

ARTICLE 15 Flood Damage Prevention¹

Division 1 General Provisions

Sec. 18-15-10. Statutory authorization.

The Legislature of the State of Colorado has, in Article 20 of Title 29, C.R.S., delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of Trustees does hereby adopt the floodplain management regulations contained in this Article.

Sec. 18-15-20. Findings of fact.

- (a) The flood hazard areas of the Town are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.
- (c) The flood of September 2013 caused great damage to the Town including residences and infrastructure and highlighted the need for increased flood plain regulation. This devastating flood damaged public and private property, with damage to public property occurring from the impacts of private improvements. Of particular concern and consideration is the ability to provide emergency protective services in areas inundated by the floodway and the structures located within the floodway.

(Ord. 920 §1, 2012; Ord. 956 §1, 2014; Ord. No. 969, § 1 (Exh. A), 3-16-2015 ; Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-30. Statement of purpose.

It is the purpose of this Article to promote 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, property, 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 interruptions.
- (5) Minimize damage to critical facilities, infrastructure and other public facilities such as water, sewer and gas mains; electric and communications stations; and 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.

¹Editor's note: in such a manner as to minimize future flood blight areas. red art. 15, §§ 18-15-10, 18-15-20 as art. 6, §§ 18-6-10, 18-6-40.

(7) Ensure that potential buyers are notified that property is located in a flood hazard area.

(8) Ensure the best available data is used in making development decisions.

(Ord. No. 1075, § 2, 1-21-2020 ; Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-40. Methods of reducing flood loss.

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

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities.

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters.

(4) Control filling, grading, dredging and other development which may increase flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 18-15-50. 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.

500-year flood means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual flood). The term does not imply that the flood will necessarily happen once every five hundred (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 a fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

Appeal means a request for review by the Board of Trustees when it is alleged that there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this Article. The process provided in this Article for appeals from decisions made by the

Floodplain Administrator shall be used in lieu of the appeal process set forth in Article 1 of this Chapter for appeals from decisions made by the Building Inspector.

Architect means a qualified, licensed, professional Colorado architect in good standing.

Area of shallow flooding means a designated Zone AO or AH on the Town'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 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 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.

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

Best Available Data means either:

- The existing scientific and engineering report entitled "The Flood Insurance Study for the Town of Lyons, Colorado," dated December 12, 2012, with accompanying flood insurance rate maps and/or flood boundary-floodway maps (FIRM and/or FBFM) and any revisions thereto; or
- Draft or preliminary flood hazard information supplied by FEMA or from another source (such as the floodplain remapping of the Colorado Hazard Mapping Program (CHAMP), Federal Emergency Management Agency (FEMA) Risk MAP

(Revised to reflect new effective FIRMs)

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.

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

Community means any political subdivision in the State that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts. (Town of Lyons was added to definition)

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

Critical facility means a structure or related infrastructure, but not the land on which it is situated, as specified in Section 18-15-380 of this Article, that, if flooded, may result in significant hazards to public health and safety or interrupt essential services and operations for the Town at any time before, during and after a flood.

Development means any manmade change in improved and unimproved real estate, including, but not limited to, buildings, decks, stairways, carports or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DFIRM database means the 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.

Digital flood insurance rate map (DFIRM) means a FEMA digital floodplain map. These digital maps serve as "regulatory floodplain maps" for insurance and floodplain management purposes.

Elevated building means a non-basement building:

- (1) Built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and
- (2) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Engineer means a qualified, licensed professional Colorado Engineer in good standing.

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).

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.

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

- 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 which 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 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.

Flood Insurance Rate Map (FIRM) 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.

Flood insurance study (FIS) means the official report provided by the Federal Emergency Management Agency FEMA. 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.

Floodplain or flood-prone area means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

Floodplain Administrator means the Town official designated by title to administer and enforce the floodplain management regulations.

Floodplain development permit means a permit required before construction or development begins within any special flood hazard area (SFHA). If FEMA has not defined the special flood hazard area (SFHA) within the Town or the floodway within the SFHA, the Town shall require permits for all proposed construction or other development in the Town, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas and floodway. Permits are required to ensure that proposed development projects meet the requirements of the National Flood Insurance Program (NFIP) and this Article.

