

Chapter 21.10 FLOODPLAIN MANAGEMENT REGULATIONS

21.10.010 Title and purpose.

A. Statutory Authorization. The Legislature of the State of Colorado has in Article 20 of Title 29 and Part 2 of Article 23 of Title 31, Colorado Revised Statutes delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses.

B. Findings of Fact.

1. The flood hazard areas of the City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

2. These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

C. Statement of Purpose. It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Promote sound planning, use and development of floodplain areas consistent with the degree of hazard involved;
2. Protect human life and health;
3. Minimize expenditure of public money for costly flood control projects;
4. Protect the public from avoidable financial expenditures for the repair and restoration of flood damaged public and private facilities;
5. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
6. Minimize prolonged business interruptions;
7. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
8. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas;
9. Ensure that potential buyers are notified that property is in a flood area and minimize victimization of unwary home and land purchasers; and
10. Ensure that those who occupy the Special Flood Hazard Areas assume responsibility for their actions.

D. Methods of Reducing Flood Losses. In order to accomplish its purposes, this chapter uses the following methods:

1. Facilitate the administration of flood hazard areas by establishing requirements that must be met before use or development is permitted;
2. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

3. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
4. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
5. Control filling, grading, dredging and other development which may increase flood damage;
6. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands. (Ord. 12-2019 § 12)

21.10.020 Definitions.

As used in this chapter the meaning of certain words and phrases shall be as set out in this section. Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application.

A. “100-Year Flood” means a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (one-percent-annual-chance flood). The terms “one-hundred-year flood” and “one percent chance flood” are synonymous with the term “100-year flood.” The term does not imply that the flood will necessarily happen once every one hundred years.

B. “100-Year Floodplain” means the area of land susceptible to being inundated as a result of the occurrence of a one hundred year flood.

C. “500-Year Flood” means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years.

D. “500-Year Floodplain” means the area of land susceptible to being inundated as a result of the occurrence of a five hundred year flood.

E. “Addition” means any activity that expands the enclosed footprint or increases the square footage of an existing structure.

F. “Administrator” means the local administrative official responsible for administering and implementing these regulations as set forth in Section 21.10.030.

G. “Appeal” means the request for a review of the City’s interpretation of any provisions of this chapter or a request for a variance.

H. “Appeal Board” means the Board of Adjustment, as provided for in Chapter 17.36 of this Code.

I. “Applicant” means any individual, partnership, corporation, association, company or public body, including the federal government or any political subdivision, agency, corporation or instrumentality of the state applying for a floodplain development permit pursuant to these regulations.

J. “Area of Shallow Flooding” means a designated AO or AH zone on the City’s Flood Insurance Rate Map (FIRM) with a one percent chance 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.

K. “Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year. The term is used interchangeably with “Intermediate Regional Flood,” “one hundred year flood” and “one percent chance flood.”

L. “Base Flood Elevation (BFE)” means the elevation shown on a FEMA Flood Insurance Rate Map for Zones A, AE, AH, AO, or A1-99 that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

M. “Basement” means any area of the building having its floor sub-grade (below ground level) on all sides.

N. “Channel” means a natural or artificial watercourse of perceptible extent with definite bed and banks which confines and conducts continuously or intermittently flowing water.

O. “Channelization” means the artificial creation, enlargement or realignment of a stream channel.

P. “Code of Federal Regulations (CFR)” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. It is divided into fifty (50) titles that represent broad areas subject to federal regulation.

Q. “Conditional Letter of Map Revision (CLOMR)” means FEMA’s comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

R. “Critical Facility” means a structure or related infrastructure, but not the land on which it is situated, as specified in Section 21.10.050(G), that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the City at any time before, during and after a flood.

S. “Crawl Space” means a type of foundation in which the lowest floor of a house is elevated above the ground on continuous foundation walls, creating an uninhabitable enclosed area.

T. “Development” means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

U. “Digital Flood Insurance Rate Map (DFIRM)” means FEMA digital floodplain map. These digital maps serve as “regulatory floodplain maps” for insurance and floodplain management purposes.

