

ORDINANCE NO. 2023-37

AN ORDINANCE OF THE CITY COUNCIL OF CITY OF BOERNE, TEXAS, AMENDING THE UNIFIED DEVELOPMENT CODE, CHAPTER 2. PROCEDURES, ADDING SECTION 2.13 EXTRATERRITORIAL JURISDICTION, TO PROVIDE A PROCESS FOR PETITIONS FOR RELEASE FROM THE CITY'S EXTRATERRITORIAL JURISDICTION; AND CHAPTER 8. ENVIRONMENTAL DESIGN, SECTION 8.1 FLOODPLAIN MANAGEMENT, AND APPENDICES, APPENDIX A. DEFINITIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE OF ALL ORDINANCES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A PENALTY FOR VIOLATION; AND PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Boerne, Texas is a Home Rule municipal corporation located in Kendall County, created in accordance with the provisions of Chapter 9 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Texas Legislature passed Senate Bill 2038, which allows residents of a city's extraterritorial jurisdiction to petition for release from the municipality's extraterritorial jurisdiction; and

WHEREAS, Senate Bill 2038 provides a timeline for approving the release of property from the extraterritorial jurisdiction after a petition is filed with the municipality; and

WHEREAS, the City Council deems it appropriate to provide procedures for establishing when a petition is considered filed; and

WHEREAS, a petition requesting release must comply with the petition requirements of Chapter 277 of the Texas Election Code; and

WHEREAS, Senate Bill 2038 requires the City Secretary, or designee, to verify the petition signatures; and

WHEREAS, City Council finds it necessary to establish a procedure for the City Secretary to verify the signature of corporate owners; and

WHEREAS, with recent updated flood models additional parcels that had not previously been within the 100-year floodplain will now be in the floodplain; and

WHEREAS, there are many residential structures and vacant lots that were developed prior to the adoption of the current floodplain ordinances; and

WHEREAS, the City Council finds that the amendments as outlined herein are in the best interest of the health, safety, and general welfare of the citizens of the City and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS THAT:

Section 1. All the above premises are true and correct legislative and factual findings of the City Council, and they are hereby approved, ratified, and incorporated into the body of this ordinance as if copied in their entirety.

Section 2. The Unified Development Code is hereby amended as follows:

Chapter 2. Procedures

2.13 EXTRATERRITORIAL JURISDICTION

Petitions for Release from Extraterritorial Jurisdiction.

- a. A petition for release or a petition to hold an election for release from the City's extraterritorial jurisdiction may be filed by a resident or land owner within the extraterritorial jurisdiction, as provided by Chapter 42 of the Texas Local Government Code, as amended.
- b. A petition either for release or requesting an election is considered filed when it meets the following requirements:
 1. The petition must comply with the signature requirements of Chapter 42 of the Texas Local Government Code, as amended, and Chapter 277 of the Texas Election Code, as amended;
 2. The petition must include a map of the land to be released and describe the boundaries of the land by either:
 - i. Metes and bounds, or
 - ii. Lot and block number, if there is a recorded map or plat; and
 3. To permit the City Secretary to verify the petition, the petition of a corporate owner must be accompanied by the following:
 - i. Date of birth of the signor;
 - ii. Personal residence address of the signor;
 - iii. Business entity's Certificate of Good Standing from the Texas Secretary of State;
 - iv. Business entity's Articles of incorporation, certificate of formation, partnership agreement, or other corporate formation document;
 4. Business entity's Bylaws; and
 5. Resolution of the business entity authorizing the petition for release be executed and filed by the entity representative.
- c. Upon receipt of a petition, the City must verify the petition.
 1. The City shall notify the resident and landowners of the area described by the petition of its results. This may be satisfied by notifying the party who filed the petition.
- d. If the petition for release contains the requisite number of signatures, the City shall release the area from its extraterritorial jurisdiction by the later of the 45th day after the date the petition was filed or the next meeting of the City Council

that occurs after the 30th date after the petition was filed.

- e. If the resident or landowner submits a verified petition to hold an election for release, the city may either:
 - 1. Voluntarily release the area for which the election is to be held from the City's extraterritorial jurisdiction before the date on which the election would have been held; or
 - 2. Order an election for release, which must comply with Texas Election Code and Chapter 42 of the Local Government Code, as amended.
- f. This section does not apply to the following properties in the extraterritorial jurisdiction:
 - 1. In an area designated as an Industrial District under Section 42.044 of the Texas Local Government Code, as amended;
 - 2. In an area subject to a strategic partnership agreement with the city; or
 - 3. An area within five miles of the boundary of a military base, as defined by Section 43.0117 of the Texas Local Government Code,
 - 4. Any other exceptions to release of an area by petition of a landowner or resident as described by Chapter 42 of the Local Government Code."

Chapter 8. Environmental Design

8.1 FLOODPLAIN MANAGEMENT

D. PROVISIONS FOR FLOOD HAZARD REDUCTION

1. General Standards

- j. For all construction (residential and non-residential) and substantial improvements within, where allowed, or within 100' of the 1% annual chance (100-year) local or FEMA floodplain limits, the lowest floor (including basements), shall be elevated to two (2) feet above the base flood elevation as follows:

Basis of Study	Minimum building slab elevation
Atlas 14 Rainfall	1.0 feet above the Base Flood Elevation
Rainfall other than Atlas 14 Evaluation	2.0 feet above the Base Flood Elevation

A registered professional engineer, architect, or land surveyor shall submit a FEMA Elevation Certificate to the Floodplain Administrator as described in the permit procedures, section 8.1 (C)(3) that the standard of this subsection is satisfied.

- k. Filling or the disposal of any materials which will diminish the natural floodplain storage water flow capacity of any waterway or floodplain defined by this ordinance must be compensated with remedial action. An equal amount of storage volume must be created in another location of the same local watershed to compensate for the storage capacity lost, as approved by the Floodplain Administrator Any reduction in floodplain storage or conveyance capacity within the 1% (i.e. 100-Year) floodplain

must be offset with a hydraulically equivalent (one-to-one) volume of mitigation sufficient to offset the reduction. Such mitigation shall be within the same watershed and shall be provided on the same property or within the same hydrologic sub-watershed or at an alternate site meeting the approval of the Floodplain Administrator."

l. The landowner shall sign City prepared letter acknowledging the risks in building within the floodplain, acknowledging the possible delay in emergency response to the site, and agreeing to indemnify the City of Boerne against damages resulting from flooding on the owner's property or subject site.

m. All new construction (residential and commercial), or substantial improvements, within the floodplain shall require a no-rise/no-impact certification as described in Chapter 5 of the Engineering Design Manual (EDM). This requirement may be waived by the Floodplain Administrator for open style fences, additions to existing buildings within a conveyance shadow, or other minor improvements that the Floodplain Administrator determines will be insignificant to the floodplain.

n. The Floodplain Administrator may deny a permit for new or substantially improved habitable structures if the project site or vicinity has a history of high-water rescues, repetitive losses, or other historical flooding issues.

o. Depending on the proposed design and the building type, the applicant must meet all FEMA requirements related to crawl space, enclosures, openings, etc. Reference the FEMA NFIP Elevation Certificate and Instructions, 2019 Edition or subsequent updates.

2. Specific standards for A & AE zones

In all areas of special flood hazards where base flood elevation data has been provided as set forth in this Chapter, the following provisions are required:

a. Residential or Other Habitable Construction

i. New platted lots shall comply with 8.1(D)(3)

ii. ~~For~~ New Construction of a habitable primary dwelling structure on existing platted lot, platted prior to the February 11, 2020, shall have the lowest floor (including basement), elevated to a minimum of two feet above the base flood elevation together with all HVAC and supporting mechanical, electrical, and sanitary facilities. ~~effective date of this ordinance, is allowed if the proposed structure is located outside the 1% annual chance (100-year) local or FEMA floodplain. New Construction must be in compliance with the above General Standards, 8.1(D)(1).~~

iii. Modifications (additions, redevelopment, etc.) and substantial improvements of existing habitable structure, shall have the lowest floor (including basement), elevated to a minimum of two feet above the base flood elevation together with all HVAC and supporting mechanical, electrical, and sanitary facilities. ~~other than rebuilding activity due flood or fire damage, within the 1% annual chance (100-year) local or FEMA floodplain limits is not allowed.~~

~~Rebuilding activity shall raise the finished floor above the Base Flood elevation as described in the above General Standards, Chapter 8.1(D)(1).~~
Construction must be in compliance with the above General Standards, 8.1(D)(1).

Where allowed by zoning, new Accessory Dwelling Unit (ADU) structures, other than rebuilding activity of existing structures damaged due to flood or fire damage, within the 1% annual chance (100-year) local and FEMA floodplain limits is not allowed.

g. Mixed Use Construction

- i. Where allowed by zoning, new mixed use (habitable and commercial, parking garage, etc.) structure may be constructed under the following conditions:
 - (a) Parking garages cannot accept surface flow from outside the structure.
 - (b) Construction must be in compliance with the above General Standards, 8.1(D)(1).

9. Critical Facilities

Construction of critical facilities (see definition in appendix A) shall be, to the extent possible, located outside the limits of the 0.2% annual chance (500-year) flood plain (Shaded Zone X) and any "A" Zone. Construction of new critical facilities shall be permissible within the base flood plain if no feasible alternative site is available.

- a. Construction of critical facilities on land located in the 0.2% (500-year) flood plain or within the 1 percent or 100-year flood plain shall have the lowest floor elevated to three feet or more above the 0.2% annual chance (500- year) elevation, or twenty-four (24) inches above the crown of the adjacent road, which ever results in a higher elevation.
- b. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.
- c. Access routes elevated to or above the level of the base flood shall be provided to all critical facilities to the extent possible.

10. Materials Storage

The following uses are prohibited within a designated floodplain:

- a. Storage or processing of materials that are hazardous, flammable, or explosive in the identified special flood hazard area.
- b. Storage of material or equipment that, in time of flooding, could become buoyant and pose an obstruction to flow in identified floodway areas.

Storage of material or equipment not otherwise prohibited shall be firmly anchored to prevent flotation. Dumpsters shall be located in an enclosure designed to withstand flood conditions. The enclosure shall be constructed to prevent the dumpster from becoming buoyant and a flood hazard. Dumpsters used during construction activities shall be anchored or located in an enclosure.

11. ~~9.~~ Severability.

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

12. ~~40.~~ Penalties for Noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance court-order and other applicable regulations. Violation of the provisions of this ordinance court-order by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance court-order or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$1,000 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Boerne from taking such other lawful action as is necessary to prevent or remedy any violation.

Appendix A: Definitions

Critical Development: Critical development is that which is critical to the community's public health and safety, is essential to the orderly functioning of a community, stores or produces highly volatile, toxic or water-reactive materials, or houses occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical development include jails, hospitals, schools, daycare facilities, public electric utilities, fire stations, emergency operation centers, police facilities, nursing homes, wastewater treatment facilities, water plants, gas/oil/propane storage facilities, hazardous waste handling and storage facilities and other public equipment storage facilities.

Repetitive Loss: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure before such damage occurred.

If any nonconforming use or structure is substantially damaged or experiences a repetitive loss, as defined in this ordinance, it shall not be reconstructed except in conformity with the provisions of this ordinance.

Substantial Damage: damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood related damage sustained by a structure on two (2) separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before such damage occurred.

Substantial improvement: 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 "repetitive loss" or "substantial damage", regardless of the actual repair work performed. When the combined total of all improvements or repairs made after the adoption of this ordinance equals or exceeds 50 percent of a structure's market value, that structure is considered to be substantially improved. 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 which have been identified by the local

Permitting and Code Compliance 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."

(3) Ordinary maintenance and repairs, not part of larger project.

Section 3. This Ordinance shall be cumulative of all provisions of Ordinances of the City of Boerne, Texas except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage and publication.

PASSED and APPROVED on first reading this the 28th day of November 2023.

PASSED, APPROVED, and ADOPTED on second reading this the ____ day of December 2023.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney