

**ABILENE CITY COMMISSION - STUDY SESSION AGENDA**  
**ABILENE PUBLIC LIBRARY - 209 NW FOURTH STREET**  
**April 21, 2015 - 7:00 pm**

1. **PUBLIC COMMENTS**. Persons who wish to address the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.
2. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
  - a. An Ordinance amending Articles 17, 27, and 28 of the Zoning Regulations of the City of Abilene, Kansas, concerning landscaping, signage, and floodplain regulations, respectively.
  - b. A Resolution approving a Memorandum of Understanding between the Championship Demolition Derby Association and the City of Abilene, Kansas, concerning the sale of cereal malt beverages on City-owned property.
  - c. A Resolution making certain appointments to the Library Board of the City of Abilene, Kansas.
3. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
  - a. Meeting Minutes: April 13, 2015 regular meeting
  - b. A Resolution authorizing certain signatories on deposit accounts at Financial Institutions for the City of Abilene, Kansas.
4. **ITEMS FOR PRESENTATION AND DISCUSSION**
  - a. City Commission Installation
  - b. City Manager's Report
5. **REPORTS**
  - a. None
6. **ANNOUNCEMENTS** (*Meetings at Abilene Public Library unless otherwise provided*)
  - a. NGA Luncheon, April 24 at 11:30 (Civic Center)
  - b. Community Foundation Annual Dinner, April 24 at 6:00 pm (Eisenhower Library Courtyard)
  - c. City Commission meeting, April 27 at 4:00 pm
  - d. Convention and Visitors Bureau, April 28 at 2:00 pm (Civic Center)
  - e. Business Investment Grant Pre-Application Conference, April 28 at 5:30 pm
  - f. Library Board, May 4 at 4:00 pm
  - g. Kids Council, May 4 at 6:00 pm (Frontier Estates)
  - h. Commission Study Session, May 5 at 7:00 pm

## **Memorandum**

**Date:** April 15, 2015

**To:** City Commission; David Dillner

**From:** Tim Hamilton – Community Development Director

**Regarding:** Zoning Articles 17 “Gateway Landscaping Overlay District; Article 27 Sign Regulations

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On November 14, 2014, the City Commission adopted the update of the Zoning Regulations with the exception of Articles 17 and 27. These Articles were sent back to the Planning Commission for additional consideration regarding the compulsory language of the proposed landscaping guidelines. The Planning Commission was also asked to consider changes to the limitations of off-premise signage.

At both the February and March Planning Commission meetings, a public study and work session was scheduled to consider additional changes to both Articles 17 and 27. The Public participation was sparse, but those that did attend provided valuable input for the Planning Commission to consider. These recommended changes are included in the attached Articles. These recommended changes include language changes and deletions satisfactory to the public that participated. Language to be deleted is indicated with strike-throughs, and added or modified language is indicated with a yellow highlight.

Because the current Comprehensive Plan includes goals regarding the aesthetics of the Buckeye/K-15 Corridor, the Planning Commission was reluctant to remove the compulsory language included in the proposed Gateway Landscaping Overlay District. The Commission felt unanimously that changing the language from compulsory (references to “shall”) to voluntary (references to “May”) would defeat the purpose of the goals specifically outlined in the Comprehensive Plan. This could potentially have a negative impact on any future interpretation of the Plan or any land use policy which could be derived from it. The Planning Commission feels that if Article 17 is to include voluntary language for the requirement of landscaping, that the Governing Body should be the one to change it.

With regard to Article 27 (Sign Regulations), Off premise advertising and other minor changes to this Article are recommended for approval as submitted to the satisfaction of the general public present at the public work sessions in February and March.

## ARTICLE 17

### GATEWAY LANDSCAPING OVERLAY (GL-O) DISTRICT

#### Sections:

- 17-1 Intent
- 17-2 Definitions
- 17-3 Applicability
- 17-4 General Conditions
- 17-5 Planting Requirements
- 17-6 Planting Requirements Within Parking Areas
- 17-7 Timing for Establishing Landscaping
- 17-8 Maintenance and Enforcement

#### SECTION 17-1 INTENT

**17-101.** The intent of the Gateway Landscaping Overlay (GL-O) District is to enhance the visual integrity of the Kansas Highway 15 gateway into the community; to encourage the use of landscape vegetation within the GL-O District, in particular to visually soften paved areas and to generally enhance the quality and appearance of parking lots and parking areas.

#### SECTION 17-2 DEFINITIONS

**17-201.** For the purposes of this Article, the following words shall have the following meanings:

- a. ***Deciduous trees*** means generally those trees which shed their leaves annually, such as ash, sycamore and willow.
- b. ***Evergreen trees*** means generally those trees which do not shed their leaves annually, such as pine, spruce and juniper.
- c. ***Ground cover*** means landscape materials, or living low-growing plants other than turf grass, installed in such a manner so as to form a continuous cover over the ground surface.
- d. ***Landscaped open space*** means all land area within the property lines not covered by building or pavement.
- e. ***Landscape material*** shall consist of such living material as trees, shrubs, ground cover/vines, turf grasses, and nonliving material such as: rocks, pebbles, sand, bark, brick pavers, earthen mounds (excluding pavement); and/or other

items of a decorative or embellishment nature such as: fountains, pools, walls, fencing, sculpture and geo-block drives.

- f. **Large trees** generally include those species of trees that reach a height of seventy feet (70') or taller at maturity.
- g. **Medium trees** means trees generally thirty (30') to seventy feet (70') in height at maturity.
- h. **Native grasses** means species of perennial grass other than those designated as noxious weeds by the Kansas Department of Agriculture.
- i. **Public street setback** means that distance of open area between the street right-of-way line and the building or parking setback line.
- j. **Shrubs** means any self-supporting, woody plant of a species which normally grows to an overall minimum height of less than fifteen feet (15').
- k. **Small trees** means trees generally thirty feet (30') or less in height at maturity, including ornamental flowering trees and patio trees.
- l. **Trees** means any self-supporting, woody plant of a species which normally grows to an overall minimum height of fifteen feet (15').
- m. **Turf grass** means a species of perennial grass grown as permanent lawns or for landscape purposes as distinguished from those species grown for agricultural or commercial seed purposes.

["The American Standard for Nursery Stock," in its most current edition, as published by the American Association of Nurserymen, shall be referred to in determining the applicability of the definitions in this section.]

### **SECTION 17-3 APPLICABILITY**

**17-301.** GL-O District zoning Shall be applied to any property having frontage upon K-15 Highway right-of-way and located North of 14th Street. Any such property having GL-O District classification and underlying C-3 zoning shall comply with the requirements of this Article whenever: a. a building permit for new commercial development is applied for; or b. a building permit for an expansion of an existing commercial use is applied for when such permit authorizes an expansion or enlargement of 50% or more of the ground square footage of an existing commercial structure on the C-3 zoned property.

## SECTION 17-4 GENERAL CONDITIONS

### 17-401.

- a. A landscape plan shall be submitted in support of a site plan or planned unit development. The landscape plan shall be subject to final approval by the Planning Commission. All land areas which are to be unpaved shall be planted with turf or native grass or other appropriate ground cover and receive trees as specified in Section 17-5.
- b. Tree Preservation.
  1. Development for which a landscaping plan is required shall be designed to preserve existing trees and vegetation to the greatest extent possible and shall seek to incorporate existing stands of trees as well as individual trees. Sensitivity to site grading, storm drainage, and orientation and configuration of parking lots and parking areas shall be demonstrated to maximize tree and vegetation preservation. The intent of these regulations is to recognize the need to alter the landscape during site development activities, while setting out standards necessary to ensure tree preservation to the greatest extent possible.
  2. ~~A tree preservation plan shall be submitted at the time of site plan review. The plan shall indicate the general location and massing of wooded areas, areas with dense shrubbery, and isolated individual mature hardwood trees and designate which areas or trees are to be preserved and which are to be removed. The Planning Commission shall review the plan and either approve it or direct the applicant to seek alternative site design to improve preservation of existing trees.~~

## SECTION 17-5 PLANTING REQUIREMENTS

**17-501.** The planting and minimum size standards for all new plant material set forth in a required landscape plan shall be as set out in this Section. The Planning Commission may modify these standards for good cause shown. All plant material, including trees must be of species that thrive in the local climate:

- a. Medium and Large Deciduous Shade Trees. Three-inch (3") caliper, as measured six inches (6") above the ground as specified by the American Association of Nurserymen;
- b. Small Deciduous or Ornamental Trees. Six to eight feet in height as specified by the American Association of Nurserymen, with the exception of true dwarf species;

- c. Conifers. Five to six feet in height;
- d. Upright Evergreen Trees. Five to six feet in height as specified by the American Association of Nurserymen, except for true dwarf varieties;
- e. Shrubs (Deciduous and Conifer, Including Spreader and Globe Tree forms). Size should be sufficient to create an immediate visual impact;
- f. Lawns. Yard areas shall be sodded, or seeded, or maintained in a generally mature state, or covered with native grasses or other ground cover appropriate to the location and intended use to provide complete coverage within the first growing season; xeriscaping with river rock or similar material is allowed provided there is a minimum of 5% plant material for the designated area to be xeriscaped.
- g. Ground Cover. Crowns, plugs, containers, in a number and of a quality appropriate by species to fulfill intended use; and
- h. Sod. As necessary to provide soil stabilization.

## **SECTION 17-6 PLANTING REQUIREMENTS WITHIN PARKING LOTS AND PARKING AREAS**

### **17-601.**

- a. The intent of this section is to encourage interior landscaping within vehicular parking areas on C-3 zoned properties within the GL-O District, to break up large expanses of pavement, minimize increases in stormwater runoff, and to provide relief from reflected glare and heat, as well as to guide vehicular and pedestrian traffic.
- b. Parking lots and parking areas designed to accommodate 15 or more motor vehicles, including lots for the sale or display of autos, trucks, motorcycles, boats, recreational vehicles, campers and similar items, may include the following as minimum requirements:
  - 1. ~~An area equal to not less than one (1) of every fifteen (15) parking stalls in the parking lot shall be used for interior landscaping. The applicant shall submit calculations demonstrating compliance with this requirement. Planting which is required along the perimeter of a parking lot shall not be considered as part of the interior landscaping requirement.~~

2. ~~The landscaping and planting areas shall be reasonably dispersed throughout the parking lots. No lot or area shall be required to have more than 5 40% of its area used for interior landscaping and plantings.~~
3. The interior dimensions of any planting area or planting median shall be sufficient to protect the landscaping materials planted therein and to insure proper growth. Each area shall be protected by portland cement concrete vertical curbs, or similar structures.
4. ~~The primary landscaping materials used in parking lots shall be trees which provide shade or are capable of providing shade at maturity. Shrubbery, hedges and other planting material may be used to complement the tree landscaping, but shall not be the sole contribution to the landscaping.~~
5. In those instances where plant material exists on a parking lot site prior to its development, such landscape material is encouraged to be preserved.
6. No landscaping, tree, shrub, fence, wall or similar item shall be placed in zones of ingress or egress at street corners, or in the intersection of a public right-of-way that the Public Works Director or his or her designee determines is an obstruction to visibility, extends into sight lines, or is a traffic hazard.

