

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2020

Ordinance No. 20-05

AN ORDINANCE REPEALING AND RE-ENACTING ARTICLES I-V OF CHAPTER 15 OF THE LONE TREE MUNICIPAL CODE CONCERNING STORM DRAINAGE, GRADING, EROSION AND SEDIMENT CONTROL, AND FLOODPLAIN DEVELOPMENT; ADOPTING SUCH ARTICLES AND THE CODES ADOPTED THEREIN BY REFERENCE; AND PROVIDING PENALTIES FOR VIOLATIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE, COLORADO:

ARTICLE 1 – AUTHORITY

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Municipal Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

ARTICLE 2 – DECLARATIONS OF POLICY

- A. The City Council previously adopted regulations and standards to address storm drainage, grading, erosion and sediment control, and floodplain management to adequately protect the public health, safety and welfare of the community ("Regulations"). These Regulations are codified in Articles I through V of Chapter 15, titled *Public Works*, of the Municipal Code.
- B. The City desires to amend provisions in the Regulations to include:
- Updated Flood Insurance Study for Douglas dated September 4, 2020 (including all accompanying maps);
 - Allowing for zero foot rise in floodplain from any new or proposed development;
 - Increasing and standardizing penalties to be consistent with the City's standard penalty provision in Article IV of Chapter 1 of the Municipal Code;
 - Establish a two-foot flood protection elevation; and
 - Adoption of Mile High Flood Control District restrictions on permitted uses in the floodplain.

- C. The City Council wishes to update and improve the Regulations and standards for development in relation to storm drainage management, grading and erosion control, and floodplain management in furtherance of the public health, safety and welfare.

ARTICLE 3 – SAFETY CLAUSE

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

ARTICLE 4 – REPEAL AND RE-ENACTMENT

Articles I through V of Chapter 15 of the Municipal Code, titled *Public Works*, are hereby repealed in their entirety and re-adopted by reference as fully set forth in Exhibit A, attached to and incorporated in this Ordinance. In addition, the following codes, studies, maps and reports referenced in Chapter 15 are hereby adopted by reference as amended:

- Douglas County Storm Drainage Design and Technical Criteria Manual;
- Douglas County Grading, Erosion and Sediment Control Manual;
- Flood Insurance Study for Douglas County dated September 4, 2020 as updated from time to time with accompanying Flood Insurance Rate Maps (FIRMs), Digital Flood Rate Maps (DFIRMs) and Flood Boundary Floodway Maps (FBFMs), and any revisions thereto.

ARTICLE 5- PENALTIES

The following penalty provision is adopted by this Ordinance, as provided in Exhibit A:

Section 15-1-60 – Penalties.

- (a) Violations of any of the provisions of this Chapter, including violations of conditions of approval, shall constitute a municipal offense subject to the penalties set forth in Section 1-4-20 of this Code. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- (b) This Chapter may be enforced by injunction, or other civil actions, and the City shall be entitled to an award of its costs including attorney's fees.
- (c) The Director of Public Works or his/her designated representative is authorized to order work stopped on any project which is not in compliance with the provisions of this Chapter.
- (d) The City may withhold issuance of building permits or certificates of occupancy for any project which is not in compliance with the provisions of this Chapter.

ARTICLE 6 – CAUSES OF ACTION RETAINED

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

ARTICLE 7 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

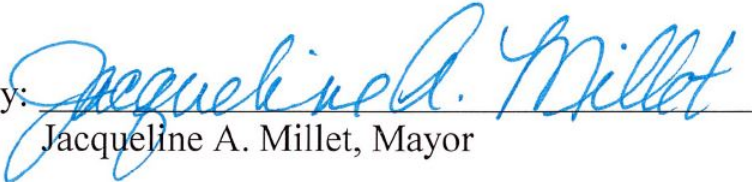
ARTICLE 8 - EFFECTIVE DATE

Pursuant to Article V, Section 7 of the Charter, this Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED, READ AND ORDERED PUBLISHED ON AUGUST 4, 2020.
PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON AUGUST 6, 2020
(LEGAL NOTICE NO. 937759).**

**APPROVED AND ADOPTED ON SECOND READING ON AUGUST 18, 2020, TO
BECOME EFFECTIVE ON SEPTEMBER 5, 2020.**

CITY OF LONE TREE

By: 
Jacqueline A. Millet, Mayor

ATTEST:


Jay Robb, City Clerk



EXHIBIT A

ADOPTION BY REFERENCE

CHAPTER 15 – PUBLIC WORKS

[Exhibit begins on the next page]

CHAPTER 15 - Public Works

ARTICLE I - Adoption of Codes by Reference

Sec. 15-1-10. - Adoption by reference: Storm Drainage Design and Technical Criteria Manual.

- (a) The Douglas County Storm Drainage Design and Technical Criteria Manual, as amended, revised and updated, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the City of Lone Tree Storm Drainage Design and Technical Criteria Manual. Except as otherwise provided, this code is adopted in full.
- (b) One (1) copy of the Douglas County Storm Drainage Design and Technical Criteria Manual, as amended by this Chapter, certified to be a true copy by the Mayor and City Clerk, shall be on file in the office of the City Clerk and on the City's website for public inspection.

Sec. 15-1-20. - Amendments.

The Douglas County Storm Drainage Design and Technical Criteria Manual (the "Manual") is amended as follows:

- (1) *Authority* means the City Council of the City of Lone Tree.
- (2) *Jurisdiction* means the City of Lone Tree.
- (3) *Douglas County, County, unincorporated area of Douglas County or unincorporated Douglas County* means the City of Lone Tree.
- (4) *Board of County Commissioners* means the City Council of the City of Lone Tree, unless the context refers to a specific action previously taken by the Douglas County Board of County Commissioners.
- (5) *Department of Public Works, Douglas County Department of Public Works or County Department of Public Works* means the City of Lone Tree Department of Public Works.
- (6) *Director of Engineering Services, Douglas County Director of Engineering Services or County Director of Engineering Services* means the City of Lone Tree Director of Public Works or a designee.
- (7) *Douglas County Zoning Resolution* means the City of Lone Tree Zoning Code.
- (8) Section 1.1 of the Manual, "Enactment Authority," is amended to read:

"The *Regulations* have been adopted pursuant to applicable sections of the City of Lone Tree Codes, the Constitutional authority given to home rule cities and the Colorado Revised Statutes, as amended."
- (9) All references to the "Chatfield Reservoir watershed" are deleted.
- (10) All references to the "Chatfield Watershed Authority" are deleted.
- (11) All references to the "Douglas County Comprehensive Master Plan" are deleted.
- (12) Section 5.2 of the Manual, "Floodplain Management and Regulation," (introductory paragraph) is amended to read as follows:

"The City of Lone Tree Codes are the governing regulations for the Floodplain Overlay District and Flood Damage Prevention in the City of Lone Tree."
- (13) Section 5.2.6 of the Manual, "Floodplain Development Regulations," is amended by replacing the first sentence of that Manual Section with the following:

"The floodplain development regulations that have been adopted by the City of Lone Tree are incorporated into the City of Lone Tree Codes."

Sec. 15-1-30. - Adoption by reference: Grading, Erosion and Sediment Control Manual.

- (a) The Douglas County Grading, Erosion and Sediment Control Manual, as amended, revised and updated from time to time, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the City of Lone Tree Grading, Erosion and Sediment Control (GESC) Manual. Except as otherwise provided, this code is adopted in full.
- (b) One (1) copy of the Douglas County Grading, Erosion and Sediment Control Manual, as amended by this Chapter, certified to be a true copy by the Mayor and City Clerk, shall be on file in the office of the City Clerk and on the City's website for public inspection.

Sec. 15-1-40. - Amendments.

The Douglas County Grading, Erosion and Sediment Control Manual (the "Manual") is amended as follows:

- (1) *Authority* means the City Council of the City of Lone Tree.
- (2) *Jurisdiction* means the City of Lone Tree.
- (3) *Douglas County, County, unincorporated area of Douglas County or unincorporated Douglas County* means the City of Lone Tree.
- (4) *Board of County Commissioners* means the City Council of the City of Lone Tree, unless the context refers to a specific action previously taken by the Douglas County Board of County Commissioners.
- (5) *Department of Public Works, Douglas County Department of Public Works or County Department of Public Works* means the City of Lone Tree Department of Public Works.
- (6) *Director of Engineering Services, Douglas County Director of Engineering Services or County Director of Engineering Services* means the City of Lone Tree Director of Public Works or a designee.
- (7) *Douglas County Zoning Resolution* means the City of Lone Tree Zoning Code.
- (8) *Engineering Permits Technician, Douglas County Engineering Permits Technician or County Engineering Permits Technician* means the City of Lone Tree Director of Public Works or a designee.
- (9) *Section 31 of the Douglas County Zoning Resolution* means the City of Lone Tree Zoning Code.
- (10) *Section 31A of the Douglas County Zoning Resolution* means the City of Lone Tree Zoning Code.
- (11) *Engineering Permits and Inspections Office, Douglas County Engineering Permits and Inspections Office or County Engineering Permits and Inspections Office* means the City of Lone Tree Department of Public Works.
- (12) Sections referencing the "Chatfield Reservoir Control Regulation No. 73" are deleted.
- (13) Sections of the Manual pertaining to permitting for Temporary Batch Plants are deleted.

- (14) The Section of the Manual, "Authorization of the GESC Manual," shall remain unchanged, without substitution of terms.
- (15) The Section of the Manual, "GESC Plan Standard Notes and Details," Appendix B and other references to the "Douglas County GESC Plan Standard Notes and Details, consisting of 14 sheets" are amended to read "City of Lone Tree GESC Plan Standard Notes and Details" as amended.
- (16) The Sections and Appendices of the Manual are amended to reference the City of Lone Tree GESC Checklist Template and GESC Report Certification, as applicable.
- (17) All references to "Engineering Division shall release any holds ..." are amended to read "Public Works shall release any GESC Compliance associated holds"
- (18) The Section of the Manual, "Control of Noxious Weeds," is amended to add Russian Olives (*Elaeagnus angustifolia*) to the list of noxious weeds that are to be removed from all project sites.
- (19) The Appendix of the Manual, "Contact List," is amended to include:
 - a. City of Lone Tree Public Works Department, cityoflonetree.com, Lone Tree, Colorado 80124, (303) 662-8112.
 - b. City of Lone Tree Building Department, cityoflonetree.com, Lone Tree, Colorado 80124, (303) 708-1818.
- (20) The Appendix of the Manual, "Acceptance Block," is amended to reference the City of Lone Tree CD Acceptance Block.
- (21) The Appendix of the Manual is amended to reference the City of Lone Tree GESC Opinion of Probable Cost Template.
- (22) The Appendix of the Manual is amended to reference the City of Lone Tree Grading, Erosion and Sediment Control (GESC) Permit Application.
- (23) The Appendix of the Manual is amended to reference the City of Lone Tree Irrevocable Letter of Credit Form.
- (24) Section 5.10.1 of the Manual is deleted and retained as "Reserved".

Sec. 15-1-50. - Adoption by reference: Flood Insurance Study for Douglas County, Colorado and Incorporated Areas.

- (a) The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas, a scientific and engineering report by the Federal Emergency Management Agency, dated September 4, 2020, as amended, revised and updated from time to time, with accompanying Flood Insurance Rate Maps, Digital Flood Rate Maps and Flood Boundary Floodway Maps, and any revisions thereto, is hereby adopted by reference and incorporated into this Article as though fully set forth herein. Except as otherwise provided, this flood insurance study is adopted in full.
- (b) One (1) copy of The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas, dated September 4, 2020, as amended, revised and updated from time to time, with accompanying Flood Insurance Rate Maps, Digital Flood Rate Maps and Flood Boundary

Floodway Maps, and any revisions thereto, certified to be a true copy by the Mayor and City Clerk, shall be on file in the office of the City Clerk and on the City's website for public inspection.

Sec. 15-1-60 – Penalties.

- (e) Violations of any of the provisions of this Chapter, including violations of conditions of approval, shall constitute a municipal offense subject to the penalties set forth in Section 1-4-20 of this Code. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- (f) This Chapter may be enforced by injunction, or other civil actions, and the City shall be entitled to an award of its costs including attorney's fees.
- (g) The Director of Public Works or his/her designated representative is authorized to order work stopped on any project which is not in compliance with the provisions of this Chapter.
- (h) The City may withhold issuance of building permits or certificates of occupancy for any project which is not in compliance with the provisions of this Chapter.

ARTICLE II - Stormwater Management; Grading, Erosion and Sediment Control; Illicit Discharge

Sec. 15-2-10. - Definitions.

Unless the context otherwise requires, these terms and phrases shall have the following meanings:

Authorized enforcement agent means the City of Lone Tree Public Works Director and designated agents.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of nonstormwater directly or indirectly into stormwater, the MS4, receiving waters or any other stormwater conveyance systems. BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal or drainage from raw materials storage.

Construction activities means any construction activity occurring on the premises, excluding safety-related items and activity required to correct a cited violation.

Construction sites means the premises on which land disturbance activities requiring a GESC permit or DESC permit, as outlined in the GESC Manual, take place or are proposed to take place.

Discharge means any addition or introduction of any pollutant, stormwater or any other substance whatsoever into the MS4 or into waters of the State.

Division means the Colorado Department of Public Health and Environment, Water Quality Control Division.

Drainage, Erosion and Sediment Control (DESC) Permit means a permit obtained from the City prior to commencement of land-disturbing activities as required by the City of Lone Tree GESC Manual.

Grading, Erosion and Sediment Control (GESC) Manual means the City of Lone Tree Grading, Erosion and Sediment Control Manual, as amended.

Grading, Erosion and Sediment Control (GESC) Permit means a permit obtained from the City prior to commencement of land-disturbing activities as required by the City of Lone Tree GESC Manual.

Hazardous materials means any material, including any substance, waste or combination thereof, which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Illicit connections means and shall include:

- a. Any drain or conveyance, whether on the surface or subsurface, which allows or may allow an illicit discharge to enter the MS4, including but not limited to any conveyances which allow any nonstormwater discharge to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agent; or
- b. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records or approved by the authorized enforcement agent.

Illicit discharge means any prohibited direct or indirect nonstormwater discharge into the MS4.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances, including but not limited to sidewalks, roads with drainage systems, streets, catch basins, curbs, gutters, inlets, pumping facilities, retention and detention basins, reservoirs, ditches, natural or human-made channels, or storm drains owned and/or operated by the City and designed or used for collecting or conveying stormwater and which is not used for collecting or conveying sewage.

Nonstormwater discharge means any discharge to the MS4 that is not composed entirely of stormwater, except as specifically allowed herein. *Nonstormwater discharges* may include, but are not limited to: soil sediments from erosion of soils at construction sites; excessive nutrients such as nitrates and phosphates; paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous materials and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind. *Nonstormwater discharges* specifically do not include landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising groundwaters, uncontaminated groundwater infiltration,

uncontaminated pumped groundwater, springs, flows from riparian habitats and wetlands, water line flushing in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Potable Water, discharges from potable water sources in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Potable Water, foundation drains, air conditioning condensation, water from crawl space pumps, footing drains, individual residential car washing, dechlorinated swimming pool discharges in accordance with the Colorado Department of Public Health and Environment's Low Risk Discharge Guidance: Swimming Pools, water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction, dye testing in accordance with the manufacturer's recommendations, stormwater runoff with incidental pollutants, discharges resulting from emergency firefighting activities, discharges authorized by a separate Colorado Discharge Permit System (CDPS) or National Pollutant Discharge Elimination System (NPDES) permit, agricultural stormwater runoff, and discharges that are in accordance with the Colorado Department of Public Health and Environment Water Quality Control Division Low Risk Discharge Guidance documents, as amended.

Person means any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law, whether public or private, corporate or politic.

Pollutant means and shall include, but not be limited to: dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; filter backwash; munitions; chemical wastes; biological materials; toxic materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, recreational and agricultural waste discharged into waters of the State or into the MS4.

Pollute/pollution means alteration of the physical, thermal, chemical or biological quality of, or the contamination of, any water of the State that renders the water harmful, detrimental or injurious to humans, animal life, vegetation, property or the public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Premises means any building, lot, parcel of land or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

Stormwater means any surface flow, runoff or drainage from any form of natural precipitation, including snowmelt.

Stormwater management facility means a facility that includes, but is not limited to, ponds, pipes, channels and other facilities that store, treat or convey stormwater runoff.

Watercourse means a channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainageways, in which stormwater and flood water flows either regularly or infrequently.

Waters of the State means any and all surface and subsurface waters which are contained in or flow in or through the State of Colorado, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems and all water withdrawn for use until use and treatment have been completed.

Sec. 15-2-20. - Illicit discharge detection and elimination — violations.

- (a) It shall be unlawful for any person to discharge or cause to be discharged nonstormwater into the MS4 or waters of the State.
- (b) It shall be unlawful for any person to dump or deposit any nonstormwater onto public or private premises when such dumping or deposit may result in an illicit discharge to the MS4.

Sec. 15-2-30. - Prohibition of illicit connections — violations.

- (a) It shall be unlawful for any person to construct, use, maintain or continue the existence of illicit connections to the MS4.
- (b) It shall be unlawful to connect a line conveying sewage or other nonstormwater discharges to the MS4 or allow such a connection to continue.
- (c) These prohibitions expressly include, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

Sec. 15-2-40. - Implementation of BMPS — violations.

Persons shall provide, at their own expense, and it shall be unlawful to fail to provide, reasonable protection from release of nonstormwater discharges on or into the MS4 or into watercourses through the use of City-approved structural and nonstructural BMPs.

Sec. 15-2-50. - Notification of spills — violations.

- (a) Notwithstanding other requirements of law, as soon as any person has information of any known or suspected release of a nonstormwater discharge into stormwater, or into or on the MS4, or into waters of the State, said person shall take all necessary steps to ensure the containment and cleanup of such release.
- (b) In the event of a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonstormwater discharges, said person shall notify the authorized enforcement agent in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agent within three (3) business days of the phone notice. If the discharge of hazardous materials or nonstormwater discharges emanate from a commercial or industrial establishment, an on-site written record of the discharge and the actions taken to prevent its recurrence shall be retained for at least three (3) years.
- (c) It shall be unlawful for any person not to provide the appropriate notice or recordkeeping as outlined herein.

Sec. 15-2-60. - Grading, erosion and sediment control; drainage, erosion and sediment control — violations.

It shall be unlawful for any person to cause or allow any land-disturbing activity to be conducted in a manner that violates the MS4 permit or the GESC Manual.

Sec. 15-2-70. - Operation and maintenance of stormwater management facilities — violations.

- (a) It shall be unlawful for any person to cause or allow any stormwater management facilities to be operated or maintained in a manner that violates the MS4 permit or the City of Lone Tree Storm Drainage Design and Technical Criteria Manual.

- (b) Stormwater management facilities shall be operated and maintained at all times so their water quality control functions, water quantity control functions and maintenance access are not impaired, which shall include keeping all stormwater management facilities and access areas free of accumulated debris, trash and sediment. Proper water quality and water quantity control functions are defined within the City accepted drainage report and associated construction drawings required by the City of Lone Tree Storm Drainage Design and Technical Criteria Manual.
- (c) Operation and maintenance of all stormwater management facilities shall at all times be conducted in compliance with the City of Lone Tree Storm Drainage Design and Technical Criteria Manual.
- (d) Any modification to a specific, previously approved stormwater management facility, for operation and maintenance, shall require re-submittal of premises-specific plans to the City for approval prior to modification.

Sec. 15-2-80. - Inspections.

The authorized representatives or employees of the City may enter at all reasonable times in or upon any private or public property for the purpose of inspecting or investigating conditions and practices which may constitute a violation of this Article. The authorized enforcement agent and the City of Lone Tree Police Department shall administer, implement and enforce the provisions of this Article.

Sec. 15-2-90. - Administration and enforcement.

(a) Upon determination of a violation, the authorized enforcement agent may:

- (1) Issue a verbal warning if the violation does not pose an immediate threat to life or environment.
- (2) Issue a written notice to persons violating this Article. Such notice shall describe the violation and the level of such violation if it is related to the GESC Manual and may require, without limitation:
 - a. Corrective actions necessary to remediate violations of the GESC manual;
 - b. Corrective actions necessary to ensure proper functioning of the stormwater management facility or easement; and
 - c. For illicit discharges, that monitoring, analyses and reporting be performed; that illicit connections and illicit discharges be eliminated; that nonstormwater pollution or contamination hazards be contained, abated and remediated and any affected property be restored; and that source control or treatment BMPs be implemented.
- (3) Determine that an emergency suspension is necessary and, without prior notice, order the immediate suspension of all construction activities, discharge of nonstormwater into the MS4, and any other activity when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, the health or welfare of persons, the MS4 or the waters of the State. This order may be in the form of a written notice or verbally with written documentation to follow.

- (b) If abatement of a violation or restoration of affected premises is required, the written notice shall set forth a deadline within which such abatement, remediation or restoration must be completed. If the person discharging nonstormwater fails to comply with such written notice, the authorized enforcement agent may take such actions as deemed necessary to prevent or minimize damage to the MS4 or waters of the State.
- (c) The notice of violation shall be served by hand-delivery or by certified mail, return receipt requested. Any such notice shall be deemed valid if it is mailed to the address of the owner of the premises on file with the County Assessor's office for the receipt of tax notices or mailed as otherwise set forth herein. If a person violates this Article and such violation is not associated with a specific premises, then, if the violation is committed by a person other than a legal entity, notice shall be deemed valid if sent to such person at the address on file at any political subdivision or State official records kept for any purpose whatsoever. If a person refuses certified mail, notice shall be deemed valid if sent by prepaid first-class U.S. mail, and such notice shall be deemed effective upon receipt or five (5) calendar days after the date of mailing, whichever is earlier.
- (d) If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, the authorized enforcement agent may:
 - (1) Take such actions as deemed necessary to prevent or minimize damage to the MS4 or waters of the State. The authorized enforcement agent shall collect all costs incurred in taking such additional action.
 - (2) Pursue civil or criminal enforcement.
- (e) All violations of this Article are considered enforceable from the moment of discovery through the timeframe of correction. Any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety and welfare; is declared and deemed a nuisance and may be summarily abated or restored at the violator's expense; and a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

Sec. 15-2-100. - Civil enforcement.

- (a) The authorized enforcement agent may apply to the appropriate court for an administrative entry and seizure warrant permitting the authorized enforcement agent or any additional persons deemed necessary and appropriate to abate the violation to enter the premises and take any and all actions necessary to abate the conditions violating this Article and for restoration of the affected premises.
- (b) Such application to the court shall include a copy of this Article, a sworn or affirmed affidavit stating the factual basis for such warrant, evidence that notice of violation has been provided or that reasonable efforts to serve the notice of violation have been made to no avail and such person has failed to abate the condition within the prescribed period, and a general description of the location of the premises that is the subject of the warrant and a list of corrective actions needed.
- (c) Within ten (10) days after the date of issuance of an administrative entry and seizure warrant, the authorized enforcement agent shall execute the warrant in accordance with directions by the issuing court, deliver or mail a copy of such warrant to the person violating this Article by both certified mail, return receipt requested, and by regular mail, and submit proof of the

execution of such warrant to the court, including a written inventory of any property impounded by the authorized enforcement agent.

- (d) The authorized enforcement agent shall submit to the person violating this Article an invoice for the costs of the abatement, which may include costs for administration, inspection and other incidental costs in connection therewith. Such costs shall be paid within ten (10) days of the date of the invoice. If not paid, collection remedies may include the placing of a lien against the premises that were the subject of the abatement until paid and shall have priority based upon the lien's date of recording.
- (e) Nothing in this Section shall be construed to limit the authorized enforcement agent's institution of actions for violations under this Code, injunction, mandamus, abatement or other appropriate actions to prevent, enjoin, abate or remove a violation of this Article or to enforce this Article.

Sec. 15-2-110. - Concurrent regulation.

This Article is meant to be interpreted and enforced concurrently with other Articles in this Chapter and this Code. In the event of a conflict between this Article and another Section of this Chapter or this Code, the more restrictive requirement shall apply.

ARTICLE III - Flood Damage Prevention

Division 1 - General Provisions

Sec. 15-3-10. - Statement of purpose.

It is the purpose of this Article 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) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruption;
- (5) Minimize damage to critical facilities, infrastructure and other public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) 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;
- (7) Ensure that potential buyers are notified that property is in a flood area; and
- (8) Meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

Sec. 15-3-20. - Methods of reducing flood losses.

In order to accomplish its purposes, this Article uses the following methods:

- (1) Restricting or prohibiting uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;
- (4) Controlling filling, grading, dredging and other development which may increase flood damage; and
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

Sec. 15-3-30. - Definitions.

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

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 (or only once) every one hundred (100) years.

100-year floodplain means the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

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 (or only once) every five hundred (500) years.

500-year floodplain means the area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

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

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows, active processes of erosion, sediment transport and deposition and unpredictable flow paths.

Appeal Board means the City Council, or such other board established by the City Council in regard to floodplain management issues within the City.

Area of shallow flooding means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) 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.

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

Base Flood Elevation (BFE) means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30 and/or VE that indicates the water surface elevation resulting from a base flood.

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

Channel means the physical confine of a stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

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

CFR or *Code of Federal Regulations* 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.

CLOMR or *Conditional Letter of Map Revision* 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.

Critical facility or *critical facilities* means a structure or related infrastructure, but not the land on which it is situated, 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.

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.

DFIRM or *Digital Flood Insurance Rate Map* means FEMA digital floodplain map. These digital maps serve as "regulatory floodplain maps" for insurance and floodplain management purposes.

DFIRM Database means a database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

Elevated building means, for flood insurance purposes and in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X and/or D, a non-basement building (i) built to have the top of the lowest raised above ground level by sheer walls, posts, piers, pilings or columns parallel to the flow of the water, and (ii) 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, or a non-basement building built to have the top of the lowest raised above ground level by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

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

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

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).

FBFM or Flood Boundary and Floodway Map means a pre-1986 Floodway Map. Mapping created or updated since 1986 is referred to as Flood Insurance Rate Maps, or FIRMs.

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.

FEMA means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program (NFIP).

FHBM or Flood Hazard Boundary Map means a precursor (interim) map prepared to indicate approximate flood hazard limits until more detailed studies are prepared. Where detailed Flood Insurance Studies (FIS) or hydraulic analyses are not available or cannot be justified, the FHBM's (where available) may still be utilized, along with other local studies and other available data, to identify flood hazard areas.

FIRM or Flood Insurance Rate Map means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FIS or Flood Insurance Study means the official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine base flood elevations for some areas.

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

- a. The overflow of inland or tidal waters;
- b. The unusual and rapid accumulation or runoff of surface waters from any source; or
- c. 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).

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 a community subject to a

"special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Flood zones means geographic areas that FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map. Each zone reflects the severity or type of flooding in the area.

Floodplain or flood prone area means any land area susceptible to being inundated by water from any source (see definition of "flooding"), including the area of land over which floodwater would flow from the spillway of a reservoir.

Floodplain Administrator means the Director of Public Works or a designated representative.

Floodplain development permit means a permit required before construction or development begins within any special flood hazard area (SFHA).

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

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) 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.

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.

Floodproofing means any combination of structural and/or 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.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

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 contribute to flood heights greater than the height calculated for a selected size flood, such as debris blockage of bridge openings and increased runoff due to urbanization of the watershed.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior.
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by:
 1. An approved state program as determined by the Secretary of the Interior; or
 2. The Secretary of the Interior in states without approved programs.

Levee means a man-made structure, usually an earthen embankment, 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 44 CFR 65.10.)

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.

LOMR or Letter of Map Revision means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristic of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), and/or the special flood hazard area (SFHA).

LOMR-F or Letter of Map Revision Based On Fill 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 regulatory floodway.

Lowest floor means the lowest floor of the lowest enclosed area (including basement), which is used for living purposes, which includes working, storage, sleeping, cooking and eating, recreation and/or any combination thereof. This includes any floor that could be converted into such use, such as a basement or crawl space. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one (1) 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."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

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

MSDS or Material Safety Data Sheet means a form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, the MSDS is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner. The MSDS includes information, such as physical data (melting point, boiling point, flash point, etc.), reactivity, toxicity, health effects, first aid, storage, disposal, protective equipment and spill-handling procedures.

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 a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the 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 a community.

NFIP or National Flood Insurance Program means FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the Nation Flood Insurance Act of 1968.

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 be 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 applicable Flood Insurance Rate Map (FIRM).

PMR or Physical Map Revision means FEMA's action whereby one (1) 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.

Recreational vehicle means a vehicle which is:

- a. Built on a single chassis;

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

SFHA or *special flood hazard area* means the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year (i.e., the 100-year floodplain).

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), 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; or 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.

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.

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 before the damage occurred.

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. This includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. 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
- b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

TPQ or *Threshold Planning Quantity* 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.

Variance means a grant of relief to a person from the requirements of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, allows construction or development in a manner otherwise prohibited by this Article. (For full requirements, see Section 60.6 of the National Flood Insurance Program regulations.)

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 15-3-40. - Application.

This Article shall apply to all special flood hazard areas and areas removed from the floodplain by issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the City.

Sec. 15-3-50. - Basis for establishing the special flood hazard areas; adoption by reference.

The special flood hazard areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report, entitled "The Flood Insurance Study for Douglas County, Colorado and Incorporated Areas," dated September 4, 2020, as amended from time to time, with accompanying Flood Insurance Rate Maps (FIRMs), Digital Flood Rate Maps (DFIRMs) and Flood Boundary Floodway Maps (FBFMs), and any revisions thereto, are hereby adopted by reference and declared to be a part of this Chapter. These SFHAs identified by the Flood Insurance Study (FIS) and attendant mapping are the minimum area of applicability of this Article and may be supplemented by studies designated and approved by the City. The City Clerk and Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and FBFMs on file and available for public inspection.

Sec. 15-3-60. - Concurrent floodplain regulation.

The "Floodplain Overlay District," Article IV of this Chapter, provides additional regulations regarding development within or adjacent to floodplains. In the event of a conflict between this Article and Article IV of this Chapter, the more restrictive requirement shall apply.

Sec. 15-3-70. - Establishment of development permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this Article.

Sec. 15-3-80. - Compliance.

No structure or land shall hereafter be located, altered or have its use changed within the special flood hazard area without full compliance with the terms of this Article and other applicable regulations. Nothing in this Article shall prevent the City from taking such lawful action as is necessary to prevent or remedy any violation.

Sec. 15-3-90. - Abrogation and greater restrictions.

This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions; however, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, the more stringent restrictions shall prevail.

Sec. 15-3-100. - Interpretation.

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

- (1) Considered as minimum requirements;

- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 15-3-110. - Warning and disclaimer of liability.

The degree of flood protection required by this Article 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 Article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This Article 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 Article or any administrative decision lawfully made thereunder.

Sec. 15-3-120. - Severability.

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

Sec. 15-3-130. - Designation of Floodplain Administrator.

The Director of Public Works is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Article and other appropriate sections of 44 C.F.R. (National Flood Insurance Program regulations) pertaining to floodplain management. The Director of Public Works may appoint a designated representative to perform the Floodplain Administrator duties.

Sec. 15-3-140. - Duties and responsibilities of Floodplain Administrator.

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

- (1) Maintaining and holding open for public inspection all records pertaining to the provisions of this Article;
- (2) Reviewing floodplain development permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
- (3) Reviewing, approving or denying all applications for floodplain development permits required by this Article;
- (4) Reviewing permits for proposed development to ensure 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) Where interpretation is needed as to the exact location of the boundaries of the special flood hazard areas (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;

- (6) Notifying, in riverine situations, adjacent communities and the state coordinating agency, prior to any alteration or relocation of a watercourse and submitting the evidence of such notification to the Federal Emergency Management Agency;
- (7) Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (8) When base flood elevation data has not been provided in accordance with this Article, 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 this Article;
- (9) For waterways with base flood elevations for which a regulatory floodway has not been designated, the Floodplain Administrator shall require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half (0.5) foot at any point within the City; and
- (10) Under the provisions of 44 C.F.R., Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the City may approve certain development in Zones A1-30, AE or 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 44 C.F.R., Chapter 1, Section 65-12, and receives FEMA approval.

Sec. 15-3-150. - Permit procedures.

- (a) Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him or her 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 special flood hazard areas. Additionally, the following information is required:
 - (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (2) Elevation (in relation to mean sea level) to which any nonresidential structure shall be floodproofed;
 - (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of this Article;
 - (4) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (5) A record of all such information maintained in accordance with Section 15-3-140 above.
- (b) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this Article and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The danger that materials may be swept onto other lands, to the injury of others;
- (4) The compatibility of the proposed use with existing and anticipated development;
- (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (6) 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;
- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable;
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
- (10) The relationship of the proposed use to the Comprehensive Plan for that area.

Sec. 15-3-160. - Variance procedures.

- (a) The Appeal Board as established by the City shall hear and render judgment on requests for variances from the requirements of this Article.
- (b) 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 Article.
- (c) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (d) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (e) 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 Article.
- (f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($\frac{1}{2}$) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the relevant factors in Subsection 15-3-150(b) of this Article have been fully considered. As the lot size increases beyond the one-half ($\frac{1}{2}$) acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted above and the intent of this Article, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article.

- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) 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.
- (j) Prerequisites for granting variances:
 - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and
 - (2) Variances shall only be issued upon:
 - a. Showing a good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - (3) Any applicant to whom 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 base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (k) Variances may be issued by the City for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
 - (1) The criteria outlined in Subsections (a) through (i) above are met; and
 - (2) 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.

Division 2 - Flood Hazard Reduction

Sec. 15-3-210. - General standards.

In all special flood hazard areas, the following provisions 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 constructed by methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

- (4) 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 and placed a minimum of two (2) feet above the base flood elevation.
- (5) All manufactured homes shall be installed using methods and practices which minimize flood damage. For purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local requirements for resisting wind forces.
- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters.
- (8) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (9) For waterways with base flood elevations for which 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 that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than zero (0) foot feet at any point within the City.
- (10) Under the provisions of 44 C.F.R. Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the City may approve certain development in Zones A1-30, AE or AH on the City's FIRM which increases the water surface elevation of the base flood by more than one-half ($\frac{1}{2}$) 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 44 C.F.R. Chapter 1, Section 65.12, and received FEMA approval.

Sec. 15-3-220. - Specific standards.

In all special flood hazard areas where base flood elevation data has been provided, the following provisions are required:

- (1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), together with attendant utility and sanitary facilities, elevated to or above two (2) feet above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit to the Floodplain Administrator a certification documenting that the lowest floor elevation, including basement, the applicable BFE and the standards of this Article are satisfied.

- (2) Nonresidential construction. With the exception of critical facilities, outlined in Division 3 of this Article, new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement), together with attendant utility and sanitary facilities, elevated to or above two (2) feet above the base flood elevation, or, together with attendant utility and sanitary facilities, be designed so that below the two (2) feet above the base flood 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. A registered professional engineer, architect or land surveyor shall submit to the Floodplain Administrator a certification documenting that the lowest floor elevation, including basement, the applicable BFE and the standards of this Article are satisfied. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Article. Such certification shall include the applicable BFE and the specific elevation (in relation to mean sea level) to which such structures are floodproofed. A record of such certification shall be maintained by the Floodplain Administrator.
- (3) 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. Designs for meeting this requirement shall meet or exceed the City's adopted building codes,
- a. A minimum of two (2) openings having a total net area of not less than one (1) 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 (1) 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.
- (4) Manufactured homes.
- a. All manufactured homes to be placed within Zones A1-30, AH and AE on the City's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 - b. All manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the City's FIRM 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, must be elevated on a permanent foundation

such that the lowest floor of the manufactured home, together with attendant utility and sanitary facilities, is elevated to or above one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

- c. All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the City's FIRM that are not subject to the provisions of Subsection b(iv) of this Section shall be elevated so that either:
 - 1. The lowest floor of the manufactured home, together with attendant utility and sanitary facilities, is at or above two (2) feet above the base flood elevation; or
 - 2. 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 is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (5) Recreational vehicles. Recreational vehicles placed on sites within Zones A1-30, AH and AE on the City's FIRM must 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 this Article and the elevation and anchoring requirements for manufactured homes in Paragraph (4) above. 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.

Sec. 15-3-230. - Standards for subdivision proposals.

- (a) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with this Article.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet development permit requirements of this Article.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is less, unless otherwise provided pursuant to this Article.
- (d) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Sec. 15-3-240. - 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 September 14, 2013 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 Article if it meets those standards.

Sec. 15-3-250. - Standards for areas of shallow flooding (AO/AH zones).

Located within the special flood hazard areas established in this Article are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, in AO and/or AH Zones, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures:
 - a. Shall have the lowest floor (including basement), together with attendant utility and sanitary facilities, elevated above the highest adjacent grade at least two (2) feet above the depth number specified in feet on the City's FIRM (at least three (3) feet if no depth number is specified); and
 - b. A registered Colorado professional engineer, architect or land surveyor shall submit to the Floodplain Administrator a certification documenting the lowest floor elevation, including basement, and the applicable adjacent grades and that the standard of this Subsection is satisfied.
- (2) All new construction and substantial improvements of nonresidential structures, with the exception of critical facilities as outlined in Division 3 of this Article:
 - a. Shall have the lowest floor (including basement), together with attendant utility and sanitary facilities, elevated to or above two (2) feet above the highest adjacent grade at least two (2) feet above the depth number specified in feet on the City's FIRM (at least three [3] feet if no depth number is specified).
 - b. Together with attendant utility and sanitary facilities, shall be designed so that the structure is watertight to at least one (21) feet above the highest adjacent ground level, 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. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Section.
 - c. A registered Colorado professional engineer, architect or land surveyor shall submit to the Floodplain Administrator a certification documenting the lowest floor elevation, including basement, and the applicable adjacent grades and that the standard of this Subsection is satisfied.
- (3) Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide floodwaters around and away from proposed structures.

Sec. 15-3-260. - Floodways.

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

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed by a Colorado professional engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (e.g., requires a no-rise certification) in flood levels within the City during the occurrence of the base flood discharge;
- (2) If Paragraph (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Division; and
- (3) Under the provisions of 44 C.F.R., Chapter 1, Section 65.12, of the National Flood Insurance 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 CLOMR and floodway revision through FEMA.

Sec. 15-3-270. - Alteration of a watercourse.

For all proposed developments that alter a watercourse within a special flood hazard area, 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 the project will not cause more than a 0.00-foot rise in the Base Flood Elevation as compared to existing conditions, otherwise known as a No-Rise Certification, unless the City first applies for a CLOMR and Floodway revision in accordance with Section 15-3-260 of this Article; and
- (7) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

Sec. 15-3-280. - 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), unless the lowest floor elevation, including basement, will be placed no lower than two (2) feet above the original base flood elevation that existed prior to the placement of fill, or unless the new structure or addition to the existing structure, together with attendant utility and sanitary facilities, is designed so that below the two feet above the base flood 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. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Section. Such certification shall include the applicable BFE and the specific elevation (in relation to mean sea level) to which such structures are floodproofed. A record of such certification shall be maintained by the Floodplain Administrator.

Division 3 - Critical Facilities

Sec. 15-3-310. - Classification of critical facilities.

Critical facilities are classified under the following categories:

(1) Essential services facilities:

a. Essential services facilities include:

1. Public safety facilities: police stations, fire and rescue stations, emergency vehicle and equipment storage and emergency operation centers;
2. Emergency medical facilities: hospitals, ambulance service centers, urgent care centers having emergency treatment functions and non-ambulatory surgical structures but excluding clinics, doctor's offices and non-urgent care medical structures that do not provide these functions;
3. Designated emergency shelters;
4. Communications facilities: 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;
5. 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
6. 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).

b. Specific exemptions to the essential services facilities category include:

1. Wastewater treatment plants (WWTP);

2. Non-potable water treatment and distribution systems; and
 3. Hydroelectric power generating plants and related appurtenances.
- c. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Floodplain Administrator 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:
1. That redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected;
 2. The alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article;
 3. That, an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood; and
 4. Evidence of ongoing redundancy shall be provided to the City on an as-needed basis upon request.
- (2) Hazardous materials facilities:
- a. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials, and may include:
 1. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
 2. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
 3. Refineries;
 4. Hazardous waste storage and disposal sites; and
 5. Above ground gasoline or propane storage or sales centers.
 - b. Facilities shall be determined to be hazardous materials 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 chemicals are 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 356 chemicals listed under 40 C.F.R. § 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 and can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation, entitled "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation, entitled "Occupational Safety and Health

Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation of this Article, but exclude later amendments to or editions of the regulations.

- c. Specific exemptions to the hazardous materials facilities critical facilities category include:
 - 1. Finished consumer products within retail centers and households containing hazardous materials intended for household use and agricultural products intended for agricultural use;
 - 2. 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; and
 - 3. Pharmaceutical sales, use, storage and distribution centers that do not manufacture pharmaceutical products.
- d. The exemptions in Subparagraph c. above shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Article.

(3) At-risk population facilities:

- a. At risk population facilities consist of:
 - 1. Elder care (nursing homes);
 - 2. Congregate care serving twelve (12) or more individuals (day care and assisted living);
 - 3. Public and private schools (pre-schools, K-12 schools); and
 - 4. Before-school and after-school care serving twelve (12) or more children.

(4) Facilities vital to restoring normal services, including government operations.

- a. Facilities vital to restoring normal services consist of:
 - 1. Essential government operations (public records, courts, jails, building permitting and inspection services, City administration and management, maintenance and equipment centers); and
 - 2. Essential structures for public colleges and universities (dormitories, offices and classrooms only).
- b. Exemptions: 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:
 - 1. Redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract);
 - 2. The alternative facilities are either located outside of the 100-year floodplain or are compliant with this Article;

3. An operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood; and
4. Evidence of ongoing redundancy shall be provided to the City on an as-needed basis upon request.

Sec. 15-3-320. - Protection for critical facilities.

- (a) 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 Article, protection shall include one (1) of the following:
 - (1) Relocation outside the special flood hazard area; or
 - (2) Elevation or floodproofing of the structure to at least two (2) feet above the base flood elevation.
- (b) 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.

ARTICLE IV - Floodplain - Overlay District

Sec. 15-4-10. - Intent.

- (a) The purpose of this Article is to minimize flood-related losses in areas subject to flooding, to protect the health, safety and welfare of the residents and to minimize hazards due to flooding and flood-related erosion, in addition to the following:
 - (1) To ensure that landowners of special flood hazard areas assume responsibility for their actions;
 - (2) To minimize damage to public facilities and utilities such as water, gas, electric, telephone and sewer lines, roads and bridges located in special flood hazard areas;
 - (3) To minimize expenditure of public money for costly flood control projects and the need for rescue and relief efforts associated with flooding;
 - (4) To minimize prolonged business interruption;
 - (5) To protect the hydraulic characteristics of the drainage ways and the storage capacity of floodplains, and to assure retention of floodway area to convey flood flows which can reasonably be expected to occur;
 - (6) To comply with the program requirements of the Federal Emergency Management Agency (FEMA) in order that national flood insurance may be available to City residents; and
 - (7) To comply with the program requirements of the Colorado Water Conservation Board Department of Natural Resources "Rules and Regulations for Regulatory Floodplains in Colorado," as adopted November 17, 2010 and effective January 14, 2011.
- (b) In order to accomplish the intent, this Article includes methods and provisions for:
 - (1) Restricting uses or prohibiting certain uses which would be hazardous to the public health, safety and property;

- (2) Requiring permitted floodplain uses to be protected against flooding by providing general flood protection at the time of initial construction or reconstruction;
- (3) Requiring water supply and sanitations to be protected against flood damage at the time of initial construction so as to prevent disease, contamination and unsanitary conditions;
- (4) Delineating areas that are defined as within the regulatory floodplain, with associated risks of inundation by flooding, thereby helping protect individuals from purchasing floodplain land for purposes which are not suitable;
- (5) Regulating excavation, filling, dumping, dredging and channelization, which may increase flood damage; and
- (6) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwater or which may increase flood hazards in other areas.

Sec. 15-4-20. - Definitions.

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

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 (100) years.

100-year floodplain means the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

Accessory structure means a subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure. For purposes of this Section, habitable structures are not considered as accessory structures.

Allowable BFE Impact means that the proposed development activities will create no adverse impact on the BFE when considered alone; or, when considered in concert with other proposed or potential development within the identified floodway reach, will have a cumulative effect of no greater than zero (0) foot of BFE rise.

Base flood (one-hundred-year flood) means the flood having a one-percent chance of being equaled or exceeded in any given year.

BFE or base flood elevation means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30 and VE 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.

Critical facility or critical facilities means a structure or related infrastructure, but not the land on which it is situated, that, if flooded, may result in significant hazards to public health and safety or that may interrupt essential services and operations for the community at any time before, during and after a flood.

CWCB means the Colorado Water Conservation Board.

CWCB RFPR means the Colorado Water Conservation Board "Rules and Regulations for Regulatory Floodplains in Colorado," as adopted November 17, 2010 and effective January 14, 2011, as amended from time to time.

DFIRM means Digital Flood Insurance Rate Map as amended and produced by FEMA.

FEMA means the Federal Emergency Management Agency.

FIRM means Flood Insurance Rate Map as amended and produced by FEMA.

FIS means the Flood Insurance Study for Douglas County, as amended from time to time, and the accompanying series of Flood Insurance Rate Maps (FIRM) and/or Digital Flood Insurance Rate Maps (DFIRMs) as amended and produced by FEMA.

Flood (flooding) means a general and temporary condition of partial or complete inundation of normally dry land areas from, but not necessarily limited to, item occurrences such as:

- a. The overflow of water from channels and reservoir spillways;
- b. The unusual and rapid accumulation or runoff of surface waters from any source; or
- c. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid enough so as to flow over the surface of normally dry land.
- d. *Flood profile* means a graph or plot of the water surface elevation against distance along a channel, specifically for a level of flooding.

Flood protection elevation means an elevation two (2) foot above the elevation or "flood profile" of the one-hundred-year flood under existing channel and floodplain conditions. It is two (2) foot above the elevation of the flood for the flood regulatory area.

Flood stage means the height or elevation of a flood as referred to some datum. It is commonly used to refer to the elevation at which a stream will overtop its normal banks.

Flood zones are geographic areas that FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM). Each zone reflects the severity or type of flooding in the area.

Floodplain Administrator means the Director of Public Works or a designated representative.

Floodplain storage capacity means the volume of space above an area of floodplain land that can be occupied by floodwater of a given stage at a given time, regardless of whether the water is moving.

Floodproofing means a combination of structural changes and adjustments to new or existing structures and facilities, their contents and sites for the purpose of reducing or eliminating flood damages by protecting against structural failure, keeping water out or reducing the effect of water entry.

Floodway means the channel, river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one-half ($\frac{1}{2}$) foot, provided that hazardous velocities are not produced.

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 as calculated for a selected size flood.

Major drainage way means any drainage flow path with a tributary area of one hundred thirty (130) acres or more as referenced in the City's duly adopted Storm Drainage Design and Technical Criteria manual.

No adverse impact means that, as pertains to floodplain and floodway water surface elevations, the proposed development or activities will result in a 0.00 foot rise in the base flood elevations within the floodway and/or adjacent floodplain in the proposed conditions compared to the existing conditions.

Regulatory Floodplain means the 100-year floodplain in the State, as designated and approved by the CWCBC and/or FEMA.

Sec. 15-4-30. - Nature of district.

The Floodplain Overlay District shall be applied as a supplemental regulation on existing zoned areas containing flood hazard areas, including Planned Developments (PDs). The Floodplain Overlay District is superimposed on the existing zoning, and the restrictions and requirements herein are in addition to those of the underlying zone. All land use review processes that apply to the underlying zoning district shall remain in full force and effect. In the case of overlapping or conflicting requirements, the most restrictive provision shall apply.

Sec. 15-4-40. - Concurrent floodplain regulation.

Article III of this Chapter provides additional regulations regarding development within or adjacent to floodplains. In the event of a conflict between this Article and Article III of this Chapter, the more restrictive requirement shall apply.

Sec. 15-4-50. - Boundary.

The Floodplain Overlay District is composed of the one-hundred-year floodplain and a subarea within the floodplain called the Floodway, which shall be reserved in order to discharge the one-hundred-year flood without increasing the water surface elevation at any point.

- (1) The boundary of the Floodplain Overlay District shall be the boundary of the one-hundred-year floodplain. The extent of this area shall be based upon the best available information, including:
 - a. The Flood Insurance Study (FIS) for Douglas County dated September 4, 2020, as amended from time to time, and the accompanying series of Flood Insurance Rate Maps (FIRM) and/or Digital Flood Insurance Rate Maps (DFIRMs) as amended and produced by FEMA.
 - b. Flood hazard area delineation studies produced through the Urban Drainage and Flood Control District and approved by the Floodplain Administrator and the Colorado Water and Conservation Board; and
 - c. Other one-hundred-year floodplain studies as approved by the Floodplain Administrator and accepted by the appropriate local, regional, state or federal agencies.

- (2) When base flood elevation data and floodway data have not been provided in accordance with FEMA's FIS, FIRM or DFIRM, the Floodplain Administrator shall require applicants to use other base flood elevation and floodway information, if it exists. If this information does not exist, the applicant shall generate these studies.
- (3) Base flood and floodway elevations must be determined prior to permitting for new construction, substantial improvements or other development in the one-hundred-year floodplain (Zone A on the FEMA maps) or adjacent to major drainage ways, not yet identified as Zone A on the FEMA maps.
- (4) Floodplain maps are available at the City Public Works Department, or at the FEMA website at <http://www.fema.gov/business/nfip/>. Applicants shall refer to the most current floodplain maps available.
- (5) Based upon the available floodplain map information or applicant-generated information (where applicable), the Floodplain Administrator shall make the necessary interpretation of the location of the boundary of the Floodplain Overlay District. The decision of the Floodplain Administrator may be appealed to the City Council.
- (6) If an individual wishes to appeal the flood elevation on the FEMA Flood Insurance Study and/or floodplain maps for an area in question, a map amendment or revision process is available through the Code of Federal Regulations. The regional FEMA office may be contacted for this information.

Sec. 15-4-60. - Uses prohibited.

The following uses are strictly prohibited within the Floodplain Overlay District:

- (1) Habitable structures or commercial/ industrial structures (except fish hatcheries, water-related recreational facilities, and reconstruction of nonconforming structures as allowed by a floodplain development permit);
- (2) Junk or salvage yards, solid waste disposal facilities or landfills;
- (3) Storage or processing of materials that are buoyant, flammable, explosive, potentially dangerous or capable of causing injury in the time of flooding;
- (4) Critical facilities, except as allowed by a floodplain development permit, and in conformance with Article III of this Chapter, and provided that the critical facility is permitted in the underlying zoning district and to the extent that the critical facility does not impair the flood carrying capacity of the channel in compliance with the intent of this Article; and
- (5) Tents and makeshift structures, enclosures, or other shelters used for human habitation, except in locations expressly permitted by the Floodplain Administrator and having adequate sanitation facilities and flood evacuation plans.

Sec. 15-4-70. - Uses permitted by right.

- (a) The following uses shall be allowed by right, provided that they are permitted in the underlying zoning district and to the extent that they do not impair the flood-carrying capacity of the channel in compliance with the intent of this Article:
 - (1) Agricultural uses such as general, pasture, sod farming, grazing and crop harvesting;

- (2) Lawns, gardens, parking areas and other similar uses accessory to the residential use of the land;
 - (3) Open space; and
 - (4) Recreational uses not requiring structures or fences, including parks, golf courses, picnic grounds, wildlife and natural reserves and hiking areas.
- (b) The Floodplain Administrator may determine which other uses may be allowed, provided that they are very similar in nature to those permitted and that they comply with the provisions of this Article.

Sec. 15-4-80. - Uses permitted by floodplain development permit within floodway.

- (a) The following uses are permitted within the floodway:
- (1) Accessory structures, provided that flood hazards are mitigated;
 - (2) Streets, bridges or any other public transportation infrastructure; and
 - (3) Underground pipelines, water monitoring devices and utility and flood control facilities, including flowage management areas and transmission lines, but excluding above ground support facilities.
- (b) A certification by a Colorado registered professional engineer, stating that the use will have no adverse impact, shall be provided to the Floodplain Administrator prior to the issuance of any permit under this Article.

Sec. 15-4-90. - Uses permitted by floodplain development permit within one-hundred-year floodplain (but outside of the 100-year floodway).

- (a) The following listed uses may be permitted within the one-hundred-year floodplain by the approval of a floodplain development permit; however, many of these uses also require a use by special review permit pursuant to Chapter 16, Article XXI of this Code:
- (1) Channelization, bank stabilization or any activity which alters or relocates the configuration of the one-hundred-year floodplain boundary. Any channelization, alteration or relocation of a watercourse shall be in accordance with the provisions contained within the City's duly adopted Storm Drainage Design and Technical Criteria manual. The above changes shall not cause any increase in the base flood elevation without the approval of the Floodplain Administrator.
 - (2) Extraction of topsoil, sand, gravel or other minerals.
 - (3) Fish hatcheries and water-related recreational facilities, including marinas, boat rentals, docks, piers and wharves.
 - (4) Public or private water storage facilities, including ponds and reservoirs. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
 - (5) Public water and sewage treatment facilities and multiple-use water treatment facilities. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into floodwaters.

- (6) Reconstruction of a nonconforming structure or portion thereof which has been damaged or destroyed by any means or declared unsafe by the Building Division. Damage that consists of more than fifty percent (50%) of the replacement cost of the structure is considered substantial and the building shall be brought into full compliance with the floodplain ordinance. Damage of less than fifty percent (50%) of the replacement cost of the structure is considered minor. Minor improvements require a floodplain development permit, but are not required to be otherwise brought into compliance with the floodplain ordinance.
- (7) Streets, bridges or any other public transportation infrastructure.
- (8) Utility and flood control facilities, including dams, retention and/or detention facilities, flowage management areas, transmission lines, pipelines and water monitoring devices.
- (b) For accessory structures, the applicant may refer to the flood hazard mitigation measures listed herein which may be required.

Sec. 15-4-100. - Development standards.

When development is proposed within the special flood hazard area, or permitted improvements in the floodplain would raise the land above the base flood elevation, applicants shall be required to comply with the requirements of Article III of this Chapter, including, but not limited to:

- (1) Locate new construction or substantial improvements of any residential structure so that the lowest floor, including basement, together with attendant utility and sanitary facilities, lies a minimum of two (2) feet above the base flood elevation (BFE), and provide the required certification under Section 15-3-220 of this Chapter., if the structure is not a critical facility; or a minimum of two (2) feet above the BFE, or provide floodproofing of the structure to a minimum of two (2) feet above the BFE (applicable only to non-residential structures), if the structure is a critical facility; (2) Locate new construction or substantial improvements of any commercial, industrial or other nonresidential structure so that the lowest floor, including basement, together with attendant utility and sanitary facilities, lies a minimum of two (2) feet above the base flood elevation; or that, together with attendant utility and sanitary facilities, the structure is designed so that below two feet above the BFE the structure is appropriately floodproofed in conformance with Section 15-3-220 of this Chapter, and provide the required certification. If the structure is a critical facility under Article III of this Chapter, a minimum of two (2) feet above the BFE or floodproofing of the structure to a minimum of two (2) feet above the BFE shall be required;
- (3) Where practicable, provide for continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event for critical facilities;
- (4) Locate new on-site sewage systems (including leach fields) in areas above the base flood elevation (except the replacement of a failing system where no alternate location outside the one-hundred-year floodplain is available);
- (5) Provide adequate drainage to reduce exposure to flood damage;
- (6) Locate and construct public utilities and facilities such as sewer, gas, electrical or water systems to minimize flood damage;

- (7) Provide base flood elevation data for subdivisions greater than fifty (50) lots or five (5) acres, whichever is the lesser, proposed in area shown to have one-hundred-year floodplains as determined by methods referenced in Section 15-4-50 of this Article, and where no base flood elevation data exists;
- (8) Notify the City, adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse which is part of a one-hundred-year floodplain and submit evidence of such notification to FEMA. Alteration of a watercourse which is part of an identified one-hundred-year-floodplain shall not be constructed unless the project proponent demonstrates through a floodway analysis and report, sealed by a Colorado registered professional engineer, that there are no adverse impacts to the floodway resulting from the project; and
- (9) Provide a written operations and maintenance plan, acceptable to the Floodplain Administrator, for the altered or relocated portions of watercourses, and maintain the altered or relocated portions of such watercourses in conformance with the operations and maintenance plan so that the flood-carrying capacity is not diminished, unless this maintenance responsibility has been accepted by a separate public entity.

Sec. 15-4-110. - Administration.

The Floodplain Administrator shall administer and implement the floodplain development permits in accordance with the provisions of this Article.

Sec. 15-4-120. - Floodplain development permit.

A floodplain development permit is required prior to the issuance of a building permit or any development, use or a change of use located in the floodplain overlay district which is subject to the provisions of this Article. The floodplain development permit is required in addition to other permits or review processes which may be associated with the underlying zone district. All applicable federal and state permits shall be obtained prior to the issuance of a floodplain development permit.

Sec. 15-4-130. - Floodplain development permit; submittal process.

- (a) Applicants shall meet with City planning and engineering staff to review the proposed use and determine whether a floodplain development permit is required.
- (b) When a permit is required, the applicant shall submit all required information to the Floodplain Administrator.
- (c) When the application is determined complete, the Floodplain Administrator shall provide one (1) copy of the submittal to any referral agency from which expert technical assistance may be required. The applicant shall be responsible for fees established by these referral agencies. If an outside consultant is needed to review the application, the City shall enter into a contract with the applicant that shall clearly detail the financial responsibilities of all parties.
- (d) Referral agencies shall assist in determining whether the proposed use is located in the floodway or floodplain, in determining the flood protection elevation and in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection and other effective regulations.
- (e) The Floodplain Administrator shall evaluate the application and submittal information and approve the permit, approve the permit with conditions or deny the permit.

- (f) If denied, the decision of the Floodplain Administrator may be appealed to the City Council within ten (10) working days of the date of the decision.
- (g) A copy of the floodplain development permit will be distributed to the Building and Planning Departments.
- (h) The project sponsor shall submit to the Floodplain Administrator a completed FEMA NFIP Elevation Certificate (most current FEMA issued version) for the impacted structure. Once reviewed and accepted by the Floodplain Administrator, a copy of the elevation certificate will be filed in the Planning/Building Department and made available to the public. An "accepted" elevation certificate shall be on file before issuance of a final certificate of occupancy for the applicable facility.

Sec. 15-4-140. - Floodplain development permit; submittal requirements.

The applicant shall submit:

- (1) A digital copy of the plan prepared by a registered engineer, drawn to scale, showing:
 - a. The nature, location, dimensions and elevation of the lot;
 - b. Existing and proposed structures;
 - c. Cut or fill, and the quantities of each, within or adjacent to the floodway and/or floodplain;
 - d. Storage of materials;
 - e. Flood hazard mitigation measures; and
 - f. The relationship of the above to the location of the floodplain regulatory area.

Plans shall show the elevations in relation to mean sea level of the lowest floor (including basement) of all structures.

- (2) A digital copy of a typical valley cross-section, showing:
 - a. The channel of the stream;
 - b. Elevation of land adjoining the channel;
 - c. Cross-sectional areas to be occupied by the proposed development; and
 - d. Base flood elevations (before and after the proposed development).

Plans shall include a description of the extent to which any watercourse will be altered or relocated as a result of development.

- (3) A digital copy of a plan view, showing:
 - a. Elevations or contours of the ground;
 - b. Structures: size, location and spatial arrangement;
 - c. Embankment or structural fill or storage elevations;
 - d. Streets, water supply and sanitary facilities: location and elevations; and
 - e. Soil types and other pertinent information, including photographs showing existing land uses and vegetation upstream and downstream.

- (4) A digital copy of a stream profile, showing:
 - a. The bottom of the channel or flow line of the stream; and
 - b. The one-hundred-year water surface profile.
- (5) Specifications of materials, flood hazard mitigation measures, filling, dredging, grading, channel improvements, storage of materials, water supply and sanitary facilities; and
- (6) Additional information as requested or contained in the City's duly adopted Storm Drainage and Technical Criteria and/or Grading, Erosion and Sedimentation Control Manuals.

Sec. 15-4-150. - Floodplain development permit; approval criteria.

The following factors will be used in evaluating the effects of the proposed use upon the public health, safety and welfare in approving the issuance of a floodplain development permit:

- (1) The potential danger to life and property due to increased flood elevations or velocities caused by encroachments;
- (2) The potential danger that material may be swept onto other lands or downstream, endangering others;
- (3) The existing or proposed water supply and sanitation systems, the degree to which these facilities are subject to potential adverse impacts during a 100-year flood event and the effect of such impacts on the public health, safety and welfare;
- (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the public health, safety and welfare;
- (5) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area;
- (6) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (7) The expected elevation, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site; and
- (8) A determination of a site's suitability for proposed uses by:
 - a. A calculation of water surface elevations based on a hydraulic analysis of the capacity of the stream channel and overbank areas to convey the one-hundred-year flood;
 - b. A computation of the floodway required to convey this flood without increasing flood heights to an extent which would cause upstream or downstream damage to existing or reasonably anticipated future development, with the condition that any increase in flood stages attributable to encroachments on the floodplain of any river or stream shall not exceed zero (0) feet above the established BFE; and
 - c. An analysis of the effect of a proposed development upon the floodway, including hydrologic studies showing that the development will not cause any increase in the regulatory floodway elevation.

Sec. 15-4-160. - Conditions of approval.

Any or all of the following conditions may be required by the Floodplain Administrator when granting a development permit:

- (1) Modification of waste disposal and water supply facilities;
- (2) Imposition of operational controls, including a limitation on periods of use and operation;
- (3) Provision of bonds or other financial security to ensure that improvements are made according to the provisions of the permit and adequate maintenance is provided;
- (4) Anchoring of all structures and facilities to resist flotation and lateral movement;
- (5) Construction of water supply and waste-treatment systems in a manner which prevents the entrance of floodwaters;
- (6) Elevation of structures and uses to the base flood elevation plus two (2) feet; and
- (7) Implementation of flood hazard mitigation measures in compliance with the requirements of Article III of this Chapter and shown on a plan certified by a registered professional engineer.

Sec. 15-4-170. - Warning and disclaimer of liability.

The degree of flood protection intended to be provided by this Article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on occasion or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Article does not imply the areas outside floodplain area boundaries or land uses permitted within such areas will always be totally free from flooding or flood damages, nor shall this Article create a liability on the part of, or a cause of action against, the City.

ARTICLE V - Clearing, Grading and Land Disturbance

Sec. 15-5-10. - Intent.

The purpose of this Article is to:

- (1) Provide a mechanism for the issuance of permits relating to clearing, grading and earth movement so as to limit soil erosion and sedimentation during and after construction; and
- (2) Control nonpoint-source pollution by requiring the implementation of soil erosion and sedimentation control practices for protection of water quality, soil surfaces during and after construction and lands identified as having high open space, visual or vegetative value.

Sec. 15-5-20. - Permits required.

- (a) A grading permit shall be required from the Engineering Division for any of the following uses:
 - (1) Grading.
 - (2) Stripping of soil or vegetation.

- (3) Depositing fill material.
- (4) Trenching or excavating.
- (5) Constructing public or private facilities.
- (b) For single-family residential development, a permit may be issued upon approval of a preliminary plan by the City Council. However, a permit may be issued upon the approval of the Community Development Director and the Director of Public Works or his/her designated representative, on a case-by-case basis, prior to approval of a preliminary plan.
- (c) For all uses that require an approved Site Improvement Plan (SIP), a permit may be issued upon approval of the SIP. However, a permit may be issued upon the approval of the Director and the Director of Public Works or his/her designated representative, on a case-by-case basis, prior to approval of a SIP.
- (d) A permit may be issued for construction activities not subject to the platting or Site Improvement Plan review process with the approval of the Director of Public Works or his/her designated representative, (i.e., road construction, utility lines).

Sec. 15-5-30. - Permits not required.

- (a) Permits are not required for the following uses:

- (1) Grading in an area of one (1) acre or less which is isolated and self-contained, when the Director of Public Works or his/her designated representative determines that such grading will not have a negative impact upon private or public property. When a negative impact is identified, the provisions of this Article shall apply.
- (2) An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. Any fill made with the material from such excavation and any excavation having an unsupported height greater than five (5) feet after the completion of such structure shall be required to have a grading permit.
- (3) Individual cemetery gravesites.
- (4) Routine agricultural uses of agricultural land.
- (5) Exploratory excavations of less than five hundred (500) square feet (excluding mining activity) at the direction of a soil engineer or engineering geologist.
- (6) A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than five (5) horizontal feet to one (1) vertical foot (5:1), or less than three (3) feet in depth, not intended to support structures, which does not exceed fifty (50) cubic yards on any one (1) lot and does not obstruct a drainage course.
- (b) Even if a permit is not required, any clearing, grading or land disturbance activities shall be in accordance with the standards set forth in the City's duly adopted Storm Drainage Design and Technical Criteria manual and those set forth in this Article.

Sec. 15-5-40. - Review issues.

Any land-disturbing activity is subject to review by the City and other appropriate agencies regarding:

- (1) Significant wildlife habitat.
- (2) Archaeological or historical sites.
- (3) Lands identified as having high open space, visual or vegetative value.
- (4) Geologically sensitive areas.
- (5) Riparian or wetland areas.
- (6) Unique or distinctive topographic features or other issues as may be identified in the Comprehensive Plan, or Chapter 17 of this Code and other Articles of this Chapter.

Sec. 15-5-50. - Minimum standards.

All erosion and sediment control plans and specifications for activities which disturb soil or vegetation shall meet, at a minimum, the following criteria:

- (1) Plans shall be prepared in accordance with the City's duly adopted Storm Drainage Design and Technical Criteria and Grading, Erosion and Sediment Control Manuals, as amended, and shall be prepared or supervised by a professional engineer licensed in Colorado or a certified professional erosion and sediment control specialist trained and experienced in soil erosion and sedimentation control methods and techniques. Erosion control measures shall be implemented such that the following standards of performance are met:
- (2) In addition to the specific performance standards in Paragraph (1) above, all plans shall be prepared and adhered to so that land-disturbing activities shall not:
 - a. Result in or contribute to soil erosion or sedimentation that would interfere with any existing drainage course in such a manner as to cause damage to any adjacent property;
 - b. Result in or contribute to deposition of debris or sediment on any private or public property not designed or designated as an area to collect said sediment;
 - c. Create any hazard to any persons or property; or
 - d. Detrimentally influence the public welfare or the development of any watershed.
- (3) Technical methodologies to meet the standards set forth in Paragraphs (1) and (2) above are described in the City's duly adopted Storm Drainage Design and Technical Criteria manual.

Sec. 15-5-60. - Submittal requirements.

Applicants for a grading permit shall submit the appropriate review fees and an erosion and sedimentation control plan to the Director of Public Works or his/her designated representative which plan shall, at a minimum, contain the information detailed in the City's duly adopted Storm Drainage Design and Technical Criteria and Grading, Erosion and Sediment Control manuals and the following:

- (1) A vicinity map, at a maximum scale of 1" = 2,000', indicating the site location, as well as the adjacent properties within five hundred (500) feet of the site boundaries.
- (2) A boundary survey or site property lines shown in true location with respect to topographic information.

- (3) A plan of the site, at a maximum scale of 1" = 200', on a 24" × 36" sheet showing:
 - a. Name, address and telephone number of the landowner, developer and petitioner.
 - b. Existing topography (shown by dashed lines) having maximum contour intervals of two (2) feet, unless otherwise specified by the Director of Public Works or his/her designated representative.
 - c. Proposed topography (shown by solid lines) having contour intervals of two (2) feet, unless otherwise specified by the Director of Public Works or his/her designated representative, including spot elevations.
 - d. Location of existing structures and natural features, such as stream channels, stands of trees, rock outcroppings, wetlands, historical/archaeological sites, significant wildlife habitats, vegetative stands and potential open space land as identified in the Comprehensive Plan, on the site, adjacent to the site and within one hundred (100) feet of the site boundary line.
 - e. Location of proposed structures or development on the site, if known.
 - f. Elevations, including spot elevations if buildings are shown, dimensions, location, extent and slope of all proposed grading, including building and driveway grades.
 - g. Plans and timing schedule for all temporary or permanent erosion control measures to be constructed with or as a part of the proposed work, including drainage facilities, retaining walls, cribbing and plantings. The timing schedule shall assure that the standards set forth in Section 15-5-50 above are adhered to from the commencement of construction. In preparing the site plan, the applicant shall use the soil erodibility zone classifications in the Storm Drainage Design and Technical Criteria manual, the soil classification data for the site identified by the U.S. Soil Conservation Service in the published Soil Survey, or the data which is collected, analyzed and reported upon by a qualified soils engineer registered in the State.
- (4) A written report which includes the following:
 - a. A schedule indicating the anticipated project starting and completion dates, the time of overlot grading, construction phases and completion for vegetative and structural control measures.
 - b. A statement of the quantity of excavation and fill involved, source of the fill material and the total area of land surface to be disturbed.
 - c. Estimated itemized and total cost of the required temporary and permanent soil erosion control measures, which estimates shall include quantities and unit costs.
- (5) Other information or data as may be required by the Director of Public Works or his/her designated representative, such as a soil investigation report which shall include, at a minimum, data regarding the nature, distribution and supporting ability of existing soils and rock on the site.

Sec. 15-5-70. - Submittal process.

- (a) All plans shall be submitted to the Engineering Division. Incomplete or otherwise inadequate application submittals shall be returned to the applicant with comments. The applicant shall comply with the provisions of this Article.

- (b) The Engineering Division shall review and comment and either accept the plan or return the plan to the applicant within twenty (20) working days from the date the application submittal was determined to be complete. If the Engineering Division cannot review the plan within twenty (20) days, the applicant will be so notified. The Engineering Division and the applicant may mutually agree upon an extension of time for completion of the plan review or for retention of a qualified professional to perform the review. The applicant shall be responsible for all costs associated with the review.
- (c) In the event the applicant desires to amend the plan, an amended plan which complies with the requirements set forth in Sections 15-5-50 and 15-5-60 above shall be submitted by the applicant and reviewed by the Engineering Division prior to the commencement of any work pursuant to the amended plan.

Sec. 15-5-80. - Expiration of permit.

A permit shall be effective for twelve (12) consecutive months from the date of issue. Prior to the expiration date, the permit may be renewed upon approval by the Director of Public Works or his/her designated representative for a period of time not to exceed twelve (12) months. Two (2) additional extensions of six (6) months per extension may be granted by the Director of Public Works or his/her designated representative. Any further extensions may require the applicant to request City Council approval.

Sec. 15-5-90. - Appeals process.

If the applicant disagrees with the decision of the Engineering Division, the applicant may appeal to the City Council. The appeal shall be based on technical data or other relevant information. The City Council may affirm, modify or reverse the findings, conclusions and decision of the Engineering Division or remand the decision to the Engineering Division for further review and findings.

Sec. 15-5-100. - Fees.

- (a) A nonrefundable filing fee shall be paid to the Engineering Division at the time of application.
- (b) Any person, corporation, partnership, firm or other entity applying for a grading permit after commencement or completion of the activities authorized in said permit shall be required to pay double the standard fee.

Sec. 15-5-110. - Security.

- (a) To ensure rehabilitation of the disturbed area, the applicant shall furnish a letter of credit or other form of security acceptable to the City, naming the City as the secured party in an amount and type to be determined by the Director of Public Works or his/her designated representative based upon the magnitude of the land-disturbing activities and rehabilitation requirements. The amount of security will be one hundred fifteen percent (115%) of the cost estimate set forth in Section 15-5-60(4) or one hundred fifteen percent (115%) of the cost to vegetate the disturbed land to dryland grasses based upon unit costs determined by the Director of Public Works or his/her designated representative, whichever is greater. Due to the complexities of erosion control, in no instance shall the amount of security be less than two thousand five hundred dollars (\$2,500.00), except as provided in Paragraph 15-5-30(a)(1). The Director of Public Works or his/her designated representative shall have the right to call

on the security in the event the schedules required in Subparagraphs 15-5-60(3)g and 15-5-60(4)a are not met.

- (b) No erosion and sedimentation control permit(s) will be approved without the submittal of the required security.
- (c) The City will accept a cash escrow or letter of credit as security. The cash escrow or letter of credit will be returned to the applicant within sixty (60) days after the completion of the land-disturbing activity and closure of the permit. Completion shall mean the achievement of the final stabilization of the land as indicated on the erosion and sedimentation control plan. Completion shall be determined by a representative of the Director of Public Works or his/her designated representative who shall notify the applicant in writing. The warranty period for erosion control construction shall be two (2) growing seasons.
- (d) Prior to final release, the Director of Public Works or his/her representative may grant a reduction of the security.

Sec. 15-5-120. - Insurance.

Every applicant, before commencing operations, shall be insured in amounts required by the City, listing the City as an additional insured. Such insurance shall be kept in full force and effect during the period of such activities or operations, including site rehabilitation. A certificate indicating protection by such insurance shall be filed by the applicant together with his or her application for permit. Said insurance shall not be released until final inspection and approval has been completed by the Engineering Division.

Sec. 15-5-130. - Abatement.

- (a) In the event a landowner determines or discovers that a plan is not being adhered to, said landowner shall take immediate steps to abate said violation and shall notify the Director of Public Works or his/her designated representative of the deviation from the plan and the efforts undertaken to bring the work into compliance with said plan.
- (b) In the event the Director of Public Works or his/her designated representative discovers a deviation from the plan, the landowner or authorized representative shall be notified in writing of said deviation and shall be required to bring the work into compliance with the plan. The written notice shall specify the areas of deviation from the plan. Failure to correct the deviation from the plan within the time period provided in the notice shall entitle the City to invoke the provisions of Section 15-1-60.

Sec. 15-5-140. - Applicability of other laws and regulations.

Nothing contained herein relieves any person, corporation, firm or entity from the obligation to comply with any applicable state or federal laws or regulations relating to water quality or water quality standards or any other standards contained within this Chapter.