

**TITLE 12  
FLOODPLAINS**

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**CHAPTER 12-01  
FLOOD PLAIN REGULATIONS**

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**SECTION 12-01-001-0001 STATEMENT OF PURPOSE**

It is the purpose of these regulations to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in the City of Flagstaff by provisions designed:

- A. To protect human life and health;

- B. To minimize flood damages and reduce the height and velocities which are caused by obstructions which restrict the capacity of the watercourses and floodways;
- C. To reduce the financial burden imposed on the community, its governmental units and its citizens;
- D. To assure retention of sufficient floodway area to convey the base flood;
- E. To enhance wildlife and recreation values where appropriate by preserving riparian vegetation along watercourses and floodplains;
- F. To minimize expenditure of public money for costly flood control projects;
- G. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- H. To minimize prolonged business interruptions;
- I. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- J. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- K. To insure that potential buyers are notified that property is in an area of special flood hazard;
- L. To insure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
- M. To maintain eligibility for the National Flood Insurance Program and State and/or Federal Disaster Relief.

(Ord. No. 1886, Amended, 08/29/95; Ord. No. 1886, Amended, 08/29/95; Ord. No. 2001-06, 04/03/01)(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0001.1 STATUTORY AUTHORIZATION**

A.R.S. § 48-3610, the Arizona State Legislature authorizes City of Flagstaff to adopt regulations in conformance with A.R.S. § 48-3603 designed to promote the public health, safety and general welfare of its citizenry.  
(Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0001.2 FINDINGS OF FACT**

- A. The flood hazard areas of the City of Flagstaff 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 areas of special flood hazards which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage, also contribute to the flood loss.

(Ord. No. 1886, Amended, 08/29/95; Ord. No. 1886, Amended, 08/29/95; Ord. No. 2001-06, 04/03/01) (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0002 METHODS OF REDUCING FLOOD LOSSES:**

In order to accomplish its purpose, these regulations includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which may unnaturally divert flood waters or which may increase flood hazards in other areas.
- F. Controlling or regulating increased stormwater runoff caused by development within contributing watersheds of watercourses and floodplains.

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0003 DEFINITIONS**

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

**"Accessory Use"** means a use which is incidental and subordinate to the principal use of the parcel of land on which it is applied.

**"Accessory Structure"** means a structure that is solely for the parking of no more than 2 cars; or limited storage (small, low cost sheds 200 sq. ft. or less). (Amended, Ord. No. 2011-11, 09/06/2011)

**"Addition"** means any alteration to an existing structure which results in any extension or increase in the structure's floor area or height.

**"Alluvial Fan Flooding"** means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by

high velocity flows, active processes of erosion, sediment transport and deposition, and unpredictable flow paths.

**"Alteration"** means any act or process that changes one or more of the existing features of a structure, including but not limited to, exterior changes or interior modifications of a structure or any of its architectural details or visual characteristics, including paint color, surface texture, and façade materials.

**"Apex"** means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**"Appeal"** means a request for a review of the Floodplain Administrator's interpretation of any provision of these regulations.

**"Architect"** means a Registered Professional Architect in the State of Arizona.

**"Area of Jurisdiction"** means the lands within the municipal boundaries of the City of Flagstaff.

**"Area of Shallow Flooding"** means a designated AO or AH Zone on the Flood Insurance Rate Map, (FIRM) with a one percent or greater annual chance of flooding. The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. (Amended, Ord. No. 2011-11, 09/06/2011)

**"Area of Special Flood Hazard"** means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area is designated as Zone A, AO, AH, ,AE, or A99 on the FIRM and other areas determined by the criteria adopted by the Director of the Arizona Department of Water Resources. For the purposes of these regulations, the term "special flood hazard area" (SFHA) is synonymous in meaning with "area of special flood hazard". (Amended, Ord. No. 2011-11, 09/06/2011)

**"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year. For the purposes of these regulations, the term "base flood" is synonymous in meaning with the "100-year flood".

**"Base Flood Elevation"** means the elevation shown on the Flood Insurance Rate Map for Zones AH, V and VE that indicate the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. (Amended, Ord. No. 2011-11, 09/06/2011)

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

**"Breakaway Wall"** means a wall that is not part of the structural support of a building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building supporting foundation system.

**"Building"** see "Structure".

**“Chief Executive Officer of the Community** (CEO)” means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**“Community”** means any state or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**“Critical Facilities”** means structures or facilities that produce, use or store highly volatile, flammable, explosive, toxic, and/or water reactive materials; hospitals; nursing homes and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood; police stations; fire stations; vehicle and equipment storage facilities and emergency operations centers that are needed for flood response activities before, during, and after a flood; and public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood.

**“Critical Feature”** means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.

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

**“Discontinued Use”** means the relinquishment of a property or the cessation of a use or activity by the owner or tenant, excluding temporary or short term interruptions for the purpose of remodeling, maintaining or otherwise improving or rearranging the facility. A use shall be deemed as discontinued when such use is suspended as evidenced by the cessation of activities or conditions that constitute the principal use of the property.

**“Elevation Certificate”** - means the most current version of the Elevation Certificate form developed by the Federal Emergency Management Agency (FEMA Form 81-31) (Amended, Ord. No. 2011-11, 09/06/2011)

**“Encroachment”** means the advance or infringement of any uses, including but not limited to, plant growth, fill, excavation, buildings, permanent structures, fencing, or other development into a floodplain which may impede and/or alter the flow or storage capacity of a floodplain, or cause an increase in the floodway elevation.

**“Engineer”** means a Professional Engineer registered in the State of Arizona. (Amended, Ord. No. 2011-11, 09/06/2011)

**Engineering Geologist** means a Professional Engineering Geologist registered in the State of Arizona. (Amended, Ord. No. 2011-11, 09/06/2011)

**“Erosion”** means the process of the gradual wearing away of land masses. This peril is not per se covered under the program (see “flood-related erosion”).

**“Erosion Hazard”** means the process of the wearing away of land masses. This peril is not per se covered under the program (see “flood-related erosion”). (Amended, Ord. No. 2011-11, 09/06/2011)

**“Exceptional Hardship”** means a hardship that would result from failure to grant a variance which is 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 one's 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. (Amended, Ord. No. 2011-11, 09/06/2011)

**“FEMA”** means the Federal Emergency Management Agency

**“Flood or Flooding”** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters;
- B. The unusual and rapid accumulation or runoff of surface waters from any source, and/or
- C. 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 as defined in this definition.

**“Flood Boundary and Floodway Map (FBFM)”** means the official map on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the regulatory floodway.

**“Flood Elevation Determination”** means a determination, by the Administrator, of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**“Flood Elevation Study”** means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**“Flood Fringe”** means that area located between the regulatory floodway and the boundary of the 100-year floodplain as shown on the Flood Boundary and Floodway Map.

**“Flood Insurance Rate Map (FIRM)”** means the official map of the community, on which the Federal Insurance Administrator has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**“Flood Insurance Study”** means the official report provided by the Federal Emergency Management Agency (FEMA) that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevations of the base flood. (Amended, Ord. No. 2011-11, 09/06/2011)

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

**"Floodproofing"** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to improved or unimproved real property, water and sanitary facilities, structures and their contents.

**"Floodproofing Certificate"** - means the most current version of the Floodproofing Certificate form developed by the Federal Emergency Management Agency (FEMA Form 81-65). (Amended, Ord. No. 2011-11, 09/06/2011)

**"Flood-Related Erosion"** means 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.

**"Floodplain or Flood-Prone Area"** means any land area susceptible to being inundated by water from any source (see definition of "flood or flooding"). "Floodplain" areas include the "flood fringe" and the "regulatory floodway".

**"Floodplain Administrator"** is the individual or his/her authorized representative authorized by the Floodplain Board to administer, implement, and enforce the provisions of these regulations.

**"Floodplain Board"** is the City Council of the City of Flagstaff at such times as they are engaged in the administration, implementation, and enforcement of these regulations.

**"Floodplain Management"** means 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. (Amended, Ord. No. 2011-11, 09/06/2011)

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

**"Floodplain Use Permit"** means a permit issued by the Floodplain Administrator under the provisions of these regulations for development of land located in a floodplain.



**"Flood-Related Erosion Area Management"** means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including, but not limited to, emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

**"Floodway"** - see "Regulatory Floodway".

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

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

**"Highest Adjacent Grade"** means the highest natural elevation, prior to fill or excavation, of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is:

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

**"Lateral Addition"** An addition to an existing structure that is beside and connected to the existing structure. If one building is connected to another through a covered breezeway or similar connection it is considered to be a separate building, and not an addition, for the purpose of this Ordinance. (Amended, Ord. No. 2011-11m 09/06/2011)

**"Levee"** means a man-made structure; usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

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

**"Lowest Floor"** means the lowest floor of the lowest enclosed area (including basement) of a building. 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 Ordinance. The lowest floor elevation is defined as the bottom of the lowest floor joist, horizontal structural member, or duct work.

**"Manufactured Home"** means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For the purposes of floodplain management, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days or which are not licensed and ready for highway use. The term "manufactured home" does not include a "recreational vehicle".

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.

**"Map"** means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for the community as issued by FEMA. (Amended, Ord. No. 2011-11, 09/06/2011)

**"Market Value"** shall be determined by the current Coconino County Assessor's Office assessed value or by an independent professional appraiser by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the Floodplain Administrator, but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

**"Mean Sea Level"** means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum, (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced. (Amended, Ord. No. 2011-11, 09/06/2011)

**"Mudslide (i.e., Mudflow)"** describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

**"Mudslide (i.e., Mudflow) Area Management"** means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including, but not limited to, emergency preparedness plans, mudslide control works, and floodplain management regulations.

**"Mudslide (i.e. Mudflow), Prone Area"** means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

**"New Construction"** means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**"New Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, and which is completed on or after the effective date of these floodplain regulations.

**"Nonconforming Use"** means a structure or the use of a structure or premises, which was lawful but not in conformity with these regulations before the adoption or amendment of these floodplain regulations.

**"Nonresidential Structure"** means any structure or any portion of a structure used exclusively for, or designed as and capable of being used for, without limitation, office, commercial, business, educational, public, industrial, factory, or governmental occupation.

**"Obstruction"** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridges, conduit, culvert, building, wire, fence, rock, gravel, fill, dumping, structure, vegetation, or other material in, along, across, or projecting into a 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.

**"One Hundred-Year Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year (see "Base Flood").

**"Person"** includes an individual or his agent, firm, partnership, association, limited liability company, or corporation, or agent of the aforementioned groups, or this State or its agencies or political subdivisions.

**“Program Deficiency”** means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the National Flood Insurance Program standards.

**“Reconstruction”** means the rebuilding of an existing structure which has been partially or completely destroyed by any cause (e.g., fire, wind, flood) without increasing the floor area of the structure.

**“Recreational Vehicle”** means a vehicle which is:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

**“Regulatory Flood Elevation”** means an elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the Director of the Arizona Department of Water Resources for all other watercourses.

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

**“Rehabilitation”** means any improvements and repairs which are made to the interior or exterior of an existing structure but which do not result in any increase in the floor area of the structure.

**“Remedy a Violation”** means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this Ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**“Residential Structure”** means any structure or any portion of a structure that is used for, or designed as and capable of being used for, the temporary or permanent domicile of persons, including without limitation a dwelling unit, apartment house, boarding house, hotel, motel, nursing home, lodging house, congregate residence, jail, prison, and similarly used structures.

**Soils Engineer** means a Professional Soils Engineer registered in the State of Arizona. (Amended, Ord. No. 2011-11, 09/06/2011)

**“Special Flood Hazard Area (SFHA)”** means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. An area having special flood or flood-related erosion hazards, and shown on an FBFM or FIRM as

Zone A, AO, AE, A99, or AH (see "Area of Special Flood Hazard"). (Amended, Ord. No. 2011-11, 09/06/2011)

**"Start of Construction"**, includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. (Amended, Ord. No. 2011-11, 09/06/2011)

**"Stormwater Management Design Manual"** means the most recent edition of the City of Flagstaff Stormwater Management Design Manual. (Amended, Ord. No. 2011-11, 09/06/2011)

**"Structure"** means, for floodplain management purposes, that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, without limitation, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**"Substantial Damage"** means damage of any origin sustained by a structure whereby the cumulative cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

**"Substantial Improvement"** means any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**"Surveyor"** means a Registered Professional Land Surveyor in the State of Arizona.

**"Variance"** means a grant of relief from the requirements of this Ordinance which permits construction in a manner that would otherwise be prohibited by these regulations.

**"Violation"** means 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 these regulations is presumed to be in violation until such time as that documentation is provided.

**"Water Surface Elevation"** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas. (Amended, Ord. No. 2011-11, 09/06/2011)

**"Watercourse"** means 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.

**"Watercourse Master Plan"** means a hydraulic and hydrologic plan for a watercourse that examines the cumulative impacts of existing development and future encroachment in the floodplain and future development in the watershed on potential flood damages, and establishes technical criteria for subsequent development so as to minimize potential flood damages for all flood events up to and including the one hundred-year flood.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ordinance No. 2011-11, 09/06/2011)

## **SECTION 12-01-001-0004 GENERAL PROVISIONS**

### **SECTION 12-01-001-0004.01 JURISDICTION**

- A. These regulations shall apply to all areas within the corporate limits of the City of Flagstaff, Arizona.
- B. The provisions of these regulations shall apply to lands outside the corporate limits of the City of Flagstaff upon annexation of such lands.

(Ord. 2001-06, Amended, 04/03/2001)

### **SECTION 12-01-001-0004.02 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

- A. The Federal Emergency Management Agency (FEMA) scientific and engineering report entitled "Flood Insurance Study, dated September 3, 2010, Coconino County, Arizona and Incorporated Areas" with accompanying Flood Insurance Rate Maps (FIRM's), and all subsequent amendments and/or revisions, identifying areas of special flood hazard, are hereby adopted by reference and declared to be a part of this Ordinance. The Flood Insurance Study and the FIRM panels are on file in the office of the Floodplain Administrator at City Hall, City of Flagstaff, 211 W. Aspen Ave. Flagstaff, AZ 86001. The Flood Insurance Study and attendant mapping is the minimum area of applicability of these regulations and may be supplemented by studies for other areas which allow implementation of

this Ordinance 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, for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the Federal Emergency Management Agency and the Director of the Arizona Department of Water Resources.

- B. The Floodplain Board may adopt additional floodplain studies or reports by reference and declare them to be part of these regulations, provided that any differences in floodplain delineation between such additional studies or reports and the effective Flood Insurance Rate Map(s) shall be resolved by applying those provisions which result in a broader floodplain delineation. A copy of such studies shall be on file in the office of the Floodplain Administrator.

(Ord. 2001-06, Amended, 04/03/2001) (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0004.03 COMPLIANCE**

No structure or development shall hereafter be constructed, located, extended, converted, or altered without full compliance with the provisions of these regulations and other applicable codes.

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0004.04 ABROGATION AND GREATER RESTRICTIONS:**

These regulations are not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another Ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0004.05 INTERPRETATION:**

In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State Statutes.

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0004.06 WARNING AND DISCLAIMER OF LIABILITY:**

The degree of flood protection required by these regulations 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 Ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. These

regulations shall not create liability on the part of the City of Flagstaff, any officer or employee thereof, the State of Arizona, or the Federal Emergency Management Agency (FEMA), for any flood damages that result from reliance on these regulations or any administrative decision lawfully made thereunder.

(Ord. 2001-06, Amended, 04/03/2001; Amended Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0004.07 STATUTORY EXEMPTIONS:**

A. In accordance with A.R.S. Section 48-3609(H), unless otherwise expressly provided, this and any regulation adopted pursuant to said statute do not affect:

1. Existing legal uses of property or the right to continuation of such legal use. 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 (50) percent of its market value, as determined by an independent professional appraiser, any further use shall comply with these regulations.
2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or on the date any regulations affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by fifty (50) percent or more shall be either flood proofed or elevated to or above the regulatory flood elevation.
3. Reasonable repair of structures constructed with the written authorization required by A.R.S. Section 48-3613.
4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to Title 40, Chapter 2, Article 6.2, Arizona revised Statutes (A.R.S. Section 40-360, et seq.).

B. In accordance with A.R.S. Section 48-3613, written authorization shall not be required, nor shall the Floodplain Board (the "Board") prohibit:

1. The construction of bridges, culverts, dikes, and other structures necessary for the construction of public highways, roads, and streets intersecting or crossing a watercourse.
2. The construction of storage dams for watering livestock or wildlife and 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 Title 45, Chapter 6, Arizona Revised Statutes.
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 which will divert, retard, or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the Board pursuant to regulations adopted by the Board under said statute.



4. Other construction if it is determined by the 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 said statute.
  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.
  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. Before any construction authorized by Subsection B of this Section may begin, the responsible person must submit plans for the construction to the Board for review and comment. These exemptions do not preclude any person from liability if that person's actions increase flood hazards to any other person's property.
- D. In addition to other penalties or remedies otherwise provided by law, this State, a political subdivision thereof, 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 section or regulations adopted pursuant to A.R.S. Section 48-3610. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the Board 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. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0004.08 NONCONFORMING USES:**

A structure or the use of a structure or premises which existed and was lawful, but not in conformity, before the adoption or amendment of these regulations, may be continued subject to the following conditions:

- A. No existing structure in the floodway shall be expanded, but may be modified, altered or repaired to incorporate elevation or flood proofing measures, provided such measures comply with the substantial improvement requirements of this ordinance and do not raise the level of the base flood or floodway. (Amended, Ord. No. 2011-11, 09/906/2011)
- B. 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 of its market value, as determined by a competent professional appraiser, any further use shall comply with these regulations. Intent to resume active operations shall not affect the foregoing.

- C. If any nonconforming building in the floodplain is substantially damaged, it shall not be reconstructed except in conformance with the provisions of these regulations.
- D. Additions to nonconforming structures shall be constructed in conformance with the provisions of these regulations.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0004.09 DECLARATION OF PUBLIC NUISANCE:**

Every new structure, building, fill, excavation, or development located or maintained within any area of special flood hazard after August 8, 1973, in violation of these regulations, is a public nuisance per se and may be abated, prevented, or restrained by action of the City of Flagstaff.

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0004.10 VIOLATIONS AND ABATEMENT**

- A. No structure or land within areas of special flood hazard shall be constructed, located, extended, converted or altered without full compliance with the requirements of this Ordinance and other applicable regulations.
- B. Upon discovery of a violation of the provisions of these regulations, the Floodplain Administrator shall issue a written Notice of Violation to the person or property owner responsible for such violation. The Notice of Violation shall specify the nature of the violation and order abatement of the violation.
- C. If the Floodplain Administrator determines that a violation of this ordinance does not result in a life-safety issue, or does not create an immediate threat to surrounding properties, then the responsible party shall have 30 days following a Notice of Violation in order to remedy the violation, or develop a remediation plan acceptable to the Floodplain Administrator, before any penalties are assessed pursuant to Section 12-01-001-0004.11. (Amended, Ord. No. 2011-11, 09/06/2011)
- D. 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** Arizona Revised Statute (ARS) section 48-3613. 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 section ARS48-3613. (Amended, Ord. No. 2011-11, 09/06/2011)
- E. Stormwater that is generated and concentrated as a result of single, residential lot development is not considered a watercourse and not regulated under this ordinance. (Amended, Ord. No. 2011-11, 09/06/2011)
- F. The Floodplain Administrator shall reserve the right to submit to the Administrator of the Federal Emergency Management Agency (FEMA) a declaration for denial of insurance, stating that a property is in violation of a specified federal, state or local law, regulation, or

ordinance, pursuant to 44 CFR Ch. 1, Part 73 - Implementation of Section 1316 of the National Flood Insurance Act of 1968.

G. Nothing contained herein shall prevent the City of Flagstaff from taking such lawful action as is necessary to prevent or remedy any violation.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0004.11 PENALTIES**

Violations of the provisions of these regulations by failure to comply with any of their requirements, including violations of conditions and safeguards established in connection with conditions, shall constitute a misdemeanor. Any person who violates the provisions of these regulations or fails to comply with any of their requirements shall, upon conviction thereof, be guilty of a Class 2 misdemeanor and subject to the associated fines and penalties established by the Arizona Revised Statutes, §§ 48-3615 and 13-802B.. In addition, such person shall pay all costs and expenses involved in the case. A separate offense shall be deemed committed for each day such violation continues.

(Ord. 2001-06, Amended, 04/03/2001), Ord. No. 2011-11, Amended, 09/06/2011

**SECTION 12-01-001-0005 ADMINISTRATION**

**SECTION 12-01-001-0005.1 FLOODPLAIN BOARD**

The City Council of Flagstaff, Arizona is hereby established as the Floodplain Board (the "Board").

A. Powers of the Board:

1. To delineate or by rule require developers of land to delineate, for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with criteria developed by the Federal Emergency Management Agency and the Director of Water Resources.
2. To adopt, amend, repeal, enforce, and otherwise administer floodplain management resolutions, rules, regulations, and orders pertaining to the delineated floodplains within the City of Flagstaff including comprehensive floodplain management and watercourse master plans, pursuant to the regulations of the City of Flagstaff setting forth requirements for the enactment and amendment of ordinances and resolutions.
3. To enter into cooperative agreements authorized by A.R.S. Section 48-3624.
4. To publicly hear and decide appeals and/or variance requests from the review, order, requirement, decision, or determination of the Floodplain Administrator.

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0005.2 FLOODPLAIN ADMINISTRATOR**

The Stormwater Manager is hereby appointed as Floodplain Administrator. The Floodplain Administrator may delegate to others the duties and authority necessary to carry out the duties outlined in this Section. The Floodplain Administrator shall administer and implement these regulations by granting or denying Floodplain Use Permit applications in accordance with the provisions herein. The Floodplain Administrator shall have the authority to establish methods and standards for constructing the flood protection measures required by this Ordinance when the details of such methods and standards have not been specified by the Ordinance. The various Technical Bulletins published by FEMA are considered to be acceptable methods and standards, provided they are not less restrictive than requirements already established by other City standards and regulations. (Amended, Ord. No. 2011-11, 09/06/2011)

- A. Duties of the Floodplain Administrator shall include, but not be limited to the following:
1. Administer and enforce the provisions of these regulations.
  2. Require Floodplain Use Permits for all proposed construction and other developments including the placement of manufactured homes and fill within areas of special flood hazard as identified in the FIRM.
  3. Review all Floodplain Use Permits applications to determine that:
    - a. The permit requirements of these regulations have been satisfied;
    - b. All other required State and Federal permits pertaining to construction in floodplains and watercourses have been obtained;
    - c. The site is reasonably safe from flooding; and
    - d. The proposed development does not adversely affect the carrying capacity of areas of special flood hazard. For purposes of these regulations, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood at any point.
  4. Establish the criteria and policy by which consistent technical evaluations of the floodplain are made.
  5. Formulate overall comprehensive floodplain management and watercourse master plans.
  6. When base flood elevation data has not been provided in accordance with Section 12-01-001-0004.02, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State or other source, including data developed pursuant to paragraph 12-01-001-0006.04, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the FIRM meet the provisions of these regulations. Any such information shall be consistent with the

requirements of the Federal Emergency Management Agency and the Director of Arizona Department of Water Resources.

7. Delineate or by rule require developers of land located in Zones "A", or along watercourses that constitute a flood hazard as determined by the criteria established by the Arizona Department of Water Resources (ADWR) in State Standard 2-96 that do not have base flood elevation or floodway data, to delineate for areas where development is ongoing or imminent, floodplains and floodways consistent with criteria developed by the Federal Emergency Management Agency and the Director of the Arizona Department of Water Resources. (Amended, Ord. No. 2011-11, 09/06/2011)
  
8. In those areas along a watercourse where the channel width, topography, and/or channel gradient clearly vary from the cross-section and profile data in the FIS, FIRM, and/or FBFM, the Floodplain Administrator may require a floodplain delineation re-study to ensure that the base flood elevation data and horizontal location of the floodway and flood fringe are correctly shown on any property prior to development.
  
9. Obtain and maintain for public inspection and make available as needed for Flood Insurance Policies or affecting Increased Cost of Construction Coverage:
  - a. The certified regulatory flood elevation required for residential structures in Section 12-01-001-0006.1.A.3.c;
  - b. The certification required for manufactured homes in Section 12-01-001-0006.5.A.1;
  - c. The flood proofing certification required for floodproofed non-residential structures in Section 12-01-001-0006.1.A.3.d.3.
  - d. The certified elevation required for subdivisions in Section 12-01-001-0006.4.E;
  - e. The flood vent certification required in Section 12-01-001-0006.A.3.f
  - f. Permit records for repair of flood-related damage to structures on a cumulative basis Improvements, modifications, and additions to existing buildings are counted cumulatively for the 10 years prior to the date of application for construction.
  - g. The Floodplain Administrator shall require that the above certifications are provided using the most current version of the FEMA elevation certificate and Floodproofing certificate forms.
  - h. Obtain and maintain improvement calculations.
  - i. Maintain a record of all variance actions, including justification for their issuance, and report such variances

issued in the biennial report submitted to the Federal Emergency Management Agency.

- j. Complete and submit a Biennial Report to the Federal Emergency Management Agency.

(Amended, Ord. No. 2011-11, 09/06/2011)

10. Whenever a watercourse is to be altered or relocated:

- a. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA) through appropriate notification means;

- b. Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

- c. Base flood elevation and rate of flow due to physical alterations:

- (1) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Emergency Management Agency (FEMA) of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations section 65.3. 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.

- (2) 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, the person or agency responsible for installation of the project shall provide 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 the criteria adopted by the Director of the Arizona Department of Water Resources. (Amended, Ord. No. 2011-11, 09/06/2011)

- 11. Within one hundred twenty (120) days after completion of construction of any flood control protective works which changes the rate of flow during the base flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person, or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineations shall be done according to the criteria adopted by the Federal Emergency Management Agency (FEMA),

the Director of the Arizona Department of Water Resources and the City of Flagstaff. (Amended, Ord. No. 2011-11, 09/06/2011)

12. Advise the Flood Control District of Coconino County (the "District") and any adjacent jurisdiction having responsibility for floodplain management in writing and provide a copy of any development plan of all applications for Floodplain Use Permits or variances to develop land in a floodplain or floodway within one mile of the boundary between the City's area of jurisdiction and the area of jurisdiction of the District. Also, advise the District and any jurisdiction having responsibility for floodplain management in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses outside the City's area of jurisdiction.
13. Make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 12-01-001-0007.1.
14. Take actions on violations of these regulations as required in Section 12-01-001-0004.10 herein.
15. Notify the Administrator and Director of the Arizona Department of Water Resources of acquisition by means of annexation, incorporation, or otherwise, of additional areas of jurisdiction.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

B. Substantial Improvement and Substantial Damage Procedures.

Develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "Market Value." Assure procedures are coordinated with other departments and divisions and implemented by city staff.

(Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0005.3 ESTABLISHMENT OF FLOODPLAIN USE PERMIT:**

- A. Except as provided in ARS section 48-3625, a person shall not engage in any development which will divert, retard or obstruct the flow of waters in any watercourse without securing written authorization from the floodplain administrator. Where the watercourse is a delineated floodplain no development shall take place in the floodplain without written authorization from the floodplain administrator.

(Amended, Ord. No. 2011-11, 09/06/2011)

- B. Floodplain Use Permit, issued by the Floodplain Administrator, shall be obtained prior to any construction or substantial improvement of any building, structure or portion thereof; including placement of manufactured homes; prior to the use or change of use of land, building

or structure; prior to the change or extension of a non-conforming use; and prior to the placement of fill in the flood fringe. Application for a Floodplain Use Permit shall be made on forms furnished by the Floodplain Administrator. (Amended, Ord. No. 2011-11, 09/06/2011)

C. The following information, at a minimum, is required for a Floodplain Use Permit application:

1. Plans in duplicate drawn to an engineering scale showing the nature, location, dimensions, and elevation of the area in question; existing and proposed structures, fill, storage of materials; and existing and proposed drainage facilities.
2. 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 natural grade and proposed elevation of lowest floor of all structures.
3. Proposed elevation in relation to mean sea level to which any nonresidential structure will be flood proofed.
4. Certification by an engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing criteria in Section 12-01-001-0006.1.A.3.d.3.
5. Base flood elevation data for subdivision proposals or other development.
6. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
7. The signatures of all property owners for all property subject to the development request on the permit.
8. Surface (i.e., plan) view, drawn to an engineering scale, showing all elevation and contours; fill and storage elevations; sizes, locations and spatial arrangement of all proposed, anticipated, and existing structures on the site; location and elevations of streets, water supply and sanitary facilities.
9. Specifications for building construction and materials, filling, dredging, grading, channel improvements and changes, storage of materials, water supply and sanitary facilities.

(Amended, Ord. No. 2011-11, 09/06/2011)

D. The Floodplain Administrator may require the applicant to furnish additional information, data, and details as deemed necessary, by the Floodplain Administrator, to evaluate the effects of the proposed construction upon the floodplain, including without limitation:

1. A detailed floodplain analysis, performed by an engineer, of the flood profile, base flood elevations, floodway, and velocities, using methodologies acceptable to the City of Flagstaff Floodplain Administrator, Director of the Arizona Department of Water Resources, and the Federal Emergency Management Agency (FEMA), including existing and anticipated uses.



2. Cross section showing the floodplain surrounding the watercourse, cross sections of the area to be occupied by the proposed development, and base flood elevations.
  3. A profile showing the slope of the flow line of the channel or thalweg of the watercourse.
  4. A structural analysis by an engineer showing that any proposed structure(s) will be adequately designed and constructed to prevent flotation, collapse, or lateral movement of the structure(s) resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, scour and other erosion hazards.
  5. Provide any other information needed to ensure that the proposed construction complies with this ordinance. (Amended, Ord. No. 2011-11, 09/06/2011)
- E. The Floodplain Administrator shall consider the following potential impacts upon review of all Floodplain Use Permit applications:
1. The effects upon lands upstream, downstream and in the immediate vicinity of the proposed development.
  2. The effects upon the flood profile and channel stability.
  3. The effects upon any tributaries to the main watercourse, drainage channels and any other drainage facilities or systems.
  4. Whether the proposed use of a structure is intended for human occupancy.
  5. The potential danger to persons upstream, downstream and in the immediate vicinity of the proposed development.
  6. Whether any proposed changes in the watercourse will have an adverse environmental impact on the watercourse, including without limitation, erosion of streambanks and stream side trees, vegetation, and wildlife.
  7. Whether any proposed water supply, sanitary sewer systems and other utility systems can prevent disease, contamination and unsanitary or hazardous conditions during a flood.
  8. The relationship of the proposed development to elements of any applicable City of Flagstaff master plan or other floodplain management program.
  9. Whether safe access is available to the proposed development in times of flood for ordinary and emergency vehicles.
  10. Whether the cumulative effect of the proposed development, with other existing and anticipated uses, will increase flood heights.
  11. Whether expected flood heights, velocities, duration, rate of rise, channel stability and sediment transport of the floodwaters

expected at the site will adversely effect the development or the surrounding property.

- F. Upon review of a Floodplain Use Permit application and consideration of the provisions of these regulations, the Floodplain Administrator may attach conditions to the approval of the Floodplain Use Permit as he/she deems necessary. Such conditions may include, but are not limited to:
  - 1. Modification of waste disposal and water supply facilities.
  - 2. Limitations on periods of use and operation.
  - 3. Impositions of operational controls, sureties, and deed restrictions.
  - 4. Requirements for construction of channel modifications, dikes, levees, and other protective measures.
  - 5. Flood proofing measures as described in Section 12-01-001-0006.1.A.3.
- G. The Floodplain Administrator shall act on an application for a Floodplain Use Permit within thirty (30) days from receipt of the complete application. If the Floodplain Administrator determines that the proposed use is located within the regulatory floodway and is prohibited under Section 12-01-001-0006.7, the Floodplain Administrator shall deny the application.
- H. An applicant for a Floodplain Use Permit shall pay the floodplain use permit fee in Section 12-02-002-0003. If the Floodplain Administrator, pursuant to Section 12-01-001-0005.3.D.1, requires the applicant to furnish a floodplain study, the applicant shall also pay any applicable review fee established in Section 12-02-002-0003. (Amended, Ord. No. 2011-11, 09/06/2011)
- I. Every person who has obtained a Floodplain Use Permit shall conduct all construction authorized by said permit in accordance with the approved application, design, and permit conditions.
- J. Prior to issuance of a Floodplain Use Permit, the applicant must submit evidence to the Floodplain Administrator that necessary State and Federal permits have been obtained.
- K. The Floodplain Administrator may require deed restrictions or performance bonds, assurances or other security to ensure the performance of the conditions and restrictions imposed on the Floodplain Use Permit.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0006 PROVISIONS FOR FLOOD HAZARD REDUCTION**

**SECTION 12-01-001-0006.1 DEVELOPMENT STANDARDS IN FLOOD FRINGE AREAS**

- A. In all areas of special flood hazards the following development standards are required:
  - 1. Anchoring:

- a. 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.
- b. All manufactured homes shall meet the anchoring standards of 12-01-001-0006.5.A.2.

(Amended, Ord. No. 2011-11, 09/06/2011)

2. Construction Materials and Methods:

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. All new construction, substantial improvements, 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 their components during conditions of flooding.
- d. All new construction, substantial improvements, and other development within Zones AH or AO shall be constructed so that adequate drainage paths around the structure(s) on slopes guide flood waters around and away from proposed or existing structures.
- e. All new construction, substantial improvements or other development shall be designed and constructed in accordance with the current City of Flagstaff Design and Construction Standards and Specifications and the City of Flagstaff Stormwater Management Design Manual.

3. Elevation and Flood Proofing Requirements:

- a. All new and substantially improved or substantially damaged residential structures within Zones AE and AH of areas of special flood hazard shall have the lowest floor (including basement) elevated at or above the regulatory flood elevation. Flood proofing of new residential structures is prohibited. Nonresidential structures may meet the standards in Section 12-01-001-0006.1.A.3.d and e. The lowest floor elevation is defined as the bottom of the lowest floor joist, horizontal structural member, or duct work. (Amended, Ord. No. 2011-11, 09/06/2011)
- b. All new and substantially improved residential structures in Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot

higher than the depth number on the FIRM, or at least two feet if no depth number is specified. Nonresidential structures in AO Zones may meet the standards in Section 12-01-001-0006.1.A.3.d and e. Upon completion of the structure, an engineer or surveyor shall certify to the Floodplain Administrator that the elevation of the structure meets this standard.

- c. All new or substantially improved residential structures shall have the lowest floor elevation certified by an engineer or surveyor or architect and provide an elevation certificate to the Floodplain Administrator.

(Amended, Ord. No. 2011-11, 09/06/2011)

- d. Nonresidential structures shall either be elevated in conformance with Section 12-01-001-0006.1.A.3.a. through c. or together with attendant utility and sanitary facilities:

1. be flood proofed so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
3. be certified by an engineer or architect that the standards of this subsection are satisfied. An elevation certificate shall be provided to the Floodplain Administrator prior to issuance of a building permit.

(Amended, Ord. No. 2011-11, 09/06/2011)

- e. Whenever flood proofing measures are required, a professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of these regulations. The following measures shall be utilized, where appropriate, to ensure that design, specifications, and methods of construction will withstand flood depths, pressures, velocities, impact, and uplift forces and other factors associated with flooding:

- (1) anchoring of structures, or addition of mass or weight to structures to prevent flotation;
- (2) reinforcement of walls and floors to resist rupture or collapse caused by water pressures or floating debris;
- (3) construction of wells, water supply systems and wastewater treatment/disposal systems so as to prevent the entrance of flood waters into such systems;

- (4) subsurface drainage systems to relieve external pressures on foundation walls or basement floors;
  - (5) cut-off valves or backflow prevention devices on sewer lines or the elimination of gravity flow basement drains; and
  - (6) placement of utilities at or above the regulatory flood elevation.
- f. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are useable 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 must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided on opposite sides of each enclosed area, if physically possible. If a structure has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to enter and exit directly.
  - (2) The bottom of all openings shall be no higher than one foot above the adjacent grade; and
  - (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. Openings which require human intervention will not meet the requirement for an opening.
  - (4) A garage door, which does not have an opening in conformity with the design criteria in Section 12-01-001-0006.1.A.3.f, does not meet the requirement for an opening.
- g. Additions to existing structures or buildings shall be constructed such that the lowest floor is in conformity with the standards set forth in Section 12-01-001-0006.1.A.3.
- h. Manufactured homes shall meet the standards set forth in Section 12-01-001-0006.1 and also the standards set forth in Section 12-01-001-0006.5.

(Amended, Ord. No. 2011-11, 09/06/2011)

4. Structural fill shall be allowed within the flood fringe, under a Floodplain Use Permit, to the extent that it is not prohibited under any other regulation and the following standards are met:

- a. Fill which is intended to elevate a structure at or above the regulatory flood elevation must be designed and compacted to 95 percent of the maximum density obtainable with the Standard Proctor Test method issued by the American Society for Testing and Materials (ASTM Standard D-698) or other equivalent method. The fill must extend a minimum of 15 feet, or as approved by the Floodplain Administrator, beyond the exterior walls of any structure erected thereon before dropping below the base flood elevation. Fill must be designed and certified by an engineer.
  - b. Fill slopes for granular material can be no steeper than two horizontal to one vertical unless substantiating data, prepared by a soils engineer or engineering geologist, justifying steeper slopes is provided.
  - c. Adequate protection must be provided for fill slopes exposed to flood waters with velocities of five feet per second or less by covering the slopes with grasses, or other equivalent planting that is able to withstand the design velocities.
  - d. Adequate protection must be provided for fill slopes exposed to flood waters with velocities greater than five feet per second by armoring the slopes in accordance with the standards in the City of Flagstaff Stormwater Management Design Manual. (Amended, Ord. No. 2011-11, 09/06/2011)
  - e. New structures constructed on structural fill must have the lowest floor elevation in conformance with Section 12-01-001-0006.1.A.3 herein.
5. All temporary and permanent structures shall be anchored to prevent flotation, which could result in damage to other structures, restriction of bridge openings and other sections of the regulatory floodway.
  6. Attendant utility and sanitary facilities for new construction and substantial improvements shall be elevated and/or flood proofed to the regulatory flood elevation.
  7. **Garages and low cost accessory structures**
    - a. Attached garages.
      - (1) A garage attached to a residential structure, constructed with the garage floor slab below the regulatory flood elevation, must be designed to allow for the automatic entry of flood waters. See Section 12-01-001-0006.1.A.3.f. Areas of the garage below the regulatory flood elevation must be constructed with flood resistant materials. See Section 12-01-001-0006.1.A.2.
      - (2) A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed.
    - b. Detached garages and accessory structures.

(1) "Accessory structure" used solely for parking (2 car detached garages or smaller) or limited storage (small, low-cost sheds 200 sq ft or less), may be constructed such that its floor is below the regulatory flood elevation, provided the structure is designed and constructed in accordance with the following requirements:

- (a) Use of the accessory structure must be limited to parking or limited storage;
- (b) The portions of the accessory structure located below the regulatory flood elevation must be built using flood-resistant materials;
- (c) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- (d) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation;
- (e) The accessory structure must comply with floodplain encroachment provisions in Section 12-01-001-0006.7; and
- (f) The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with Section 12-01-001-0006.1.A.3.f.1.

2. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 12-01-001-0006.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0006.2 STANDARDS FOR STORAGE OF MATERIALS AND EQUIPMENT:**

- A. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, toxic, or could be injurious to human, animal, or plant life is prohibited.
- B. Storage of other material or equipment may be allowed if not subject to major 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. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0006.3 STANDARDS FOR UTILITIES:**

- A. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

- 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.
- D. All areas within the Floodplain that are disturbed as a result of the construction or maintenance of underground utilities must be restored to pre-construction conditions including, but not limited to, re-seeding, re-vegetating and restoring the same grade. (Amended, Ord. No. 2011-11, 09/06/2011)

(Ord. 2001-06, Amended, 04/03/2001); (Amended Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0006.4                    STANDARDS FOR SUBDIVISIONS:**

- A. All preliminary subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) shall identify the area of the special flood hazard and the elevation of the base flood. (Amended, Ord. No. 2011-11, 09/06/2011)
- B. A preliminary drainage report is required for all preliminary plat submittals in accordance with the City of Flagstaff Stormwater Management Design Manual. A final drainage report which technically demonstrates compliance with these regulations and the Stormwater Management Design Manual is required to be submitted and accepted prior to approval of subdivision construction plans and recording of the final plat.
- C. All subdivision proposals or other developments must provide base flood elevation data.
- D. All final subdivision plats within special flood hazard areas shall show the limits of the base flood, base flood elevations, and floodway. All final subdivision plans shall provide the minimum lowest floor elevation(s) of proposed structure(s) and pads.
- E. In areas of special flood hazard, all final subdivision construction plans shall provide the minimum lowest floor elevations of proposed structures and elevations of the engineered pads. If the site is filled above the base flood, the lowest floor and pad elevations shall be certified by an engineer or surveyor and provided to the Floodplain Administrator. The subdivider must complete a revision of the Flood Insurance Rate Map for any areas filled above the base flood elevation. (Amended, Ord. No. 2011-11, 09/06/2011)
- F. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- G. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- H. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.



I. All subdivisions shall provide stormwater facilities in accordance with the City of Flagstaff Stormwater Management Design Manual.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0006.5                    STANDARDS FOR MANUFACTURED HOMES, MANUFACTURED HOME PARKS AND SUBDIVISIONS, AND RECREATIONAL VEHICLES:**

A. All new and replacement manufactured homes, additions to manufactured homes, and recreational vehicles which are left on site for more than 180 days or are not licensed and ready for highway use shall:

1. Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation;

2. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement capable of resisting forces of at least four thousand eight hundred (4,800) pounds. This requirement is in addition to applicable State and local anchoring requirements to withstand wind forces. One of the following methods shall be used:

a. by providing over-the-top to ground anchors at each of the four corners of the manufactured home. Manufactured homes fifty (50) feet or more in length must have two (2) additional ties per side at intermediate locations and manufactured homes less than fifty (50) feet in length must have one (1) additional over-the-top tie per side; or

b. by providing frame ties at each of the four corners of the manufactured home. Manufactured homes fifty (50) feet or more in length must have five (5) additional ties per side, and manufactured homes less than fifty (50) feet in length must have four additional frame ties per side.

3. The manufactured home chassis must be supported by reinforced piers or other foundation elements of at least equivalent strength that are no more 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.

4. Any additions to a manufactured home must be similarly anchored.

B. Minimum Requirements for Manufactured Home Parks and Manufactured Home Subdivisions:

1. Adequate surface drainage and vehicular access for a manufactured home transport vehicle shall be provided.

2. All manufactured homes shall be placed on pads, lots elevated on compacted fill or pilings so that the bottom of the structural frame or the lowest point on any attached appliances, whichever is lower, is at or above the regulatory flood elevation. If elevated on pilings:

- a. the lots shall be large enough to permit steps;
  - b. the pilings shall be placed in stable soil no more than ten (10) feet apart; and
  - c. reinforcement shall be provided for pilings more than six (6) feet above the ground level.
- C. No manufactured home, recreational vehicle, new manufactured home park, or enlargement of an existing manufactured home park shall be permitted in the regulatory floodway.
- D. Recreational vehicles placed on sites within Zones A, AH, AE and AO must meet the following requirements:
- 1. be on the site for fewer than 180 consecutive days;
  - 2. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  - 3. recreational vehicles not meeting the criteria in items 1 and 2 must meet the requirements of Section 12-01-001-0006.5.A.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

SECTION 12-01-001-0006.6 RESERVED FOR FUTURE USE

**SECTION 12-01-001-0006.7 DEVELOPMENT STANDARDS FOR REGULATORY FLOODWAYS:**

Located within areas of special flood hazard established in Section 12-01-001-0004.02 are areas designated as regulatory floodways. The following provisions shall apply to regulatory floodways:

- A. The following are prohibited in, on, or over the regulatory floodway unless removed by a FEMA map revision: Encroachments, including fill, new construction, additions to existing structures which increase the building footprint, storage of materials or equipment, manufactured homes, recreational vehicles, or other development are prohibited. Substantial improvements are prohibited within the regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed substantial improvement would not result in any increase in flood levels within the community during the occurrence of the base flood. All new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of **Section 12-01-001-0006**. (Amended, Ord. No. 2011-11, 09/06/2011)
- B. Storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life is prohibited in, on or over the regulatory floodway.
- C. Any solid or hazardous waste disposal facility is prohibited in, on or over the regulatory floodway.

- D. Any wastewater treatment facility or pond is prohibited in, on or over the regulatory floodway. New private sewage systems, or additions to existing private sewage systems are prohibited in, on or over the regulatory floodway.
- E. Zone A, for which a regulatory floodway has not been delineated, shall be deemed in entirety as regulatory floodway for the purposes of these regulations.
- F. Uses having low flood-damage potential and not obstructing flood flows shall be permitted in the regulatory floodway to the extent that they are not prohibited by any other regulation, and provided they do not require structures, fill or storage of materials and equipment, or anything which will significantly impede or obstruct flood flows. Such uses include:
  - 1. Agricultural uses such as general farming, pasture and forestry but, does not include permanent crops which would constitute an obstruction to flood flows.
  - 2. Functionally dependent uses, industrial/commercial loading areas and parking lots. Overnight parking and unattended vehicles are prohibited in the regulatory floodway.
  - 3. Private and public recreational uses including but not limited to: golf courses, driving ranges, picnic grounds, swimming areas, parks, ball or multi-use fields, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback trails.
  - 4. Functions that serve the public interest and that will not cause a rise in the floodway elevation. Such uses include but are not limited to: water conservation, power and water quality service facilities and related works; remedial or corrective actions; environmental restoration; flood control facilities and related works; public roadways and bridges; fish and wildlife enhancement activities; emergency action assistance; public health assistance; utility transmission lines, pipelines, and water monitoring devices.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0006.8 MISCELLANEOUS PROVISIONS:**

- A. The Floodplain Administrator shall review and approve all development permits before issuance to ensure compliance with the provisions of these regulations. (Amended, Ord. No. 2011-11, 09/06/2011)
- B. Lateral additions to existing structures must meet all requirements of this Ordinance. If the Lateral Addition constitutes a Substantial Improvement to the existing structure then both the addition and the existing structure must meet all requirements of this Ordinance. The exception to this is for lateral additions located in the flood fringe, if the Lateral Addition is connected to the existing structure by only one doorway, not exceeding 36 inches in width, and minimal finishing is done to the common wall. (Amended, Ord. No. 2011-11, 09/11/2011)

- C. Substantial improvements to existing structures shall be counted on a cumulative basis for the 10 years prior to the date of application for construction. Additions to existing structures shall be included in the determination of a substantial improvement to the original structure. The property owner or permit applicant may have the option of having the structure independently appraised, the cost of which shall be assumed by the property owner or permit applicant, to be used as the market value. A copy of the certified appraisal must be submitted to the Floodplain Administrator. (Amended, Ord. No. 2011-11, 09/06/2011)
- D. The development of all land within the City of Flagstaff must include provisions for the management of stormwater runoff from the property which is to be developed. This management shall consist of stormwater storage facilities or other mitigation measures for rainfall events up to and including the one-hundred year event, in accordance with the City of Flagstaff Stormwater Management Design Manual.
- E. No street shall be used as a major carrier of stormwater from adjacent lands in lieu of natural washes, man-made channel, or storm drains. Streets shall be used for local runoff only. In all cases the flow of water from public streets shall be confined in public rights-of-way or drainage easements.
- F. All lots, structures, etc. within a development shall be accessible over terrain which can be traversed by conventional motor vehicles from the boundary of that development during the one-hundred year flood. Boundary shall include any adjacent street(s). At least one access route shall be accessible with a maximum water depth of one foot over the top of the access route or road during the one-hundred year flood.
- G. Parking lots are permitted within the floodplain provided that:
1. All vehicles are fully licensed, ready for highway use, and are not unattended. The term "unattended" shall mean that the owner or authorized driver cannot reasonably be expected to be available to remove the vehicle before flooding occurs.
  2. Any parking lot subject to flooding shall have a prominent sign posted at each entrance stating "Warning, parking lot subject to flooding".
  3. Overnight parking is prohibited in the regulatory floodway and shall be limited to flood fringe areas where the flooding does not exceed one foot of depth during the one-hundred year flood.
- H. An erosion hazard and building setback from the top of the channel bank is required for all new development to create a buffer and to provide access to the channel for possible maintenance and improvements work. This buffer shall be designated by the Floodplain Administrator according to the flood-related erosion hazard and erosion rates in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The minimum setback shall be ten (10) feet. The buffer may be used for suitable open space purposes, such as for agriculture, forestry, outdoor recreation, wildlife habitat areas, landscaping and for other activities using temporary and portable structures only.

- I. A waiver to the setback requirements may be granted by the Floodplain Administrator if it can be demonstrated that adequate erosion and flow velocity protection can and will be constructed and maintained, and vehicular maintenance access along the top of the channel bank is not required. All plans for erosion and flow velocity protection must be prepared by an engineer and reviewed and approved by the Floodplain Administrator.
- J. No new critical facility shall be constructed within the 100 or 500-year floodplain.
- K. No person shall change the use of an existing structure from a nonresidential use to a residential use without compliance with the provisions of these regulations.
- L. The design and evaluation of all new floodplain and stormwater management facilities shall be in accordance with the policies and design criteria set forth in the City of Flagstaff Stormwater Management Design Manual.
- M. Private Drainage Infrastructure that was required to be constructed as a condition of development, such as detention basins, Low Impact Development (LID) facilities, culverts and open channels, shall be maintained by the private property owner, or responsible party(s), to ensure proper function pursuant to the approved design. (Amended, Ord. No. 2011-11, 09/06/2011)
- N. In order to provide for properly sized drainage infrastructure and to minimize the need for the upsizing of drainage infrastructure in the future, drainage infrastructure shall be sized according to the best available hydrologic and hydraulic data including, but not limited to Drainage Master Plans, future conditions modeling and other drainage studies as may be approved by the City. (Amended, Ord. No. 2011-11, 09/06/2011)

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0007 VARIANCE PROCEDURE**

**SECTION 12-01-001-0007.1 APPEAL AND VARIANCE BOARD**

- A. The Floodplain Board (the "Board") of the City of Flagstaff shall hear and decide appeals and requests for variances from the requirements of these regulations.
- B. The Board shall hear and decide appeals 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 these regulations.
- C. The Board shall hear and decide variance requests from the provisions of these regulations.
- D. Applications for an appeal or variance shall be made on forms and in accordance with procedures furnished by the Floodplain Administrator. Persons requesting an appeal or variance shall pay a fee in the amount of three hundred dollars (\$300.00). Upon receipt of the appeal/variance request, fee, and all required information, the Floodplain Administrator

shall schedule the request before the Board within thirty (30) calendar days.

- E. The Board shall conduct hearings on all appeals and variance requests and all hearings shall be open to the public. Notice of the public hearing shall be published in a newspaper of general circulation a minimum of fifteen (15) days prior to the hearing.
- F. The Board shall render a written decision on an appeal or variance within thirty (30) calendar days from the date of the public hearing. When additional information is required by the Board, the Board shall render a decision within thirty (30) calendar days from receipt of such information.
- G. In passing upon such applications, the Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of these regulations, and:
  - 1. The danger that materials may be swept onto other lands to the injury of others;
  - 2. The danger of 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 community;
  - 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 flood waters expected at the site; and,
  - 11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system, and streets and bridges.
- H. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency. (Amended, Ord. No. 2011-11, 09/06/2011)

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0007.2            VARIANCES**

A.     NATURE OF VARIANCES

The variance criteria set forth in these regulations are based on the general principle of zoning law that variances pertain to a piece 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 Ordinance would create an exceptional hardship to the applicant or the surrounding properties. Mere economic or financial hardship alone is not exceptional. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not the structure, its inhabitants, or the property owners.

It is the duty of the Floodplain Board to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the regulatory flood elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance 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 ordinance 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.

(Amended, Ord. No. 2011-11, 09/06/2011)

B.     CONDITIONS FOR VARIANCES

1.     Variances may be issued 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 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.
2.     Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3.     Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4.     Variances shall only be issued upon:
  - a.     A showing of good and sufficient cause;
  - b.     A determination that failure to grant the variance would result in exceptional hardship to the applicant;

- c. 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 defined in Section 12-01-001-0003 of these regulations in the definition of "Functionally Dependent Use"; and
  - d. 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.
5. Generally, variances may be issued 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 base flood level, providing items 12-01-001-0005 and 12-01-001-0006 have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
  6. Upon consideration of the factors of Section 12-01-001-0007.1 and the purposes of these regulations, the Floodplain Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.
  7. Any applicant to whom a variance is granted shall be given written notice over the signature of Floodplain Administrator that:
    - a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance coverage; and
    - b. Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions as required in Paragraph 12-1-7-1.8. of these regulations. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of land pursuant to any flood relocation and land exchange program. A copy of the notice shall be recorded by the Board in the Office of the Coconino County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

8. If the Floodplain Board has cause to believe, after approval of a variance, that any stipulations or conditions may have been violated, the Floodplain Board may set a hearing for the purpose of determining to revoke the variance for such violation. The Floodplain Board may revoke the variance for finding a violation of the stipulations or conditions or it may grant a limited time in which to correct the violation in order to avoid revocation of the variance.