## **SECTION 17-7 TIMING FOR ESTABLISHING LANDSCAPING**

**17-701.** All plant material shall be healthy and in place prior to completion of the development which requires a landscape plan to be produced. A temporary certificate from the Zoning Administrator may be issued without the installation, provided exposed soil on the site has been properly stabilized and written assurances are given by the property owner that the approved planting will take place when the proper season arrives.

## **SECTION 17-8 MAINTENANCE AND ENFORCEMENT**

### **17-801.**

- a. The trees, shrubs and other landscaping materials depicted on plans approved by the City shall be considered as required elements of the project in the same manner as parking, building materials and other details are elements of the project.

- b. The landowner shall be responsible for the continued maintenance to remain in compliance with all the requirements of this Article.

## **ARTICLE 27 SIGN REGULATIONS**

### **Sections:**

- 27-1 Intent**
- 27-2 Definitions**
- 27-3 Administration**
- 27-4 General Standards**
- 27-5 Signs Permitted in All Districts**
- 27-6 District Regulations**
- 27-7 Prohibited Signs**
- 27-8 Sign Maintenance Requirements**
- 27-9 Abandoned Signs**
- 27-10 Nonconforming Signs**

### **SECTION 27-1 INTENT**

**27-101.** This Article provides regulations for exterior signs for advertising, promotion and identification of uses in order to preserve, protect and promote the public health, safety, and general welfare. Further, this Article intends to: encourage the reasonable, orderly and effective display of signs; enhance the physical appearance of the city; reduce visual clutter; prevent blighting influences; protect property values; provide minimum standards to safeguard life, health, and property by regulating and controlling the size, height, design, quality of materials, construction, location, electrification and maintenance of all signs and sign structures; and authorize the use of signs which are compatible with their surroundings.

### **SECTION 27-2 DEFINITIONS**

**27-201.** As used in this Article, unless the context indicates otherwise, the terms listed below shall have the following meanings:

**“A” frame sign** means a freestanding sign which is ordinarily in the shape of an “A” or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure.

**Abandoned sign** means a sign which no longer advertises or identifies a business, lessor, owner, product, activity, message or location that is available to the public.

**Address sign** means a sign indicating only the common street address and/or the occupant of a dwelling or structure. For the purposes of this definition, a nameplate shall be construed to be an address sign.

**Advertising (off-premises) sign** means any sign that directs the attention of the public to any goods, merchandise, property, business, service, entertainment or amusement conducted or produced which is bought, sold, furnished, offered or dealt in elsewhere other than on the premises where such sign is located or to which it is affixed. Billboards are a type of advertising sign.

**Advertising (interstate) sign** means any on-premise sign, on a lot size of eight (8) acres or more, that directs the attention of the traveling public to any goods, merchandise, property, business, service, entertainment or amusement conducted or produced which is bought, sold, furnished, offered or dealt on the premises where such sign is located or to which it is affixed.

~~**Attention-attracting device** means any device intended to attract the attention of the public to an establishment, location, product or service, except signs as permitted by these regulations.~~

**Awning, canopy or marquee sign (illuminated and/or non-illuminated)** means a sign which is mounted, painted or printed on, or attached to an awning, canopy or marquee. No such signs shall project above, below or beyond the awning, canopy or marquee. For the purposes of this definition, canopy signs and marquee signs shall be construed to be awning signs.

**Banner** means a temporary sign composed of lightweight material, either enclosed or not enclosed in a rigid frame, and either installed flat against the building or not flat against the building.

**Billboard** means a freestanding outdoor advertising structure which advertises a product or service, or relays a message to the public.

**Bulletin board sign** means a sign that indicates the name of an institution or organization on whose premises it is located and which contains the name of the institution or organization, the name or names of persons connected with it, and announcement of persons, events or activities occurring at the institution. Such sign may also present a greeting or similar message.

**Business sign** means a sign which directs attention to a business or profession conducted, or to products, services or entertainment sold or offered upon the premises where such sign is located, or to which it is affixed.

**Canopy:**

1. **Building canopy** means a roof-like structure attached to a building covering the entrance, exit, walkway or loading dock, not including the building roof line extension. For the purposes of these regulations, when the pitch of a building canopy is 1:4 or less (twenty-five [25] degrees or less from vertical), the face of the canopy shall be considered part of the wall.
2. **Freestanding canopy** means a self-supported, detached roof-like structure normally covering gas islands.

**Construction signs** means a sign erected on the premises on which development is taking place during the period of such development. Such sign may indicate the names of architects, engineers, landscape architects, contractors or similar individuals, and the owners, financial supporters, sponsors or similar individuals or firms having a role or interest with respect to the structure or project.

**Copy area (see Sign face)** means the entire face of a sign including the advertising surface and any framing, trim or molding, but not including the supporting structure.

**Directional sign** means a sign which serves solely to designate any area or activity such as "exit," "one-way," "drive-in," "auto service," etc.

**Directly illuminated sign** means a sign where the source of illumination is located on the sign face. The source of illumination may include, but not be limited to, neon tubes, incandescent bulbs, and fluorescent bulbs.

**Electronic Message Center** means a sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

**Erected** means attached, altered, built, constructed, reconstructed, and shall include the painting of wall signs, but does not include copy changes on any legal conforming sign.

**Fuel rate sign** means a sign which identifies gasoline and/or petroleum product rates or prices in words, numbers, figures or any combination thereof.

**Governmental sign** means any sign placed by a governmental entity upon a building, structure or land owned or leased by that entity and used for governmental purposes, including signs for the control of traffic and other regulatory purposes, street signs, construction signs, danger signs, railroad crossing signs, and signs of public service companies indicating danger and aids to service or safety which are erected by or on the order of any public officer in the performance of his or her public duty.

**Ground sign** means any sign permanently placed upon, or supported by, the ground independently of the principal building or structure on the property, where the bottom edge of the sign is less than six (6) feet above the ground.

**Identification sign** means a sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily-recognized symbol.

**Incidental sign** means a sign which indicates to the public, goods, facilities or services available on the premises. For the purposes of this definition, credit card signs, signs indicating hours of operation, "help wanted" signs, and similar signs shall be construed to be incidental signs.

**Indirectly illuminated sign** means a sign which is illuminated by a shielded light source.

**Internally illuminated sign** means a sign illuminated by an internal light source diffused through a translucent material.

**Monument sign** means a freestanding sign having a solid appearance and a low profile, normally consisting of a face and base. Said sign may be constructed with stone, concrete, metal, routed wood planks or beams, brick or similar materials.

**Nameplate sign** means a single-faced, non-illuminated wall sign which displays only the name and occupation of the person or persons occupying space in the building. Nameplate signs may be part of a wall sign.

**Off-site developmental sign** means a temporary freestanding, non-illuminated sign used to direct people to a single-family or duplex subdivision.

**On-site developmental sign** means a temporary, freestanding, non-illuminated sign identifying a building or construction site and the architects, engineers, financial institutions, contractors, suppliers and real estate professionals involved. An on-site developmental sign includes a "coming soon" sign.

**Parapet or parapet wall** means that portion of a building wall that rises above the roofline.

**Person** means an individual, corporation, association, firm or partnership.

**Pole sign** means any sign placed upon, or supported by, the ground independently of the principal building or structure on the property where the bottom edge of the sign is six (6) feet or more above the ground.

**Political signs** means a sign supporting a candidate for public office or measures on an election ballot.

**Portable signs** means a sign which is not permanently affixed to the ground, building or other structure, which may be mounded on wheels, and can easily be transported from place to place.

**Poster** means a temporary sign installed flat against a building.

**Projecting sign** means a sign extending more than twelve (12) inches from the face of the building to which it is attached, not including wall signs.

**Public notices and signs** means official notices or signs for a public purpose as required by any law, statute or ordinance or as permitted by the Governing Body.

**Real estate sign** means an on-site or off-site sign which advertises the sale, rental or lease of property, or special program signs, such as open house, energy conservation, warranty, builder, etc.

**Roof** means the primary cover of a building used to shed weather, including all supporting materials.

**Roof sign** means a sign erected, constructed or maintained partially or wholly upon or over the roof of a building, a building canopy, or a freestanding canopy, and not projecting more than twelve (12) inches from such building or canopy.

**Shopping center** means any retail development having two or more tenants, which may be joined by a common wall. At least one tenant shall have a minimum of 9,000 square feet of leased space and a second tenant shall have a minimum of 2,000 square feet.

**Sign** means any identification, description, illustration, message, symbol, logo or device which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanent or temporary display of merchandise, emblems, corporate flags, pennants or placards, designed to advertise, identify, or convey information, including all supporting structure.

**Sign alteration** means the replacement, enlargement, rewording, reduction, reshaping, or repainting using different colors, of a sign to serve an establishment or business.

**Sign face** means that area within a line including the outer extremities of all letters, figures, characters and logos; or within a line including the outer extremities of the framework or background.

**Sign maintenance** means the normal care and minor repair that is necessary to retain a safe, attractive sign and supporting structures. Repainting with the same colors, or repairing copy or logo shall be considered maintenance if the name, product, service, place, activity, person, etc., depicted remains the same.

**Sign structure** means the base, supports, uprights, braces, framework and face of a sign.

**Snipe sign** means a sign constructed of any kind of material that is attached to a utility pole, tree, fence or similar object located or situated on public or private property.

**Streamer/pennant** means flags or small signs/emblems on a rope or cable hung from one point to another.

**Subdivision entry marker** means a monument sign used to identify a platted subdivision of 20 or more single-family or duplex lots.

**Temporary sign** means a sign constructed of cloth, canvas, cardboard, plywood or other similar material, which is readily moveable, and is not permanently attached to the ground or any structure thereof, and which is intended to be displayed for a short period of time.

**Time and/or temperature sign** means a sign displaying time and/or temperature information with no additional advertising or comments other than the name of the company which owns the sign.

**Under canopy sign** means a sign that is placed under the canopy at right angles to the wall of the building. Its sole purpose is for communicating to pedestrian traffic the name of the tenant.

**Vehicular sign** means any sign which is attached to or placed upon a parked motor vehicle which is improperly tagged or otherwise inoperable as determined by the Community Development Inspector.

**Wall** means a vertical structure which is solid and encloses a building, and supports the roof.

**Wall sign** means a sign that is parallel to, and attached to, the surface of a wall, including illuminated awning signs. Such a sign does not project more than twelve (12) inches from the building.

## **SECTION 27-3 ADMINISTRATION**

### **27-301.**

#### **a. Sign Permit Required:**

1. It shall be unlawful for any person to erect or alter any sign as defined in these regulations without first obtaining a sign permit. This requirement shall not be construed to require a permit for sign maintenance, altering changeable copy on theater signs, billboards, or similar signs, or signs exempted from a permit as described elsewhere in this Article.
2. Applications: Sign permits shall be made on a form provided and shall be accompanied by plans drawn to scale indicating the sign size, location, method of illumination, colors, materials of the sign and structure, and method of attachment. In addition, the applicant shall submit other information relating to the placement, construction, design, etc., of the sign as may be required. A survey showing recommended height and face size must be submitted for all applications for interstate advertising signs. The Zoning Administrator, or designee, shall review and approve any increase in size of height of signs, based on survey.
3. Issuance: The Zoning Administrator shall issue a permit for the erection, alteration, or relocation of a sign when an application has been properly made and the sign complies with all appropriate laws.
4. Revocation and Denial: The Zoning Administrator may, in writing, suspend or revoke a permit issued under the provisions of this section whenever the permit is issued on the basis of a misstatement of material fact or fraud. When a sign permit is denied by the Zoning Administrator, he/she will give written notice of the denial to the applicant, together with a brief written statement of the reasons for the denial.
5. Sign Permit Appeals: Appeal may be made to the Board of Zoning Appeals upon denial of a sign permit.
6. Effect of Permit Issuance: No permit for a sign shall be deemed to constitute permission or authorization to maintain an unlawful sign nor shall any permit constitute a defense in an action to abate an unlawful sign.

#### **b. Removal of Sign:**

1. If it has been determined that any sign or other advertising structure regulated herein is unsafe, written notice of such determination shall be

given to the sign owner. The owner shall immediately remove or repair the sign to make it safe. If the owner fails to remove or repair the sign so as to comply within ten (10) calendar days after notice, the Zoning Administrator may cause the sign to be removed or repaired to make it safe, at the expense of the permittee or owner.

2. The City Clerk shall mail a statement of the costs for removal or repair of the unsafe sign to either the last known address or the owner of record of the property, the person in charge of such property, or the sign permittee. If costs are not paid within ten (10) calendar days from the time of mailing the notice, the Governing Body may proceed to levy a special assessment for the cost against the subject land. The City Clerk shall certify the assessment to the County Clerk for collection and payment to the city in the same manner as other assessment and taxes are collected and paid to the city.

## **SECTION 27-4 GENERAL STANDARDS**

### **27-401.**

- a. Sign Height: Sign height shall be measured from the ground elevation at the base of the sign to the highest element of the sign. No sign may exceed the maximum height permitted for buildings in the zoning district in which the sign is located. Except that interstate advertising signs(on-premise) may be sixty-five (65) feet above the interstate roadbed and associated bridges and ramps, with a maximum height of eighty-five (85) feet. Where the interstate roadbed is below the grade elevation of adjoining property, the maximum sign height shall be sixty-five (65) feet. This height may be increased provided a sign survey indicates a need for visibility at ½ mile, which will allow a safe exit from the inside lane of the interstate highway, with a maximum height of 110 feet.
- b. Illuminated Sign: A sign designed to give forth artificial light or designed to reflect light derived from any source, shall comply with the following:
  1. Illuminated sign shall be designed so as to reflect or direct light away from any residential dwelling district.
  2. Lighted signs in direct vision of a traffic signal shall not be in red, amber or green illumination.
- c. Flashing or Moving Signs: Any illuminated sign on which the artificial light is not constant in intensity and color at all times. For the purpose of this regulation, any revolving, rotating, moving, animated, signs with moving lights or signs which create the illusion of movement shall not be permitted except Christmas or other

holiday lights during a period four (4) weeks preceding such holiday. Such signs shall comply with the following:

A sign whereon the current time and/or temperature is indicated by intermittent lighting shall not be deemed as a flashing sign if the lighting changes are limited to the numerals and any ancillary messages (such as community events).

Electronic Message Centers shall be permitted only upon issuance of a conditional use permit in accordance with Article 26. In considering a conditional use permit application the Planning Commission and Governing Body shall impose the following requirements:

1. No electronic message center shall exceed 40 square feet in size and shall be incorporated into a larger sign permitted by these regulations. The electronic message center shall not exceed 50 % of the overall sign face.
  2. The sign must not exceed a maximum illumination of 5,000 nits (candelas per square meter) during daylight hours and a maximum illumination of 500 nits (candelas per square meter) between dusk and dawn.
  3. The sign must have an automatic dimmer control to produce a distinct illumination change as required.
  4. Electronic message centers are permitted to utilize the static display with "fade" or "dissolve" transitions or similar subtle transitions and frame effects that do not have the appearance of moving text or images. Electronic message centers may be changed at periodic intervals by said entry and exit effects provided that the minimum message time shall be three (3) seconds. Transition times between frames shall not exceed two (2) seconds nor be less than a minimum of 0.3 seconds. Animated images are prohibited.
  5. Electronic message centers, if located in a residential district or within two hundred (200) feet of a residentially zoned district, may only be operated between the hours of 6 a.m. and 10 p.m.
- d. Accessway: No sign shall block any required accessway.
- e. Signs on Trees or Utility Poles: Except where otherwise specifically allowed under these regulations for temporary signs, no sign shall be attached to a tree or to a publicly- or privately-owned utility pole on either public or private property.
- f. Temporary Sign: Temporary signs are signs which are not permanently mounted to the ground or to a building. Temporary signs shall be allowed without a permit if they comply with the following requirements:

1. Posters and banners of a commercial nature shall only be allowed within commercial or industrial zoning classification and on non-residential properties within residential zoning classifications. Flags (no more than 2 per allowed sign) shall be allowed in residential zoning classifications only in new developments and subdivisions during periods of active construction, and shall be located with or mounted on monument or construction signs.
  2. Posters shall be attached flat against a building and shall not exceed thirty-two (32) square feet in area.
  3. Posters and banners shall be limited to advertising an award, special product or sale within the building to which the poster or banner is attached.
  4. Banners or streamer/pennants shall be attached to privately owned and maintained poles that are located on private property.
  5. A banner or pennant may not hang lower than 15 feet over a vehicular path/drive and 12 feet over a pedestrian walkway.
  6. Banners that are attached flat against a building may not exceed 200 square feet and 32 square feet if not attached flat. All permanent wall signs, banners, pennants collectively may not exceed 10% of the wall space. All permanent ground signs, and ground mounted banners collectively may not exceed 200 square feet of sign face.
  7. Both the business and property owner are responsible to keep any poster, banner, or pennant in good repair and condition. Any poster, banner or pennant in deteriorated condition, hazardous to persons, or unsightly shall be removed.
  8. Construction and contractor yard signs and garage sale signs.
  9. No building permit will be required for any permitted temporary sign.
- g. Projecting Signs: Projecting signs shall not extend over the public right-of-way, except as allowed in this subsection in the C-4 district. Projecting signs shall be allowed in the C-4 District subject to the following restrictions.
1. No projecting sign shall be maintained less than nine (9) feet, nor more than fifteen (15) feet above, the sidewalk over which it is erected.

2. No projecting sign shall project more than five (5) feet beyond the face of the building to which it is attached, and shall not extend over any public driveway, alley or thoroughfare used for vehicular traffic.
  3. No projecting sign shall exceed twelve (12) square feet in surface area.
  4. A projecting sign shall project at a ninety (90) degree angle from the building to which it is attached.
  5. No applicant shall be granted a permit to erect a projecting sign until he/she has furnished proof of insurance satisfactory to the Zoning Administrator stating that the applicant's coverage extends to the proposed sign and any injuries arising therefrom.
- h. Metal Signs: Signs constructed of metal and illuminated by any means requiring internal wiring or electrically-wired accessory fixtures attached to a metal sign shall maintain a free clearance to grade of nine (9) feet. Accessory lighting fixtures attached to a non-metal frame sign shall also maintain a clearance of nine (9) feet to grade. No metal ground sign shall be located within eight (8) feet vertically and four (4) feet horizontally of electric wires or conductors in free air carrying more than 48 volts, whether or not such wires or conductors are insulated or otherwise protected. All such signs shall conform with the City's adopted Electrical Code.
- i. Traffic Safety:
1. No sign shall be maintained at any location where by reason of its position, size, shape or color, it will, in the determination of the Zoning Administrator, obstruct, impair, obscure, interfere with the view of or be confused with any traffic or railroad control sign, signal or device, or where it may interfere with, mislead, or confuse traffic.
  2. Any sign located within two (2) feet of a private driveway or within a parking area shall have its lowest elevation at least ten (10) feet above the curb level; however, in no event shall any sign except wall signs and awnings, canopy or marquee signs be placed so as to project over any public right-of-way.
  3. No sign shall be placed in the sight triangle as defined in this subsection unless the bottom edge of such sign is greater than 12 feet above the ground. No pole or structure supporting such sign shall have a width exceeding two (2) feet. The minimum area included in a sight triangle shall be bounded on two sides by the centerline of each street, and on the third side by a line connecting the two centerline at points a distance of 90 feet from the intersection of the centerline. This distance shall be increased to

120 feet on State or Federal highways and on arterial streets as defined by the Comprehensive Plan.

- j. Lineal Street Frontage: In those districts where gross sign area is allocated based on lineal street frontage and the tract or parcel is adjacent to more than one street, street frontage shall be computed as follows:
  - 1. For those tracts or parcels located on major streets as designated in the Comprehensive Plan, the lineal street frontage shall be the length of that property line abutting the major streets.
  - 2. For those tracts or parcels not located on a major street, the lineal street frontage shall be one-half (1/2) of the sum of all the street frontage.

## **SECTION 27-5 SIGNS PERMITTED IN ALL DISTRICTS**

**27-501.** The signs listed in this Section are permitted in all districts and do not require a sign permit, unless otherwise noted. Such signs must be in conformance with all other applicable regulations and laws of the City.

- a. Changeable Copy: Permits are not required for replacing or altering changeable copy on theater signs, billboards, or other similar signs.
- b. Governmental Signs.
- c. On-Site Development Signs:
  - 1. The sign must be on the site of the development, and shall not exceed eight (8) feet in height or 32 square feet in area per face. The sign may have two (2) faces. The minimum setback from any property line shall be 30 feet. For each additional setback of ten (10) feet the face area may be increased one (1) square foot. The maximum face area shall not exceed 100 square feet, and the maximum height shall not exceed 15 feet, except as provided below. One (1) on-site development sign may be permitted for every 1,000 feet of street frontage. If a development has more than one (1) street frontage, then a separate on-site development sign may be permitted on each frontage. A maximum of two (2) on-site development signs may be permitted for a development.
  - 2. Development signs include "Coming Soon" signs. The sign shall be removed no later than five (5) days after a certificate of occupancy has been issued for the last building or phase. A sign permit is required.
- d. Nameplate Sign: Such signs shall not exceed four (4) square feet in area.

- e. Political Sign: Political signs shall not exceed six (6) feet in height and thirty-two (32) square feet per face with two (2) faces permitted. Political signs shall not be:
  - 1. placed, erected or maintained on or in public buildings and structures, including libraries, recreational centers, parking structures, city hall, or on or in public parks, lawns, vehicles, trees, shrubs, fences, walks, parking meters, traffic signs, fire hydrants or rights-of-way;
  - 2. placed, erected or maintained so as to pose a visibility hazard to pedestrian or motor vehicle traffic along streets, sidewalks or at street corners;
  - 3. lighted; or
  - 4. for political signs relating to candidates for elective office or ballot questions, placed, erected or maintained more than forty-five (45) days prior to and seven (7) days after the election to which the sign relates. In the event of a subsequent run-off election, the signs of the run-off candidates may be maintained until seven (7) days after the run-off election.
  