V. “Elevated Building” means a non-basement building: (1) built, in the case of a building in Zones A, AE, A1-99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water; and (2) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A, AE, A1-99, AO, AH, B, C, X, and D, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

W. “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.”

X. “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 a City.

Y. “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).

Z. “Federal Register” means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

AA. “FEMA” means Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

BB. “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 or tidal waters;
2. The unusual and rapid accumulation or runoff of surface waters from any source;
3. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

CC. “Flood Insurance Rate Map (FIRM)” means an official map of the City, on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the City.

DD. “Flood Insurance Study (FIS)” means the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

EE. “Floodplain or Flood-Prone Area” means any land area susceptible to being inundated by water from any source (see definition of flooding).

FF. “Floodplain Development Permit” means an official document required by this chapter for development within any Special Flood Hazard Area (SFHA) to ensure that proposed development projects meet the requirements of the NFIP and this chapter.

GG. “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.

HH. “Floodplain Management Regulations” means zoning chapters, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinances, grading ordinances and erosion control ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

II. “Flood Control Structure” means a physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

JJ. “Flood Protection System” means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the City subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

KK. “Flood Proofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

LL. “Floodway (Regulatory Floodway)” means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The designated height to be used for all newly studied reaches shall be one-half foot (six (6) inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

MM. “Freeboard” means the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

NN. “Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

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

PP. “Historic Structure” means any structure that is:

1. 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;
2. 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;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

QQ. “Levee” means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMS as providing flood protection, the levee structure must meet the requirements set forth in Title 44 CFR Chapter 1, 65.10.

RR. “Levee System” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

SS. “Letter of Map Revision (LOMR)” means FEMA’s official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

TT. “Letter of Map Revision Based on Fill (LOMR-F)” means FEMA’s modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

UU. “Lowest Adjacent Grade” means the lowest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

VV. “Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3, NFIP Regulations.

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

XX. “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.

YY. “Mean Sea Level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or 1988 or other datum, to which base flood elevations shown on the City’s Flood Insurance Rate Map are referenced.

ZZ. “Material Safety Data Sheet (MSDS)” also sometimes known as Safety Data Sheet (SDS) aligning with the Globally Harmonized System (GHS) of Classification and Labelling of Chemicals means a form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

AAA. “Mixed-Use Structure” means any structure with both residential and nonresidential uses. (Ord. 33-2019)

BBB. “National Flood Insurance Program Regulations (CFR 44/NFIP)” means regulations created within the federal program established with the passage of the National Flood Insurance Act of 1968 in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act and administered by the Federal Emergency Management Agency (FEMA) enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the federal government that states if the City will adopt and enforce floodplain management regulations to reduce future flood risks to new construction in Special Flood Hazard Areas, the federal government will make flood insurance and disaster assistance available within the City as a financial protection against flood losses. The regulations are contained within the Code of Federal Regulations Title 44.

CCC. “New Construction” means, for the purpose 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 a floodplain management regulation adopted by the City and includes any subsequent improvements to such structures.

DDD. “New 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 on or after the effective date of floodplain management regulations adopted by the City.

EEE. “No-Rise Certification” means a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

FFF. “Nonconforming Use” means any structure, development or land use not permitted under the terms and provisions of this Regulation but in existence on the effective date of this Regulation.

GGG. “Nonresidential Structure” means any structure used exclusively for, or designed as and capable of being used for, office, commercial, industrial, or governmental occupation, or the temporary lodging of persons for periods of less than thirty (30) days, including hotels, motels, a boarding house, emergency shelters, and overnight shelters. (Ord. 33-2019)

HH. “Obstruction” means any dam, wall embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, culvert, building, fence, stockpile, refuse, fill, structure, or matter in, along, across or projecting into any floodplain which might impede, retard or change the direction of a flow of water, either by itself or by catching or collection debris carried by such water.

III. “Permanent Foundation” means reinforced piers, posts, piles, poured concrete walls, reinforced block walls, or compacted fill in use as a permanent foundation for a manufactured home or mobile building. Stacked concrete blocks shall not be considered to constitute a permanent foundation.

JJJ. “Physical Map Revision (PMR)” means FEMA’s action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or planimetric features.

