45. Same--Removal of obstructions.**

(a) Any person who owns, occupies, or leases real property within the city and who obstructs or reduces the capacity of a watercourse, or of a pipe, conduit or any other conveyance through, on or over which stormwaters flow at least periodically, other than as provided for in this chapter, shall be deemed to have created a public nuisance. Such persons shall be notified in writing, either personally delivered or by certified or registered mail, return receipt requested, by the floodplain administrator or his authorized representative, to remove the obstructions or the materials creating the reduction of the capacity of a watercourse, or of a pipe, conduit or any other conveyance through, on or over which stormwaters flow at least periodically, within ten (10) days after receipt of said written notice. If the owner does not reside on such property, a duplicate shall also be sent to him at his last known address.

(b) If the owner, lessee, or occupant of such real property, after having been given notice as required above, does not comply and abate such conditions which constitute a public nuisance, the floodplain administrator shall be authorized to abate such condition at the expense of such owner, lessee or occupant.

(c) The floodplain administrator, or his authorized representative, shall prepare a verified statement and account of actual cost of such abatement, including inspection and other incidental costs in connection with such abatement. Said verified statement and account is hereby declared as a debt of such owner, lessee, or occupant. A copy of said statement and account shall be personally delivered or delivered by certified mail, return receipt requested, to the party served with the original notice. The city attorney may institute an action to collect the debts so created in the superior court of the county at any time after delivery of the statement and account.

(d) Within ten (10) days after receipt of the notice described in subsection (a), any person may appeal the city's request by serving written notice of appeal upon the city clerk and shall be entitled to a hearing before the floodplain board on the appeal. In the event such an appeal is filed, all proceedings shall be stayed pending disposition of the appeal. Any person may also appeal to the floodplain board within ten (10) days after the receipt of the statement and account prepared and served pursuant to subsection (c) the amount of said debt by serving written notice of appeal upon the city clerk which also shall stay all further proceedings pending disposition of the appeal.

(e) When, in the opinion of the floodplain administrator, there is immediate danger to life or property, constituting an emergency, as the result of any obstruction or reduction of the capacity of a watercourse, or of a pipe, conduit or any other conveyance through, on or over which stormwaters flow at least periodically, not authorized under this chapter, he may order the immediate abatement of said condition notwithstanding the notice provisions provided in subsection (a) of this section. The cost of said abatement shall be collected in the same manner as other debts, as provided for in subsection (c) of this section.

(Code 1972, § 5-618(B); Ord. No. 1993, 2-29-88; Ord. No. 3333, § 9, 9-5-00)

#### **Sec. 37-46. Penalties.**

Any person, corporation, partnership or association violating or failing to comply with the provisions of this article shall, upon conviction thereof, be guilty of a class 1 misdemeanor, or appropriate actions or proceedings to prevent such acts as may be filed in a court of competent jurisdiction.

(Ord. No. 1993, 2-29-88)

**Sec. 37-47. Severability.**

This article and the various parts thereof are hereby declared to be severable. Should any provision of this article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole, or any portion thereof, other than the provision so declared, to be unconstitutional or invalid.

(Ord. No. 1993, 2-29-88)

**Sec. 37-48. Conflict.**

This article shall take precedence over any conflicting ordinance of the city.

(Ord. No. 1993, 2-29-88)

## **DIVISION 3. DRAINAGE FACILITY DEVELOPMENT FEES**

### **Sec. 37-49. Purpose.**

The purpose of this section is to impose development fees to reimburse the city for financing and constructing necessary public drainage and related improvements on lands owned by the State of Arizona within the Reata Pass Wash Desert Greenbelt Improvement District No. 18902, and thus make possible the beneficial use of the property to be developed.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-50. Definitions.**

*Developer* means the person that is responsible for creating a demand for drainage facilities.

*Development* means any proposed improvement to property that creates a demand for the drainage facilities in the area of the Reata Pass Wash Drainage Improvement Program.

*Drainage improvement program* means those drainage facility improvements set forth in the report.

*Person* means an individual, corporation, a partnership, an incorporated association, or any other similar entity.

*Report* means the document entitled Project Cost Estimate and Assessment Methodology dated February 2, 1998, prepared by Simons, Li and Associates.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-51. Drainage development fee imposed.**

(a) There is hereby imposed within the Reata Pass Wash Desert Greenbelt Improvement District No. 18902, as depicted on the following map, a drainage development fee on all new development on property that has been owned by the Arizona State Land Department and thus has not paid improvement district assessments in the Reata Pass Wash Desert Greenbelt Improvement District No. 18902.

(b) The developer shall pay to the city the drainage development fee at the time and as a condition of the issuance of building permits for new residential dwelling units or non residential structures.

(Ord. No. 3131, § 1, 5-4-98)

**GRAPHIC LINK:**[Reata Pass Wash Desert Greenbelt](#)

### **Sec. 37-52. Fee amount.**

(a) The amount of the development fee shall be three thousand six hundred twenty-five (\$3,625.00) per acre, plus the cost of interest on that amount equal to that paid by the city for the general obligation bonds sold to finance the Reata Pass Wash drainage improvements.

(b) The interest cost will be calculated by the city financial services general manager, or his designee, for each development at the time that the development fee is paid, based on the time between the date of the sale of the bonds and the time the fee is to be paid. The city financial services general manager, or his designee, shall provide to the city development services director a schedule for the payment of interest to be used for the purposes of this section.

(c) For development of less than an acre, the amount of the fee shall be proportionate to the acreage involved. In the case of platted properties, the acreage attributable to common areas of the plat shall be allocated proportionally to individual lots within the plat at the time the plat is approved.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-53. Payment of the fee.**

(1) The fee shall be paid in cash by the developer or the person authorized on his behalf to apply for the issuance of a construction permit, to the city development services director or his designee. No construction permit may be issued by the city until such fee has been paid.

(2) The city may accept the offer by the developer to construct or otherwise provide all or part of the improvements (including the dedication of land) that are contained in the drainage improvements program for the Reata Pass Wash. The construction of the drainage improvements must be in accordance with the engineering and design standards of the drainage improvements program.

(a) The timing of completion, the necessary security for completion of construction, the standards for acceptance of the construction and other construction matters, the legal descriptions of and the allocation of dollar amounts of the value of the fee otherwise due in lieu of construction per development parcel within a larger development, and other such matters as are appropriate shall be the subject of an agreement between the developer and the city. Drainage improvements that are local to the site, and which therefore do not serve the regional purposes of the drainage improvement program are not eligible for such credits.

(b) Thereafter, drainage fees collected pursuant to this division for the property subject to the development agreement shall be refunded by the city to the developer within thirty (30) days of the end of the quarter in which the drainage fees have been paid. Credits shall be payable for a period of up to twenty (20) years from the date the city issues its final acceptance of the drainage improvements pursuant to the development agreement.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-54. Drainage development fee fund.**

There is hereby established a drainage development fee fund, into which all fees collected pursuant to this section shall be held. Monies withdrawn from this fund must be used for the purpose of providing drainage improvements in the Reata Pass Wash area consistent with the drainage improvements program as set forth in the report. Interest earned on the monies in the fund shall be credited to the fund.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-55. Use of fees.**

Fees collected pursuant to this section shall be used solely for the purpose of acquiring, equipping, financing and/or installing improvements to the Reata Pass Wash Drainage Improvements Program and shall not be used for maintenance or operations. At least once each fiscal period, the city manager or designee shall present to the city council a report on the use of the fees collected in the fund for specific drainage improvements in the Reata Pass Wash Drainage Improvement Program.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-56. Refund of drainage development fees.**

Any funds not expended or encumbered within fifteen (15) years from the date the drainage development fee was paid are refundable upon application of the developer or its successor. Development fees shall be deemed expended or encumbered in the order received by the city on a first-in, first-out basis. Development fees are expended or encumbered when actually paid by the city or when a lease, purchase, construction option or other contract or agreement creating an absolute or continuing obligation to pay and relating to the purposes of this section has been approved by the city council. Written application for a refund shall be made within one (1) year after the date the development fee becomes refundable and shall include documentation sufficient to establish the date and amount of the development fee payment. Development fees for which no timely refund application is made may be expended by the city for the purposes stated in this section.