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, or any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

("Flood Control Structure" added 2024)

Floodproofing means any combination of structural and/or nonstructural 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 adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be six (6) inches. Letters of map revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

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

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

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

Historic structure means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of Interior 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; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of Interior, or
2. Directly by the Secretary of Interior in states without approved programs.

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

Letter of map revision based on fill (LOMR-F) means FEMA's modification of the special flood hazard area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

Levee means a manmade embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 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.

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

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

Mean sea level means for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on the Town's Flood Insurance Rate Map are referenced.

National Flood Insurance Program (NFIP) 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 National Flood Insurance Program NFIP has applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the National Flood Insurance Program in 1968 with the passage of the National Flood Insurance Act of 1968.

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.

No-rise certification means a record of the results of an engineering analysis using common methodologies and standards conducted to determine whether a project will increase flood heights in a floodway. A no-rise certification must be supported by technical data and signed and stamped by an engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM) or be integrated into that study to show no-rise.

Plans—Building or Site means documents drawn to scale and prepared by an engineer, architect and surveyor showing the nature, location, dimensions, elevations and other information for the lot, building, landscape, surface improvements, contours and spot elevations, utility mains and services along with profiles, structures and other physical features of a proposed development, re-development, structure or other improvement placed in the special flood hazard area.

Physical map revision (PMR) means FEMA's action whereby one (1) or more map panels are physically revised and republished. A physical map revision (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.

Reasonable use means the use of the data would not be detrimental to a proposed development or to the community's standing within the NFIP. Reasonable use allows the community to use preliminary information in cases where it is more restrictive [i.e., where there are discharges, floodplain boundaries, or increasing Base Flood Elevations (BFEs)] when compared to the current effective information and not when discharges or BFEs are decreasing when compared to the current effective information.

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

wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, or a roofed building supported by columns, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home, deck, steps, carport.

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 (50) percent of the market value of the structure just prior to when the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before start of construction of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- 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.

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

Variance means a grant of relief to a person from the requirement of this Article when the Board of Adjustments finds that specific enforcement would result in unnecessary hardship. A variance, therefore, permits 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.)

Violation means the failure of a structure or other development to be fully compliant with the Town's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 1075, § 2, 1-21-2020 ; Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-60. Lands to which regulations apply.

This Article shall apply to all special flood hazard areas and areas removed from the floodplain by the issuance of a FEMA letter of map revision based on fill (LOMR-F) within the jurisdiction of the Town. The Town adopts by reference the "Design Report for Lyons Valley Park Bridge St. Vrain Creek Crossing" (the "Report"), dated revised March 19, 2001, prepared by Hurst & Associates, Inc., to identify the physical character of the St. Vrain Creek floodplain at the area of the Lyons Valley Park bridge crossing (McConnell Street at approximately U.S. Highway 36/66) and to govern the construction and design of improvements within the limited floodplain as described in such report. (Removed outdated information)

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-70. Basis for establishing special flood hazard areas.

The special flood hazard areas identified by the best available data and reasonably used by the community. The Floodplain Administrator shall keep a copy of the best available data such as (Flood Insurance Study (FIS), digital flood insurance rate maps (DFIRMs), flood insurance rate maps (FIRMs) and/or flood boundary and floodway maps (FBFMs), and sources of best available data) on file and available for public inspection.

(Updated to recommended language from CWCB)

(Ord. No. 1075, § 2, 1-21-2020 ; Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-80. Establishment of floodplain development permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this Article. The Floodplain Development is a form provided by the Town of Lyons and is amended periodically as codes and regulations change. Land owners, builders and developers shall engage the assistance of an engineer and architect to direct or supervise floodplain projects within the regulatory flood plain. projects within the regulatory floodplain shall be certified and sealed by the engineer and architect.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-90. 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 herein shall prevent the Board of Trustees from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-100. 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 any other ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-110. Interpretation.

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

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

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-120. 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 manmade or natural causes. This Article does not imply that land outside the special flood hazard area 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 Town or any official or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-130. 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 this Article as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

(Ord. No. 1145 , § 2, 5-1-2023)

Division 2 Administration

Sec. 18-15-210. Designation of Floodplain Administrator.

The Town Administrator is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this Article and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-220. Duties and responsibilities of Floodplain Administrator.

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

- (1) The Floodplain Administrator shall maintain and hold open for public inspection all records pertaining to the provisions of this Article, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by Section 18-15-230 below.
- (2) The Floodplain Administrator shall review, approve or deny all applications for floodplain development permits required by adoption of this Article.
- (3) The Floodplain Administrator shall review floodplain development permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- (4) The Floodplain Administrator shall review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

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- (5) The Floodplain Administrator shall inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this Article, including proper elevation of the structure.
 - (6) Where interpretation is needed as to the exact location of the boundaries of the special flood hazard area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
 - (7) When base flood elevation data has not been provided in accordance with Section 18-15-70 of 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 Division 3 of this Article.
 - (8) For waterways with base flood elevations for which a regulatory floodway has not been designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the Town'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 (½) foot at any point within the community.
 - (9) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the Town may approve certain development in Zones A1-30, AE and AH on the Town's FIRM which increases the water surface elevation of the base flood by more than one-half (0.5) foot, provided that the Town first applies for a conditional FIRM revision through FEMA (conditional letter of map revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
 - (10) The Floodplain Administrator shall notify, in riverine situations, adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
 - (11) The Floodplain Administrator shall ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-230. Permit procedures.

- (a) Application for a floodplain 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 alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to special flood hazard areas. This information must be submitted on site plans, landscape plans, building plans and other reports and documents prepared by Engineers, Surveyors and Architects and include actual property dimensions and elevations matched to the flood plain datum of the Town. 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 an Engineer or Architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Paragraph 18-15-320(2) of this Article.

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- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
 - (5) Maintain a record of all such information in accordance with Section 18-3-220 above.
 - (b) Approval or denial of a floodplain 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 flood waters 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.
 - (10) The relationship of the proposed use to the comprehensive plan for that area.

(Ord. 920 §1, 2012; Ord. 956 §1, 2014; Ord. No. 969, § 1 (Exh. A), 3-16-2015)

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-240. Variance procedures.

- (a) The Board of Adjustments shall hear and render judgment on requests for variances from the requirements of this Article.
- (b) The Board of Adjustments shall hear and render judgment on an appeal only when it is alleged that there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this Article.
- (c) Any person or persons aggrieved by the decision of the Board of Adjustments 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 (½) 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 Section 18-15-230 above have been fully

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- considered. As the lot size increases beyond the one-half (½) 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 Board of Adjustments may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article as stated in Section 18-15-30.
- (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.
- (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, extraordinary public expense, 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 a community 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.
- (l) Copies available, charges: At least three (3) certified copies of this Article are on file in the office of the Town Clerk and may be inspected during regular business hours. In addition, copies are available for distribution and sale to the public at a price not to exceed the cost to the Town. (Removed, ordinance available online)
- (m) Penalties for noncompliance: No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Article and other applicable regulations. Violation of the provisions of this Article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, be fined or imprisoned as provided in Section 1-4-20 of this Code. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation. (Moved to appropriate section, should not be under variances)

(Ord. 920 §1, 2012; Ord. 956 §1, 2014; Ord. No. 969, § 1 (Exh. A), 3-16-2015)

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-250. Appeals.

- (a) The Board of Trustees shall hear and render judgment on an appeal when it is alleged that there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this Article.
- (b) The Board of Trustees may reverse the decision or determination of the Floodplain Administrator only upon a finding of good cause.
- (c) When an appeal of a determination of substantial damage or nonsubstantial damage, and the appealing party is relying upon the written estimate of a licensed contractor that contradicts the finding of substantial or nonsubstantial damage, the Board of Trustees shall delegate the matter to the Town Administrator for further proceedings.
- (d) Any person aggrieved by the decision of the Town Administrator pursuant to this Section may appeal such decision to the Board of Trustees. Any person aggrieved by the decision of the Board of Trustees may appeal such decision to the Boulder County District Court pursuant to Colorado Rules of Civil Procedure Rule 106(a)(4).
- (e) The Floodplain Administrator shall maintain a record of all actions involving an appeal.
- (f) The right of appeal provided herein shall be a separate remedy from the variance process described in Section 18-15-240 above.

(Ord. 943 §2, 2013; Ord. 956 §1, 2014; Ord. No. 969, § 1 (Exh. A), 3-16-2015)

(Ord. No. 1145 , § 2, 5-1-2023)

Division 3 Flood Hazard Reduction

Sec. 18-15-310. 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.
- (5) All manufactured homes 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.

- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- (8) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-320. Specific standards.

In all special flood hazard areas where base flood elevation data has been provided as set forth in Section 18-15-70, Paragraph 18-15-220(7), or Section 18-15-370, the following provisions are required:

- (1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be signed and certified by an Engineer, Architect or Surveyor. Such certification shall be submitted to the Floodplain Administrator. (HVAC included in 2024)
- (2) Nonresidential construction.
 - a. With the exception of critical facilities, outlined in Section 18-15-380 of this Article, new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that, at 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. (HVAC included in 2024)
 - b. A registered 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 be maintained by the Floodplain Administrator, as proposed in Section 18-15-230 of this Article.
- (3) Enclosures.
 - a. 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.
 - b. Designs for meeting this requirement must either be signed and certified by an Engineer or Architect or meet or exceed the following minimum criteria:
 1. 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.
 2. The bottom of all openings shall be no higher than one (1) foot above grade.

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3. 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 that are placed or substantially improved within Zones A1-30, AH and AE on the Town'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 manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to two (2) feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (HVAC included in 2024)
 - b. 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 Town's FIRM that are not subject to the provisions of the above Subparagraph shall be elevated so that either:
 1. The lowest floor of the manufactured home is two (2) feet above the base flood elevation; or (HVAC included in 2024)
 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 be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (5) Recreational vehicles.
- a. All recreational vehicles placed on sites within Zones A1-30, AH and AE on the Town's FIRM either:
 1. Be on the site for fewer than one hundred eighty (180) consecutive days;
 2. Be fully licensed and ready for highway use; or
 3. Meet the permit requirements of Section 18-15-230 of this Article and the elevation and anchoring requirements for manufactured homes in Paragraph (4) above.
 - b. 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.
- (6) Prior approved activities. Any activity for which a floodplain development permit was issued by the Town or a conditional letter of map revision (CLOMR) was issued by FEMA prior to December 18, 2012, may be completed according to the standards in place at the time of the permit or conditional letter of map revision (CLOMR) issuance and will not be considered in violation of this Article if it meets such standards. (Updated per 2024 information)

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-330. Standards for areas of shallow flooding (AO/AH Zones).

Located within the special flood hazard area established in Section 18-15-70 of 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, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

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- (1) Residential construction. All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least two (2) feet above the depth number specified in feet on the Town's FIRM (at least four (4) feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be signed and certified by an Engineer, Architect or Surveyor. Such certification shall be submitted to the Floodplain Administrator. (HVAC included in 2024)
 - (2) Nonresidential construction.
 - a. With the exception of critical facilities, outlined in Section 18-15-380 of this Article, all new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least two (2) feet above the depth number specified in feet on the Town's FIRM (at least four (4) feet if no depth number is specified), or, together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least two (2) feet above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. An Engineer or Architect shall submit a signed certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 18-15-230 of this Article, are satisfied. (HVAC included in 2024)
 - b. Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-340. Floodways.

Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State has adopted floodway standards that are more stringent than the FEMA minimum standard (see definition of *Floodway* in Section 18-15-50 of this Article). Located within special flood hazard areas established in Section 18-15-70 of 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 an Engineer and in accordance with standard and customary engineering practice that the proposed encroachment would not result in any increase (requires a no-rise certification) in flood levels within the Town 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.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the Town may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the Town first applies for a conditional letter of map revision (CLOMR) and floodway revision through FEMA.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-350. Alteration of 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, signed and sealed by an Engineer or Hydrologist.
- (5) All activities within the regulatory floodplain shall meet all applicable federal, state and Town 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, signed and sealed by an Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a no-rise certification, unless the community first applies for a conditional letter of map revision (CLOMR) and floodway revision in accordance with Section 18-15-340 above.
- (7) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-360. Properties removed from floodplain by fill.

A floodplain development permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA letter of map revision based on fill (LOMR-F), with a lowest floor elevation placed below the base flood elevation with two (2) feet of freeboard that existed prior to the placement of fill. (It appears this section was cut off and missing information. Corrected for 2024)

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-370. Standards for subdivision proposals.

- (a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet floodplain development permit requirements of Section 18-15-80; Section 18-15-230; and the provisions of this Division.
- (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 lesser, if not otherwise provided pursuant to Section 18-15-70 or Section 18-15-220 of 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.

(Ord. 920 §1, 2012; Ord. 956 §1, 2014; Ord. No. 969, § 1 (Exh. A), 3-16-2015)

(Ord. No. 1145 , § 2, 5-1-2023)

Sec. 18-15-380. Critical facilities.

- (a) Standards. A critical facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that, if flooded, may result in significant hazards to public health and safety or interrupt essential services and operations for the Town at any time before, during and after a flood.
- (b) Classification. It is the responsibility of the Board of Trustees to identify and confirm that specific structures in the Town meet the criteria set forth in this Subsection. Critical facilities are classified under the following categories: (1) essential services; (2) hazardous materials; (3) at-risk populations; and (4) vital to restoring normal services.
 - (1) Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities and transportation lifelines. These facilities consist of:
 - a. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage and emergency operation centers).
 - b. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions and non-ambulatory surgical structures, but excluding clinics, doctors' offices and non-urgent care medical structures that do not provide these functions).
 - c. Designated emergency shelters.
 - d. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio and other emergency warning systems, but excluding towers, poles, lines, cables and conduits).
 - e. 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).
 - f. Air transportation lifelines (airports, municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers and emergency equipment aircraft hangars).

Specific exemptions to this category include wastewater treatment plants (WWTP), nonpotable water treatment and distribution systems and hydroelectric power-generating plants and related appurtenances. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Board of Trustees that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the

same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Board of Trustees on an as-needed basis upon request.

- (2) Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:
- a. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing).
 - b. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials.
 - c. Refineries.
 - d. Hazardous waste storage and disposal sites.
 - e. Aboveground gasoline or propane storage or sales centers.

Facilities shall be determined to be critical facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a material safety data sheet on file for any chemicals stored or used in the work place, AND the chemical is stored in quantities equal to or greater than the threshold planning quantity (TPQ) for that chemical, then that facility shall be considered to be a critical facility. The TPQ for these chemicals is: either five hundred (500) pounds or the TPQ listed (whichever is lower) for the three hundred fifty-six (356) chemicals listed under 40 C.F.R. § 302 (2010), also known as extremely hazardous substances; 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 Public Health and Environment. OSHA requirements for material safety data sheets can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "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 this Article, but exclude later amendments to or editions of the regulations. Specific exemptions to this category include:

- a. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
- b. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
- c. Pharmaceutical sales, use, storage and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Article.

- (3) At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:
- a. Elder care (nursing homes).
 - b. Congregate care serving twelve (12) or more individuals (day care and assisted living).

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- c. Public and private schools ((pre-schools, K-12 schools), before-school and after-school care serving twelve (12) or more children).
 - (4) Facilities vital to restoring normal services, including government operations. These facilities consist of:
 - a. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers).
 - b. Essential structures for public colleges and universities (dormitories, offices and classrooms only).
- These facilities may be exempted if it is demonstrated to the Board of Trustees that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this Article, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Board of Trustees on an as-needed basis upon request.
- (c) Protection. 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) Location 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.
 - (d) Ingress and egress. New critical facilities shall, when practicable as determined by the Board of Trustees, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

(Ord. 920 §1, 2012; Ord. 956 §1, 2014; Ord. No. 969, § 1 (Exh. A), 3-16-2015)

(Ord. No. 1145 , § 2, 5-1-2023)