KKK. “Recreational Vehicle” means a vehicle which is:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

LLL. “Regulatory Flood Protection Elevation” means the elevation one foot above the water surface elevation of the base flood.

MMM. “Residential Structure” means any structure that is used for, or designed as and capable of being used for, the temporary or permanent domicile of persons for periods of thirty (30) days or more, including, without limitation, a dwelling unit, a boarding house, a bed and breakfast, and similarly used structures. (Ord. 33-2019)

NNN. “Special Flood Hazard Area (SFHA)” means the land in the floodplain within the City subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, or A1-99.

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

PPP. “Structure” means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

QQQ. “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure just prior to when the damage occurred.

RRR. “Substantial Improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before “start of construction” of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This 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 which have been identified by the local code enforcement official and which are the minimum necessary 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.”

SSS. “Threshold Planning Quantity (TPQ)” means a quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the state that such facilities are subject to emergency planning requirements.

TTT. “Variance” means a grant of relief to a person from the requirement of this chapter when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this chapter. (For full requirements see Section 60.6 NFIP Regulations.)

UUU. “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 a floodplain development permit, the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the NFIP Regulations is presumed to be in violation until such time as that documentation is provided.

VVV. “Watercourse” means a natural or artificial channel, depression dry wash, slough, gulch, arroyo, stream, creek, drainage way, pond reservoir or lake in which water flows either continuously, intermittently or periodically.

WWW. “Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. (Ord. 12-2019 § 12)

21.10.030 General provisions.

A. Lands to Which This Chapter Applies. This chapter shall apply to all SFHAs and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the City.

B. Basis for Establishing the Special Flood Hazard Area. The SFHA identified by FEMA in a scientific and engineering report entitled, “The Flood Insurance Study for Fremont County, Colorado and incorporated areas,” dated July 3, 2012, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter. These SFHAs identified by the FIS and attendant mapping are the minimum area of applicability of this chapter and may be supplemented by studies designated and approved by the City. The Floodplain Administrator shall keep a copy of the FIS, DFIRMs, FIRMs and/or FBFMs on file and available for public inspection.

C. Establishment of Floodplain Development Permit. A Floodplain Development Permit shall be required to ensure conformance with the provisions of this chapter.

D. Compliance. No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations. Nothing herein shall prevent the City from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

E. Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

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

1. Considered as minimum requirements;
2. Liberally construed in favor of the City; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

G. Warning and Disclaimer or Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the SFHAs or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

H. Severability. If any section, clause, provision or portion of these regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby and are hereby declared to be necessary for the public health, safety and welfare.

I. Amendments. The regulations, restrictions and boundaries set forth in these regulations may, from time to time, be amended, supplemented, changed or repealed in accordance with the appropriate process. (Ord. 12-2019 § 12)

21.10.040 Administration.

A. Designation of the Floodplain Administrator. The City Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

B. Duties and Responsibilities of the Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this chapter including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by this chapter;
2. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;

3. Review, approve or deny all applications for floodplain development permits required by adoption of this chapter;

4. Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;

5. Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this chapter, including proper elevation of the structure;

6. Where interpretation is needed as to the exact location of the boundaries of the SFHAs (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;

7. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the FEMA;

8. Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

9. When base flood elevation data has not been provided in accordance with Section 21.10.030(B), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of Section 21.10.050;

10. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the City's FIRM, unless it is demonstrated in accordance with Section 21.10.050(E) and applicable NFIP standard practices 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-half foot at any point within the City;

11. Under the provisions of Title 44 CFR Chapter 1, Section 65.12, NFIP Regulations, the City may approve certain development in Zones A1-30, AE, AH, on the City's FIRM which increases the water surface elevation of the base flood by more than one-half foot, provided that the City first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.

C. Permit Procedures.

1. Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by the Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to the SFHA. Additionally, the following information is required:

a. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

b. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;

c. A registered professional engineer shall submit a certification to the Floodplain Administrator that the standards of this chapter are satisfied;

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

e. Maintain a record of all such information in accordance with Section 21.10.040(B)(1).

2. Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

a. The danger to life and property due to flooding or erosion damage;

b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

c. The danger that materials may be swept onto other lands to the injury of others;

d. The compatibility of the proposed use with existing and anticipated development;

e. The safety of access to the property in times of flood for ordinary and emergency vehicles;

f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

h. The necessity to the facility of a waterfront location, where applicable;

i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

j. The relationship of the proposed use to the comprehensive plan for that area;

k. The public and private facilities such as electrical, gas, sewer, and water systems that must be located within or across a floodway are designed by a registered professional engineer and certified that the flood hazard has been appropriately considered and that all Colorado Department of Health regulations regarding design and construction of such facilities are followed; and

l. A proposed development does not increase the depth of flooding in the floodway, increase flow velocities, adversely change the direction of flow, adversely affect public health, safety, and general welfare, and decrease the flood carrying capacity within the altered or relocated portion of the water course.

3. Processing of Application.

a. An application shall not be accepted until it is completed as specified;

b. If deemed incomplete by the Administrator, the additional information required will be specified;

c. If an application involves a development downstream from a dam and reservoir subject to review and approval of the State Engineer, the Administrator shall refer the application to the Dam Safety Section, Colorado Division of Water Resources, for review and comment;

d. The Administrator shall review applications for conformance with these regulations, and within thirty (30) days of receiving completed applications, report the results of such review to applicants;

e. If an application involves an allowed use, the Administrator shall, within fifteen (15) days of completing the review, either:

i. Grant a Floodplain Development Permit if the proposal complies with the provisions of these regulations, and establish any conditions deemed appropriate for the particular proposal, or

ii. Deny a Floodplain Development Permit if the proposal does not comply with the provisions of these regulations, and document the reasons for the denial;

f. Applicant shall pay nonrefundable fees in the amount of sixty dollars (\$60.00), but in no event shall such amount exceed the cost incurred in the review and approval of the permit application, including all hearings conducted therefor and any applicable recording fees as set forth by the Fremont County Clerk and Recorder;

g. Floodplain Development Permits shall be issued on the form provided by the Administrator. The Administrator shall present a certified copy of the permit to the Fremont County Clerk and Recorder for official recording. Copies of the permit or a notice thereof shall be sent, on payment of the cost of reproduction, to any other person or entity requesting a copy.

D. Variance Procedures.

1. The Appeal Board as established in Chapter 17.36 of this Code shall hear and render judgment on requests for variances from the requirements of this chapter.

2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision, as provided by law.

4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the FEMA upon request.

5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.

6. Variances may not be issued for new construction and substantial improvements using size of project or property as a factor.

7. Factors to be considered in granting a variance shall include technical evaluations and all relevant factors and standards specified in this chapter.

8. Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.

9. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

10. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

11. Prerequisites for Granting Variances.

a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

b. Variances shall only be issued upon:

i. Showing a good and sufficient cause;

- ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - iii. A 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 chapters;
 - c. Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Regulatory Flood Protection Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
12. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- a. The criteria outlined in this section are met; and
 - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. (Ord. 12-2019 § 12)

21.10.050 Provisions for flood hazard reduction.

A. General Standards. In all SFHAs the following provisions, except as stated in Section 21.10.050(E) for designated Floodways, are required for all new construction and substantial improvements:

- 1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- 2. All new construction or substantial improvements shall be designed to include additional floodproofing sufficient to withstand floodwaters that attain a velocity greater than three (3) feet per second as determined by the design engineer; (Ord. 33-2019)
- 3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- 4. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- 5. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- 6. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- 7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters;
- 8. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;

9. When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the City's FIRM, unless it is demonstrated in accordance with Section 21.10.050(E) and applicable NFIP standard practices 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-half foot at any point within the City;

10. Under the provisions of Title 44 CFR Chapter 1, Section 65.12, NFIP Regulations, the City may approve certain development in Zones A1-30, AE, AH, on the City's FIRM which increases the water surface elevation of the base flood by more than one-half foot, provided that the City first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval;

11. Prohibited Uses. No uses shall be permitted which alone or cumulatively with other such uses would cause or result in:

- a. The storing or processing of materials that are buoyant, flammable, explosive or otherwise potentially injurious to human, animal or plant life;
- b. The disposal of garbage or other solid or liquid waste materials; and
- c. The potential of solid debris or waste being carried downstream;

12. Allowed Uses. The following structures and uses are allowed:

- a. All permanent structures are allowed provided that the conditions and standards of this chapter are adhered to; (Ord. 33-2019)
- b. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry and sod farming;
- c. Private and public recreational uses, such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, trap and skeet ranges, hunting and fishing areas, fish hatcheries and hiking and equestrian trails;
- d. Open area residential uses such as lawns, gardens, parking areas and play areas;
- e. Uses accessory to open space; and
- f. Railroads, streets, bridges, utility lines and facilities, and structures for irrigation, drainage, flood control or water diversion.

B. Specific Standards. In all SFHAs where base flood elevation data has been provided as set forth in this chapter, the following provisions are required:

1. Residential Construction. With the exception of Critical Facilities, outlined in Section 21.10.050(H), new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the Regulatory Flood Protection Elevation. A registered professional engineer shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 21.10.040(C) is satisfied. A certification shall be prepared based on the construction plans and second one for the finished construction prior to occupation of the structure; (Ord. 33-2019)

2. Nonresidential Construction. With the exception of Critical Facilities, outlined in Section 21.10.050(H), new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the Regulatory Flood Protection Elevation or together with attendant utility and sanitary facilities, be designed so that below the Regulatory Flood Protection Elevation 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. All areas of the structure intended for lodging shall be elevated to or above the Regulatory Flood Protection Elevation. A registered professional engineer shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. A registered professional engineer shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 21.10.040(C), is satisfied. A certification shall be prepared based on the construction plans and second one for the finished construction prior to occupation of the structure or use of the property; (Ord. 33-2019)

3. Mixed-Use Construction. With the exception of Critical Facilities, outlined in Section 21.10.050(H), new construction and substantial improvements of any mixed-use structure shall either have the lowest floor (including basement) elevated to or above the Regulatory Flood Protection Elevation or together with attendant utility and sanitary facilities, be designed so that below the Regulatory Flood Protection Elevation 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 and all areas of the structure intended for as overnight stay of persons (guest rooms) or used for, or designed as and capable of being used for, the temporary or permanent domicile of persons, or a portion of such a domicile are elevated to or above the Regulatory Flood Protection Elevation. A registered professional engineer shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator. A registered professional engineer shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 21.10.040(C), is satisfied. A certification shall be prepared based on the construction plans and second one for the finished construction prior to occupation of the structure or use of the property; (Ord. 33-2019)

4. Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Enclosures below the lowest floor shall not be permitted if there is the potential for the storing or processing of materials that are buoyant, flammable, explosive or otherwise potentially injurious to human, animal or plant life. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

a. A minimum of two (2) 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;

- b. The bottom of all openings shall be no higher than one foot above grade; and
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

5. Below-Grade Residential Crawlspace Construction. New residential construction and substantial improvements, with a crawlspace below the lowest floor and which are subject to flooding shall be designed according to the criteria in Section 21.10.050(B)(3) and the following:

- a. Have the interior grade elevation that is below the Regulatory Flood Protection Elevation no lower than two (2) feet below the lowest adjacent grade;
- b. Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall not to exceed four (4) feet at any point;
- c. Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;
- d. Be constructed with materials and utility equipment that is flood proof; and
- e. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

6. Manufactured Homes.

a. Require that manufactured homes that are placed or substantially improved within a special flood hazard area on sites: (i) outside of a manufactured home park or subdivision; (ii) in a new manufactured home park or subdivision; (iii) in an expansion to an existing manufactured home park or subdivision; or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the Regulatory Flood Protection Elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. A registered professional engineer shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 21.10.040(C) is satisfied. A certification shall be prepared based on the construction plans and second one for the finished construction prior to occupation of the structure or use of the property;

b. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision within a special flood hazard area that are not subject to the provisions of subsection (B)(4) of this section be elevated so that either:

- i. The lowest floor of the manufactured home is at or above the Regulatory Flood Protection Elevation; or
- ii. 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 (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement;

7. Recreational Vehicles. Require that recreational vehicles placed on sites within SFHA on the City’s FIRM either:

- a. Be on the site for fewer than one hundred eighty (180) consecutive days;
- b. Be fully licensed and ready for highway use; or

c. Meet the permit requirements of Section 21.10.040(C), and the elevation and anchoring requirements for “manufactured homes” in Subsection (B)(4) of this section. 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;

8. Prior Approved Activities. Any activity for which a Floodplain Development Permit was issued by the City or a CLOMR was issued by FEMA prior to July 3, 2012 may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this chapter if it meets such standards.

C. Standards For Subdivision Proposals.

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Section 21.10.010(B), (C), and (D) of this chapter.

2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Subsection 21.10.030(C); Subsection 21.10.040(C); and the provisions of Section 21.10.050 of this chapter.

3. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Subsection 21.10.030(B) or Subsection 21.10.040(B) of this chapter.

4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, regardless of SFHA designation, the proposal shall minimize flood damage.

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

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

D. Standards For Areas of Shallow Flooding (AO/AH Zones). Located within the SFHA established in Subsection 21.10.030(B), may be areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot higher than the depth number specified in feet on the City’s FIRM (at least three (3) feet if no depth number is specified);

2. All new construction and substantial improvements of non-residential structures, except Critical Facilities, outlined in Section 21.10.050(H): (Ord. 33-2019)

a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot higher than the depth number specified in feet on the City’s FIRM (at least three (3) feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities be designed so that below the Regulatory Flood Protection Elevation 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 of effects of buoyancy;

3. A registered professional engineer shall submit a certification to the Floodplain Administrator that the standards of this chapter, as proposed in Subsection 21.10.040(C), are satisfied;

4. Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

E. Floodways. Floodways, located within a SFHA established in Subsection 21.10.030(B), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, alterations, 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 by a licensed Colorado Professional Engineer that the proposed encroachment would not result in any increase in flood levels (No-Rise Certification) within the City during the occurrence of the base flood discharge;

2. Prohibited Uses:

- a. Mobile structures for any purpose;
- b. Residential structures;
- c. Any mixed-use structure with residential uses on the ground level;
- d. Any nonresidential structure with lodging on the ground level;
- e. The development or use of public and commercial overnight campgrounds and travel trailer parks;
- f. The storing or processing of materials that are buoyant, flammable, explosive or otherwise potentially injurious to human, animal or plant life;
- g. The disposal of garbage or other solid or liquid waste materials;
- h. Activities causing potential of solid debris or waste being carried downstream; and
- i. An obstruction or encroachment that would adversely affect the efficiency of the floodway or change the direction of flow or increase base flood heights. (Ord. 33-2019)

3. If Section 21.10.050(E)(1) and (2) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 21.10.050;

4. Under the provisions of Title 44 CFR Chapter 1 Section 65.12, NFIP Regulations, the City may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the City first applies for a conditional FIRM and floodway revision through FEMA, fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.

F. Alteration of a Watercourse. For all proposed developments that alter a watercourse within a SFHA, the following standards apply:

1. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design;

2. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain;

3. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable federal, state and local floodplain rules, regulations and ordinances;

4. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist;

5. All activities within the regulatory floodplain shall meet all applicable federal, state and City floodplain requirements and regulations;

6. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is no rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the City first applies for a CLOMR and Floodway revision in accordance with Subsection D of this section, fulfills the requirements for such revisions as established under the applicable regulations and receives FEMA approval; and

7. Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

G. Properties Removed From the Floodplain by Fill. A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), with a lowest floor elevation placed below the Regulatory Flood Protection Elevation that existed prior to the placement of fill.

H. Standards For Critical Facilities. A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the City at any time before, during and after a flood.

1. Classification of Critical Facilities. Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services. It is the responsibility of the City to identify and confirm that specific structures in the City meet the following criteria:

a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines. These facilities consist of:

i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);

ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors' offices, and non-urgent care medical structures that do not provide these functions);

iii. Designated emergency shelters;

iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);

v. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and

vi. Air Transportation lifelines (airports, municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars); Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.

vii. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the City that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this section, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the City on an as-needed basis upon request.

b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:

i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);

ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;

iii. Refineries;

iv. Hazardous waste storage and disposal sites; and

v. Above ground gasoline or propane storage or sales centers.

vi. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, and the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either five hundred (500) pounds or the TPQ listed (whichever is lower) for the three hundred fifty-six (356) chemicals listed under 40 C.F.R. Section 302 (2010), also known as Extremely Hazardous Substances (EHS); or ten thousand (10,000) pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. Section 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable

Quantities, and Notification,” 40 C.F.R. Section 302 (2010) and OSHA regulation “Occupational Safety and Health Standards,” 29 C.F.R. Section 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation of this chapter, but exclude later amendments to or editions of the regulations. Specific exemptions to this category include:

(A) Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.

(B) Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.

(C) Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this section.

c. At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:

- i. Elder care (nursing homes);
- ii. Congregate care serving twelve (12) or more individuals (day care and assisted living);
- iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving twelve (12) or more children.

d. Facilities vital to restoring normal services including government operations. These facilities consist of:

- i. Essential government operations (public records, courts, jails, building permitting and inspection services, public administration and management, maintenance and equipment centers);
- ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the City that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this chapter, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the City on an as-needed basis upon request.

2. Protection For Critical Facilities. All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this chapter, protection shall include one of the following:

- a. Location outside the SFHA; or
- b. Elevation or floodproofing of the structure to at least two (2) feet above the Base Flood Elevation.

3. Ingress and Egress For New Critical Facilities. New Critical Facilities shall, when practicable as determined by the City, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

I. Exemption—Nonconforming Uses. The provisions of these regulations shall not apply to a nonconforming use existing on the date the area in which the nonconforming use is located becomes subject to regulation, provided that: (1) when such nonconforming use is discontinued for six (6) months or more; or (2) a nonconforming structure is damaged or destroyed by flood, fire, wind or any other means to the extent of at least fifty percent (50%) of the market value, and reuse, reconstruction or replacement of such structure shall be deemed a new use and shall be subject to the provisions of these regulations. Substantial improvement, as herein defined, to any nonconforming structure or use must result in the permanent change of the structure or use to a conforming use or structure. (Ord. 12-2019 § 12)

21.10.060 Enforcement and penalties.

A. Access and Inspection of Properties and Facilities.

1. The Administrator is hereby empowered and directed to inspect, in or upon any premises and examine the use, occupation or development of floodplains subject to these regulations for the purpose of determining from time to time whether any use, occupation, development or activity is in violation of any of the provisions of these regulations or any permit issued or required pursuant to this or other applicable regulations or chapters. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry. The investigation may include, but is not limited to, the following: surveying; measuring; taking of photographs; interviewing persons; and access to any and all facilities or areas within the premises that may have any effect on the violation.

2. If the violation constitutes an immediate danger to public health and public safety, the Administrator is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the violation.

3. If a violation is found to exist, the Administrator shall by written order direct that such remedial action be taken forthwith as will result in full compliance with the applicable provisions of these regulations; provided, however, that the issuance of such order shall in no way or manner be deemed a prerequisite to the institution of such enforcement proceedings as are set forth in these regulations; and provided further, that, compliance with such order shall not necessarily be deemed a defense to any alleged violation of these regulations, in any court action instituted seeking full compliance therewith, but evidence of compliance with such order may be introduced as pertinent to mitigation and extenuation.

4. If the work necessary to abate the violation is not completed as directed by the Administrator, the City may take corrective measures and charge the cost of such corrective measures to the violator. Such costs shall include the actual cost of the work deemed necessary by the Administrator, plus reasonable administrative and inspection costs and any penalties imposed pursuant to these regulations.

B. Violations and Remedial Actions.

1. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of these regulations, the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

2. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter 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 any provision of this chapter or fails to comply with any of its requirements, upon conviction thereof, shall be punished by a fine in an amount that does not exceed the maximum fine provided for in Section 1.28.010 for each violation and, in addition, shall pay all costs and expenses involved in the case.

3. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 12-2019 § 12)