(Ord. No. 3131, § 1, 5-4-98)

### **Sec. 37-57. Review of fee.**

The drainage development fee adopted by this section shall be reviewed at least once every three (3) years by the city council to determine if any changes to the fee or its administration may be appropriate.

(Ord. No. 3131, § 1, 5-4-98)

## ARTICLE III. STORMWATER QUALITY PROTECTION

### DIVISION 1. GENERALLY

#### Sec. 37-58. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicable water quality standard* means a numeric or narrative water quality criterion that limits the quantity or concentrations of pollutants that may be present in navigable waters defined in 33 United States Code Section 1362(7).

*Nonresidential use* means any real property that is actually or intended to be used for commercial, industrial, agricultural, or recreational purposes; the immediate vicinity of five (5) or more connected residential dwelling units; and residential subdivisions or dwellings that have not yet been issued a certificate of occupancy.

*NPDES coordinator* means the city manager or his designee who is authorized by this article to administer its provisions.

*NPDES permit* means an authorization to discharge pollutants issued pursuant to 33 United States Code Section 1342.

*Pollutant* means solid, liquid, gaseous, or other substances that can alter the chemical or physical properties of water, including but not limited to: fluids, solid wastes, pesticides, herbicides, fertilizers, solvents, sludge, petroleum and petroleum products, biological materials, radioactive materials, sand, dirt, animal wastes, acids and bases.

*Pollution* means the presence of pollutants on land or in stormwater.

*Public storm drain system* means all or any part of the publicly-owned storm drains, basins, curbs, culverts, ditches, washes, joint-use drainage facilities, pipes, graded areas, and gutters located within easements, rights-of-way, parks, streets, roads or highways, or in common areas of real property leased from the city, that are used for collecting, retaining, detaining, or conveying stormwater.

*Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, placing, leaching, dumping, or disposing into or on any land in a manner that significant materials, pollutants, or stormwater may come to be located in the public storm drain system.

*Significant materials* means any solid, liquid, or gaseous substance other than stormwater, that can release pollutants, including but not limited to: raw materials; fuels; solvents; detergents; finished materials; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code Section 9601(14); any chemical for which a report must be filed pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 United States Code Section 11023; fertilizers; pesticides; herbicides; and waste materials, including garbage, trash, ashes, slag, yard waste, animal waste, and sludge.

*Stormwater means* stormwater runoff, snow melt runoff, and surface runoff and drainage.

(Ord. No. 3333, § 14, 9-5-00)

#### Sec. 37-59. General powers and purpose.

(a) The National Pollutant Discharge Elimination System (NPDES) coordinator may regulate the use, grading, paving, maintenance, and operation of public rights-of-way and the public storm drain system so as to reduce, to the maximum extent practicable, the addition of pollutants to stormwater in quantities or concentrations that could reasonably be expected to cause or contribute to either a violation of an applicable water quality standard or any condition of a stormwater NPDES permit issued to the city; or any other act that causes or contributes to damage to the public storm drain system. The NPDES coordinator may regulate the use of the public storm drain system through administrative rules, permits, or other written forms of approval for activities that could release pollutants or stormwater to the public storm drain system.

(b) Nothing in this article shall be construed as an assumption by the city of any other person's duties or responsibilities arising under any applicable law, including the common law. Except where required to comply with applicable law, any activities of the NPDES coordinator authorized by this article are permissive rather than

mandatory.

(c) The NPDES coordinator will provide implementation guidance to assist the public in complying with this article. This guidance may consist of fact sheets, policy and procedure manuals, and other pertinent information relating to the development and implementation of best management practices.

(Ord. No. 3333, § 15, 9-5-00)

### **Sec. 37-60. Declaration of nuisance.**

It is hereby declared to be a public nuisance for any person to directly or indirectly release significant materials, pollutants, or stormwater without proper authorization in quantities, velocities, or concentrations that cause or contribute to, or may reasonably be expected to cause or contribute to: damage to a publicly-owned right-of-way or the public storm drain system; a violation of an applicable water quality standard; or a violation of any condition of a stormwater NPDES permit issued to the city. As used in this section, proper authorization exists if an activity affecting stormwater is specifically authorized in (i) this article; (ii) an administrative rule, permit, plan approval, or other authorization issued in compliance with this article, or (iii) a stormwater NPDES permit.

(Ord. No. 3333, § 16, 9-5-00)

### **Sec. 37-61. Prohibited practices.**

(a) It shall be unlawful for any person to use, handle, store, treat, spill, dump, or dispose of stormwater, pollutants, or significant materials in a manner that creates a public nuisance as defined in section 37-60.

(b) It shall be unlawful for any person to release to a publicly-owned right-of-way or public storm drain system any substance that is not composed entirely of stormwater except (i) releases pursuant to a NPDES permit; (ii) releases resulting from fire fighting and street maintenance activities; and (iii) releases of materials as provided in subsections (e) and (f) of this section.

(c) It shall be unlawful for any person to use, handle, store, spill, dump, or dispose of significant materials in a manner that could reasonably be expected to cause or contribute to the addition of pollutants to the public storm drain system.

(d) It shall be unlawful for any person to, without good cause, interfere with or prohibit any city employee from conducting any activities in furtherance of the requirements of this article, including conducting inspections and taking samples.

(e) This section does not prohibit releases of stormwater from stormwater retention or detention basins if a permit or approval is first obtained from the NPDES coordinator. A person seeking such a permit or approval shall demonstrate that the release is not reasonably expected to cause or contribute to a public nuisance as defined in section 37-60 of this article. It shall be unlawful for any person to violate the terms and conditions of any such permit or approval.

(f) This section does not prohibit releases from: fire hydrant flushing; potable water systems, including water line flushing; foundation or footing drains that are not contaminated by pollutants; naturally occurring seeps, springs, wetlands, or riparian areas; nonagricultural irrigation water; vehicle washing for no charge in residential areas, or for not-for-profit fundraisers for educational or public service groups; residential evaporative coolers; air conditioner condensate; and dust control watering.

(Ord. No. 3333, § 17, 9-5-00)

### **Sec. 37-62. Stormwater management plans prepared by permit applicants.**

(a) Any person applying pursuant to any chapter of this Code for authorization, permission, or a permit to construct improvements or conduct activities on nonresidential property that have the reasonable potential to affect stormwater shall prepare a detailed written stormwater management plan for the management of the volume, velocity, and quality of stormwater that has the reasonable potential to be released off-site. Stormwater management plans shall apply to all contiguous land under common ownership or control and shall specifically state the address of each parcel of property subject to the plan. The plan shall include a description of the types of all significant materials that will be on the property; the land use and materials management practices that could lead to the pollution of stormwater during all phases of existing and proposed land use; the manner in which significant materials will be used, handled, stored, treated, or disposed of; the methods to minimize, to the

maximum extent practicable, the pollution of stormwater; and any additional information concerning stormwater management and pollution prevention efforts that are or will be prepared to comply with any rules or NPDES permits promulgated pursuant to the portions of 40 Code of Federal Regulations Part 122 that relate to discharges of stormwater. The stormwater management plan shall be provided to the NPDES coordinator.

(b) A stormwater management plan may cover more than one (1) parcel of property so long as the activities on each property are sufficiently similar that the plan is appropriate. A stormwater management plan need not be resubmitted where the new permit, approval or other authorization relates to activities that will not affect the applicability of a previously submitted plan.

(c) Permits, approvals or other authorizations that require stormwater management plans as provided in this section shall not be issued until the NPDES coordinator has on file a stormwater management plan prepared in accordance with this section. The NPDES coordinator may modify or revoke any permits, approvals, or other authorization if significant materials are not at all times managed in substantial compliance with the stormwater management plan, or if the authorized activity causes or contributes to violations of this article. All persons described in subsection (a) above must update the stormwater management plan as necessary if activities at the affected property are modified in a manner that may cause a material detrimental change in the volume, velocity, or quality of stormwater released off-site.

