

CHAPTER 12

FLOODPLAIN MANAGEMENT

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**12-01-010**    **Statutory Authorization.**

In ARS §48-3610 (as amended), the Arizona State Legislature enabled the Town of Prescott Valley to assume the powers and duties for Floodplain Management and adopt regulations in conformance with ARS §48-3609 (as amended) designed to promote the public health, safety and general welfare of its citizenry.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-01-010; Ord. No. 614, Amended, 02/10/05; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

**12-01-020**    **Findings of Fact.**

- A.     The Special Flood Hazard Areas (“SFHAs”) of the Town of Prescott Valley are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for Flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B.     These Flood losses may be caused by the cumulative effect of obstructions in SFHAs which increase Flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately Floodproofed, elevated or otherwise protected from Flood damage, also contribute to the Flood loss.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-01-020; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

**12-01-030**    **Statement of Purpose.**

It is the purpose of this Chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to Flood conditions in specific areas by provisions designed to:

- A.     Protect human life and health;
- B.     Minimize expenditure of public money for costly Flood control projects;
- C.     Minimize the need for rescue and relief efforts associated with Flooding and generally undertaken at the expense of the general public;

- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in SFHAs;
- F. Help maintain a stable tax base by providing for the sound use and development of SFHAs so as to minimize blight areas caused by Flooding;
- G. Participate in and maintain eligibility for Flood insurance and disaster relief.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-01-030; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

#### **12-01-040 Methods of Reducing Flood Losses.**

In order to accomplish its purposes, this Chapter includes methods and provisions to:

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or Erosion hazards, which result in damaging increases in Erosion or Flood heights or velocities;
- B. Require that uses vulnerable to Floods, including facilities which serve such uses, be protected against Flood damage at the time of initial construction;
- C. Control the alteration of natural Floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- D. Control filling, grading, dredging, and other Development which may increase Flood damage; and
- E. Prevent or regulate the construction of Flood barriers which will unnaturally divert floodwaters or which may increase Flood hazards in other areas.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-01-040; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

*Article 12-02 DEFINITIONS*

12-02-010 Definitions.

12-02-010 Definitions.

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

- A. Accessory Structure: A structure that is on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.
- B. Appeal: A request for a review of the Floodplain Administrator's interpretation of any provision of this Chapter or a request for a Variance.
- C. Area of Shallow Flooding: A designated Zone AO, AH, AR/AO or AR/AH on a Community's Flood Insurance Rate Map (FIRM) with a one percent (1%) 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.
- D. Base Flood: A Flood which has a 1% chance of being equaled or exceeded in any given year.
- E. Base Flood Elevation (BFE): The computed elevation to which floodwater is anticipated to rise during the Base Flood.
- F. Basement: Any area of the Building having its floor sub-grade (i.e., below ground level) on all sides.
- G. Building: See "Structure."
- H. Community: Any state, area, or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce Floodplain Management Regulations for the areas within its jurisdiction.
- I. Development: Any man-made change to improved or unimproved real estate, including (but not limited to) Buildings or other Structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- J. Elevation Certificate: An administrative tool of the National Flood Insurance Program (NFIP) that is used to provide elevation information necessary to ensure compliance

with Community floodplain management ordinances, to determine the proper insurance premium rate, and to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

- K. Encroachment: The advance or infringement of uses, plant growth, fill, excavation, Buildings, permanent Structures or Development into a Floodplain, which may impede or alter the flow capacity of a Floodplain.
- L. Erosion: The process of the gradual wearing away of landmasses. This peril is not, per se, covered under the National Flood Insurance Program (NFIP).
- M. Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. the overflow of floodwaters;
  - 2. the unusual and rapid accumulation or runoff of surface waters from any source; and/or
  - 3. the collapse or subsidence of land along the shore of a lake or other body of water as a result of Erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash Flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in Flooding.
- N. Flood Insurance Rate Map (FIRM): The official map of a Community, on which the Federal Emergency Management Agency (FEMA) has delineated both the SFHAs and the risk premium zones applicable to the Community.
- O. Flood Insurance Study (FIS): The official report provided by FEMA that includes Flood profiles, FIRMs, and the Water Surface Elevation of the Base Flood.
- P. Floodplain or Flood-prone Area: Any land area susceptible to being inundated by water from any source. See "Flood or Flooding."
- Q. Floodplain Administrator: The Community official designated by title to administer and enforce the Floodplain Management Regulations.
- R. Floodplain Board: The Town Council at such times as it is engaged in the enforcement of this Chapter.
- S. Floodplain Management: The operation of an overall program of corrective and preventive measures for reducing Flood damage and preserving and enhancing, where possible, natural resources in the Floodplain, including (but not limited to) emergency preparedness plans, Flood control works, Floodplain Management Regulations, and open space plans.
- T. Floodplain Management Regulations: This Chapter and other Ordinances (including

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zoning ordinances), subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and Erosion control) and other applications of police power which control Development in Flood-prone Areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing Flood loss and damage.