- f. Real Estate Sign:
  - 1. For signs in residential districts (CS, R-1, R-2, R-3, MHS, MHP, MU) no more than one sign on-site. Off-site signs are not permitted other than temporary "open house" signs.
  - 2. For signs in commercial districts (C-1, C-2, C-3, C-4, MU) and industrial districts (I-1, I-2) no more than one sign on-site. Off-site signs are not permitted.
  
- g. Directional Sign: Such sign shall not exceed four (4) square feet per face with two (2) faces permitted. The sign shall not exceed four (4) feet in height if freestanding.
  
- h. Civic Organization Signs: After approval by the Planning Commission a sign displaying the logos of civic organizations operating in the city may be permitted on major arterials or highways at the city limits. The signs shall not exceed 16 square feet per face, with one (1) face permitted. The maximum height shall not exceed twelve (12) feet.
  
- i. Address Numbers: Address numbers shall not exceed four (4) square feet in total area.



## **SECTION 27-6 DISTRICT REGULATIONS**

**27-601. Residential Districts.** Only the signs set out in Table 27-1 shall be permitted in the CS, R-1, R-2 and R-3 residential districts; MHS and MHP manufactured home districts, and all residential sections of either a PUD or MU.

### **27-602. Requirements in Residential Districts.**

- a. Number of Signs Permitted: One sign per zoning lot. However, any zoning lot with frontage on two or more public streets may have additional ground signs, one per street frontage, if the use is conforming to the district. Home Occupations shall be limited to one sign regardless of street frontage.
- b. Maximum Height: 12 feet.
- c. Required Setback: No sign shall be placed closer to the front property line than one-half (1/2) the distance of the required front yard, except when a non-conforming setback exists, then no sign shall be placed closer to the front property line than one-half (1/2) the distance of the existing front yard.
- d. Illumination: Bulletin board signs may be illuminated with incandescent, mercury, or fluorescent lighting and all other signs shall only be indirectly lit. No such sign shall create glare on surrounding residential uses.

**27-603. Commercial and Industrial Districts.** Only the signs set out in Table 27-1 shall be permitted in the C-1, C-2, C-3 and C-4 commercial districts; I-1 and I-2 industrial districts; and all commercial and industrial areas of either a PUD or MU.

**TABLE 27-1  
PERMITTED SIGN TYPES**

| SIGN TYPE                  | ZONING DISTRICTS             |                          |                         |                         |
|----------------------------|------------------------------|--------------------------|-------------------------|-------------------------|
|                            | Agricultural/<br>Countryside | Residential<br>Districts | Commercial<br>Districts | Industrial<br>Districts |
| <b>FUNCTIONAL:</b>         |                              |                          |                         |                         |
| Advertising (off-premises) |                              |                          | All (1)                 | All (1)                 |
| Advertising (on-premises)  |                              |                          | All                     | All                     |
| Bulletin Board             | All                          | All                      | All                     | All                     |
| Business                   | For home<br>occupations      | For home<br>occupations  | All                     | All                     |
| Construction               | All                          | All                      | All                     | All                     |
| Identification             | All                          | All                      | All                     | All                     |
| Name Plate                 | All                          | All                      | All                     | All                     |
| Real Estate                | All                          | All                      | All                     | All                     |
| <b>STRUCTURAL:</b>         |                              |                          |                         |                         |
| A-Frame                    |                              |                          | C-3, C-4                |                         |
| Awning/Canopy/Marquee      |                              |                          | All                     | All                     |
| Ground                     | All                          | All                      | All                     | All                     |
| Pole                       |                              |                          | All                     | All                     |
| Projecting                 |                              |                          | All                     | All                     |
| Wall                       | All                          | All                      | All                     | All                     |
| Roof                       |                              |                          | All                     | All                     |
| Poster                     |                              |                          | All                     |                         |
| Banner/Portable            |                              |                          | All                     |                         |
| Streamer/Pennant           |                              |                          | All                     |                         |

(1) Within 150 feet of K-15/Buckeye Avenue or I-70 right-of-way.

**27-604. Requirements in Commercial and Industrial Districts.**

a. Number of Signs Permitted:

1. Awning, canopy or marquee signs and wall signs: Coverage of awnings, canopies or marquees cannot exceed 25% of the surface area. Coverage of wall signs cannot exceed 10% of the wall.
2. Any zoning lot with access to two public streets may have one ground or one pole sign per street to which the business has access.

Any shopping center with direct access to two public streets may have one ground or one pole sign per street to which the shopping center has access. Any zoning lot which directly abuts an interstate highway right-of-way may have one additional ground sign or pole sign located no more than fifty (50) feet from the interstate highway right-of-way, provided there are no on-premise advertising signs on the premises.

3. Advertising (Interstate) signs: No limitation; however, all advertising signs must be located within 500 feet of the center of the U.S. Interstate 70 median or exit ramp and no two (2) advertising signs shall be within 660 feet of each other.

b. Table 27-2. Maximum Gross Surface Area:

**TABLE 27-2  
MAXIMUM GROSS SQUARE FOOTAGE SURFACE AREA**

| SIGN TYPE                  | ZONING DISTRICTS             |                          |   |   |
|----------------------------|------------------------------|--------------------------|---|---|
|                            | Agricultural/<br>Countryside | Residential<br>Districts | Commercial<br>Districts                               | Industrial<br>Districts                               |
| <b>FUNCTIONAL:</b>         |                              |                          |   |   |
| Advertising (off-premises) |                              |                          | 64/side (6)   | 64/side (6)   |
| Advertising (on-premises)  |                              |                          | 500/side<br>(5)(6)                                    | 500/side (6)  |
| Bulletin Board             | 32                           | 24 (1)                   |   |   |
| Business                   | 16                           | 4 (home<br>occupations)  |   |   |
| Construction               | 32                           | 32                       |   |   |
| Identification             | 32                           | 32 (1)                   |   |   |
| Name Plate                 | 10                           | 4                        |   |   |
| Real Estate                | 32                           | 14                       | 32  | 32  |
| <b>STRUCTURAL:</b>         |                              |                          |   |   |
| Awning/Canopy/Marquee      |                              |                          | 25% of surface<br>area of<br>awning/canopy<br>marquee | 25% of surface<br>area of<br>awning/canopy<br>marquee |
| Ground                     |                              |                          | 100/side  | 150/side  |
| Pole                       |                              |                          | 150/side (2)  | 150/side  |
| Projecting                 |                              |                          | 150/side  | 100/side  |
| Wall                       |                              |                          | 300/side (3)  | 300/side (3)  |
| Roof                       |                              |                          | 100/side  | 150/side  |
| Poster                     | 32                           | 32 (7)                   | 32  | 32  |
| Banner/Portable            | 32                           | 32 (7)                   | 32 (4)  | 32 (4)  |
| Streamer/Pennant           |                              |                          |   |   |

Footnotes to Table 27-2

- (1) Area may be increased by 1 foot for each additional 1 foot of setback, not to exceed total gross area of 100 sq. ft.
- (2) Except advertising signs
- (3) Or 10% of the wall area, whichever is the lesser
- (4) 200 sq. ft. if attached flat against a building
- (5) No individual sign face may be greater than 200 sq. ft. in size
- (6) Total sign face may be increased to 100 sq. ft. upon approval by the Board of Zoning Appeals.
- (7) Permitted on non-residential properties in Residential Zoning Districts and in Public District only.

- c. Required Setbacks: Thirty (30) feet from the center of the right-of-way, except that no sign shall be located in the right-of-way, and except that advertising signs shall maintain the same setback that is required for principal structures.
- d. Illumination: Illuminated signs are permitted.
- e. Tourism Way-Finding Signs: After approval by the Planning Commission, a sign displaying the logos, names, and direction of lodging establishments operating in the City may be permitted at highway entrances into the community. The sign shall not exceed 32 square feet, with only one face permitted. The maximum height shall not exceed 10 feet. Conditions considered in the approval are if a majority of lodging establishments are listed and at least two are in the vicinity of the sign, the proposed location of the sign, and its appropriateness in terms of design.

**27-605.** A-frame signs shall be permitted only in the C-3 and C-4 districts. Such signs shall not impede or obstruct pedestrian traffic on public sidewalks and shall be placed so as to allow for an unobstructed width of no less than five (5) feet on any public sidewalk upon which the sign is placed.

**27-606.** Requirements in Public District. Institutional uses shall comply with the area limitations set forth in Table 27-2 above for Commercial Districts, and also comply with the following regulations:

- a. Wall signs: two per building.
- b. Identification signs: one per street frontage.
- c. Directional signs: the number shall be unlimited, provided no single directional sign shall exceed thirty (30) square feet in area.
- d. The number of directional and identification signs internal to the site shall be unlimited, provided a sign plan is submitted to and approved by the Zoning Administrator.

## SECTION 27-7 PROHIBITED SIGNS

**27-701.** It shall be a violation of these regulations to erect, install, place or maintain the following signs in any zoning district:

- a. Any signs or advertising structures which are not specifically permitted under these zoning regulations.
- b. Any sign or advertising structure which constitutes a traffic hazard or a detriment to traffic safety by reason of its size, location, movement, content, coloring, or method of illumination, or which obstructs the vision of drivers, or signs that obstruct or detract from the visibility of traffic control devices or emergency vehicles. The use of flashing lights or revolving lights is prohibited in any sign as constituting a hazard to traffic. Any sign which by glare or method of illumination constitutes a hazard to traffic prohibited. Exterior neon lighting, illuminated banding or other types of lighting that creates a glow is prohibited unless it is approved by the Planning Commission.
- c. Any sign or advertising structure (other than those erected by a governmental agency or required to be erected by a governmental agency for a public purpose) erected, installed or placed on the right-of-way of any street, road of public way, or signs overhanging or infringing upon the right-of-way of any street, road or public way, except as specifically permitted by these regulations.
- d. Any sign or advertising structure erected on City property or other governmental property other than signs erected by that governmental entity for public purposes.
- e. Any sign or advertising structure which is erected, installed or maintained that obstructs any fire escape, required exit, window or door opening intended as a means of ingress or egress.
- f. Any sign or advertising structure which is erected, installed or maintained upon the rear of a building, however, with the exception of allowing a tenant to identify the business name and/or address on a rear exit door with no greater than six (6) inch non-illuminated letters painted, printed, stenciled, or attached to the face of the rear door. The rear of a building is that side of a building opposite from the principal or main entrance to a building.
- g. "A" Frame sign, except as permitted by Section 27-605.
- ~~h. Attention-attracting devices.~~
- i. Abandoned signs.
- j. Off-site advertising and off site development signs (see Table 27-1).

- k. Snipe signs, except warning signs posed by public utility companies.
- l. Temporary signs, except as permitted by Section 27-4.
- m. Vehicular signs. Signs on vehicles which are improperly tagged, or inoperable as defined by Abilene City Code. A company or corporation name or logo painted on a motor vehicle or semi-trailer normally in motion, or parked during use, shall not be considered a vehicular sign.
- n. Directly illuminated signs, except to the extent specifically authorized in this Article.

## **SECTION 27-8 SIGN MAINTENANCE REQUIREMENTS**

### **27-801.**

- a. Any sign or advertising structure erected or installed under the provisions of this Article shall be maintained in a safe, functional and sound structural condition at all times. General maintenance of signs shall include the replacement of nonfunctional, broken, or defective parts, painting, cleaning and upkeep of the premises immediately surrounding the sign or advertising structure, and any other action required for proper maintenance. All signs and supporting structures shall be kept painted or treated to prevent rust, decay or deterioration.
- b. Should any sign in a public easement be damaged due to maintenance of utilities in that easement by the City or others, the cost for repairs or replacement of the sign shall be borne by the sign owner.

## **SECTION 27-9 ABANDONED SIGNS**

### **27-901.**

- a. Except as otherwise provided in this section for nonconforming signs, any sign which is located on a building, structure, or real property which becomes vacant and unoccupied for a period of ninety (90) consecutive days or more, or any sign which pertains to a time, event, or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign or the owner of the premises. When a wall sign is removed, the wall of the building or structure shall be restored to its normal

appearance. Removal of a monument or highway sign shall include the face and base.

- b. If after the ninety (90) consecutive day time period has elapsed and the sign has not been removed, the Zoning Administrator shall notify, in writing, the property owner of record that the sign shall be removed within thirty (30) calendar days after the date of the notice. If the sign has not been removed within thirty (30) calendar days after the date of the notice, the City may have the sign removed and the associated costs assessed to the property.
- c. The City Clerk shall mail a statement of cost for removal of the sign to the last known address of the owner of record of the property, or person in charge of such property. If such costs are not paid within ten (10) days from the mailing of notice, the Governing Body may levy a special assessment for such cost against the property. The City Clerk shall certify such assessment to the County Clerk for collection and payment to the City in the same manner as other assessments and taxes are collected and paid to the City.

## **SECTION 27-10 NONCONFORMING SIGNS**

### **27-1001.**

- a. Except as provided otherwise in this section, nonconforming signs that were otherwise lawful on the effective date of these regulations may be continued.
- b. No nonconforming sign may be altered in such a manner as to increase the degree of the nonconforming condition, nor may illumination be added to any nonconforming sign.
- c. A nonconforming sign may be altered to bring the sign into complete conformity with these regulations.
- d. If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within thirty (30) days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For good cause shown the Zoning Administrator may grant an extension of time for such removal.
- e. If a nonconforming billboard remains blank for one hundred eighty (180) consecutive days, that billboard shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Article or be removed by the sign owner or owner of the property where the sign is located,

or other person having control over such sign. For good cause shown the Zoning Administrator may grant an extension of time for such alteration or removal. For purposes of this section, a sign is "blank" if:

1. It advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted; or
2. The advertising copy paid for by a person other than the sign owner has been removed.

# Memorandum

**Date:** April 15, 2015

**To:** Mayor and City Commission; David Dillner

**From:** Tim Hamilton – Community Development Director

**Regarding:** Floodplain Management Ordinance, and addendum to Article 28 of the Zoning Regulations.

---

Please find the following Floodplain Management Ordinance for your review. Staff has submitted this document to the Division of Water Resources for their review and approval. This is an update to the current floodplain Ordinance adopted in 1992. The language incorporated in this Ordinance is standard for all communities in Kansas participating in the National Flood Insurance Program.

In an effort to aid the public and staff in the enforcement of this document, staff is proposing including the attached “Floodplain Management Ordinance” as part of Article 28. On April 14<sup>th</sup>, the Planning Commission recommended approval of an addendum to include the attached Ordinance with the recently adopted Zoning Regulations, Article 28 regarding Floodplain Management.

Commission Options:

1. Approve the attached Floodplain Management Ordinance, which will be included within Article 28 of the Zoning Regulations.
2. Conditionally approve the attached Ordinance with any changes which the Commission deems necessary. This only applies to general grammatical corrections, and does not include deleting or amending language already approved by the Division of Water Resources.

**FLOODPLAIN MANAGEMENT ORDINANCE**  
**60.3 (d) Regulatory Floodway Identified**

**ORDINANCE No.** \_\_\_\_\_

**ARTICLE 1            STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES**

**SECTION A. STATUTORY AUTHORIZATION**

1.     *Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption*

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on   January 20  , 2015.

2.     *Kansas Statutory Authorization*

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the City Commission of Abilene, Kansas, ordains as follows:

**SECTION B. FINDINGS OF FACT**

1.     *Flood Losses Resulting from Periodic Inundation*

The special flood hazard areas of Abilene, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

2.     *General Causes of the Flood Losses*

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

3.     *Methods Used To Analyze Flood Hazards*

The Flood Insurance Study (FIS) that is the basis of this Ordinance uses a standard engineering method of analyzing flood hazards, which consists of a series of interrelated steps.

- a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors at its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this Ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this Ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated June 2, 2004 as amended, and any future revisions thereto.
- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
- c. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
- d. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
- e. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

## SECTION C. STATEMENT OF PURPOSE

It is the purpose of this Ordinance to promote the public health, safety, and general welfare; to minimize those losses described in Article 1, Section B(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this Ordinance to:

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

## ARTICLE 2 GENERAL PROVISIONS

### SECTION A. LANDS TO WHICH ORDINANCE APPLIES

This Ordinance shall apply to all lands within the jurisdiction of the City of Abilene, Kansas identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map

dated June 2, 2004 of the Flood Insurance Rate Map (FIRM) as amended and any future revisions thereto. In all areas covered by this Ordinance, no development shall be permitted except through the issuance of a Floodplain Development Permit, granted by the City of Abilene under such safeguards and restrictions as the City may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

#### SECTION B. COMPLIANCE

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations.

#### SECTION C. ABROGATION AND GREATER RESTRICTIONS

It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other Ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

#### SECTION D. INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

#### SECTION E. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This Ordinance shall not create a liability on the part of the City of Abilene, KS, any officer or employee thereof, for any flood damages that may result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

#### SECTION F. SEVERABILITY

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this Ordinance shall not be affected thereby.

## **ARTICLE 3 ADMINISTRATION**

### **SECTION A. FLOODPLAIN DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in Article 2, Section A. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate Floodplain Development Permit for each structure or other development.

### **SECTION B. DESIGNATION OF FLOODPLAIN ADMINISTRATOR**

The Community Development Director is hereby appointed to administer and implement the provisions of this Ordinance.

### **SECTION C. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR**

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for Floodplain Development Permits to assure that sites are reasonably safe from flooding and that the Floodplain Development Permit requirements of this Ordinance have been satisfied;
2. Review of all applications for Floodplain Development Permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue Floodplain Development Permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basements of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the Floodplain Administrator shall require certification from a registered professional engineer or architect.

## SECTION D. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

To obtain a Floodplain Development Permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every Floodplain Development Permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the Floodplain Development Permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;
7. Give such other information as reasonably may be required by the floodplain administrator;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

## ARTICLE 4 PROVISIONS FOR FLOOD HAZARD REDUCTION

### SECTION A. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered "A" zones, "AE", "AO", and "AH" zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered "A" zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered "A" zones is subject to all provisions of this Ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered "A" zones, or "AE" zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

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4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
  - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - b. Construction with materials resistant to flood damage;
  - c. Utilization of methods and practices that minimize flood damages;
  - d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination from them during flooding; and
  - f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
    - (1) All such proposals are consistent with the need to minimize flood damage;
    - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
    - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
    - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of five acres or fifty lots, whichever is lesser, include within such proposals base flood elevation data.

5. *Storage, Material, and Equipment*

- a. The storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

6. *Nonconforming Use*

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the Ordinance, but which is not in conformity with the provisions of this Ordinance, may be continued subject to the following conditions:

- a. If such structure, use, or utility service is discontinued for twelve consecutive months, any future use of the building shall conform to this Ordinance.
- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

7. *Agricultural Structures*

Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; a variance has been granted from the floodplain management requirements of this Ordinance; and a Floodplain Development Permit has been issued.

8. *Accessory Structures*

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-flood-proofed, provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard floodplain management requirements of this Ordinance; and a Floodplain Development Permit has been issued.

9. *Critical Facilities*

- a. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated above the two-tenths percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be flood-proofed so that below the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered

professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

b. No critical facilities shall be constructed in any designated floodway.

10. *Hazardous Materials*

All hazardous material storage and handling sites shall be located out of the special flood hazard area.

11. *Cumulative Improvement*

A structure may be improved to include remodeling or enlargement, without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five calendar years does not exceed fifty percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty percent of the structure's current market value, the structure must be brought into compliance with Article 4, Section B(1) which requires elevation of residential structures to one foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one foot above the base flood elevation.

SECTION B. SPECIFIC STANDARDS

1. In all areas identified as numbered and unnumbered "A" zones, "AE", and "AH" Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:

a. *Residential Construction*

New construction or substantial improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one foot above base flood elevation. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

b. *Non-Residential Construction*

New construction or substantial improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be dry flood-proofed to a minimum of one foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.** Such certification shall be provided to the Floodplain Administrator as set forth in Article 3, Section C(7)(8)(9).

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- c. Require, for all new construction and substantial improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
  - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; and
  - (2) The bottom of all opening shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

### SECTION C. MANUFACTURED HOMES

1. All manufactured homes to be placed within all unnumbered and numbered "A" zones, "AE", and "AH" zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered "A" zones, "AE", and "AH" zones, on the community's FIRM on sites:
  - a. Outside of a manufactured home park or subdivision;
  - b. In a new manufactured home park or subdivision;
  - c. In an expansion to and existing manufactured home park or subdivision; or
  - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**
3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered "A" zones, "AE" and "AH" zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C(2) of this Ordinance, be elevated so that either:

- a. The lowest floor of the manufactured home is a minimum of one foot above the base flood level; or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

#### SECTION D. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

##### 1. *AO Zones*

- a. All new construction and substantial improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
- b. All new construction and substantial improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely flood-proofed to that level so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

##### 2. *AH Zones*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

#### SECTION E. FLOODWAY

Located within areas of special flood hazard established in Article 2, Section A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
3. If Article 4, Section E(2), is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.
4. In unnumbered "A" zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Article 4, Section A(2).

#### SECTION F. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered "A" Zones, "AE", "AH", and "AO" Zones on the community's FIRM either:

1. Be fully licensed and ready for highway use\*; *or*
2. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this Ordinance.

\*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

### ARTICLE 5 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

#### SECTION A. ESTABLISHMENT OF APPEAL BOARD

The Board of Zoning Appeals, as established by the City of Abilene, Kansas shall hear and decide appeals and requests for variances from the floodplain management requirements of this Ordinance.