(d) Stormwater management plans shall include, to the extent applicable, practicable measures for: managing litter; the use, handling, storage, treatment, and disposal of significant materials; the use, handling, storage, and disposal of pesticides and herbicides; reducing the velocity of releases to the public storm drain system; the use of landscape features to reduce the quantity and velocity of stormwater that may be released off-site; maintenance of retention and detention basins and other stormwater management devices; maintenance and cleaning of parking lots and buildings; and for ensuring that significant materials are not exposed to direct contact with stormwater. Stormwater pollution prevention plans that comply with a stormwater NPDES permit and applicable requirements of 40 Code of Federal Regulations Part 122 may be used as part or all of the stormwater management plan required by this section.

(Ord. No. 3333, § 18, 9-5-00)

### **Sec. 37-63. Inspections.**

(a) The NPDES coordinator shall enforce the provisions of this article. The NPDES coordinator is authorized to make inspections in the normal course of job duties; or in response to a complaint that an alleged violation of the provisions of this article may exist; or when there is reason to believe that a violation of this article has been or is being committed. The NPDES coordinator may collect and analyze samples of stormwater and significant materials, install and require the installation of stormwater sampling and measurement devices, and examine records concerning significant materials and stormwater.

(b) The NPDES coordinator may enter onto any real property, or into any building or premises, at all reasonable times to determine compliance with this article or a stormwater NPDES permit issued to the city, or to otherwise permit the duties imposed by this article, provided that if such property, building, or premises is occupied, the NPDES coordinator shall present credentials to the occupant and request entry. If such property, building, or premises is unoccupied, the NPDES coordinator shall first make a reasonable effort to locate the owner or other person having charge of control of the building or premises and request entry. If entry is refused, the NPDES coordinator has recourse to every remedy providing by law to secure entry.

(c) When the NPDES coordinator has first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant, or person having charge, care, or control of any real property, structure, or building shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the administrative authority for the purpose of inspection pursuant to this article.

(d) No person shall interfere with, prevent, or attempt to interfere with or prevent an individual employed by the city or other person contracted for by the city, from investigating an alleged violation of this article, or from correcting or abating a violation of this article.

(e) No person shall knowingly make a false or fraudulent statement, or knowingly misrepresent a fact, or mislead an individual employed by the city or other person contracted for by the city, when that individual is investigating a violation or alleged violation of this chapter, or is correcting or abating a violation of this chapter.

(f) Inspections conducted pursuant to this article may be expanded to include items covered by other chapters of this Code that relate to the quality or management of stormwater.

(Ord. No. 3333, § 19, 9-5-00)



## **DIVISION 2. VIOLATIONS AND PENALTIES**

### **Sec. 37-71. Violations.**

(a) It shall be unlawful for any person to cause, facilitate, aid or abet any violation of, or to fail to perform any act or duty required by, any provision of this article, or any rules or regulations promulgated hereunder.

(b) When two (2) or more persons have liability to the city or are responsible for a violation of this article, their responsibility shall be joint and several.

(Ord. No. 3333, § 21, 9-5-00)

### **Sec. 37-72. Civil penalties**

(a) Any person that violates any provision of this article shall be subject to a civil action in any court of competent jurisdiction to collect a civil penalty for a sum not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day of each violation shall constitute a separate civil offense. In seeking the assessment of a civil penalty, the following criteria shall be considered:

- (1) The seriousness of the violation;
- (2) The economic benefit, if any, resulting from the violation;
- (3) Any history of such violations;
- (4) Any good-faith efforts to comply with the applicable requirements;
- (5) The economic impact of the penalty on the violator; and
- (6) Such other factors as justice may require.

(b) In addition to the civil penalty imposed herein, the person shall be liable for any penalties imposed on the city as a result of the violation.

(c) The transportation systems department shall provide written notice and an opportunity to be heard to any person assessed a civil penalty under this article. Within fifteen (15) days of receipt of the notice, such person shall pay the penalty or file a written request for a hearing with the department. If a hearing is held, the general manager shall issue a written decision, and such decision shall be final.

(Ord. No. 3333, § 22, 9-5-00)

### **Sec. 37-73. Enforcement of judgments.**

Any judgment for abatement, restitution or civil penalties taken pursuant to this article may be enforced as any other civil judgment.