- U. Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to nonresidential Structures which reduce or eliminate risk of Flood damage to real estate or improved real property, water and sanitary facilities, Structures, and their contents by means other than elevation.
- V. Flood-Related Erosion: The collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash Flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in Flooding.
- W. Floodway: The channel of a river or other Watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the Water Surface Elevation more than a designated height. See "Regulatory Floodway."
- X. Functionally Dependent Use: 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, and does not include long-term storage or related manufacturing facilities.
- Y. Governing Body: The local governing unit (i.e. county or municipality) that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.
- Z. Hardship: As related to Article 12-06 herein (as amended), the Town Council (as Floodplain Board) requires that the hardship be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a Variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.
- AA. Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a Structure.
- BB. Historic Structure: Any Structure that is:
  - 1. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the U.S. Secretary of the Interior as meeting the requirements for individual

- listing on the National Register;
2. Certified or preliminarily determined by the U.S. 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 U.S. Secretary of Interior; or
  4. Individually listed on a local inventory of historic places in Communities with historic preservation programs that have been certified either:
    - a. By an approved state program as determined by the U.S. Secretary of the Interior; or
    - b. Directly by the U.S. Secretary of the Interior in states without approved programs.
- CC. Levee: A man-made Structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary Flooding.
- DD. Levee System: 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 accord with sound engineering practices.
- EE. Lowest Floor: The lowest floor of the lowest enclosed area, including the Basement. See "Basement." An unfinished or Flood resistant enclosure, usable solely for parking of vehicles, Building access or storage in an area other than a Basement area, is not considered a Building's Lowest Floor (provided that such enclosure is not built so as to render the Structure in violation of the applicable non-elevation design requirements of this Chapter).
- FF. Manufactured Home: A Structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "Manufactured Home" does not include "Recreational Vehicles".
- GG. Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into 2 or more Manufactured Home lots for rent or sale.
- HH. Market Value: Replacement cost of a Structure less depreciation since construction.
- II. Mean Sea Level: For purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which BFEs shown on a Community's FIRM are referenced.
- JJ. New Construction: For the purposes of determining insurance rates, Structures for

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which the Start of Construction commenced on or after the effective date of an initial FIRM or after May 29, 1982 (whichever is later), and includes any subsequent improvements to such Structures. For Floodplain Management purposes, New Construction means Structures for which the Start of Construction commenced on or after the effective date of a Floodplain Management Regulation adopted by a Community and includes any subsequent improvements to such Structures.

- KK. Obstruction: Including (but not limited to) any dam, wall, wharf, embankment, Levee, Levee System, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, Building, wire, fence, rock, gravel, refuse, fill, Structure, vegetation or other material in, along, across or projecting into any Watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or (due to its location) its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.
- LL. One-Hundred-Year Flood or 100-year Flood: A common name for the Flood having a 1% chance of being equaled or exceeded in any given year. See "Base Flood."
- MM. Person: An individual or the individual's agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or the State of Arizona, its agencies or political subdivisions.
- NN. Recreational Vehicle: A vehicle which is:
1. Built on a single chassis;
  2. four hundred (400) square feet or less when measured at the largest horizontal projection;
  3. Designed to be self-propelled or permanently-towable by a light-duty truck; and
  4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- OO. Regulatory Flood Elevation (RFE): An elevation 1 foot above the BFE.
- PP. Regulatory Floodway: The channel of a river or other Watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the Water Surface Elevation more than a designated height.
- QQ. Riverine: Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- RR. Sheet Flow Area: See "Area of Shallow Flooding."
- SS. Special Flood Hazard Area (SFHA): An area in the Floodplain subject to a 1% or greater chance of Flooding in any given year. It is shown on a FIRM as Zone A, AO, AE, AH, or A99.



- TT. Start of Construction: Includes substantial improvement and other proposed new development and means the date a Building permit is issued (provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within one hundred eighty (180) days from the date of the permit). The actual start means either the first placement of permanent construction of a Structure on a site (such as the pouring of a 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, excavation for a Basement, footings, piers, or foundations (or the erection of temporary forms), or 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.
- UU. Structure: A walled and roofed Building that is principally above ground (including a gas or liquid storage tank or Manufactured Home).
- VV. 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 before the damage occurred.
- WW. Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a Structure, the cost of which equals or exceeds 50% of the Market Value of the Structure before the Start of Construction. This term includes Structures which have incurred Substantial Damage, regardless of the actual repair work performed. The term does not, however, include either:
1. Any project for improvement of a Structure to correct existing Violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
  2. Any alteration of a Historic Structure, provided that the alteration will not preclude the Structure's continued designation as a Historic Structure.
- XX. Variance: A grant of relief from the requirements of this Chapter which permits construction or other uses of property in a manner that would otherwise be prohibited by this Chapter.
- YY. Violation: The failure of a Structure or other Development to be fully compliant with the Community's Floodplain Management Regulations. A Structure or other Development without the Elevation Certificate, other certifications, or other evidence of compliance required in this Chapter is presumed to be a Violation until such time as that documentation is provided.
- ZZ. Water Surface Elevation: The height, in relation to the NGVD of 1929, NAVD of 1988, or other datum, of Floods of various magnitudes and frequencies in the Floodplains of

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coastal or Riverine areas.

- AAA. Watercourse: A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which Substantial Flood Damage may occur.
- BBB. Zone A: No BFEs determined.
- CCC. Zone AE: BFEs determined.
- DDD. Zone AH: Flood depths of 1 to 3 feet (usually areas of ponding); BFEs determined.
- EEE. Zone AO: Flood depths of 1 to 3 feet (usually Sheet Flow on sloping terrain); average depths determined. For areas of alluvial fan Flooding, velocities also determined.
- FFF. Zone AR: SFHA formerly protected from the 1% annual chance Flood by a Flood control system that was subsequently decertified. Zone AR indicates that the former Flood control system is being restored to provide protection from the 1% annual chance or greater Flood.
- GGG. Zone A99: Area to be protected from 1% annual chance Flood by a Federal Flood protection system under construction; no BFEs determined.

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-010; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-02-010; Ord. No. 375, Renumbered, 12/28/95, 12-02; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

**Article 12-03 GENERAL PROVISIONS**

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**12-03-010 Application of Chapter.**

This Chapter shall apply to all SFHAs within the corporate limits of the Town of Prescott Valley.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-010; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

**12-03-020 Basis for Establishing Special Flood Hazard Areas.**

The SFHAs identified by FEMA in a scientific and engineering report entitled "The FIS for Yavapai County, Arizona and Incorporated Areas, dated June 6, 2001, with accompanying FIRMs, dated June 6, 2001, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this Chapter. This FIS and attendant mapping is the minimum area of applicability of this Chapter and may be supplemented by studies for other areas which allow implementation of this Chapter and which are recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) areas where Development is ongoing or imminent and, thereafter (as Development becomes imminent) Floodplains consistent with the criteria developed by FEMA and the Director of ADWR. The FIS and FIRM panels are available through the Town's Department of Public Works, 7501 E. Skoog Blvd., Prescott Valley, Arizona.

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-030; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-020; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Ren&Amd, 05/13/21)

**12-03-030 Compliance.**

All Development of land, construction of residential, commercial or industrial Structures, or future Development within delineated Floodplain areas is subject to the terms of this Chapter and other applicable regulations.

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(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-030; Ord. No. 671, Rep&ReEn, 09/28/06)

### **12-03-040 Abrogation and Greater Restrictions.**

This Chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. Where this Chapter and other applicable regulations, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-040; Ord. No. 671, Rep&ReEn, 09/28/06)

### **12-03-050 Interpretation.**

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

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the actions of the Governing Body; and
- C. Deemed neither to limit nor repeal any other powers granted under applicable state and federal statutes and regulations.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-050; Ord. No. 671, Rep&ReEn, 09/28/06)

### **12-03-060 Disclaimer of Liability.**

The degree of Flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger Floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the SFHAs or uses permitted within such areas will be free from Flooding or Flood damages. This Chapter shall not create liability on the part of the Town, any officer or employee thereof, the State of Arizona, or FEMA for any Flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-060; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

### **12-03-070 Statutory Exceptions.**

- A. In accordance with ARS §48-3609(I) (as amended), unless expressly provided, this Chapter and any regulation adopted pursuant to this Chapter do not affect:
  - 1. Existing legal uses of property or the right to continuation of such legal uses. However, if a nonconforming use of land or a Building or Structure is

discontinued for twelve (12) months, or destroyed to the extent of fifty percent (50%) of its Market Value (as determined by a competent appraiser), any further use shall comply with this Chapter and related Floodplain Management Regulations;

2. Reasonable repair or alteration of property for the purposes for which the property was legally used on May 29, 1982 (or other date any regulations affecting such property take effect), except that any alteration, addition or repair to a nonconforming Building or Structure which would result in increasing its Flood damage potential by 50% or more shall be either Floodproofed or elevated to or above the RFE;
  3. Reasonable repair of Structures constructed with the written authorization required by ARS §48-3613 (as amended);
  4. Facilities constructed or installed pursuant to a Certificate of Environmental Compatibility issued pursuant to ARS Title 40, Chapter 2, Article 6.2 (as amended); and
- B. Before the following types of construction authorized by ARS §48-3613(B) begin, the responsible person must submit plans for the construction to the Floodplain Board for review and comment pursuant to ARS §48-3613(C):
1. The construction of bridges, culverts, dikes and other Structures necessary to the construction of public highways, roads and streets intersecting or crossing a Watercourse;
  2. The construction of storage dams for watering livestock or wildlife, or Structures on banks of a Watercourse to prevent Erosion of or damage to adjoining land (if the Structure will not divert, retard or obstruct the natural channel of the Watercourse or dams for the conservation of floodwaters as permitted by ARS Title 45, Chapter 6 (as amended));
  3. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any Watercourse from complying with and acquiring authorization from the Floodplain Board pursuant to regulations adopted by the Floodplain Board under this Chapter;
  4. Other construction upon determination by the Floodplain Board that written authorization is unnecessary;
  5. Any Flood control district, county, city, town or other political subdivision from exercising powers granted to it under ARS Title 48, Chapter 21, Article 1 (as amended);
  6. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision; and

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7. The construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission as constructed by any utility (whether a public service corporation or a political subdivision).
- C. In accordance with ARS §48-3613(D)(as amended), in addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a Person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or Obstruction of a Watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any Person from violating or continuing to violate this Chapter or regulations adopted pursuant to ARS Title 48, Chapter 21, Article 1 (as amended). If a Person is found to be in violation of this Chapter, the court shall require the violator to either comply with this Chapter or remove the Obstruction and restore the Watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the Violation (including reasonable costs and attorney fees).

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-070; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

### 12-03-080 Violations.

- A. It is unlawful for a person to engage in any Development or to divert, retard or obstruct the flow of waters in a Watercourse if it creates a hazard to life or property without securing the written authorization required by ARS §48-3613 (as amended). Where the Watercourse is a delineated Floodplain, it is unlawful to engage in any Development affecting the flow of waters without securing written authorization required by ARS §48-3613 (as amended).
- B. A person who violates any provision of this Chapter is guilty of a class 2 misdemeanor.
- C. A person who violates any provision of this Chapter may be assessed a civil penalty not to exceed the fine chargeable for a class 2 misdemeanor or, by agreement with the person in violation, a non-monetary penalty that serves the purposes of the Town. Each day the violation continues constitutes a separate violation.
- D. A person who without written authorization damages or interferes with a facility that is owned, operated, or otherwise under the jurisdiction of the Town is liable for both of the following:
  1. Any actual damages to persons or property that is caused by the damage or interference.
  2. Payment of costs to the Town for remediating the damage or interference.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-03-100; Ord. No. 671, Renumbered, 09/28/06, 12-03-100; Ord. No. 889, Ren&Amd, 05/13/21)

**12-03-090 Declaration of Public Nuisance.**

All Development located or maintained within any SFHA after May 29, 1982, in violation of this Chapter and without written authorization from the Floodplain Board, is a public nuisance per se and may be abated, prevented or restrained by action of the Town.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-080; Ord. No. 671, Renumbered, 09/28/06, 12-03-080; Ord. No. 889, Amended, 05/13/21)

**12-03-100 Abatement of Violations.**

Within sixty (60) days of discovery of a Violation of this Chapter, the Floodplain Administrator shall submit a report to the Floodplain Board which shall include all information available to the Floodplain Administrator which is pertinent to said Violation. Within thirty (30) days of receipt of this report, the Floodplain Board shall:

- A. Take any necessary action to effect the abatement of or otherwise remedy such Violation; or
- B. Issue a Variance to this Chapter in accordance with the provisions of Article 12-06 herein (as amended); or
- C. Order the owner of the property upon which the Violation exists to provide whatever additional information may be required for the Floodplain Board's determination. Such information must be provided to the Floodplain Administrator within 60 days of such order and the Floodplain Administrator shall submit an amended report to the Floodplain Board within 30 days after the information is provided. At the next regularly-scheduled public meeting that is no sooner than one (1) week after receiving the report, the Floodplain Board shall either order the abatement of said Violation or they shall grant a Variance in accordance with the provisions of Article 12-06 herein (as amended); or
- D. Submit to FEMA a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to Section 1316 of the National Flood Insurance Act of 1968 (as amended).

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-03-090; Ord. No. 671, Renumbered, 09/28/06, 12-03-090; Ord. No. 889, Amended, 05/13/21)

**12-03-110 Severability.**

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

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(Ord. No. 671, Enacted, 09/28/06)



**Article 12-04 ADMINISTRATION**

- 12-04-010 Designation of Floodplain Administrator.
- 12-04-020 Duties and Responsibilities of Floodplain Administrator.
- 12-04-030 Establishment of Development Permit.

**12-04-010 Designation of Floodplain Administrator.**

The manager of the Town's engineering department or division is hereby designated as the Floodplain Administrator to administer, implement and enforce this Chapter by granting or denying Development permits in accordance with its provisions.

(Ord. No. 671, Enacted, 09/28/06)

**12-04-020 Duties and Responsibilities of Floodplain Administrator.**

Duties of the Floodplain Administrator shall include (but not be limited to):

- A. PERMIT REVIEW. Reviewing all Development permits to determine that:
  - 1. The permit requirements of this Chapter have been satisfied;
  - 2. All other required state and federal permits have been obtained;
  - 3. The site is reasonably safe from Flooding; and
  - 4. In areas where a Floodway has not been designated, the proposed Development does not adversely affect the carrying capacity of areas where BFEs have been determined.

For purposes of this Chapter, "adversely affect" means that the cumulative effect of the proposed Development (when combined with all other existing and anticipated or potential Development) will not increase the Water Surface Elevation of the Base Flood more than one (1) foot at any point.

- B. SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE ASSESSMENTS. Reviewing all Development permits for improvements and/or damages to existing Structures to determine if the application of the Substantial Improvement rules apply, including establishing a definition of Market Value determination and verifying that the estimated improvement and/or repair costs are less than 50% of the Market Value of the Structure.
- C. USE OF OTHER BASE FLOOD DATA. When BFE data has not been provided in accordance with Section 12-03-020 herein (as amended), obtaining, reviewing and reasonably utilizing any BFE data available from a federal, state or other source in order to administer Article 12-05 herein (as amended). Any such information shall be consistent with the requirements of FEMA and the Director of ADWR and shall be

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submitted to the Floodplain Board for adoption.

### D. RECORDS FOR PUBLIC INSPECTION. Obtaining and maintaining for public inspection:

1. The certified RFE required in Subsection 12-05-010(C) and 12-05-050 herein (as amended) (Lowest Floor elevations, bottom of the structural frame, and utilities);
2. Certification required in Subsection 12-05-010(C) herein (as amended) (Lowest Floor elevations or Floodproofing of nonresidential Structures and utilities);
3. Certification required in Subsection 12-05-010(C) herein (as amended) (Flood vents);
4. Certification of elevation required in Subsection 12-05-040(A) herein (as amended) (subdivisions and other proposed Development standards);
5. Certification required in Subsection 12-05-070(A) herein (as amended) (Floodway Encroachments);
6. Records of all Variance actions, including justification for their issuance; and
7. Improvement and damage calculations required in Subsection 12-04-020(B) herein (as amended).

### E. NOTIFICATION OF OTHER ENTITIES.

1. Whenever a Watercourse is to be altered or relocated -
  - a. Notifying adjacent Communities and ADWR prior to such alteration or relocation of a Watercourse, and submitting evidence of such notification to FEMA through appropriate notification means; and
  - b. Assuring that the Flood carrying capacity of the altered or relocated portion of said Watercourse is maintained.
2. Whenever BFEs and rates of flow change due to physical alterations -
  - a. As soon as practicable (but not later than six (6) months after the date such information becomes available), notifying FEMA of the changes by submitting technical or scientific data in accordance with 44 CFR Section 65.3 (as amended). Such a submission is necessary so that, upon confirmation of those physical changes affecting Flooding conditions, risk premium rates and Floodplain Management requirements will be based upon current data; and
  - b. Within one hundred twenty (120) days after completion of construction of any Flood control protective works which changes the rate of flow during the Flood or the configuration of the Floodplain upstream or downstream from (or adjacent to) the project, ensuring that the person

or agency responsible for installation of the project provides to the Governing Bodies of all jurisdictions affected by the project a new delineation of all Floodplains affected by the project. The new delineation shall be done according to criteria adopted by the Director of ADWR.

3. Whenever corporate boundaries change -
  - a. Notifying FEMA of acquisition by means of annexation, incorporation or otherwise of additional areas of jurisdiction.
- F. MAP DETERMINATIONS. Making interpretations (where needed) as to the exact location of the boundaries of the SFHAs (i.e., where there appears to be a conflict between a mapped boundary and actual field conditions). The Person contesting the location of the boundary shall submit a study completed by a civil engineer registered in the State of Arizona and shall be given a reasonable opportunity to appeal the interpretation as provided in Article 12-06 herein (as amended). In the event said study relocates the boundary of a SFHA and this boundary relocation (or any subsequent proposed Development) impacts any adjoining existing property or Development, special requirements to minimize or eliminate said impacts may be made a condition of any approved Development permit.
- G. REMEDIAL ACTIONS. Taking remedial actions on Violations of this Chapter as set forth in Section 12-03-100 herein (as amended).

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-020, 040 & 090; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-04-020; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

#### **12-04-030 Establishment of Development Permit.**

- A. A Development permit shall be obtained before construction or Development begins (including placement of Manufactured Homes) within any SFHA established in Section 12-03-020 herein (as amended). Application for a Development permit shall be made on forms furnished by the Floodplain Administrator and may include (but not be limited to) plans drawn to scale showing the nature, location, dimensions and elevation of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, applications shall show:
  1. Proposed elevation in relation to Mean Sea Level of the Lowest Floor (including Basement) of all Structures. In Zone AO, elevation of existing Highest Adjacent Grade and proposed elevation of Lowest Floor of all Structures;
  2. Proposed elevation in relation to Mean Sea Level to which any non-residential Structure will be Floodproofed;
  3. Certification by a civil engineer registered in the State of Arizona that the Floodproofing methods for any non-residential Structure meet the Floodproofing criteria in Subsection 12-05-010(C) herein (as amended);

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4. BFE data for subdivision proposals (or other Development greater than fifty (50) lots or five (5) acres, whichever is the lesser); and
  5. Description of the extent to which any Watercourse will be altered or relocated as a result of proposed Development.
- B. Notwithstanding Subsection 12-04-030(A) herein (as amended), construction or Development within SFHAs is prohibited and no permit shall be issued therefor. No Structure shall be built and no fill or other material that will alter or relocate the flow of water shall be placed within the boundary of any SFHA.
- C. Nothing herein shall preclude persons from obtaining from FEMA Letters of Map Revision (LOMR) or Letters of Map Amendment (LOMA) removing property from an SFHA. Only after the Town receives a copy of the final LOMR or LOMA (as the case may be) may a Development permit for said property be issued.
- D. Accessory Buildings as defined in Subsection 13-02-010(B)(3) herein (as amended) may be located on property located within SFHAs which is immediately adjacent to property located entirely outside of the SFHA which is under the same ownership or for which an accessory use is permitted under Section 13-21-080 herein (as amended). Provided, however, that no Structures or Buildings would alter or relocate the Watercourse. In such cases, "breakaway fences" around the perimeter are permitted in the SFHA. A study completed by a civil engineer registered in the State of Arizona certifying to these provisions is required prior to issuing a Development permit under these circumstances.

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-050; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-04-010; Ord. No. 671, Renumbered, 09/28/06, 12-04-010; Ord. No. 889, Amended, 05/13/21)

*Article 12-05 PROVISIONS FOR FLOOD HAZARD REDUCTION*

- 12-05-010 Standards of Construction.
- 12-05-020 Standards for Storage of Materials and Equipment.
- 12-05-030 Standards for Water Supply and Waste Disposal Systems.
- 12-05-040 Additional Development Standards (Including Subdivisions).
- 12-05-050 Standards for Manufactured Homes.
- 12-05-060 Standards for Recreational Vehicles.
- 12-05-070 Floodways.

12-05-010 Standards of Construction.

In all SFHAs, the following standards are required:

A. Anchoring.

1. All New Construction and Substantial Improvements shall be anchored to prevent flotation, collapse or lateral movement of the Structure resulting from hydrodynamic and hydrostatic loads (including the effects of buoyancy); and
2. All Manufactured Homes shall meet the anchoring standards of Subsection 12-05-050(B) herein (as amended).

B. Construction Materials and Methods.

1. All New Construction and Substantial Improvements shall be constructed with materials and utility equipment resistant to Flood damage;
2. All New Construction and Substantial Improvements shall be constructed using methods and practices that minimize Flood damage; and
3. Within Zones AH or AO, adequate drainage paths shall be constructed around Structures on slopes to guide floodwaters around and away from proposed Structures.

C. Elevation and Floodproofing.

1. Residential Construction. Residential construction (new or Substantial Improvements), shall have the Lowest Floor (including Basement) elevated to or above the RFE -
  - a. In Zone AO, the BFE is determined from the FIRM panel. If unspecified, the required elevation is at minimum two (2) feet above the Highest Adjacent Grade;
  - b. In Zone A where a BFE has not been determined, the BFE is determined locally by the criteria set out in Subsection 12-04-020(C) herein (as

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amended);

- c. In Zones AE and AH, the BFE is determined from the FIS and/or FIRM; and
- d. A garage attached to a residential Structure (constructed with the garage floor slab below the RFE) must be designed to allow for the automatic entry and exit of floodwaters and must be used solely for parking access and/or storage.

Upon completion of the Structure, certification by a civil engineer registered in the State of Arizona shall be provided to the Floodplain Administrator to verify that the elevation requirements (as set forth in this Section) of the Lowest Floor (including Basement) have been satisfied.

2. Non-residential Construction (Commercial or Industrial Construction). Non-residential construction (new or Substantial Improvements) shall have the Lowest Floor either elevated to conform with this Subsection 12-05-010 (as amended) or, together with attendant utility and sanitary facilities,
  - a. Be Floodproofed below the elevation recommended under this Subsection 12-05-010 (as amended) so that the Structure is watertight with walls substantially impermeable to the passage of water; and
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Upon completion of the structure, certification by a civil engineer registered in the State of Arizona shall be provided to the Floodplain Administrator to verify that the elevation requirements (as set forth in this Section) of the Lowest Floor (including Basement) have been satisfied; or certification by a civil engineer or architect (registered in the State of Arizona) shall be provided to the Floodplain Administrator to verify that the floodproofing standards of this Section are satisfied.

3. Manufactured Homes. Manufactured Homes shall also meet the standards in Section 12-05-050 herein (as amended).
4. Accessory Structures (Detached Garages & Storage Structures).

Accessory Structures used solely for parking of vehicles or storage may be constructed such that the floor is below the RFE, provided the Structure is designed and constructed in accordance with the following requirements:

- a. Use of the Accessory Structure must be limited to parking of vehicles or storage;
- b. The portions of the Accessory Structure located below the RFE must be built using Flood resistant materials;

- c. The Accessory Structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- d. Any machinery or equipment servicing the Accessory Structure must be elevated or Floodproofed to or above the RFE;
- e. The Accessory Structure must comply with Floodway Encroachment provisions in Section 12-05-070 herein (as amended); and
- f. The Accessory Structure must be designed to allow for the automatic entry and exit of floodwaters in accordance with Subsection 12-05-010(C)(5) herein (as amended).

Detached garages, storage Structures and other Accessory Structures not meeting the above standards must be constructed in accordance with all applicable standards in Subsection 12-05-010(C)(1), (2), or (3) as applicable.

Upon completion of the Structure, compliance with all of the requirements of this Section shall be certified by a civil engineer registered in the State of Arizona and verified by the Town's building inspector to be compliant with this Section. Such certification and verification shall be provided to the Floodplain Administrator.

5. Flood Openings.

All New Construction and Substantial Improvement with fully enclosed areas below the Lowest Floor (excluding Basement) that are usable solely for parking of vehicles, Building access or storage, and which are subject to Flooding shall be designed to automatically equalize hydrostatic Flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following criteria:

A. For non-engineered openings:

- 1. Have a minimum of two openings on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to Flooding;
- 2. The bottom of all openings shall be no higher than one foot above grade;
- 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater; or

B. For engineered openings:

- 1. Engineered openings (or covers and devices) that are specifically designed and certified by a civil engineer or architect registered

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in the State of Arizona as meeting the performance and design requirements.

2. Engineered openings (or covers and devices) for which an evaluation report has been issued by the International Code Council (ICC) Evaluation Service, Inc. (ICC-ES), a subsidiary of the ICC.

### 6. Machinery and Service Equipment.

All New Construction, Substantial Improvement and other proposed new Development 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.

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-060; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-05-010; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

### 12-05-020 Standards for Storage of Materials and Equipment.

- A. The storage or processing of materials that could be injurious to human, animal or plant life if released due to damage from Flooding is prohibited in SFHAs.
- B. Storage of other materials or equipment may be allowed in SFHAs if not subject to damage by Floods and if firmly anchored to prevent flotation (or if readily removable from the area within the time available after Flood warning).

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-05-020; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

### 12-05-030 Standards for Water Supply and Waste Disposal Systems.

- A. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.
- B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during Flooding.
- C. Waste disposal systems shall not be installed wholly or partially in a Regulatory Floodway.

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-080; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-05-030; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Renamed, 05/13/21)



**12-05-040 Additional Development Standards (Including Subdivisions).**

- A. All new subdivision proposals and other proposed Developments (including proposals for Manufactured Home Parks and Subdivisions) greater than fifty (50) lots or five (5) acres (whichever is the lesser) shall:
  - 1. Identify the SFHAs and the elevation of the Base Flood in those areas; and
  - 2. Identify on the final plans the elevation(s) of the proposed Structure(s) and pads. If the site is filled above the BFE, the final Lowest Floor and grade elevations shall be certified by an engineer registered in the State of Arizona, which certification shall be provided to the Floodplain Administrator.
- B. All new subdivision proposals and other proposed Developments shall be consistent with the need to minimize Flood damage.
- C. All new subdivision proposals and other proposed Developments shall have public utilities and facilities (i.e. sewer, gas, electrical and water) located and constructed to minimize Flood damage.
- D. All new subdivision proposals and other proposed Developments shall provide adequate drainage to reduce exposure to Flood hazards.

(Ord. No. 19, Enacted, 01/24/80; Ord. No. 69, Ren&Amd, 04/29/82, 15-01-070; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-05-040; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Ren&Amd, 05/13/21)

**12-05-050 Standards for Manufactured Homes.**

All Manufactured Homes that are placed on site or receive Substantial Improvement shall:

- A. Be elevated to conform with Subsection 12-05-010(C) (1), (2) or (3) herein (as amended) (as applicable) so that the bottom of the structural frame or the lowest point of any attached appliances (whichever is lower) is at or above the RFE; and
- B. Be securely anchored to an adequately anchored foundation system 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.

Upon completion of installation of the manufactured home, certification by a registered professional engineer or surveyor that the elevation requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-05-050; Ord. No. 671, Rep&ReEn, 09/28/06; Ord. No. 889, Amended, 05/13/21)

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### 12-05-060 Standards for Recreational Vehicles.

All Recreational Vehicles placed on site shall:

- A. Be on site for fewer than one hundred eighty (180) consecutive days; or
- B. Be fully-licensed and ready for highway use. 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; or
- C. Meet the permit requirements of Article 12-04 herein (as amended) and the elevation and anchoring requirements for Manufactured Homes in Section 12-05-050 herein (as amended).

(Ord. No. 671, Enacted, 09/28/06)

### 12-05-070 Floodways.

Located within SFHAs established in Section 12-03-020 herein (as amended) 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 apply:

- A. Prohibit Encroachments (including, but not limited to, fill, New Construction, Substantial Improvements and other Development) unless certification by an engineer registered in the State of Arizona is provided demonstrating that Encroachments shall not result in any increase in Flood levels during the occurrence of the Base Flood discharge.
- B. If the requirements of this Section are satisfied, all New Construction and Substantial Improvements shall comply with all other applicable Flood hazard reduction provisions in this Article 12-05 (as amended).

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Ren&Amd, 03/26/87, 15-05-050; Ord. No. 178, Renumbered, 05/26/88, 15-05-060; Ord. No. 671, Renumbered, 09/28/06, 12-05-060; Ord. No. 889, Amended, 05/13/21)

**Article 12-06 VARIANCE PROCEDURE**

- 12-06-010 Nature of Variances.**
- 12-06-020 Appeal Board.**
- 12-06-030 Conditions for Variances.**

**12-06-010 Nature of Variances.**

- A. The Variance criteria set forth in this Article 12-06 (as amended) are based on the general principle of zoning law that Variances pertain to a parcel of property and are not personal in nature. A Variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this Chapter would create an exceptional Hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not shared by adjacent parcels. The unique characteristics must pertain to the land itself, not to Structures, inhabitants or property owners.
- B. It is the duty of the Town Council (serving as the Floodplain Board) to avoid Program Deficiencies and thereby help protect the citizens of the Town from Flooding. This need is so compelling (and the implications of the cost of insuring a Structure built below the RFE are so serious) that Variances from the Flood elevation or from other requirements in this Chapter are quite rare. The long-term goal of preventing and reducing Flood loss and damage can only be met if Variances are strictly limited. Therefore, the Variance guidelines provided in this Article 12-06 (as amended) are more detailed and contain multiple provisions that must be met before a Variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a Variance are more appropriate.

(Ord. No. 671, Enacted, 09/28/06; Ord. No. 889, Amended, 05/13/21)

**12-06-020 Appeal Board.**

- A. The Floodplain Board shall hear and decide Appeals and requests for Variances from the requirements of this Chapter.
- B. The Floodplain Board shall hear and decide Appeals 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 Chapter.
- C. In considering such applications, the Floodplain Board shall consider all technical evaluations, all relevant factors, standards specified in other Articles and Sections of this Chapter, and:
  - 1. The danger that materials may be swept onto other lands to the injury of others;

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2. The danger to life and property due to Flooding or Erosion damage;
  3. The susceptibility of the proposed facility and its contents to Flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the Town;
  5. The necessity to the facility of a waterfront location (where applicable);
  6. The availability of alternative locations for the proposed use which are not subject to Flooding or Erosion damage;
  7. The compatibility of the proposed use with existing and anticipated Development;
  8. The relationship of the proposed use to the comprehensive plan and Floodplain Management program for that area;
  9. The safety of access to the property in time of Flood for ordinary and emergency vehicles;
  10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and
  11. The costs of providing governmental services during and after Flood conditions, including (but not limited to) maintenance and repair of public utilities and facilities (e.g. sewer, gas, electrical, and water systems), streets and bridges.
- D. Upon consideration of the factors of this Subsection 12-06-020(C) (as amended) and the purposes of this Chapter, the Floodplain Board may attach such conditions to the granting of any Variance as it deems necessary to further the purposes of this Chapter.
- E. Any applicant to whom a Variance is granted shall be given written notice over the signature of a Town official that:
1. The issuance of a Variance to construct a Structure below the RFE will result in increased premium rates for Flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage;
  2. Construction below the RFE increases risks to life and property; and
- F. The Floodplain Administrator shall maintain a record of all Variance actions, including the justification for their issuance.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Ren&Amd, 05/26/88, 15-06-010; Ord. No. 671, Renumbered, 09/28/06, 12-06-010; Ord. No. 889, Amended, 05/13/21)

### **12-06-030 Conditions for Variances.**

- A. Variances shall only be issued:
1. Upon 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;
  2. Upon a determination that the Variance is the minimum necessary (considering the Flood hazard) to afford relief;
  3. Upon a showing of good and sufficient cause;
  4. Upon a determination that failure to grant the Variance would result in exceptional Hardship to the applicant;
  5. Upon a showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities described in the definition "Functionally Dependent Use" in Article 12-02 (as amended).
- B. Variances shall not be issued within any Floodway if any increase in Flood levels during the Base Flood discharge would result.
- C. Variances may be issued:
1. For New Construction and Substantial Improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing Structures constructed below the RFE, provided the procedures of Articles 12-04 and 12-05 (as amended) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the Variance increases;
  2. For the repair, rehabilitation or restoration of Structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the Structures' continued designation as a Historic Structure and the Variance is the minimum necessary to preserve the historic character and design of the Structure.

(Ord. No. 69, Enacted, 04/29/82; Ord. No. 124, Rep&ReEn, 12/19/85; Ord. No. 146, Rep&ReEn, 03/26/87; Ord. No. 178, Renumbered, 05/26/88, 15-06-020; Ord. No. 671, Renumbered, 09/28/06, 12-06-020; Ord. No. 889, Amended, 05/13/21)