#### SECTION B. RESPONSIBILITY OF APPEAL BOARD

Where an application for a Floodplain Development Permit is denied by the Floodplain Administrator, the applicant may apply for such Floodplain Development Permit directly to the Appeal Board, as defined in Article 5, Section A.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.

#### SECTION C. FURTHER APPEALS

Any person aggrieved by the decision of the Appeal Board, or any taxpayer, may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

#### SECTION D. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this Ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

#### SECTION E. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. Generally, variances may be issued 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 constructed below the base flood elevation, providing items two through six

below, have, been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

2. Variances may be issued for the reconstruction, repair, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.
6. The Floodplain Administrator shall notify the applicant in writing that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Ordinance.

#### SECTION F. CONDITIONS FOR APPROVING VARIANCES FOR AGRICULTURAL STRUCTURES

Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Article 5, Sections D and E of this Ordinance.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for agricultural structures that are constructed at-grade and wet-floodproofed:

1. All agricultural structures considered for a variance from the floodplain management regulations of this Ordinance shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
2. Use of the varied structures must be limited to agricultural purposes in Zone "A" only as identified on the City's Flood Insurance Rate Map (FIRM).

3. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this Ordinance.
4. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Article 4, Section A (4)(a) of this Ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
5. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood-proofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this Ordinance.
6. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this Ordinance.
7. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this Ordinance. No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
8. Major equipment, machinery, or other contents must be protected from any flood damage.
9. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of any agricultural structures.
10. The Floodplain Administrator shall notify the applicant in writing that: (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Ordinance.
11. Wet-flood-proofing construction techniques must be reviewed and approved by the Floodplain Administrator and a registered professional engineer or architect prior to the issuance of any Floodplain Development Permit for construction.

#### SECTION G. CONDITIONS FOR APPROVING VARIANCES FOR ACCESSORY STRUCTURES

Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Article 5, Sections D and E of this Ordinance.

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood, and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-flood-proofed:

1. Use of the accessory structures must be solely for parking and limited storage purposes in zone "A" only as identified on the community's Flood Insurance Rate Map (FIRM).
2. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this Ordinance.
3. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) of this Ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
4. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this Ordinance.
5. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this Ordinance.
6. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this Ordinance. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
7. Equipment, machinery, or other contents must be protected from any flood damage.
8. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of any accessory structures.
9. The Floodplain Administrator shall notify the applicant in writing that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Ordinance.
10. Wet-flood-proofing construction techniques must be reviewed and approved by the Floodplain Administrator and registered professional engineer or architect prior to the issuance of any Floodplain Development Permit for construction.

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## SECTION H. CONDITIONS FOR APPROVING VARIANCES FOR TEMPORARY STRUCTURES

Any variance granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Article 5, Sections D and E of this Ordinance.

1. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
  - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
  - b. Denial of the temporary structure permit will create an undue hardship on the property owner;
  - c. The City has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,
  - d. The City has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.
2. Once all of the above conditions are met, an application for a special use permit must be made to the Governing Body of the City. The Governing Body shall consider all applications for special use permits for a temporary structure based on the following criteria:
  - a. The placement of any temporary structure within the special flood hazard areas as shown on the City's adopted FEMA/NFIP map shall require an approved special use permit. The special use permit shall be valid for a period not to exceed 180 days.
  - b. Special use permits applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.
  - c. An emergency plan for the removal of the temporary structure(s) that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the special use permit application for the placement of any temporary structure.
  - d. On or before the expiration of the end of the 180 day special use permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
  - e. To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structures at all times.

- f. Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.
- g. Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.
- h. Violation of or non-compliance with any of the stated conditions of the special use permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body. Notice of permit revocation shall be made to the landowner, the occupant of the land, and to the general public.
- i. Any deviation from the approved site plan shall be deemed a violation of the special use permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be made as it was prior to the special permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this Ordinance and shall be illegal, non-conforming uses and may be summarily removed and abated by the City.
- j. If the temporary structure is to be returned to its previously occupied site, the process for issuing a special use permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

## **ARTICLE 6 PENALTIES FOR VIOLATION**

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the \_\_\_\_\_ City of Abilene or other appropriate authority, from taking such other lawful action as is necessary to prevent or remedy any violation.

## **ARTICLE 7 AMENDMENTS**

The regulations, restrictions, and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the official newspaper of the City. At least twenty days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office.

## **ARTICLE 8 DEFINITIONS**

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this Ordinance its most reasonable application.

**"100-year Flood"** *see "base flood."*

**"Accessory Structure"** means the same as *"appurtenant structure."*

**"Actuarial Rates"** *see "risk premium rates."*

**"Administrator"** means the Federal Insurance Administrator.

**"Agency"** means the Federal Emergency Management Agency (FEMA).

**"Agricultural Commodities"** means agricultural products and livestock.

**"Agricultural Structure"** means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

**"Appeal"** means a request for review of the Floodplain Administrator's interpretation of any provision of this Ordinance or a request for a variance.

**"Appurtenant Structure"** means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

**"Area of Shallow Flooding"** means a designated "AO" or "AH" zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**"Area of Special Flood Hazard"** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Basement"** means any area of the structure having its floor subgrade (below ground level) on all sides.

**"Building"** *see "structure."*

**"Chief Engineer"** means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

**"Chief Executive Officer"** means the City Manager who is charged with the authority to implement and administer laws, Ordinances, and regulations for that community.

"**City**" means the City of Abilene, Kansas, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"**Development**" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"**Elevated Building**" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"**Eligible Community**" or "**Participating Community**" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"**Existing Construction**" means for the purposes of determining rates, structures for which the "*start of construction*" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "*existing construction*" may also be referred to as "*existing structures*."

"**Existing Manufactured Home Park or Subdivision**" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the City.

"**Expansion to an Existing Manufactured Home Park or Subdivision**" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"**Flood**" or "**Flooding**" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (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 above in item (1).

"**Flood Boundary and Floodway Map (FBFM)**" means an official map of the City on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"**Flood Elevation Determination**" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"**Flood Elevation Study**" means an examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations.

**Topeka Field Office**

**"Flood Fringe"** means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**"Flood Hazard Boundary Map (FHBM)"** means an official map of the City, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**"Flood Hazard Map"** means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

**"Flood Insurance Rate Map (FIRM)"** means an official map of the City, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**"Flood Insurance Study (FIS)"** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

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

**"Floodplain Management"** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**"Floodplain Management Regulations"** means zoning Ordinances, subdivision regulations, building codes, health regulations, special purpose Ordinances (such as floodplain and grading Ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**"Floodproofing"** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**"Floodway" or "Regulatory Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**"Floodway Encroachment Lines"** means the lines marking the limits of floodways on Federal, State and local floodplain maps.

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**"Functionally Dependent Use"** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**"Highest Adjacent Grade"** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**"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 floodproofing design requirements of this Ordinance.

**"Manufactured Home"** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* does not include a *"recreational vehicle."*

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Map"** means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**"Market Value" or "Fair Market Value"** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**"Mean Sea Level"** means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**"New Construction"** means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by the City and includes any subsequent improvements to such structures.

**"New Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be

affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the City.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"**Participating Community**" also known as an "*eligible community*," means a community in which the Administrator has authorized the sale of flood insurance.

"**Permit**" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"**Person**" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"**Principally Above Ground**" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"**Reasonably Safe From Flooding**" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"**Recreational Vehicle**" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"**Remedy A Violation**" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"**Risk Premium Rates**" means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. "*Risk premium rates*" include provisions for operating costs and allowances.

"**Special Flood Hazard Area**" *see "area of special flood hazard."*

"**Special Hazard Area**" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

"**Start of Construction**" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 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 slabs or footings, the installation of piles, the construction of columns, 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, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"State Coordinating Agency"** means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**"Structure"** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**"Substantial Damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**"Substantial Improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *"start of construction"* of the improvement. This term includes structures, which have incurred *"substantial-damage,"* regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *"historic structure,"* provided that the alteration will not preclude the structure's continued designation as a *"historic structure."*

**"Temporary Structure"** means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, but at no time shall it include manufactured homes used as residences.

**"Variance"** means a grant of relief by the City from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**"Violation"** means the failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without the elevation certificate,

other certifications, or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as that documentation is provided.

**"Water Surface Elevation"** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain riverine areas.

**ARTICLE 9 CERTIFICATE OF ADOPTION**

This Floodplain Management Ordinance for the City of Abilene, Kansas.

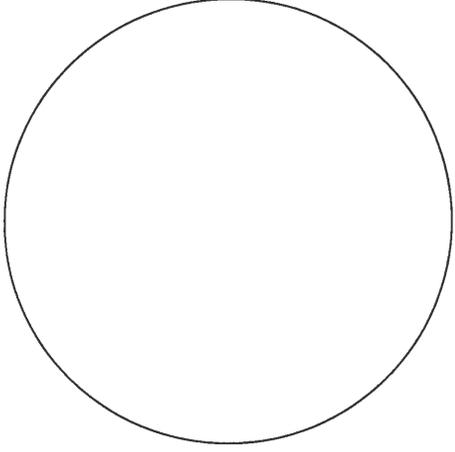
PASSED AND ADOPTED by the Governing Body of Abilene, Kansas.

This 27<sup>th</sup> day of April, 2015.

**Chief Engineer Draft Approval Seal Here:**

**APPROVED**  
 This 20<sup>th</sup> day of January, 2015  
*From M. M. for*  
 \_\_\_\_\_  
**DAVID W. BARFIELD, P.E.**  
 Chief Engineer  
 Division of Water Resources  
 Kansas Department of Agriculture

**Community Approval Seal Here:**



**APPROVED:**

\_\_\_\_\_  
 Dennis P. Weishaar,  
 Mayor Date

\_\_\_\_\_  
 Chief Elected Official Name (Typed/printed) Title

**ATTEST:**

\_\_\_\_\_  
 Penny L. Soukup, CMC,  
 Clerk Date

\_\_\_\_\_  
 Recording Clerk Name (Typed/printed) Title

**Topeka Field Office**

**JAN 09 2014**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CHAMPIONSHIP DEMOLITION DERBY ASSOCIATION AND THE CITY OF ABILENE, KANSAS, CONCERNING THE SALE OF CEREAL MALT BEVERAGES ON CITY-OWNED PROPERTY**

**WHEREAS**, the Association proposes the temporary sale of cereal malt beverages on City-owned property for an authorized event; and

**WHEREAS**, the City seeks to establish certain requirements with respect to the proposed temporary sale of said cereal malt beverages on City-owned property to ensure a safe event for the public.

**NOW, THEREFORE BE IT RESOLVED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. Memorandum of Understanding.** That a Memorandum of Understanding with the Central Kansas Free Fair Association and the City of Abilene, Kansas, is hereby adopted as attached hereto as **Exhibit A**.