(Ord. No. 3333, § 23, 9-5-00)

### **Sec. 37-74. Violations not exclusive.**

Violations of this article are in addition to any other violation enumerated within this Code and in no way limit the penalties, actions or abatement procedures which may be taken by the city for any violation of this article which is also a violation of any other provision of this Code or any other applicable law. The remedies specified herein are cumulative and the NPDES coordinator, or the city attorney, may proceed under these or any other remedies authorized by law.

(Ord. No. 3333, § 24, 9-5-00)

### **Sec. 37-75. Each day separate violation.**

Each day any violation of any provision of this article or the failure to perform any act or duty required by this article

continues shall constitute a separate offense.

(Ord. No. 3333, § 25, 9-5-00)

**Sec. 37-76. Service of notices.**

(a) Any notice required to be given for any purposes under this article shall be by either having the NPDES coordinator hand-deliver the notice, or by mailing the notice by certified mail, return receipt requested.

(b) Notice is deemed effective on the date it is hand-delivered or deposited in the United States Mail.

(c) Nothing herein shall preclude the city from giving additional oral or written notice at its discretion. If the city does elect to give any additional notice in any instance, it shall not thereby become obligated to give such additional notice thereafter in the same or other situation.

(Ord. No. 3333, § 26, 9-5-00)

**Sec. 37-77. Option to proceed civilly and/or criminally.**

The NPDES coordinator may request that the city attorney commence criminal and/or civil action against any person who has violated or is in violation of this article.

(Ord. No. 3333, § 27, 9-5-00)

**Sec. 37-78. Restitution.**

In addition to any civil sanction or criminal penalty provided for in this article, any person violating this article shall be liable for all costs which may be associated with the city's rectification of any violation of this article. The court shall impose restitution in addition to any administrative, civil or criminal penalties.

(Ord. No. 3333, § 28, 9-5-00)

Secs. 37-79---37-85. Reserved.

## **DIVISION 3. ABATEMENT OF VIOLATIONS**

### **Sec. 37-86. Abatement in lieu of or in addition to other actions.**

(a) In addition to or in lieu of denial of access or filing a civil or criminal complaint, the city may file notice to abate any violation of this article. Such abatement shall proceed independently of any civil or criminal violation filed pursuant to this article.

(b) If any person served a notice to abate by the city pursuant to this article fails to comply with such notice or order, the city may correct or abate the conditions subject to the notice.

(c) The NPDES coordinator shall prepare a verified statement as to the actual cost of correcting or abating the violation, and shall add an additional five (5) percent for costs of inspection and other incidental costs associated with abating the violation. The statement shall be delivered or mailed, certified mail, return-receipt requested, to the owner(s) or other person(s) the notice to abate or order was served upon. That statement shall further set forth the following:

- (1) The person has fifteen (15) calendar days from the date of delivery or mailing of the statement to pay.
- (2) Appeal procedures.

(Ord. No. 3333, § 30, 9-5-00)

### **Sec. 37-87. Emergency abatement.**

If a situation presents an imminent danger or threat to the health, safety or welfare of any person or the public in general, the city may issue a notice to abate directing the responsible person to take such action as is appropriate to correct or abate the emergency. In addition, the city may act to correct or abate the emergency. In the event the city is unable to contact the responsible person, such inability in no way affects the city's right to correct or abate the emergency. The responsible person shall be granted a review before the city's transportation systems general manager on the matter upon that person's request, as soon as practicable, but such appeal shall in no case stay the abatement or correction of such emergency.

(Ord. No. 3333, § 31, 9-5-00)

### **Sec. 37-88. Notice to abate.**

(a) If, after an inspection, the city finds one (1) or more violations of this article, and the city elects to use the abatement process, the city shall, in writing, notify the owner, or agent for the owner.

(b) The notice to abate shall set forth the following information:

- (1) The owner has fifteen (15) calendar days from the mailing of the notice to abate to correct the violation.
- (2) Identification of the property in violation by street address if known, and if unknown, then by book, map and parcel number.
- (3) Statement of the violation in sufficient detail to allow a reasonable person to identify and correct the violation(s).
- (4) Reinspection date and time.
- (5) Name, address and phone number of the city inspector who sent the notice to abate.
- (6) A warning stating that if the violations are not corrected within the fifteen (15) calendar day period the city can abate the problem and assess the owner the cost of such abatement and record a lien on the property for the assessment.
- (7) Appeal procedures.
- (8) The fifteen (15) calendar day notice set forth in this section shall not apply to emergency abatements pursuant to section 37-87.

(Ord. No. 3333, § 32, 9-5-00)

### **Sec. 37-89. Appeal of notice to abate.**

- (a) Any notice to abate or assessment can be appealed to the city's transportation systems general manager.
- (b) An appeal must be filed within fifteen (15) calendar days of the service of the notice to abate or assessment and must be filed with the office of the transportation systems general manager.
- (c) Failure of a person entitled to appeal under this article to timely file an appeal shall constitute a waiver of the right to a hearing of the complaint before the city's transportation systems general manager and such person shall be estopped to deny the validity of any notice or assessment which could have been timely appealed.
- (d) The notice of appeal shall set forth, in writing, the person's reasons for believing no violation of the article has occurred or that the assessment is excessive.
- (e) The individual appealing shall accompany the written appeal with an appeal fee of twenty-five dollars (\$25.00), such sum to be deposited in the general fund of the city.
- (f) In case of financial hardship, the fee may be suspended until the decision on appeal is rendered. The city's transportation systems general manager may also waive the fee upon a finding of financial hardship.

(Ord. No. 3333, § 33, 9-5-00)

### **Sec. 37-90. Procedure on appeal.**

- (a) The city's transportation systems general manager shall set a hearing date for review of the appeal within forty (40) calendar days of the receipt of notice of appeal.
- (b) The city's transportation systems general manager shall take testimony from all parties to the appeal. The parties may, if they choose, be represented by an attorney. The hearing shall be informal and the rules of evidence shall not apply.
- (c) The city's transportation systems general manager shall prepare a written summary of the hearing and shall set forth the decision reached. A decision shall be rendered within fifteen (15) calendar days of the hearing and the findings and decision shall be mailed to all parties to the appeal.

(Ord. No. 3333, § 34, 9-5-00)

### **Sec. 37-91. Abatement variances and time extensions.**

- (a) Any person may request a variance or time extension of a notice to abate or assessment. Such request shall be made to the city's transportation systems general manager.
- (b) The same time limits for filing and written requirement that appear in section 37-89 on appeals applies to this section.
- (c) The procedure shall be the same as set forth in section 37-90.
- (d) The city's transportation systems general manager may grant a variance only where it is determined that all of the following apply:
  - (1) Special circumstances or conditions apply to this appeal application such as hardship which is not self imposed;
  - (2) Authorization of the variance is necessary for the preservation and enjoyment of substantial property rights; and
  - (3) Authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.
- (e) If a variance is granted by the city's transportation systems general manager, the condition in subsection (d) allowing the variance and the extent of the variance shall be explicitly stated.
- (f) The city's transportation systems general manager may grant one (1) extension of the time limit set forth in section 37-84. Such extension shall not exceed one hundred eighty (180) calendar days. The extension period granted by the city's transportation systems general manager starts to run on the day the city's transportation systems general manager issues a decision pursuant to section 37-90(c). The city's transportation systems general

manager may grant an extension only where it is shown that:

(1) It would create a hardship to comply with the notice to abate within the fifteen (15) day period of section 37-88; and

(2) The moving party presents a plan, that is approved by the city's transportation systems general manager, by which said party will comply with the decision within no more than one hundred eighty (180) calendar days.

(Ord. No. 3333, § 35, 9-5-00)

**Sec. 37-92. Stay of order during appeal.**

Except for violations presenting an imminent hazard, the timely filing of an appeal shall stay enforcement of a notice to abate or assessment until the appeal is final determined by the city's transportation systems general manager.

(Ord. No. 3333, § 36, 9-5-00)

Secs. 37-93--37-100. Reserved.