

**Town of Erie
Ordinance No. 035-2024**

An Ordinance of the Town Council of the Town of Erie Amending the Title 10 of the Erie Municipal Code by the Addition of a New Chapter 14 Regarding Flood Damage Prevention, and Repealing other Code Sections in Conflict Therewith

Whereas, for a community to participate in the National Flood Insurance Program ("NFIP"), it must adopt and enforce floodplain management regulations that meet or exceed the minimum NFIP standards and requirements; and

Whereas, the Town Council finds it in the best interest of the public health, safety and welfare to modify Title 10 of the Erie Municipal Code to include a flood damage prevention ordinance that meets the minimum NFIP standards and requirements.

Now Therefore be it Ordained by the Town Council of the Town of Erie, Colorado, as follows:

Section 1. The table in Section 10-2-1(A)(1) of the Erie Municipal Code is amended by the deletion of the Floodplain Overlay District row in its entirety.

Section 2. Section 10-2-6(C) of the Erie Municipal Code is hereby deleted in its entirety.

Section 3. Title 10 of the Erie Municipal Code is hereby amended by the addition of a new Chapter 14, to read as follows:

Chapter 14 – Flood Damage Prevention

10-14-1 – 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.

10-14-2 – Purpose.

A. The purpose of this Chapter is to promote the public health, safety and welfare by minimizing public and private losses due to flooding.

- B. Consistent with such purpose, this Chapter is intended 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 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 floodplains in such a manner as to minimize future flood blight areas; and
 7. Ensure that potential buyers are notified that property is located in a flood hazard area.

- C. To accomplish such purpose, this Chapter:
1. Restricts or prohibits uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
 2. Requires that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 3. Controls the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
 4. Controls filling, grading, dredging and other development which may increase flood damage; and
 5. Regulates the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands.

10-14-3 – Definitions.

For purpose of this Chapter, the following terms shall have the following meanings:

100-year Flood: A flood having a recurrence interval that has a one percent (1%) chance of being equaled or exceeded during any given year.

100-year floodplain: An area of land susceptible to being inundated as a result of the occurrence of a 100-year flood.

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

Area of shallow flooding: An area designated as Zone AO or AH on the Town's FIRM with a one percent (1%) chance or greater annual chance of flooding to an average depth of one (1) foot 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, and characterized by ponding or sheet flow.

Base flood: The flood with a one percent (1%) chance of being equaled or exceeded in any given year (also known as a 100-year flood).

Base flood elevation ("BFE"): The elevation shown on a FIRM 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 (1%) chance of equaling or exceeding that level in any given year.

Basement: An area of a building having its floor below ground level on all sides.

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

Channelization: The artificial creation, enlargement or realignment of a channel.

Conditional Letter of Map Revision ("CLOMR"): 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: 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 Town at any time before, during and after a flood.

Development: A human-made change on improved and unimproved real estate, including without limitation buildings and other structures, mining, dredging, filling, grading, paving, excavation, drilling and storage of equipment or materials.

Existing manufactured home park: A manufactured home park 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 ordinance codified in this Chapter.

Expansion of an existing manufactured home park: 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).

FEMA: Federal Emergency Management Agency.

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of water from channels and reservoir spillways; (2) the unusual and rapid accumulation or runoff of surface waters from any source; or (3) mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas, such as earth carried by a current of water and deposited along the path of the current.

Flood Insurance Rate Map ("FIRM"): The official map of the Town on which FEMA has delineated both the SFHA and the risk premium zones applicable to the Town.

Flood insurance study ("FIS"): The official report provided by FEMA containing the FIRM as well as flood profiles for studied flooding sources that can be used to determine BFE for some areas.

Floodplain: 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: The Public Works Director.

Flood control structure: 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: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: The channel of a river or other watercourse and adjacent land areas that shall be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than six (6) inches.

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

Historic structure: A structure that is:

1. Listed individually in the National Register of Historic Places or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of the Interior.

Letter of Map Revision ("LOMR"): FEMA's official revision of an effective FIRM, or Flood Boundary and Floodway Map ("FBFM"), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing Regulatory Floodway, the effective BFE, or the SFHA.

Letter of Map Revision Based on Fill ("LOMR-F"): FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing Regulatory Floodway.

Lowest floor: The lowest floor of the lowest enclosed area, including basement, that is used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof.

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

Mean sea level: For purposes of the NFIP, the North American Vertical Datum ("NAVD") of 1988 or other datum, to which BFE shown on a community's FIRP are referenced.

Material Safety Data Sheet ("MSDS"): 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.

National Flood Insurance Program ("NFIP"): FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act.

New construction: The construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

New manufactured home park: A manufactured home park 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 the ordinance codified in this Chapter.

No-rise certification: A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway, which must be supported by technical data and signed by a registered Colorado Professional Engineer.

Physical Map Revision ("PMR"): FEMA's action whereby one or more map panels are physically revised and republished.

Recreational Vehicle: A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projections, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use.

Special Flood Hazard Area ("SFHA"): 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: The date a building permit was issued for a substantial improvement, provided that the actual start of construction, repair, reconstruction, rehabilitation, or addition is within 180 days of the permit date, with the actual start meaning 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, and provided that permanent construction does not include: land preparation, such as clearing, grading and filling; the installation of streets or walkways; 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.

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

Substantial improvement: 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 the start of construction of the improvement, but excluding:

1. A project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety codes which have been identified by the Town and are the minimum necessary conditions; or
2. An alteration of a historic structure if the alteration will not preclude the structure's continued designation as a historic structure.

Threshold Planning Quantity ("TPQ"): 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.

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

10-14-4 - Applicability and interpretation.

- A. This Chapter shall apply throughout the Town, and no structure or land shall hereafter be located, altered, or have its use changed without full compliance with this Chapter.
- B. This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- C. In the interpretation and application of this Chapter, all provisions shall be: considered as minimum requirements; liberally construed in favor of the Town; and deemed neither to limit nor repeal any other powers granted under state law.
- D. Any activity for which a Floodplain Development Permit was issued by the Town or a CLOMR was issued by FEMA prior to September 24, 2024 may be completed according to the standards in place at the time of the permit or CLOMR issuance.

10-14-5 – General provisions.

A. *Adoption of SFHA:* The SFHA identified by FEMA in a scientific and engineering report entitled, "The Flood Insurance Study for Erie, Colorado," dated October 24, 2024, with accompanying FIRMs or FBFM and any revisions thereto are adopted herein by reference. The Floodplain Administrator shall keep a copy of the FIS, DFIRMs, FIRMs and FBFMs on file and available for public inspection.

B. *Warning and disclaimer:* The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Greater floods can occur and flood heights may be increased by human-made or natural causes. This Chapter does not imply that land outside the SFHA will be free from flooding. This Chapter shall not create liability on the part of the Town or any official or employee thereof for any damage that results from reliance on this Chapter.

10-14-6 – Floodplain Administrator.

The Floodplain Administrator shall:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by Section 10-14-7(C).

2. Review, approve, or deny all applications for Floodplain Development Permits required by adoption of this Chapter.

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

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

6. Where interpretation is needed as to the exact location of the boundaries of the SFHA (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 BFE data has not been provided, the Floodplain Administrator shall obtain, review and reasonably utilize any BFE data and floodway data available from any source.

8. For waterways with BFE for which a floodway has not been designated, no development shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the development, when combined with all other existing and anticipated development, will not increase the BFE by more than six (6) inches.

9. Pursuant to 44 C.F.R. § 65.12, the Town may approve certain development in Zones A1-30, AE, AH, on the Town's FIRM, which increases the water surface elevation of the base flood by more than one-half foot, provided that the Town first applies for a CLOMR and receives FEMA approval.

10. Notify, in riverine situations, adjacent communities and the CWCB, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

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

10-14-7 - Floodplain Development Permit.

A. A floodplain development permit is required for all construction or other development in the SFHA.

B. An application for a Floodplain Development Permit shall be filed with the Floodplain Administrator on forms furnished by the Floodplain Administrator. The following information is required, at a minimum:

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 Colorado Professional Engineer or architect that the structure complies with this Chapter;

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

C. Approval or denial of a Floodplain Development Permit shall be based on compliance with this Chapter and the following criteria:

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 availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
9. The relationship of the proposed use to the comprehensive plan for that area.

10-14-8 - Variances.

- A. The Board of Adjustment shall hear and render judgment on requests for variances from the requirements of this Chapter.
- B. Variances shall not be issued within any designated floodway, if any increase in flood levels during the base flood discharge would result.
- C. 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.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and only upon the following:
 1. A showing a good and sufficient cause;
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 3. 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 applicable law.

E. The Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this Chapter.

F. 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.

G. The Board of Adjustment's decision shall be final, and any person aggrieved by the decision of the Board of Adjustment may appeal such decision to a court of competent jurisdiction.

G. The Floodplain Administrator shall maintain a record of all variances, and shall report variances to FEMA upon request.

10-14-9 - Appeals.

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

B. The Board of Adjustment's decision shall be final, and any person aggrieved by the decision of the Board of Adjustment may appeal such decision to a court of competent jurisdiction.

10-14-10 – Flood hazard reduction.

A. *General Standards:* In the SFHA, all of the following shall apply:

1. New construction and substantial improvements shall be designed 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. New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

3. New construction and substantial improvements shall be constructed with materials resistant to flood damage.

4. New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located, so as to prevent water from entering or accumulating within the components during conditions of flooding.

5. Manufactured homes shall be installed using methods to minimize flood damage, and shall be elevated and anchored to resist

flotation, collapse, or lateral movement. Methods of anchoring may include without limitation use of over-the-top or frame ties to ground anchors.

6. 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.

B. *Specific standards:* In areas of the SFHA where BFE has been provided, the following shall apply:

1. *Residential construction:* New construction and substantial improvements shall have the lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities elevated to at least one (1) foot above the BFE. Upon completion of the structure, the elevation of the lowest floor shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor.

2. *Nonresidential construction:* With the exception of critical facilities, new construction and substantial improvements shall either have the lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities elevated to one (1) foot above the BFE or, together with attendant utility and sanitary facilities, be designed so that at one (1) foot above the BFE, 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 Colorado Professional Engineer or architect shall develop and 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.

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 either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two (2) openings having a total net area of not less than one (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.
- 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:* Manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on sites outside of a manufactured home park, in a new manufactured home park, in an expansion to an existing manufactured home park, or in an existing manufactured home park that has incurred substantial damage as a result of a flood, shall be elevated on a permanent foundation such that the lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities are elevated to one (1) foot above the BFE and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Other manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE shall be elevated so that either:

- a. The lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities are one (1) foot above the BFE; or
- b. The 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:* All recreational vehicles placed on sites within Zones A1-30, AH, and AE must:

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

C. *Areas of shallow flooding:* In areas of shallow flooding, Zones AH and AO, the following shall apply:

1. *Residential construction:* New construction and substantial improvements shall have the lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the FIRM (at least three feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

2. *Nonresidential construction:* With the exception of critical facilities, new construction and substantial improvements shall have the lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the FIRM, or at least three (3) 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 one (1) foot above the BFE 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. A registered Colorado Professional Engineer or architect shall certify that the standards of this Section are satisfied.

3. *Drainage:* Within Zones AH and AO, adequate drainage paths around structures on slopes shall guide flood waters around and away from structures.

D. *Floodways:* The following shall apply to all floodways:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development, unless it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer that the 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 permitted, new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 10-14-8.

3. Pursuant to 44 C.F.R. § 65.12, the Town may permit encroachments that would result in an increase in BFE, provided that the Town first applies for a CLOMR and floodway revision through FEMA.

E. *Alteration of a watercourse:* For all developments that alter a watercourse within the SFHA, the following standards apply:

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

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

3. Any channelization or other stream alteration activity shall be evaluated for its impact on the floodplain.

4. Any stream alteration shall be designed and sealed by a registered Colorado professional engineer or certified professional hydrologist.

5. Within a floodway, stream alteration activities are prohibited unless a floodway analysis and report, sealed by a registered Colorado Professional Engineer, demonstrates that there is no rise in the proposed conditions compared to existing conditions, otherwise known as a No-Rise Certification, unless the Town first applies for a CLOMR and floodway revision.

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

F. *Properties removed by LOMR-F:* 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 LOMR-F, unless such new structure or addition complies with the following:

1. *Residential construction:* The lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities is elevated to one (1) foot above the BFE that existed prior to the placement of fill.

2. *Nonresidential construction:* The lowest floor electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities is elevated to one (1) foot above the BFE that existed prior to the placement of fill, or together with attendant utility and sanitary facilities, is designed so that the structure or addition is watertight to at least one (1) foot above the BFE that existed prior to the placement of fill, 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.

G. *Critical facilities:*

1. Critical facilities are classified under the following categories: essential services; hazardous materials; at-risk populations; and vital to restoring normal services.

a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines. Specific exemptions to this category include wastewater treatment plants, non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances. A public utility plant facility 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, redundant facilities must be available and connected, the alternative facilities must either located outside of the 100-year floodplain or compliant with this Chapter, and an operations plan must be 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 Floodplain Administrator upon request.

b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic or water-reactive materials, including chemical and pharmaceutical plants; laboratories containing highly volatile, flammable, explosive, toxic or water-reactive materials; refineries; hazardous waste storage and disposal sites; and above-ground gasoline or propane storage or sales centers.

c. Facilities vital to restoring normal services include:

i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers); and

ii. Dormitories, offices, and classrooms for public colleges and universities. These facilities may be exempted if it is demonstrated to the Floodplain Administrator that the facility is an element of a redundant system for which service will not be interrupted during a flood, meaning that redundant facilities are available, the alternative facilities are either located outside of the

100-year floodplain or are compliant with this Chapter, and an operations plan is in effect that states how redundant facilities shall provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Floodplain Administrator upon request.

d. At-risk populations include medical care, congregate care, and schools. These facilities consist of: elder care; congregate care serving 12 or more individuals; and public and private schools serving 12 or more children.

2. If the owner of a facility is required by the Occupational Safety and Health Administration ("OSHA") to keep a MSDS on file for any chemical stored or used in the work place, and the chemical is stored in quantities equal to or greater to or greater than the 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 chemicals listed under 40 CFR § 302, also known as Extremely Hazardous Substances, or ten thousand (10,000) pounds for any other chemical. The "Designation, Reportable Quantities, and Notification" regulation, at 40 C.F.R. § 302, and the "Occupational Safety and Health Standards," at 29 C.F.R. § 1910, are incorporated herein by reference and include the regulations in existence at the time of the promulgation of this Chapter, but exclude later amendments to or editions of the regulations. Following are specific exemptions to this category, provided that these exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Chapter:

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.

3. For new and substantially improved critical facilities and new additions to critical facilities within the SFHA, the elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, shall be at least two (2) feet above the BFE.

4. New critical facilities shall, when practicable as determined by the Floodplain Administrator, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood.

H. *Subdivision standards:*

1. All subdivisions, including the placement of manufactured home parks, shall be reasonably safe from flooding. If a subdivision is in a flood-prone area, the subdivision shall minimize flood damage.

2. BFE data shall be generated for subdivisions, including manufactured home parks, which are greater than 50 lots or 5 acres, whichever is less.

4. All subdivisions, including manufactured home parks, shall have adequate drainage provided to reduce exposure to flood hazards.

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

10-14-11. Violation and penalty.

A. It is unlawful to construct, locate, extend or convert any structure or land in violation of this Chapter.

B. Violations of this Chapter shall be subject to the penalties set forth in Chapter 4 of Title 1 of this Code.

Section 4. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 5. Safety. The Town Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 6. Effective Date. This Ordinance shall take effect 10 days after publication following adoption.

Introduced, Read, Passed and Ordered Published this ____ day of _____, 2024.

Justin Brooks, Mayor

Attest:

Debbie Stamp, Town Clerk