**SECTION TWO. Implementation.** The Mayor is hereby authorized to execute the Memorandum of Understanding with the Championship Demolition Derby Association, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

**SECTION THREE. Effective Date.** That the effects of this Resolution shall be in full force after its approval by the City Commission.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 27<sup>th</sup> day of April, 2015.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dennis P. Weishaar, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

**EXHIBIT A**

**Memorandum of Understanding**

**Championship Demolition Derby Association**

**and**

**City of Abilene, Kansas**

**(2015 Five-State Demolition Derby Beer Garden)**

**April 27, 2015**

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, between the Championship Demolition Derby Association (“Association”) and the City of Abilene, Kansas, a municipal corporation, (the “City”) with respect to the facts and objectives set forth below.

### RECITALS

- A. The Association proposes the temporary sale of cereal malt beverages on City-owned property during the Midwest Demolition Derby Championship (“Event”), which is hereby designated as an authorized event.
- B. The City seeks to establish certain requirements with respect to the proposed temporary sale of cereal malt beverages on City-owned property to ensure a safe event for the public.

**NOW, THEREFORE**, in consideration of the foregoing, the City and Association agree as follows:

1. Purpose. The purpose of this Memorandum is to establish certain requirements for the Association to temporarily sell cereal malt beverages on City-owned property during the authorized Event.
2. Term. This Memorandum shall become effective upon the issuance by the City to the Association, or Association’s representative, of a valid cereal malt beverage permit pursuant to Article 7 of the City Code, and shall remain in effect until 10:30 pm on May 9, 2015.
3. Fee for Services. Following the completion of the Event, the City Manager and Police Chief shall meet with representatives of the Association and review the Police Department’s expenses directly related to the Event. Following the review, the City will invoice the Association for Police Department expenses it deems to have been attributable to the Event.

The Association agrees to compensate the City for expenses of the Abilene Police Department (“Police Department”) related to law enforcement services necessary to ensure public safety during the Event at an hourly rate of Fifty Dollars (\$50.00). The Association agrees to submit payment to the City for said expenses by the close of business on June 8, 2015. All payments shall be remitted to the Finance Director of the City of Abilene at PO Box 519, Abilene, KS 67410.

4. Police Patrol. The Association understands that the Police Department will not provide dedicated police service for the Event, but that it shall respond as may be necessary and appropriate to incidents or calls for service. The Association agrees that the Police Department shall have access to all areas of the event at all times, and that it may establish any number of checkpoints or take such other measures as it may determine appropriate to enforce alcohol-related laws.
5. Designated Area. The Designated Area for the Beer Garden shall be as provided in **Exhibit A**, attached to this Agreement. The Association will be responsible for ensuring all consumption of cereal malt beverages occur within the boundaries of the Designated Area.

6. Stadium Area. The Association shall work with the City to minimize any unauthorized beverages in the Stadium Area adjacent to the Designated Area. The City agrees to prohibit outside beverages that have been opened from entering Abilene Stadium and authorizes the Association to enforce this prohibition on behalf of the City. The City authorizes the Association to sell non-alcoholic beverages in the confines of Abilene Stadium throughout the event.
7. Security. The Association agrees to provide to the City an adequate security plan for the Event. Said plan shall be reviewed and approved by the Police Chief prior to the commencement of the Event.
9. Regulations. The Association, and any third-party caterer, shall be required to comply, at all times, with all state and local requirements pertaining to the temporary sale of cereal malt beverages. The Association shall only serve cereal malt beverages. The Association shall provide a means to monitor the number of drinks an individual has been sold by the beer garden and shall impose a three-drink limit per night for each person.
10. Hours of Operation. The Association may begin serving such permitted beer no earlier than 5:00 pm and all sales shall terminate at 10:30 pm. The hours of operation shall apply to both days of the Event.
11. Inspection. The Association shall have all physical aspects of the Designated Area constructed at least three days in advance of the Event. The Association shall allow the City to inspect the Designated Area prior to the Event and agrees to make any changes or modifications as may be requested by the City prior to the commencement of operations for the Beer Garden.
12. Administrative Review. Within fourteen days following the Event, the City Manager shall meet with the Police Chief and representatives of the Association to review the Event. The City Manager shall, within fourteen days of such review, prepare a recommendation as to the ability of the Association to obtain any future permits for similar events on City-owned property. Such recommendation shall be presented to the City Commission for review and consideration.
13. Penalties. The Association agrees that failure to comply with the any of the provisions of this Memorandum of Understanding may disqualify the Association and its representatives from obtaining approval for future events involving the consumption of alcohol on City-owned property for a minimum of five years.
14. Insurance. The Association shall provide proof of comprehensive general liability insurance of \$1 million combined single per occurrence for bodily and personal injury or death, injury to or destruction of property, including loss resulting from activities associated with the permitted beer garden. Such proof of insurance shall be provided to the City three days prior to the commencement of operations at the beer garden and shall name the City as an "additional insured."
15. Indemnification. The Association, and any third-party contractors, agree to hold City harmless from and to indemnify City from any and all liability to third persons for any injuries to persons or property resulting from activities related to the Beer Garden.
16. Transferability. The Association agrees that no rights contained herein may be transferred or assigned by Association and that such rights may only be transferred or assigned with the written consent of the City.

IN WITNESS WHEREOF, the City of Abilene, Kansas, and the Championship Demolition Derby Association have caused this Memorandum of Understanding to be executed as of the day and year first above written.

**CITY OF ABILENE, KANSAS**

**CHAMPIONSHIP DEMOLITION DERBY  
ASSOCIATION**

By: \_\_\_\_\_  
Dennis P. Weishaar, Mayor

\_\_\_\_\_  
Chad Markley, President  
Championship Demolition Derby Association

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

**EXHIBIT A**

**Memorandum of Understanding**

**City of Abilene, Kansas**

**and**

**Central Kansas Free Fair Association**

**(2015 Demolition Derby Beer Garden)**

**April 27, 2015**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING ANNUAL APPOINTMENTS TO THE LIBRARY BOARD OF THE CITY OF ABILENE, KANSAS**

**WHEREAS**, Article 8 of Chapter 1 of the City Code of the City of Abilene establishes certain appointed boards and commissions for the City of Abilene, Kansas;

**WHEREAS**, the City of Abilene appoints members to said boards and commissions each year in May;

**WHEREAS**, the Library Board requires appointments prior to the May appointments so members may be seated for the May meeting, which is before other annual appointments are approved by the governing body; and

**WHEREAS**, serving on appointed boards and commissions provides members of the public to serve their community in a unique and appreciated manner.

**NOW, THEREFORE BE IT RESOLVED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE.** Annual Appointments. That the following appointments are made to the Library Board of the City of Abilene, Kansas:

- Mitzi Gose and Emma Detrixhe filling terms ending in 2019; and
- Sheila Biggs filling an unexpired term ending in 2018.

**SECTION TWO.** Guidelines for Operations. Appointed boards and commissions shall follow the guidelines for appointed boards and commissions as defined by Section 1-813 and 1-814 of the City Code. The City Manager, or the designated staff representative, shall provide an orientation for new members of appointed boards and commissions.

**SECTION THREE.** Recognition for Service. The City of Abilene wishes to recognize those who have served on its appointed boards and commissions that will not be continuing their service. The City Manager shall have prepared a Certificate of Service to be signed by the Mayor to be provided to each member resigning from their board or commission.

**SECTION FOUR.** Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

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**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 27<sup>th</sup> day of April, 2015.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dennis P. Weishaar, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

**Abilene City Commission Minutes**  
**Abilene Public Library**  
**April 13, 2015 @ 4:00 p.m.**  
**Abilene, Kansas**

**1. Call to Order**

**2. Roll Call** – City Commission Present: Mayor Bowers, Commissioners Ray, Casteel, Weishaar and Payne.

Staff Present: City Manager Dillner, Human Resources Director/City Clerk Soukup, Finance Director Rothchild, City Attorney Guilfoyle, Community Development Director Hamilton, Public Works Director Schrader, Convention & Visitors Bureau Director Purkis, Parks & Recreation Director Foltz, Police Chief Heimer and Fire Chief Sims.

Others Present: Andrew Minson, Bill Burt, Teresa Weishaar, Denise Guy, Kevin Beck, Rick Schmidt, Ryan Wedel, Steve Wedel, Bill Marshall, Dee Marshall, Hannah Hoehn, Brooke Wilkens, Lisa Seiser-Abilene Reflector Chronicle, Hank Royer, Torey Berndt, Jaden Litke, Jenna Gentry, Tony Geiger, Bruce Dale, Timothy Shafer and Maddie Wildman.

**3. Pledge of Allegiance** - Mayor Bowers led the Pledge of Allegiance.

**Consent Agenda**

**City Commission Installation**

4. Oath of Office to Commissioners-Elect
5. Nomination of Mayor and Vice-Mayor
6. Recognition of Out-Going Commissioners
  
7. Agenda Approval for the April 13, 2015 City Commission Meeting
8. Meeting Minutes: March 23, 2015, Regular Meeting

Motion by Commissioner Weishaar, seconded by Commissioner Payne to approve the Consent Agenda with the removal of City Commission installation items, No. 4, No. 5 and No. 6. Motion carried unanimously 5-0.

Dee Marshall and Dr. Timothy Shafer were introduced as the newly elected City Commissioners.

**Public Comments and Communications**

**9. Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.

Mayor Bowers asked for any comments or communications from the public that are not on the agenda.

Hank Royer read the following memo regarding Flint Hills Grain, LLC (formerly known as DeBruce Grain) and zoning regulations.

For the past year, this City Commission and City staff have painstakingly spent dozens of hours analyzing and adopting revised zoning regulations for the City of Abilene. Each and every chapter was reviewed and refined to be very precise. The number one purpose of these zoning regulations, as shown in the attached document, in Section 1-201, is to “promote and serve the public health, safety, morals, comfort and general welfare of the citizens of Abilene.” The secondary purpose of the zoning regulations was to obtain the objectives of the comprehensive plan, including the objectives of future land use maps. The third stated purpose of the zoning code was to preserve and protect property values by regulating and restricting the location and use of buildings and land.

After much debate, in November of 2014, the new zoning code was adopted to implement these stated protections for the citizens of Abilene.

At a date well prior to last year, DeBruce Grain did install two metal elevators, expanding their operation in the vicinity of the 100 and 200 block of South Elm Street. They did so under an old zoning ordinance. That zoning ordinance did state that storage elevators were not permitted to be in that area. Only under a conditional use permit and special permission from the City could such construction occur. To the best of my knowledge, no conditional use permits were ever acquired for this site and, hence, the metal elevators that existed on this property prior to 2014 are probably in violation of city zoning. Since the construction of those two other metal elevators, we neighbors have complained of public health issues, have seen our property values decline, and have seen a decline in our general welfare. Prior City Commissions have acted to force some nominal remediation of the problems caused by DeBruce. That is in the past.