(Ord. 2001-06, Amended, 04/03/2001); (Amended, Ord. No. 2011-11, 09/06/2011)

**SECTION 12-01-001-0007.3 APPEALS**



A person may appeal to the Board for a judgment on the interpretation of the provisions of these regulations 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 these regulations.

(Ord. 2001-06, Added, 04/03/2001)

**SECTION 12-01-001-0008 NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS**

These floodplain management regulations of the City of Flagstaff are hereby amended by the addition thereto of the regulations of the National Flood Insurance Program as they may from time to time be amended.

In accordance with 44 CFR Ch. 1, Part 60, Subpart A, any state or local floodplain management regulations, including the regulations set forth in these regulations, which are more restrictive than the minimum criteria set forth in 44 CFR shall take precedence.

The amended regulations for the National Flood Insurance Program, identified as referenced herein above are hereby declared to be a public record, and at least three (3) copies of the amendments shall be filed in the office of the City Clerk and be kept available for public use and inspection.

(Ord. No. 1675, Amended, 09/18/90; Ord. No. 1886, Ren&Amd, 08/29/95, 12-01-001-0009)

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0009 AMENDMENTS**

The provisions of these regulations may, from time to time, be amended, supplemented, changed or repealed, as provided in the Arizona Revised Statutes. However, no such action may be taken until a public hearing in relation thereto has been held, at which time parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation.

A full text of any proposed amendments to these regulations shall be available for inspection by the public at the office of the Floodplain Administrator at least fifteen (15) days prior to the date of the amendment hearing.

(Ord. No. 1675, Amended, 09/18/90; Ord. No. 1886, Rep&ReEn, 08/29/95)

(Ord. 2001-06, Amended, 04/03/2001)

**SECTION 12-01-001-0010 SEVERABILITY:**

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

(Ord. No. 1642, Repealed, 11/07/89; Ord. No. 1642, Repealed, 11/07/89; Ord. No. 1642, Repealed, 11/07/89; Ord. No. 1886, Ren&Amd, 08/29/95, 12-01-001-0011)

(Ord. 2001-06, Renumbered, 04/03/2001)

**SECTION 12-01-001-0011 RESERVED FOR FUTURE USE**

(Ord. 2001-06, Renumbered, 04/03/2001)

**SECTION 12-01-001-0012 RESERVED FOR FUTURE USE**

(Repealed by Ordinance No. 1886, 08/29/95)

(Ord. No. 1886, Repealed, 08/29/95)

CHAPTER 12-02  
STORMWATER MANAGEMENT UTILITY

DIVISIONS:

12-02-001 STORMWATER MANAGEMENT UTILITY  
12-02-002 STORMWATER MANAGEMENT UTILITY SERVICE CHARGES

**DIVISION 12-02-001  
STORMWATER MANAGEMENT UTILITY**

**SECTIONS:**

<a href="#"><u>12-02-001-0001</u></a>	<b>FINDINGS OF FACT</b>
<a href="#"><u>12-02-001-0002</u></a>	<b>DEFINITIONS</b>
<a href="#"><u>12-02-001-0003</u></a>	<b>ESTABLISHMENT OF A STORMWATER MANAGEMENT UTILITY AND A UTILITY ENTERPRISE FUND</b>
<a href="#"><u>12-02-001-0004</u></a>	<b>PURPOSE AND RESPONSIBILITY OF THE UTILITY</b>
<a href="#"><u>12-02-001-0005</u></a>	<b>LIMITATION OF SCOPE OF RESPONSIBILITY</b>
<a href="#"><u>12-02-001-0006</u></a>	<b>BOUNDARIES AND JURISDICTION</b>
<a href="#"><u>12-02-001-0007</u></a>	<b>REQUIREMENTS FOR ON-SITE STORMWATER SYSTEMS: ENFORCEMENT METHODS AND INSPECTIONS</b>
<a href="#"><u>12-02-001-0008</u></a>	<b>GENERAL FUNDING POLICY</b>
<a href="#"><u>12-02-001-0009</u></a>	<b>INVESTMENT AND REINVESTMENT OF FUNDS AND BORROWING</b>
<a href="#"><u>12-02-001-0010</u></a>	<b>SEVERABILITY</b>
<a href="#"><u>12-02-001-0011</u></a>	<b>CONFLICT WITH OTHER ORDINANCES</b>

**SECTION 12-02-001-0001 FINDINGS OF FACT**

**SECTION 12-02-001-0001 FINDINGS OF FACT**

The City Council of the City of Flagstaff, Arizona makes the following findings of fact:

- (a) The professional engineering and financial analyses conducted on behalf of and submitted to the City properly assess and define the stormwater management problems, needs, goals, program priorities, costs of service and funding opportunities of the City.
- (b) Given the problems, needs, goals, program priorities, costs of service and funding opportunities identified in the professional engineering and financial analyses submitted to the City, it is appropriate to authorize the establishment of a separate enterprise accounting unit which shall be dedicated specifically to the management, construction, maintenance, protection, control, regulation, use, and enhancement of stormwater systems and programs in the City of Flagstaff in concert with other water resource management programs.
- (c) Urban development in the City has radically altered the natural hydrology of the area and the hydraulics of stormwater systems, with many natural elements having been replaced or augmented by man-made facilities. Urban development continues, and the City recognizes that additional growth will result in further alteration of stormwater systems throughout the City. Therefore, a stormwater utility service area subject to stormwater service charges should encompass the entirety of the City of Flagstaff.
- (d) The stormwater needs in the City of Flagstaff include, but are not limited to, protecting the public health, safety, and welfare of its property owners, citizens, and residents, including the protection and enhancement of the City's water resources. Provision of stormwater management programs, services, systems, and facilities therefore renders and/or results in both service and benefit to individual properties,

property owners, citizens, and residents of the City and to properties, property owners, citizens, and residents of the City concurrently in a variety of ways as identified in the professional engineering and financial analyses.

- (e) The City of Flagstaff presently owns and operates stormwater management systems and facilities, which have been developed, installed, and acquired through various mechanisms over many years. The future usefulness and value of the existing stormwater systems and facilities owned and operated by the City of Flagstaff, and of future additions and improvements thereto, rests on the ability of the City to effectively manage, construct, protect, operate, maintain, control, regulate, use, and enhance the stormwater systems and facilities in the City, in concert with the management of other water resources in the City. In order to do so, the City must have adequate and stable funding for its stormwater management program operating and capital investment needs.
- (f) The City Council finds, concludes, and determines that a Stormwater Management Utility service charge is the most practical and appropriate means of funding to properly deliver stormwater management services and benefits throughout the City, and the most equitable means to fund stormwater programs, services, systems, and facilities in the City, and that other funding mechanisms as described in the professional engineering and financial analyses prepared for the City offer supplementary funding opportunities that will enable the City to improve the long-term adequacy and equity of funding but do not have sufficient revenue capacity to support the entirety of the projected stormwater management program.
- (g) The City Council finds that credits against stormwater utility service charges are an appropriate means of adjusting fees, rates, rentals, charges, fines, and penalties in certain cases and directs that such crediting mechanisms be addressed as part of the detailed cost of service and rate analyses necessary to implement the funding of the Stormwater Management Utility. A Credit Manual for determining available credits against stormwater utility service charges has been adopted by Ordinance No. 2004-22 by the City Council.

(Ord. 2001-18, Add, 07/17/2001); (Ord. No. 2006-02; 06/06/2006)

#### **SECTION 12-02-001-0002 DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of words and terms used in this article shall be as set forth below.

- (a) **ABATEMENT.** Any action deemed necessary by the City or its officers or agents to remedy, correct, control, or eliminate a condition within, associated with, or impacting a stormwater drainage system or the water quality of receiving waters shall be deemed an abatement action.
- (b) **CREDITS.** Credit shall mean a conditional reduction in the amount of a stormwater service charge or other fees, rates, rentals, charges, fines, and penalties to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility, conservation or other protective easement, or continuing provision of a program or service or activity that reduces

the Stormwater Management Utility's cost of providing stormwater management programs, services, systems and facilities.

- (c) **STORMWATER MANAGEMENT PROGRAMS, SERVICES, SYSTEMS AND FACILITIES.** Stormwater management programs and services are the administrative, engineering, operational, regulatory, and capital improvement activities and functions performed in the course of managing the stormwater systems of the City, plus all other activities and functions necessary to support the provision of such programs and services. Stormwater management systems, and facilities are those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes, and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.
- (d) **STORMWATER SERVICE CHARGES.** Stormwater service charges shall mean a periodic service charge imposed for the purpose of funding costs related to stormwater management programs, services, systems, and facilities. Stormwater service charges may also include, but are not limited to, special charges to individual properties or persons for services, systems, or facilities related to stormwater management, including but not limited to charges for development plan review, inspection of development projects and on-site stormwater control systems, enhanced levels of stormwater service above and beyond the levels normally provided by City of Flagstaff, and abatement of nuisances as provided for in this Article.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0003 ESTABLISHMENT OF A STORMWATER MANAGEMENT UTILITY AND A UTILITY ENTERPRISE FUND**

There is hereby established within the City of Flagstaff a Stormwater Management Utility for the purpose of conducting the City's stormwater management program. The City Manager shall establish and maintain a Stormwater Management Utility enterprise fund in the City budget and accounting system, which shall be and remain separate from other funds. All revenues of the Utility shall be placed into the Stormwater Management Utility enterprise fund and all expenses of the Utility shall be paid from the fund, except that other revenues, receipts, and resources not accounted for in the Stormwater Management Utility enterprise fund may be applied to stormwater management programs, services, systems, and facilities as deemed appropriate by the City Council.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0004 PURPOSE AND RESPONSIBILITY OF THE UTILITY**

The City of Flagstaff Stormwater Management Utility is established for the purpose of managing, acquiring, constructing, protecting, operating, maintaining, enhancing, controlling, and regulating the use of stormwater drainage systems in the City. The Utility shall, on behalf of the City and the citizens of the City: administer the stormwater management program; perform studies and analyses as required; collect service charges, system development charges, in-lieu of construction fees and other funding as allowed by law, and

obtain and administer grants and loans as authorized by the City Council; prepare capital improvement plans and designs; perform routine maintenance and remedial repair of the stormwater systems; acquire, construct, and improve stormwater systems; acquire necessary lands, easements, rights-of-way, rights-of-entry and use, and other means of access to properties to perform its duties; regulate the on-site control, conveyance, and discharge of stormwater from properties; obtain federal and state permits required to carry out its purpose; enter into operating agreements with other agencies; educate and inform the public about stormwater management; and perform, without limitation except by law, any stormwater management functions and activities necessary to ensure the public safety, protect private and public properties and habitat, and enhance the natural environment and waters of the City and the State of Arizona.

(Ord. 2001-18, Add, 07/17/2001)

#### **SECTION 12-02-001-0005 LIMITATION OF SCOPE OF RESPONSIBILITY**

The purpose and responsibility of the Stormwater Management Utility shall be limited by the following legal and practical considerations.

- (a) The City of Flagstaff owns or has legal access for purposes of operation, maintenance, and improvement only to those stormwater systems and facilities which: (1) are located within public streets, other rights-of-way, and easements; (2) are subject to easements, rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, monitoring, and/or improvement of systems and facilities; or (3) are located on public lands to which the City has adequate access for operation, maintenance, and/or improvement of systems and facilities.
- (b) Operation, maintenance, and/or improvement of stormwater systems and facilities which are located on private property or public property not owned by the City of Flagstaff and for which there has been no public dedication of such systems and facilities for operation, maintenance, monitoring, and/or improvement of the systems and facilities shall be and remain the legal responsibility of the property owner, except as that responsibility may be otherwise affected by the laws of the State of Arizona and the United States of America.
- (c) It is the express intent of this Ordinance to protect the public health, safety, and welfare of all properties and persons in general, but not to create any special duty or relationship with any individual person or to any specific property within or outside the boundaries of the City. The City of Flagstaff expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the City, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.

To the extent any permit, plan approval, inspection or similar act is required by the City as a condition precedent to any activity or change upon property not owned by the City, pursuant to this or any other regulatory ordinance, regulation, or rule of the City or under Federal or State law, the issuance of such permit, plan approval, or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action,

including any action based on failure to permit or negligent issuance of a permit, seeking the imposition of money damages against the City, its officers, employees, or agents.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0006 BOUNDARIES AND JURISDICTION**

The boundaries and jurisdiction of the Stormwater Management Utility shall encompass all of the City of Flagstaff, and such additional areas lying outside the corporate limits of the City of Flagstaff as shall be subject to intergovernmental agreements for stormwater management as approved by City Council.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0007 REQUIREMENTS FOR ON-SITE STORMWATER SYSTEMS:  
ENFORCEMENT METHODS AND INSPECTIONS**

- (a) All property owners and developers of real property to be developed within the City of Flagstaff shall provide, manage, maintain, and operate on-site stormwater systems and facilities sufficient to collect, convey, detain, control, and discharge stormwater in a safe manner consistent with all City development regulations and the laws of the State of Arizona and the United States of America. Any failure to meet this obligation shall constitute a nuisance and be subject to an abatement action filed by the City in a court of competent jurisdiction. In the event a public nuisance is found by the court to exist, which the owner fails to properly abate within such reasonable time as allowed by the court, the City may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof charged to the owner in the same manner as a stormwater service charge as provided for in this Article.
- (b) In the event that the City shall file an action pursuant to Section 12-02-001-0007 (a), from the date of filing such action the City shall have all rights of judgment and collection through a court of competent jurisdiction as may be perfected by action.
- (c) The City shall have the right, pursuant to the authority of this Ordinance, for its designated officers and employees to enter upon private property and public property owned by other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance with any order or judgment entered pursuant to this Section.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0008 GENERAL FUNDING POLICY**

- (a) It shall be the policy of the City of Flagstaff that funding for the stormwater management utility program, services, systems, and facilities shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater



program, services, systems, and facilities by individual properties or persons and/or the level of service rendered by or resulting from the provision of stormwater programs, systems, and facilities. Stormwater service charge rates shall be structured so as to be fair and reasonable, and the resultant service charges shall bear a substantial relationship to the cost of providing services and facilities throughout the City. Similarly situated properties shall be charged similar rents, rates, charges, fees, or licenses. Service charge rates shall be structured to be consistent in their application and shall be coordinated with the use of any other funding methods employed for stormwater management within the City. Plan review and inspection fees, special fees for services, fees in-lieu of regulatory requirements, impact fees, system development charges, special assessments, general obligation and revenue bonding, and other funding methods and mechanisms available to the City may be used in concert with stormwater service charges and shall be coordinated with such charges in their application to ensure a fair and reasonable service charge rate structure and overall allocation of the cost of services and facilities.

- (b) The cost of stormwater management programs, services, systems, and facilities to be recovered through stormwater service charges may include operating, capital investment, and non-operating expenses, prudent operational and emergency reserve expenses, and stormwater quality as well as stormwater quantity management programs, needs, and requirements.
- (c) To the extent practicable, credits against stormwater service charges and/or other methods of funding stormwater management shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the City's standards by private property owners which reduce, eliminate, mitigate, or compensate the City Stormwater Management Utility's cost of providing programs, services, systems, and facilities. Such credits shall reflect the impact that the on-site stormwater control systems and activities have upon stormwater runoff discharged to public stormwater programs, services, systems, or facilities or to private stormwater facilities which impact the proper function of public stormwater programs, systems, services, or facilities or upon the water quality of receiving waters.
- (d) To the extent practicable, credits against stormwater service charges and/or other methods of funding stormwater management ~~shall~~ be provided for those portions of a property permanently and perpetually dedicated by a conservation or other protective easement which reduces, eliminates, mitigates, or compensates for the impact that the property or person or other unrelated properties or persons may have upon stormwater runoff discharged to public stormwater systems or facilities or to private stormwater facilities or upon the water quality of receiving waters, or which improves the function of public stormwater programs, services, systems, or facilities or the water quality of receiving waters.
- (e) City Council has adopted, by Ordinance No. 2004-22, a Credit Manual that provides for the determination of service charge reductions as the result of implementation of on-site stormwater control systems.

(Ord. 2001-18, Add, 07/17/2001); (Ord. No. 2006-02)

**SECTION 12-02-001-0009 INVESTMENT AND REINVESTMENT OF FUNDS AND BORROWING**

Funds generated for the Stormwater Management Utility from service charges, fees, rentals, rates, bond issues, loans, or other borrowing, grants, and other sources shall be utilized only for those purposes for which the Utility has been established as specified in this ordinance, including but not limited to: construction; regulation; planning; acquisition of interests in land, including easements; design and construction of facilities; maintenance of the stormwater system; billing and administration; water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, construction inspection; public information and education, and other activities which are reasonably required. Such funds shall be invested and reinvested pursuant to the same procedures and practices established by the City for investment and reinvestment of funds. The City Council may use any form of borrowing authorized by the laws of the State of Arizona to fund capital acquisitions or expenditures for the Stormwater Management Utility. The City Council, in its discretion and pursuant to standard budgetary procedures, may supplement such funds with amounts from the General Fund or other funding sources.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0010 SEVERABILITY**

If any provision of this Ordinance shall be deemed or found to conflict with the Arizona Constitution, or to be pre-empted by state statute, then such provision of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

(Ord. 2001-18, Add, 07/17/2001)

**SECTION 12-02-001-0011 CONFLICT WITH OTHER ORDINANCES**

If any provision of this Ordinance shall conflict with the provisions of a prior ordinance of the City of Flagstaff, then the conflicting provision of the prior ordinance shall be deemed repealed and no longer in effect, and the provisions of this Ordinance shall govern.

(Ord. 2001-18, Add, 07/17/2001)

**DIVISION 12-02-002  
STORMWATER MANAGEMENT UTILITY SERVICE CHARGES**

**SECTIONS:**

<a href="#"><u>12-02-002-0001</u></a>	<b>FINDINGS OF FACT</b>
<a href="#"><u>12-02-002-0002</u></a>	<b>DEFINITIONS</b>
<a href="#"><u>12-02-002-0003</u></a>	<b>SCHEDULE OF STORMWATER MANAGEMENT UTILITY SERVICE CHARGES AND FEES</b>
<a href="#"><u>12-02-002-0004</u></a>	<b>DISPOSITION OF STORMWATER MANAGEMENT UTILITY SERVICE CHARGES AND FEES</b>
<a href="#"><u>12-02-002-0005</u></a>	<b>STORMWATER MANAGEMENT UTILITY SERVICE CHARGE EXEMPTIONS AND CREDITS</b>
<a href="#"><u>12-02-002-0006</u></a>	<b>COLLECTION OF STORMWATER MANAGEMENT UTILITY SERVICE CHARGES, BILLING, DELINQUENCIES AND PENALTIES</b>
<a href="#"><u>12-02-002-0007</u></a>	<b>APPEALS</b>
<a href="#"><u>12-02-002-0008</u></a>	<b>FLOOD INSURANCE</b>
<a href="#"><u>12-02-002-0009</u></a>	<b>SEVERABILITY</b>
<a href="#"><u>12-02-002-0010</u></a>	<b>CONFLICT WITH OTHER ORDINANCES</b>
<a href="#"><u>12-02-002-0011</u></a>	<b>COMMENCEMENT OF SERVICE CHARGES</b>

**SECTION 12-02-002-0001 FINDINGS OF FACT**

The City Council of the City of Flagstaff, Arizona makes the following findings of fact:

- (a) The professional engineering and financial analyses conducted on behalf of and submitted to the City properly assess and define the stormwater management problems, needs, goals, program priorities, costs of service, funding opportunities, and prospective service charge rate methodologies of the City.
- (b) Given the problems, needs, goals, program priorities, costs of service and funding opportunities identified in the professional engineering and financial analyses submitted to the City, it is appropriate to establish a schedule of stormwater management service charges, the revenues of which shall be dedicated specifically to the management, construction, maintenance, protection, control, regulation, use, and enhancement of stormwater systems and programs in the City of Flagstaff in concert with other water resource management programs.
- (c) Urban development in the City has radically altered the natural hydrology of the area and the hydraulics of stormwater systems, with many natural elements having been replaced or augmented by man-made facilities. Urban development continues, and the City recognizes that additional growth will result in further alteration of stormwater systems throughout the City. Therefore, a stormwater utility service area subject to stormwater service charges should encompass the entirety of the City of Flagstaff.
- (d) The stormwater needs in the City of Flagstaff include, but are not limited to, protecting the public health, safety, and welfare of its property owners, citizens, and residents, including the protection and enhancement of the City's water resources. Provision of stormwater management programs, services, systems, and facilities therefore renders and/or results in both service and benefit to individual properties, property owners, citizens, and residents of the City concurrently in a

variety of ways as identified in the professional engineering and financial analyses, and thus justifies the billing of Stormwater Management Utility service charges to such properties, property owners, citizens, and residents and any other persons that presently are or may be in the future served or benefited by the programs, services, systems, and facilities provided by the Utility.

- (e) The City Council finds, concludes, and determines that a Stormwater Management Utility service charge is the most practical and appropriate means of properly delivering stormwater management services and benefits throughout the City, and the most equitable means to fund stormwater programs, services, systems, and facilities in the City, and that other funding mechanisms as described in the professional engineering and financial analyses prepared for the City offer supplementary funding opportunities that will enable the City to improve the long-term adequacy and equity of funding but do not have sufficient revenue capacity to support the entirety of the projected stormwater management program.
- (f) The City Council finds that credits against stormwater management utility service charges are an appropriate means of adjusting fees, rates, rentals, charges, fines, and penalties in certain cases and directs that such crediting mechanisms be addressed as part of the detailed cost of service and rate analyses necessary to implement the funding of the Stormwater Management Utility.

(Ord. 2003-02, Add, 03/18/2003)

#### **SECTION 12-02-002-0002 DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of words and terms used in this article shall be as set forth below.

**CREDITS.** Credits shall mean a conditional reduction in the amount of a periodic stormwater management utility service charge or other fees, rates, rentals, charges, fines, and penalties to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility, conservation or other protective easement, or continuing provision of a program or service or activity that reduces the Stormwater Management Utility's cost of providing stormwater management programs, services, systems and facilities.

**DETACHED SINGLE-FAMILY RESIDENTIAL PROPERTY.** For the purpose of calculating the periodic stormwater management utility service charge, property containing one (1) structure not attached to another dwelling unit and which contains one or more bedrooms, with bathroom and kitchen facilities, designed for occupancy by one family. Detached single-family residential property may include detached single-family houses, manufactured homes, and mobile homes located on one (1) or more individual lots or parcels of land. A property may be classified as a detached single-family residential property for billing purposes despite the presence of incidental structures associated with residential uses such as garages, carports, or small storage buildings, or the presence of a commercial use within the dwelling unit so long as such use does not result in additional impervious areas such as parking spaces, structures, or additions to the building which are used as offices, storage facilities, meeting rooms, classrooms, houses of worship, or similar non-residential uses. Detached single-family residential property shall not include structures used primarily

for non-residential purposes, manufactured homes or mobile home parks where the land is owned by others than the owners of the manufactured homes or mobile homes, or multiple dwelling unit residential properties.

EQUIVALENT RATE UNIT. For the purpose of calculating the periodic stormwater management utility service charge applicable to any and every property in the City, except as may be altered by an exemption, credit, offset or other adjustment to the service charge, an Equivalent Rate Unit (or ERU) of 1,500 square feet of impervious area is hereby adopted and shall be applied to the calculation of periodic stormwater service charges. Each whole ERU, or increment thereof, shall be periodically charged the same amount unless the City Council shall specifically adopt varying charges per ERU to reflect differences in the cost of services and facilities by watershed, level or type of services and/or facilities provided, or other considerations deemed valid and appropriate by the City Council.

IMPERVIOUS AREA. Impervious area shall include, but is not necessarily limited to, any man-made structure or surface that is built or laid upon the natural surface of the land which has the effect of increasing, collecting, concentrating, re-directing, or otherwise altering stormwater runoff from land in a manner that increases peak stormwater runoff rates, the total volume of stormwater discharged from a property, or the pollutant loading contained in stormwater runoff, including but not limited to, those which reduce the infiltration of stormwater into the soil or reduce the natural evaporation and transpiration of stormwater from the land. Impervious area shall include, but is not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted graveled roads or parking areas, and other surfaces which are subject to vehicle traffic to such extent that the stormwater runoff from the gravel surface increases or is collected, concentrated, re-directed, or otherwise altered from that which would prevail in a natural condition absent the presence of the graveled surface.

SPECIAL STORMWATER SERVICE FEES. Special stormwater service fees shall mean a service fee, other than a periodic stormwater management utility service charge, imposed upon a property or person to recover the cost of providing special stormwater management services, systems, or facilities unique to individual properties or persons. Special stormwater service fees may include, but are not limited to, plan review and inspection fees related to alterations to the public stormwater systems or to stormwater systems and facilities located on private property; floodplain study review fees; flood hazard information letter preparation; floodplain use permit fees; drainage report review fees; grading, drainage, review and field inspections of construction site SWPPP's and paving plan review fees; surcharges applied to the periodic stormwater service charge to reflect special services and/or higher levels of service provided to any property or person; system development fees imposed at the time development occurs to recover a proportionate share of system capitalization costs; charges to recover the cost of abating, mitigating, or correcting a nuisance or non-complying condition, including but not limited to administrative costs associated therewith; charges to apportion a proportionate share of the cost of a system or facility serving one or more properties when such system or facility is constructed by the City in lieu of requiring the construction of on-site detention or other runoff control systems on the individual property(ies); and charges to apportion a proportionate share of the cost of a system or facility serving two or more properties when such system or facility is constructed by a private developer in lieu of complying with a requirement to construct an on-site detention or other runoff control system on each of the individual property(ies), in which case such charges shall be

transferred by the City to the developer who built the system, or his or her assignees, less a reasonable deduction to recover the Stormwater Management Utility's cost of administering the special stormwater service fees.

STORMWATER MANAGEMENT UTILITY SERVICE CHARGE. Stormwater management utility service charge shall mean a periodic service charge imposed upon any and every property, lot, or parcel of land in the City of Flagstaff having more than 200 square feet of impervious area, for the purpose of funding costs related to stormwater management programs, services, systems, and facilities.

CONSTRUCTION SITE STORMWATER POLLUTION PREVENTION PLAN (SWPPP). A SWPPP is a plan that shall be prepared and implemented utilizing Best Management Practices, in accordance with the City's NPDES Phase II Stormwater General Permit requirements, during active construction, on sites that disturb one acre of land or more, which are intended to minimize pollutant runoff from a construction site.

(Ord. 2003-02, Add, 03/18/2003); (Ord. 2006-02, Amended 06/06/2006)

**SECTION 12-02-002-0003 SCHEDULE OF STORMWATER MANAGEMENT UTILITY SERVICE CHARGES AND FEES**

There is hereby adopted the following schedule of stormwater management utility service charges and fees for the purpose of funding all or any portion of the City's Stormwater Management Utility programs.

(a) STORMWATER MANAGEMENT UTILITY SERVICE CHARGE. Unless amended, adjusted, or repealed by a City Council, a periodic stormwater management utility service charge is hereby imposed on any and every property, lot, or parcel of land in the City of Flagstaff, except as may be altered by an exemption, credit, offset or other adjustment to the service charge, in the following manner:

- 1) Detached single-family residential property, lots, or parcels of land shall be charged based on the following tiered system:

Tier	Impervious Area Range in Square Feet	Charge per Month
Tier 1	200 - 1,500	\$0.92
Tier 2	1,501-3,000	\$1.84
Tier 3	3,001-4,500	\$2.76
Tier 4	4,501-6,000	\$3.68
Tier 5	> 6,000	\$4.60

Effective June 1, 2007, the Stormwater Management Utility Service Charge shall be increased incrementally each year through June 1, 2010, for detached single-family.

Effective Date	Increase Amount	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
June 1, 2007	\$0.10	\$1.02	\$2.04	\$3.06	\$4.08	\$5.10
June 1, 2008	\$0.10	\$1.12	\$2.24	\$3.36	\$4.48	\$5.60
June 1, 2009	\$0.10	\$1.22	\$2.44	\$3.66	\$4.88	\$6.10
June 1, 2010	\$0.08	\$1.30	\$2.60	\$3.90	\$5.20	\$6.50

(Amended 04/17/2007; Ord. No. 2007-26).

- 2) All other properties, lots, or parcels of land not classified as detached single-family residential property, unless exempted pursuant to Section 12-02-002-0005, shall be charged \$0.92 per month for each Equivalent Rate Unit, or increment thereof, located on the property, lot, or parcel of land.

Effective June 1, 2007, all other properties, lots, or parcels of land not classified as detached single-family residential property shall be charged according to the following table for each Equivalent Rate Unit, or increment thereof, located on the property, lot, or parcel of land:

Effective Date	Incremental Increase	Total Rate per ERU
June 1, 2007	\$0.10	\$1.02
June 1, 2008	\$0.10	\$1.12
June 1, 2009	\$0.10	\$1.22
June 1, 2010	\$0.08	\$1.30

- (b) SPECIAL STORMWATER SERVICE FEES. Unless amended, adjusted, or repealed by a City Council, the following special stormwater service fees shall be applied for the following services in the amount(s) defined:

1) Grading, Drainage, Paving Plan and SWPPP review	\$225 per sheet for a first and second review \$225 per sheet for all reviews thereafter
2) Grading and Drainage Field Inspection-sites less than 5 acres	\$60 per inspection
3) Grading and Drainage Field Inspection- sites larger than 5 acres	\$120 per inspection
4) SWPPP Inspection-sites less than 5 acres	\$60 per inspection
5) SWPPP Inspection-sites larger than 5 acres	\$120 per inspection
6) Annual Inspection of Structural Control	\$60 per inspection
7) Drainage Report Review	\$200 for first review \$100 for each review thereafter
8) Flood Hazard Information Letter	\$30 per letter
9) Floodplain Use Permit	\$45 per permit
10) Floodplain Study for FEMA Map Revision	\$2500 per Technical Data Notebook

**SECTION 12-02-002-0004 DISPOSITION OF STORMWATER MANAGEMENT UTILITY SERVICE CHARGES AND FEES**

Stormwater management utility service charge and fee revenues shall be assigned and dedicated solely to the Stormwater Management Utility enterprise fund in the City budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund stormwater management services and facilities.

The services charges and fees paid to and collected by virtue of this Ordinance shall not be used for general or other governmental or proprietary purposes of

the City, except to pay for costs incurred by the City in rendering services to the Stormwater Management Utility. Other than as described above, the charges and fees shall be used solely to pay for costs of operation, repair, maintenance, improvements, renewal, replacement, reconstruction, design, right-of-way and easement acquisition, and construction of public stormwater facilities and costs incidental thereto.

(Ord. 2003-02, Add, 03/18/2003)

**SECTION 12-02-002-0005 STORMWATER MANAGEMENT UTILITY SERVICE CHARGE EXEMPTIONS AND CREDITS**

- (a) No exception, credit, offset, or other reduction in stormwater service charges shall be granted based on age, race, tax status, economic status, or religion of the customer, or other condition unrelated to the stormwater utility's cost of providing stormwater services and facilities.
- (b) The stormwater management utility service charge shall not be collected in connection with any public street, public road, public highway or public alley, or any railroad right-of-way used exclusively for trackage and related safety appurtenances.
- (c) Credits against stormwater management utility service charges are an appropriate means of adjusting fees, rates, rentals, charges, fines, and penalties in certain cases and City Council directs that such crediting mechanisms be addressed as part of the detailed cost of service and rate analyses necessary to implement the funding of the Stormwater Management Utility. A credit manual shall be issued that will set forth the appropriate process and documentation to obtain such credits. Credit shall be made available to property owners for the following on-site stormwater controls or processes:
  - 1. Engineered retention or other facilities for stormwater quality controls.
  - 2. Engineered detention facilities for peak flow reduction and/or velocity reduction.
  - 3. Dedication of conservation easements that prevent development of property.
  - 4. Establishment and implementation of structured education programs for primary, secondary and college-level students on stormwater management and water quality issues.
- (d) Any credit allowed against the stormwater management utility service charge is conditioned on continuing compliance with the City's design and performance standards as stated in the credit manual and/or upon continuing provision of the systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. A credit may be revoked by the City at any time for noncompliance.
- (e) The City of Flagstaff has adopted a Credit Manual by Ordinance No. 2004-22.

(Ord. 2003-02, Add, 03/18/2003); (Ord. No. 2006-02, Amended 06/06/2006)

**SECTION 12-02-002-0006 COLLECTION OF STORMWATER MANAGEMENT UTILITY SERVICE CHARGES, BILLING, DELINQUENCIES AND PENALTIES**



- (a) The Financial Services Director is hereby authorized to collect all stormwater management utility service charges and fees prescribed by this Ordinance.
- (b) Stormwater management utility services charges shall be added to and collected with the bills as rendered for water by the Financial Services Director and all of the rules and regulations promulgated by Financial Services shall apply to, and be effective in, the collection of such stormwater service charges. For those properties not utilizing the City's water utility, a separate bill shall be collected from the property owner of record.
- (c) All stormwater management utility service charges shall be due and payable on the due date specified on the bill, and if not paid within thirty (30) days thereafter will be considered delinquent. If such charges are not paid within ten (10) days after such delinquent date, water service shall be discontinued. Before discontinuing water service, the City shall give written notice to the property owner, of the discontinuance and an opportunity to appear before the Financial Services Director or his/her designee on any disputed matter relative to the delinquent account.
- (d) The stoppage of water service hereinbefore authorized for nonpayment of stormwater management utility service charges shall be in addition to the right of the City to proceed for the collection of such unpaid charges in a manner provided by law for the collection of a municipal claim.

(Ord. 2003-02, Add, 03/18/2003)

**SECTION 12-02-002-0007 APPEALS**

Any property owner or customer who believes the provisions of this Ordinance have been applied in error may appeal in the following manner:

- (a) An appeal must be filed in writing with the City Stormwater Services Manager. In the case of utility service charge appeals, the appeal shall include a survey prepared by a registered land surveyor or professional civil engineer containing information on the total property area, the impervious surface area, and any other features or conditions which influence the hydrologic response of the property to rainfall events.
- (b) Using the information provided by the appellant, the Stormwater Services Manager shall conduct a technical review of the conditions on the subject property and respond to the appeal in writing within thirty (30) days.
- (c) In response to the appeal, the Stormwater Services Manager may adjust the stormwater service charge applicable to a property in conformance with the purpose and intent of this ordinance.
- (d) A decision of the Stormwater Services Manager, which is adverse to the appellant, may be further appealed to the City Manager within thirty (30) days of receipt of notice of the adverse decision. Notice of the appeal shall be served to the City Manager by the appellant, stating the grounds for the appeal. The City Manager shall issue a written decision on the appeal within thirty (30) days. All decisions by the City Manager shall be final.

- (e) The appeal process contained in the section shall be a condition precedent to an aggrieved customer seeking judicial relief. Any decision of the City Manager may be reviewed upon application to the Superior Court of Coconino County, filed within thirty (30) days of the date of service of the decision.

(Ord. 2003-02, Add, 03/18/2003)

**SECTION 12-02-002-0008 FLOOD INSURANCE**

Floods caused by stormwater runoff may occasionally occur which exceed the capacity of stormwater facilities constructed and maintained by the Stormwater Management Utility. This Ordinance does not imply that property liable for service charges established in this Ordinance will always be free from stormwater flooding or flood damage. This Ordinance does not purport to reduce the need or the necessity for a property or building owner to obtain flood insurance.

(Ord. 2003-02, Add, 03/18/2003)

**SECTION 12-02-002-0009 SEVERABILITY**

If any provision of this Ordinance shall be deemed or found to conflict with the Arizona Constitution, or to be pre-empted by state statute, then such provision of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

(Ord. 2003-02, Add, 03/18/2003)

**SECTION 12-02-002-0010 CONFLICT WITH OTHER ORDINANCES**

If any provision of this Ordinance shall conflict with the provisions of a prior ordinance of the City of Flagstaff, then the conflicting provision of the prior ordinance shall be deemed repealed and no longer in effect, and the provisions of this Ordinance shall govern.

(Ord. 2003-02, Add, 03/18/2003)

**SECTION 12-02-002-0011 COMMENCEMENT OF SERVICE CHARGES**

That upon the effective date of this Ordinance, the Stormwater Management Utility shall, in addition to its purposes and responsibilities provided herein, be authorized to:

- (a) commence the collection of service charges authorized in Section 12-02-002-0003(a) in coordination with the billing process of the City's utility billing system beginning on July 1, 2003, and commence the collection of service charges as revised pursuant to Section 12-02-002-0003 (a) on the effective date of this Ordinance, and commence the collection of service charges pursuant to Section 12-02-002-0003 (a) effective June 1, 2007;
- (b) commence the collection of the special service fees authorized in Section 12-02-002-0003(b) upon the effective date of this Ordinance;
- (c) process appeals to the service charge and determine and apply credits, offsets, and other adjustment to the service charge to ensure conformance with the intent of this Ordinance; and

(d) initiate collection processes as may be available to it to collect the service charges and any applicable delinquency and/or penalty for failure to pay such charges in a timely manner.

(Ord. 2003-02, Add, 03/18/2003); (Ord. No. 2006-02, Amended 06/06/2006)

CHAPTER 12-03  
ILLCIT DISCHARGE DETECTION AND ELIMINATION

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**SECTION 12-03-001-0001 FINDING OF FACT**

Illicit discharges occur due to illicit connections to the Municipal Separate Storm Sewer System ("MS4") from residential, business, industrial or commercial establishments. As a result of illicit connections, contaminated stormwater, wastes or wastewater enters into storm drains or directly into local waters without receiving treatment from a wastewater treatment plant. Illicit connections may be intentional or may be unknown to the property or business owner and may be due to the connection of floor drains to the MS4. Additional sources of illicit discharges can be attributed to, but not necessarily limited to: failing septic systems, illegal dumping/discharge practices, and the improper disposal of sewage from recreational practices.

**SECTION 12-03-001-0002 PURPOSE AND INTENT**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Flagstaff ("City") through the regulation of non-stormwater discharges to the MS4 to the Maximum Extent Practicable ("MEP") as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the Arizona Pollutant Discharge Elimination System ("AZPDES") or National Pollutant Discharge Elimination System ("NPDES") permit process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the MS4 by non-stormwater discharges;
- B. To prohibit illicit connections and discharges to the MS4; and
- C. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.

It is the intent of this chapter to comply with the City of Flagstaff Municipal Stormwater Permit and applicable federal (40 CFR § 122.26) and State of Arizona (ARS Title 49, Chap. 2 Article 3.1 & Arizona Administrative Code Title 18, Chapter 9, Articles 9 & 10) AZPDES regulations for stormwater discharges, to be consistent with the stormwater quality provisions of the Federal Clean Water Act (33 U.S.C. § 1342), and to enable the City to comply with all applicable stormwater quality provisions of federal, state, and local laws and regulations to ensure the future health, safety, and general welfare of the citizens of Flagstaff, as well as the protection and preservation of the local environment.

#### **SECTION 12-03-001-0003      DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of words and terms used in this article shall be as set forth below.

**AZPDES GENERAL PERMIT:** *Arizona Pollutant Discharge Elimination System (AZPDES) General Permit.* A general permit issued by the Arizona Department of Environmental Quality (ADEQ) under authority delegated pursuant to 33 United States Code & 1342(b).

**BEST MANAGEMENT PRACTICES (BMP'S):** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the MS4. BMP's also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**CITY OF FLAGSTAFF OR CITY:** Used interchangeably and means the City of Flagstaff, the Stormwater Management Section of the Community Development Division, or an authorized representative of the City of Flagstaff.

**CWA:** The Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.

**DISCHARGE:** When used without qualification means the discharge of a pollutant.

**EPA:** The United States Environmental Protection Agency.

FACILITY: Any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

ILLCIT CONNECTION: Any manmade conveyance connecting an illicit discharge directly to an MS4.

ILLCIT DISCHARGE: Any discharge to the MS4 that is not composed entirely of stormwater, except for discharges allowed under the AZPDES Permit No. AZG2002-002.

MAXIMUM EXTENT PRACTICABLE (MEP): The technology based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges. A discussion of MEP as it applies to small MS4's is found at 40 CFR 122.34. CWA section 402(p)(3)(B)(iii) requires that a municipal permit shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including Best Management Practices, control techniques and system design, and engineering methods, and other provisions that the State of Arizona determines appropriate for the control of such pollutants.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): A conveyance or system of conveyances, separate from the sanitary sewer system, consisting of all structures, basins, and natural or manmade channels that can collect, detain/retain, receive, or convey stormwater or other liquid that is discharged to a water of the United States from, or through, private property, public property, common areas, easements or rights-of-way, infrastructure, including but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, watercourses, culverts, water conduits, and storm drains.

MS4: The stormwater and regulatory industry standard term for Municipal Separate Storm Sewer System.

MUNICIPAL STORMWATER PERMIT: The AZPDES General Permit *Arizona Pollutant Discharge Elimination System (AZPDES) Stormwater Permit for discharge from Small Municipal Separate Storm Sewer Systems (MS4's) to Waters of the United States*. This permit is issued by the Arizona Department of Environmental Quality (ADEQ) under authority delegated pursuant to 33 United States Code & 1342(b).

NON-STORMWATER DISCHARGES: Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flow from firefighting, and operations determined by the City as being necessary to protect public health and safety .

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): A permit issued by EPA (or by a state under authority delegated pursuant to 33 USC § 1342(b)).

PERSON: An individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.

POLLUTANT: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: contaminants, toxic wastes, chemicals, petroleum products, biological materials, wrecked or discarded equipment, rocks, sand, paints, varnishes and solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes and yard wastes, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, floatables, pesticides, herbicides, and fertilizers, hazardous substances and wastes, heat, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, wastes and residues that result from constructing a building or structure, noxious or offensive matter of any kind, or any other liquid, solid, gaseous, or hazardous substance.

POLLUTION: The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water of the State or waters of the United States, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

RECEIVING WATERS: A river, ocean, stream, or other watercourse into which wastewater, stormwater or treated effluent is discharged.

STORMWATER: Any surface flow, runoff, or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT PLAN: A document which describes the Best Management Practices and activities to be implemented by the City to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Drainage Systems, and/or Receiving Waters to the Maximum Extent Practicable.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP): A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the action to eliminate or reduce pollutant discharges to stormwater, MS4, and/or receiving waters to the Maximum Extent Practicable (MEP).

WASTEWATER: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

WATERCOURSE: Any body of water, including but not limited to, lakes, ponds, rivers, streams, and washes whether perennial, intermittent or ephemeral.

WATERS OF THE UNITED STATES:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c) Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423, which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean



Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

**SECTION 12-03-001-0004      APPLICABILITY**

This chapter shall apply to all water entering the MS4 or its watercourses and all Waters of the U.S. within the City limits, whether generated on any developed or undeveloped lands, unless explicitly exempted by the AZPDES/NPDES General Permit.

**SECTION 12-03-001-0005      RESPONSIBILITY FOR ADMINISTRATION**

The City of Flagstaff Stormwater Management Section Manager or his or her designee shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the Stormwater Management Section Manager may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City of Flagstaff. Any person who has been delegated any power or duty described under this chapter is an authorized representative.

**SECTION 12-03-001-0006      ULTIMATE RESPONSIBILITY**

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

**SECTION 12-03-001-0007      SEVERABILITY**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

**SECTION 12-03-001-0008      DISCHARGE PROHIBITIONS**

The following are prohibited:

1. Illicit discharges;
2. Any discharge that is a source of pollutants;
3. Allowing or causing any unauthorized discharge that contributes a pollutant to stormwater;
4. Any discharge that contributes to a violation of the City's Municipal Stormwater Permit;
5. Establishing, using, and/or maintaining any connection that allows a discharge that contributes a pollutant to stormwater;

6. Depositing, dumping or storing any materials in a manner that may contribute a pollutant to, or obstruct the flow of, stormwater;
7. Discharges from commercial car washing, mobile car washing, or impervious surface pressure washing operations;
8. Misrepresentation in any document pertaining to an approved plan, permit, or certification relating to a discharge activity.

The following categories of non-stormwater discharges are only prohibited if the discharges are identified as significant contributors of pollutants to or from the MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flow from firefighting, and operations determined by the City as being necessary to protect public health and safety.

The prohibition shall not apply to any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA or the ADEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

#### **SECTION 12-03-001-0009 PROHIBITION OF ILLICIT CONNECTIONS**

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

A person is considered to be in violation of this chapter if the person connects a line conveying a pollutant to the MS4, or allows such a connection to continue.

#### **SECTION 12-03-001-0010 SUSPENSION OF MS4 ACCESS**

The City may, without prior notice, suspend MS4 discharge access when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4. If the violator fails to comply with a suspension order issued in an

emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4, or to minimize danger to persons.

**SECTION 12-03-001-0011 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

Any person subject to an industrial or construction activity AZPDES/NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required. An authorized representative of the City of Flagstaff shall be permitted to enter and inspect facilities subject to regulation under Industrial or Construction Activity permits at reasonable times and as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in effect which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.

**SECTION 12-03-001-0012 SUSPENSION DUE TO THE DETECTION OF ILLICIT DISCHARGE**

Any person discharging to the MS4 in violation of this chapter may be subject to MS4 access termination if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination date of its MS4 access. The violator may petition the City Stormwater Management Section for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Flagstaff Stormwater Management Section.

**SECTION 12-03-001-0013 WATERCOURSE PROTECTION**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. All maintenance activities must be in compliance with Federal, State and Municipal regulations.

**SECTION 12-03-001-0014 NOTIFICATION OF SPILLS**

The owner, operator, or the person who has control of the source or location of any potential spill or release, which may result in a discharge that is not in compliance with this chapter, shall:

- A. Post notices to employees containing information about whom to contact and what procedures to follow in the event of an accidental discharge or spill.

- B. In the event of a spill, promptly take all reasonable safety precautions including, if appropriate, calling 911 and completing the following steps:
1. Proceed with containment and clean up in accordance with:
    - a. the orders of an involved health and safety agency, or if no such orders have been issued;
    - b. the orders of an authorized representative, or if no such orders have been issued;
    - c. the Stormwater Pollution Prevention Plan or approved corrective action plan utilizing Best Management Practices for the involved facility.
  2. Report any violations of the Flagstaff Fire Code or other such applicable safety or health codes in the manner required by such code;
  3. Notify the City of Flagstaff Stormwater Management Section and the Arizona Department of Environmental Quality of the release by telephone before noon of the next working day;
  4. Provide written notification, within five working days, to the City of Flagstaff, Stormwater Management Section of the type, volume, cause of the discharge, corrective actions taken, and measures to be taken to prevent future occurrences.

**SECTION 12-03-001-0015 ENFORCEMENT**

**12-03-001-0015.01 NOTICE OF VIOLATION, CORRECTIVE ACTION, AND PENALTIES**

Upon discovery of a violation of this chapter, the Stormwater Management Section or authorized representative may issue to the violator a written notice stating the nature of the violation, the corrective action required, the time frame for corrective action, and the penalties for continued non-compliance. The statement shall inform the owner or occupant that failure to pay the penalties will result in a lien against the property. The notice shall be served either by personal service or certified mail, upon the owner, the owner's agent, the occupant, or the lessee. The notice may also require the violator to:

1. Submit a corrective action plan to the City of Flagstaff Stormwater Management Section indicating the cause of the violation, corrective actions to prevent recurrence, and a proposed compliance schedule;
2. Pay all costs of sampling and analysis, as well as costs for laboratory sample analysis;

3. Clean up any material that has left the property or has the potential to impact stormwater runoff, ensure that the clean up has been completed, and make changes in operations to prevent future releases;
4. Obtain and pay for the services of a qualified person to oversee and certify that corrective actions needed to resolve the violation have been completed;
5. Prepare and implement a Best Management Practices Plan to prevent stormwater pollution, regardless of AZPDES/NPDES requirements;
6. Stop work on clearing, dredging, grading, excavating, storing, transporting, and/or filling of land, new construction, improvements, alterations, or additions;
7. Stop any activity that is in violation of this chapter;
8. Abate, within the time specified in the notice, any condition that is in violation of this chapter; and
9. Abate immediately any condition in violation of this chapter, if the Stormwater Management Section authorized representative determines that such condition presents an immediate threat to public health, safety, or the environment;
10. If violator refuses or is unable to immediately abate a condition that presents an immediate threat to public health, safety or the environment the City may use all means necessary to abate the incident to protect the public health, safety or the environment and the City may charge all costs of such abatement to the violator.

The City may approve the compliance schedule or corrective action plan utilizing Best Management Practices submitted by the violator, or may require an alternative compliance schedule or corrective action plan utilizing Best Management Practices. This shall be done within the period specified in the notice. If the City discovers a condition that is likely to cause or is causing a discharge that threatens public health, safety or the environment, mitigation may include an immediate cessation of activity and abatement.

The remedies in this Section are cumulative and the City may seek one or more such remedies.

It is a civil infraction for any person to violate this Section or fail to comply with a notice of violation issued under this Section.

Any person violating this Section shall be liable to the City for all damages, costs, fines and penalties incurred by the City as a result,

and shall defend, indemnify, and hold harmless the City against any resulting claims, liabilities or damages.

**12-03-001-0015.02 APPEAL OF VIOLATION**

Any person receiving a notice of violation may appeal the determination. The notice of appeal must be received by the Stormwater Manager within ten (10) calendar days from the date of the notice:

1. The request for hearing must be in writing, state the objection to the notice of violation, and be mailed or delivered to the Stormwater Manager;
2. The Stormwater Manager shall, within five (5) working days of the receipt of an appeal, provide notice of a hearing;
3. Hearings under Sections 12-03-001-015.02(1) and 12-03-001-015.02(2) of this chapter shall be conducted by the Stormwater Manager, who shall admit all probative and reliable evidence without regard to formal rules of evidence or procedure. The person requesting an appeal may be heard in person and/or by an authorized representative at such hearing. Following the hearing, the Stormwater Manager shall issue a decision as to whether the notice of violation was supported by the evidence;
4. After the Stormwater Manager has issued a decision, the person requesting an appeal under this chapter shall have the right to appeal the Stormwater Manager's decision to the City Council, by filing with the Stormwater Manager a written statement setting forth fully the grounds for the appeal, within ten (10) days following the mailing of notice of the action complained of. The Stormwater Manager shall set a time and place for a hearing on such appeal and shall cause a notice of such hearing to be mailed to the appellant no less than five (5) working days prior to the date set for such hearing. The hearing by the City Council shall be conducted in the same manner as set forth in Section 12-03-001-015.02(3) above. The decision of the City Council shall be final.

**12-03-001-0015.03 ENFORCEMENT MEASURES AFTER APPEAL**

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, then representatives of the City may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation. However, should the violator appeal the decision, representatives of the City may enter the property no sooner than three days after the Council decision is rendered to take all steps necessary to abate the violation and the property owner shall be responsible for the cost of abatement. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City and/or its designated contractor to

enter upon the premises for the purposes set forth above.

**12-03-001-0015.04 COST OF ABATEMENT OF THE VIOLATION**

Within thirty (30) calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within fifteen (15) calendar days. If the amount due is not paid within fifteen (15) calendar days or by the time in which to file for an appeal is expired, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The assessment shall be recorded in the office of the Coconino County Recorder, including the date, amount of the assessment, and the legal description of the property against which the assessment is made. From the date of its recording, the assessment shall be a lien on the property and shall accrue interest at the rate prescribed by Arizona Revised Statutes, Section 44-1201. The City shall have the right to bring an action to enforce the lien in the Superior Court of Coconino County at any time after the recording of the assessment, but failure to enforce the lien by such action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording of the assessment.

**12-03-001-0015.05 INJUNCTIVE RELIEF**

It shall be unlawful for any person to violate any provisions or to fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate any provisions of this chapter, the City may petition the Coconino County Superior Court for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**12-03-001-0015.06 VIOLATIONS DEEMED A PUBLIC NUISANCE**

In addition to the enforcement processes and penalties provided herein, if any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance by the City, such condition may be immediately abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**12-03-001-0015.07 REMEDIES NOT EXCLUSIVE**

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Flagstaff to seek cumulative remedies. The City may recover all attorneys' fees, court costs, and

other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.