Recently, on February 18, 2015, the City staff did error in issuing a building permit to a foreign limited liability company known as Flint Hills Grain, LLC. This foreign limited liability company did purchase the site in question, formerly known as Gavilon Grain on February 1, 2015. As part of their due diligence in the purchase, Flint Hills Grains, LLC should have determined this site did not allow construction of an elevator, in this I-1 zoning area, without the issuance of a conditional use permit. There is no dispute the site is not eligible for construction of this new metal elevator, under either the prior, or newly adopted zoning ordinances of the City of Abilene.

There has been some allegation that the present structures and the presently-being constructed new elevator should be allowed as a non-conforming use under Section 21-4 of the new zoning codes. That is not correct. The non-conforming use section does specifically state:

“Any non-conforming use of part or all of a structure or any non-conforming use of land WHICH WAS LAWFUL AND IN EXISTENCE AT THE EFFECTIVE DATE OF THESE REGULATIONS MAY BE CONTINUED”.

The same section also states:

“A non-conforming use shall not be extended, expanded, enlarged or increased in Intensity and no structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to”.

The two existing metal elevators were not lawful at the effective date of these regulations. Even if the two previous non-conforming structures were to be grandfathered in, the zoning code does specifically state that the non-conforming use cannot be extended, expanded or enlarged or increased in intensity, and that no structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to.

It also is generally accepted that the structure, as being erected, is in violation of the setback rules of the zoning code and, in fact, may be partially built in the street right-of-way.

Since city zoning does not allow this elevator to be constructed in the I-1 zoning, without a conditional use permit, which has not been issued, the construction should cease. No theory on non-conforming use can be utilized to allow any expansion, enlargement or increase in intensity of usage on the property, or any structure that is on the property. In addition to all of the above, the structure does violate the setback rules of the zoning code.

For all of the above reasons, the construction of this elevator should cease immediately and the City should go on record as being unable to ever issue an occupancy permit for either the new elevator or any type of expansion on the site in the future.

**10. Declaration.** At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

There were no declarations.

### **Proclamations and Recognition**

#### **11. Hope Center 2015 Week of Emphasis Proclamation**

Mayor Bowers read a proclamation for the week of April 26<sup>th</sup> to May 3, 2015 as H.O.P.E Center Emphasis Week in the City of Abilene and presented it to Teresa Weishaar and Tony Geiger from the Hope Center.

#### **12. Arbor Day Proclamation**

Mayor Bowers read a proclamation for Friday, April 24, 2015 as Arbor Day in the City of Abilene.

### **Public Hearings**

**13.** There were no public hearings.

### **Old Business**

**14.** There was no old business.

### **New Business**

**15. Consideration of an Ordinance rezoning certain property, generally described as 800 Van Buren Street, from "C-2, Restricted Commercial District" to "R-3, High Density Residential District" and amending the Zoning Map of the City of Abilene, Kansas.**

Community Development Director Hamilton presented information regarding the request from Cedar Ridge, LLC for the rezoning of this parcel of land and its findings as follows:

Rezoning: Due to the distance of the proposed development from medical and other facilities frequented by individuals 55 and older, staff is unable to recommend including this subdivision within the “EH, Elderly Housing Overlay”. Therefore all building setbacks must meet the requirements of the “R-3” District. Staff recommends approval of the rezoning to the “R-3, High Density Residential District” based on the following considerations outlined in Article 26-108:

- a. A change in District classification may be consistent with the intent and purpose of these regulations.
  - b. The surrounding conditions and character of the neighborhood would not have an impact on the proposed development since residential uses are consistent in the area.
  - c. Changed Conditions – Although the future land use map shows this lot as Commercial Potential, the residential development within the surrounding area has increased with no additional commercial uses in the vicinity over the past 8 years.
  - d. Staff is of the opinion that the change in classification from Restricted Commercial to High Density Residential will not have a negative impact on the surrounding area with regard to traffic counts or drainage, However, should a commercial use locate on the subject property (as it is currently zoned), the surrounding area might be impacted by both increased traffic counts and drainage.
  - e. Other uses allowed in the proposed district such as public facilities and churches, may have a similar traffic patten to the lower intensity Restricted Commercial district. But such uses are already allowed since the surrounding zoning is also R-3.
  - f., g., i & l. The subject property has remained vacant under its current zoning due to market conditions which dictate the location of commercial facilities. Therefore, the subject parcel may be inadequate and unsuitable for a commercial use. The amount of vacant land available currently zoned R-3 has been developing as residential for several years.
  - h. All public utilities are within the vicinity of the subject parcel. Sewer, water and storm sewer will be extended from existing lines located in Cedar Ridge Estates.
  - k. Although the Comprehensive Plan shows this parcel as “neighborhood Commercial Potential”, the development in this area since 2007 has been predominantly residential. Therefore the future land use map is outdated and does not reflect the current trends for the area.
- The Commission options are: 1. To approve the rezoning with staff findings. 2. Deny the rezoning based on any of the criteria outlined in 26-108. It is the recommendation of City staff and the Planning Commission to approve the rezoning request.

Motion by Commissioner Ray, seconded by Commissioner Weishaar to adopt Ordinance No. 3267 **AN ORDINANCE REZONING CERTAIN PROPERTY, GENERALLY DESCRIBED AS 800 N. VAN BUREN STREET, FROM “C-2, RESTRICTED COMMERCIAL DISTRICT” TO “R-3, HIGH DENSITY RESIDENTIAL DISTRICT,” AND AMENDING THE ZONING MAP OF THE CITY OF ABILENE, KANSAS.** Motion carried unanimously 5-0.

#### **16. Consideration of a Resolution of Support for a Housing Tax Credit Application to be submitted to the Kansas Housing Resources Corporation by Neighborhood Housing Services of Kansas City, Inc.**

City Manager Dillner explained this resolution will provide a Resolution of Support for a housing tax credit program. If awarded, it would provide tax credits to offset rent costs for a period of time for persons 55 years and older in the eight duplexes that are planned to be developed in the Cedar Ridge development.

Motion by Commissioner Casteel, seconded by Commissioner Ray to approve Resolution No. 041315-1 **A RESOLUTION OF SUPPORT FOR A HOUSING TAX CREDIT APPLICATION TO BE SUBMITTED TO THE KANSAS HOUSING RESOURCES CORPORATION BY NEIGHBORHOOD HOUSING SERVICES OF KANSAS CITY, inc.** Motion carried unanimously 5-0.

**17. Consideration of a Resolution amending the Business Investment Grant Program of the City of Abilene, Kansas.**

City Manager Dillner explained the resolution amends the Business Investment Grant Program. Some of the changes from last year include an increase in the money available to about \$65,000, the requirement of all participants to provide an accounting of the use of funds to the City Manager in order for a report to be presented to the City Commission and the process will also have a deadline of June 1, 2015.

Commissioner Casteel stated the Economic Development Council wants to see a uniform worksheet to compare each one on its own merits.

Motion by Commissioner Weishaar, seconded by Commissioner Casteel to approve Resolution No. 041513-2 **A RESOLUTION AMENDING THE BUSINESS INVESTMENT GRANT PROGRAM FOR THE CITY OF ABILENE, KANSAS.** Motion carried unanimously 5-0.

**18. Consideration of a Resolution establishing the Residential Incentive Program of the City of Abilene, Kansas.**

City Manager Dillner presented information regarding an incentive program for newly constructed homes within in the City. The program would incentivize residential purchases by providing Abilene Bucks to purchasers of newly constructed homes and in turn would encourage the residents to shop locally using the Abilene Bucks.

Motion by Commissioner Ray, seconded by Commissioner Payne to approve Resolution No. 041513-3 **A RESOLUTION ESTABLISHING A RESIDENTIAL INCENTIVE PROGRAM FOR THE CITY OF ABILENE, KANSAS.** Motion carried unanimously 5-0.

**19. Consideration of a motion to approve the Final Plat of the Abilene USD 435 Subdivision in the City of Abilene, Kansas.**

Community Development Director Hamilton presented information regarding the final plat for Abilene USD 435 Subdivision. City staff and the Planning Commission both recommend approval of the final plat.

Motion by Commissioner Casteel, seconded by Commissioner Payne to approve the final plat of the Abilene USD 435 Subdivision in the City of Abilene, Kansas. Motion carried unanimously 5-0.

**20. Consideration of a motion to recess into executive session for twenty minutes for the purposes of discussing attorney-client privileged information to include the City Attorney and City Manager.**

Motion by Commissioner Weishaar, seconded by Commissioner Ray to move into executive session at 4:31 p.m. for twenty minutes to include the City Manger and City Attorney. Motion carried unanimously 5-0.

**21. Consideration of a motion to return from executive session with only those items in the previous motion discussed and not action being taken.**

Motion by Commissioner Casteel, seconded by Commissioner Payne to return to regular session at 4:51 p.m. Motion carried unanimously 5-0.

There was no action taken.

## **Reports**

### **22. City Manager Reports**

The EDC Corp startup funding interviews will be this week. A website has been set up to market every city in the county.

The City of Abilene and Dickinson County have submitted five sites for a trans-loading facility. They are looking for 45 cities with 93 sites.

The City Commission orientation will be rescheduled.

The NGA luncheon will be April 22<sup>nd</sup> at 11:30 a.m. at the Civic Center.

There will be a Budget Forum on April 23<sup>rd</sup> at 6:30 p.m.

### **23. Expenditure Report**

#### **Adjournment**

### **24. Consideration of a motion to adjourn the April 13, 2015 City Commission meeting.**

Motion by Commissioner Weishaar, seconded by Commissioner Casteel to adjourn at 4:55 p.m. Motion carried unanimously 5-0.

(Seal)

\_\_\_\_\_  
Brenda Finn Bowers, Mayor

ATTEST:

\_\_\_\_\_  
Penny L. Soukup, CMC  
City Clerk

**RESOLUTION NO. 042715-1**

**A RESOLUTION AUTHORIZING CERTAIN SIGNATURES ON DEPOSIT ACCOUNTS AT FINANCIAL INSTITUTIONS FOR THE CITY OF ABILENE, KANSAS**

**WHEREAS**, the City of Abilene utilizes the services of Astra Bank, Solomon State Bank, and Pinnacle Bank, hereinafter "Financial Institutions," all located in the City of Abilene, Kansas;

**WHEREAS**, the Financial Institutions require signature cards to conduct business with their respective institutions;

**WHEREAS**, the signature cards authorize certain individuals within management of the City of Abilene to conduct the business affairs of the City of Abilene, and sign financial instruments on behalf of the City of Abilene; and

**WHEREAS**, all signature cards require certification by resolution of the governing body.

**NOW, THEREFORE BE IT RESOLVED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE.** Authorized Signatories. That David B. Dillner, City Manager; Marcus Rothchild, Finance Director; Penny L. Soukup, City Clerk; and Darlene K. Provance, Administrative Assistant are hereby designated as authorized agents of the City of Abilene to sign financial instruments on behalf of the City of Abilene.

**SECTION TWO.** Previous Resolutions; Rescinded. All previous resolutions at the aforementioned Financial Institutions are hereby rescinded and shall be null and void.

**SECTION THREE.** Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 27<sup>th</sup> day of April, 2015.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dennis P. Weishaar, Mayor

**ATTEST:**

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk