

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT ARTICLE 6-1600 OF THE BILLINGS, MONTANA CITY CODE, KNOWN AS "THE BILLINGS, MONTANA FLOODPLAIN REGULATIONS," BE REPEALED IN ITS ENTIRETY, AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT; AND, ENACTING A NEW ARTICLE 6-1600 TO BE KNOWN AS "THE CITY OF BILLINGS FLOODPLAIN HAZARD MANAGEMENT REGULATIONS" WITH DEFINITIONS, REGULATIONS, RESTRICTIONS, AND FEES AND PROVIDING THAT VIOLATIONS CONSTITUTE A MISDEMEANOR.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA:

Section 1. REPEALER. The Billings, Montana Floodplain Regulations codified as Article 6-1600 of the Billings Montana City Code, are hereby repealed in its entirety and declared to be null and void and of no effect.

Section 2. That the Billings, Montana City Code be amended by adding a new Article 6-1600 to read as follows:

"DIVISION 1. TITLE AND PURPOSE

Sec. 6-1601. Title.

This article shall be known, and may be cited, as the "City of Billings, Montana Floodplain Hazard Management Regulations;" hereinafter referred to as "these regulations."

Sec. 6-1602. PURPOSE.

These regulations promote public health, safety, and general welfare of the residents and minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas. These Regulations are intended to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood control projects;
- (c) Minimize the need for rescue and relief efforts

associated with flooding and generally undertaken at the expense of the general public;

(d) Minimize prolonged business and public service interruptions;

(e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;

(f) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood disruptions; and to

(g) Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Program for the benefit of the residents.

Sec. 6-1603. STATUTORY AUTHORITY

Floodplain and Floodway Management requirements are set forth in Montana Code Annotated Title 76, Chapter 5 and describe the authority, procedures and minimum standards for local regulations. The authority to regulate development in specifically identified flood hazard areas is granted to communities by state statute MCA 76-5-301, and Municipalities have authority to adopt regulations as provided for in MCA 76-5-302 to promote the general public health, safety, and welfare.

Sec. 6-1604 FINDINGS OF FACT

(a) Flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas have been delineated and designated by the Department of Natural Resources and Conservation (DNRC) pursuant to MCA 76-5-201.

(b) The proposed regulations have been reviewed by the Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency. The Montana Department of Natural Resources and Conservation has found the regulations to be acceptable to meet the Department minimum standards. The Federal Emergency Management Agency has found that these regulations are adequate and consistent with the comprehensive criteria for land management and use pursuant to the standards established in 44 CFR 60.3. (MCA 76-5-302, ARM 36.15.202, 44 CFR60.1 (b), 42USC 4022).

Secs. 6-1605 - 6-1610. Reserved.

DIVISION 2. DEFINITIONS

Sec. 6-1611. DEFINITIONS

Unless specifically defined below, words or phrases used in this article shall be interpreted as to give them the meaning they have in common usage and to give these regulations the most reasonable application. For the purpose of this ordinance, the following definitions are adopted:

100-year Flood - A flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Alteration - Any change or addition to an artificial obstruction that either increases its external dimensions or increases its potential flood hazard. See also, *Substantial Improvement*.

Appurtenant Structure - A structure in which the use is incidental or accessory to the use of a principal structure.

Artificial Obstruction - Any obstruction which is not natural and includes any development, dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, road, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across, or projecting into any Regulated Flood Hazard Area that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property. See also *Development*.

Base Flood (*Flood of 100 Year Frequency*) - A flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (*BFE*) - The elevation above sea level of the base flood in relation to the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988 unless otherwise specified.

Basement - Any area of the building, except a crawl space, having its lowest floor below ground level on all sides.

Building - A walled and roofed structure, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Channel - The geographical area within either the natural or artificial banks of a watercourse or drain way.

Crawl Space - An enclosure that has its interior floor area no more than 5 feet below the top of the next highest floor. See *Enclosure* and *Sub grade Crawlspace*.

DNRC - Montana Department of Natural Resources and

Conservation

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, excavation or drilling operations or storage of equipment or materials. See also Artificial Obstruction.

Elevated Building - A building that has no Basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns. A building on a crawlspace is considered an elevated building.

Enclosure - That portion below the lowest elevated floor of an elevated building that is either partially or fully shut in by rigid walls including a crawlspace, sub grade crawlspace, stairwell, or elevator below the Lowest Floor of an elevated building. A garage below or attached to an elevated building is considered an enclosure.

Encroachment - activities or construction within the Floodplain including fill, new construction, substantial improvements, and other development.

Encroachment Analysis - A hydrologic and hydraulic analysis performed by an engineer to assess the effects of the proposed artificial obstruction or nonconforming use on Base Flood Elevation and flood velocities.

Engineer - a professional engineer as defined by MCA 37-67-101(8).

Establish - To construct, place, insert, or excavate.

FEMA - The Federal Emergency Management Agency.

Flood Fringe - the identified portion of the Regulated Flood Hazard Area outside the limits of the floodway.

Flood of 100 Year Frequency (Base Flood) - a flood magnitude expected to recur on the average of once every 100-years or a flood magnitude that has a 1% chance of occurring in any given year.

Floodplain - the area including and adjoining the watercourse or drainway that would be covered by the floodwater of a Base Flood. The area is partitioned into a Flood Fringe and Floodway where specifically designated.

Floodplain Administrator - the Building Official is appointed to administer and implement the provisions of this ordinance.

Floodproof - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities,

electrical, plumbing, HVAC systems, structures and their contents. The term includes wet floodproof, dry floodproof and elevation of structures.

Floodway -the identified portion of the Regulated Flood Hazard Area and the channel and the areas adjoining the channel that are reasonably required to carry the discharge of the base flood without cumulatively increasing the water surface elevation by more than one half (½) foot.

Letter of Map Change (LOMC) - An official response from FEMA that amends or revises the FEMA Special Flood Hazard Area and FEMA Flood Insurance Study for flood insurance purposes and/or flood risk hazard. FEMA Letters of Map Change specific to an amendment or revision include:

1. Letter of Map Amendment (LOMA) - A letter of determination from FEMA issued in response to a request that a property or structure is not subject to the mandatory flood insurance requirement because it was inadvertently located in the effective FEMA Special Flood Hazard Area. The material submitted and response from FEMA may be considered by the Floodplain Administrator for determining if a property or structure is within the Regulated Flood Hazard area and subject to these regulations.

2. Letter of Map Revision Based on Fill (LOMR-F) - A letter of approval from FEMA removing the mandatory requirement for flood insurance on property based on placement of fill or an addition. Placement of fill or an addition must be preceded by a permit pursuant to these regulations. Placement of fill does not remove the development from the Regulated Flood Hazard Area or these regulations.

3. Letter of Map Revision (LOMR) - An official FEMA amendment to the currently effective FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map based on a physical change to the Floodplain of the Special Flood Hazard Area. It is issued by FEMA and changes flood zones, delineations, and elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study. It must be preceded by an approved alteration of the designated Floodplain from DNRC and subsequently an amendment to the Regulated Flood Hazard Area.

4. Conditional Letter of Map Revision (CLOMR) - A letter of approval for a proposed physical change that when completed would change by a subsequent LOMR the flood zones, delineation or elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study. The

CLOMR may be considered in an evaluation by DNRC and the Floodplain Administrator during consideration of a proposed amendment to the Regulated Flood Hazard Area.

Lowest Floor - any floor of a building including a basement used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.

Manufactured Home Park or Subdivision - includes the construction of facilities for servicing the manufactured home lots and at a minimum includes the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Manufactured or Mobile Home - a structure that is transportable in one (1) or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities and includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

New Construction - Structures for which the commencement of clearing, grading, filling, or excavating to prepare a site for construction occurs on or after the effective date of these regulations 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 include at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads and is completed on or after the effective date of Floodplain Management Regulations adopted by the City of Billings, Montana.

Non-Residential- Buildings including manufactured homes that are not residential including commercial, agricultural, and industrial buildings. See Residential Building.

Owner - any person who has dominion over, control of, or title to an artificial obstruction.

Person - Includes any individual, or group of individuals, corporation, partnership, association or any other entity, including State and local governments and agencies.

Recreational Vehicle - A park trailer, travel trailer, or other similar vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a truck; and (d) designed primarily for use as temporary living quarters for recreation, camping,

travel, or seasonal use, not for use as a permanent dwelling.

Regulated Flood Hazard Area - A Floodplain whose limits have been designated pursuant to Part 2, Chapter 5 of Title 76, MCA, and is determined to be the area adjoining the watercourse that would be covered by the floodwater of a base flood, a flood of a 100-year frequency. The Regulated Flood Hazard Area consists of the Floodway and Flood Fringe where specifically designated.

Residential Building - A dwelling or building for living purposes and including any mixed use of residential and non-residential use. All other buildings are non-residential.

Riprap - Stone, rocks, concrete blocks, or analogous material placed along the banks or bed of a watercourse or drainway for the purpose of preventing or alleviating erosion.

Scour Depth - The maximum depth of streambed scour caused by erosive forces of the base flood discharge.

Special Flood Hazard Area - Land area which has been specifically identified by the Federal Emergency Management Agency as the Floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is useful for the purposes of identifying flood hazards by local subdivisions of government for regulatory purposes as well as use by the National Flood Insurance Program for establishing risk zones and flood insurance premium rates. The FEMA flood hazard area zone designation or flood risk potential is as illustrated on FEMA's Flood Hazard Boundary Map or Flood Insurance Rate Map.

Structure - any Artificial Obstruction.

Subgrade Crawlspace - a Crawlspace foundation enclosure where the sub grade under-floor area is no more than 5 feet below the top of the next higher floor and no more than 2 feet below the lowest adjacent grade on all sides. A foundation exceeding either dimension is a Basement.

Substantial Damage - damage sustained by a structure where the cost of restoring the structure to its before-damage condition would exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - any repair, reconstruction or improvement of a structure where the cost is equal to or exceeds fifty percent (50%) of the market value of the structure either:

(a) Before the improvement or repair is started, or
(b) If the structure has been damaged, and is being restored before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when

the first construction to any wall, ceiling, floor, or other structural part of the building commences.

(c) For the purposes of this definition, substantial improvement is considered to occur when the first construction of any wall ceiling, floor or other structural part of the building commences.

(d) The term does not include:

(i) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(ii) Any alteration of a structure listed on the national register of historic places or state inventory of historic places.

Suitable Fill - Fill material which is stable, compacted, well graded, and pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and is fitting for the purpose of supporting the intended use and/or permanent structure.

Variance - a grant of relief from the development requirements of these regulations that would permit construction in a manner that would be otherwise prohibited by these regulations by an approval pursuant Section 6-1612.

Violation - A finding and order pursuant to the regulations against the owner or responsible party of the failure of a structure or other development to be fully compliant with these regulations.

Secs. 6-1612 - 6-1620. Reserved.

DIVISION 3. GENERAL PROVISIONS

Sec. 6-1621 JURISDICTIONAL AREA

These regulations apply only to the flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas and are more fully and specifically described in Division 4. The requirements and approvals for alterations to the specific jurisdictional area are in Division 4 as well. Areas within the Regulated Flood Hazard Area also include areas specifically identified, labeled and illustrated on maps as Floodplain, Floodway, or Flood Fringe that have differing uses allowed and minimum building standards that apply. The jurisdictional areas are those inundated by the Flood of 100-year Frequency illustrated and depicted in the referenced studies and maps.

The Regulated Flood Hazard Area supporting study and maps illustrating the regulatory area are generally studies and maps completed for the DNRC and may include Special Flood Hazard Areas and Flood Insurance Studies by FEMA or studies by others including the Natural Resources and Conservation Service (NRCS) that have been adopted by DNRC pursuant to MCA 76-5-201, et. seq. The maps and accompanying study become the Regulatory Flood Hazard area only when formally adopted by DNRC and community within an ordinance.

Sec. 6-1622. REGULATED FLOOD HAZARD AREAS

(a) The jurisdictional areas referenced herein as the Regulated Flood Hazard Area are the 100-year Floodplains illustrated and referenced in the "Flood Insurance Study for Yellowstone County, Montana and Incorporated Areas" with an effective date of November 6, 2013 along with accompanying flood insurance rate maps (FIRM).

(b) The Regulated Flood Hazard Area specifically described or illustrated in the specific study including maps that have been delineated, designated and established by order of the DNRC or FEMA pursuant to 76-5-201, MCA.

(c) Use allowances, design and construction requirements specifically in Sections 1622 and 1662 in these regulations vary by the specific areas identified as Floodway and Flood Fringe.

Sec. 6-1623. INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES.

(a) The mapped boundaries illustrated in the referenced studies in this Section are a guide for determining whether property is within the Regulated Flood Hazard Area.

(b) A determination of the outer limits and boundaries of the Regulated Flood Hazard Area or the Flood Fringe and Floodway within the Regulated Flood Hazard Area includes an evaluation of the maps as well as the particular study data of the referenced study in this Section. The supporting study material takes precedence over any map illustrations.

(c) The Floodplain boundary is delineated by the Base Flood Elevation. The actual intersection of the applicable study Base Flood Elevations with the natural adjacent terrain of the watercourse or channel is the physical field floodplain regulatory boundary.

(d) The Floodway boundary where identified within the Floodplain is as illustrated on the referenced maps and studies. Since the Floodway boundary is a study feature, the location of

the boundary may be physically located by referencing the study data to a ground feature. The Floodplain Administrator's interpretation of the boundary and decision may be appealed as set forth in Section 6-1652.

(e) If the Floodplain Administrator determines a proposed development is within the regulatory area:

(1) Where Base Flood Elevations exist, the property owner may provide additional information which may include elevation information provided by an engineer or land surveyor in order to re-determine if the proposed development is subject to these regulations.

(2) Where Base Flood Elevations do not exist, the property owner may provide additional information to be considered to re-determine the scaled location of the regulatory boundary or alternatively provide a computed Base Flood Elevation provided by an engineer.

(3) The Floodplain Administrator's interpretation of the boundaries and decision may be appealed as set forth in Section 6-1652.

(f) Any owner or lessee of property who believes his property has been inadvertently included in the Floodplain including the Floodway or Flood Fringe of the Regulated Flood Hazard Area may submit scientific and/or technical information to the Floodplain Administrator for a determination if the property is appropriately located. Scientific or technical information submitted to FEMA by an owner to affect the insurance rating for insurance purposes may be considered by the Floodplain Administrator. A determination by the Floodplain Administrator is independent of any determination by FEMA for insurance purposes. Any request for a FEMA determination of the flood insurance risk rating of a property or structure relative to the FEMA Special Flood Hazard area is the responsibility of the owner or lessee.

Section 6-1624. ALTERATION OF JURISDICTIONAL AREA.

(a) An alteration of the Regulated Flood Hazard Area is a DNRC approved amendment to the DNRC order that originally delineated and designated the 100-year Floodplain and is the basis of the Regulated Flood Hazard Area referenced in Section 6-1623. A DNRC approved alteration consists of revisions or updates to the specific maps and data of the referenced studies in this Section and forms the basis for an amendment to the Regulated Flood Hazard Area in these regulations.

(b) Any alteration can only be implemented by an amendment

to the Regulated Flood Hazard Area described in Section 6-1623;

(c) An alteration of the Regulated Flood Hazard Area may be the result of DNRC consideration of substantial natural physical change or new technical or scientific flood data showing that the Base Flood Elevation has or may be changed or was erroneously established.

(d) Any proposed development or artificial obstruction that causes an increase of 0.5 feet or more to the Base Flood Elevation of a Regulated Flood Hazard Area without a Floodway or an increase of more than 0.00 feet to the Base Flood Elevation of a Floodway requires a DNRC approved alteration of the Regulated Flood Hazard Area pursuant to MCA 76-5-20. A petition to DNRC from any person for alteration of the Regulated Flood Hazard Area by DNRC must include the following information:

(1) Certification that no buildings are located in the areas which would be impacted by the increased Base Flood Elevation;

(2) Evidence of notice and concurrence of all property and land owners of the proposed impacts to their properties;

(3) Information that demonstrates that alternatives are not feasible;

(4) Information that demonstrates that development is for a public use or benefit; and

(5) Any other supporting information and data as needed for approvals.

(e) The Floodplain Administrator may represent any necessary applications, approvals or endorsements by the permit authority to FEMA where they affect the FEMA Special Flood Hazard Area;

(f) A determination by the Floodplain Administrator that land areas located within the Regulated Flood Hazard Area are naturally at or above the Base Flood Elevation as proven by a certified elevation survey does not constitute or require an alteration or an amendment of the Regulated Flood Hazard Area; and

(g) Elevating with suitable fill as permitted does not alter the Regulated Flood Hazard Area or remove the elevated area from the Regulated Flood Hazard Area.

Sec. 6-1625. FLOODPLAIN ADMINISTRATOR.

The Building Official is hereby officially appointed to serve as the Floodplain Administrator and shall administer and implement the provisions of these regulations. The Floodplain

Administrator must serve to meet and maintain the commitments of the Floodplain Ordinance to remain eligible for FEMA Flood Insurance for individuals and business within the political subdivision.

Sec. 6-1626. COMPLIANCE

Development, New Construction, Alteration or Substantial Improvement may not commence without full compliance with the provisions of these regulations.

Sec. 6-1627. ABROGATION AND GREATER RESPONSIBILITY

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning, or other regulations in effect. However, where these regulations impose greater restrictions, the provision of these regulations must prevail.

Sec. 6-1628. REGULATION INTERPRETATION

In the interpretation and application of these regulations, all provisions must be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 6-1629. WARNING AND DISCLAIMER OF LIABILITY

These regulations do not imply that land outside the Regulated Flood Hazard Areas 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 community or any official or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

Sec. 6-1630. SEVERABILITY

If any section, clause, sentence, or phrase of these regulations is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way affect the validity of the remaining portions of these regulations.

Sec. 6-1631. DISCLOSURE PROVISION

All property owners or their agents in the Regulated Flood Hazard Areas shall notify potential buyers or their agents that such property is located within the Regulated Flood Hazard Areas

and is subject to regulation and any permitted uses that are transferred. Information regarding Regulated Flood Hazard Areas and the repository for Floodplain maps is available in the Floodplain Administrator's office.

Sec. 6-1632. PUBLIC RECORDS

Records including permits and applications, elevation and floodproof certificates, certificates of compliance, fee receipts, and other matters relating to these regulations must be maintained by the Floodplain Administrator and are public records and must be made available for inspection and for copies upon reasonable request. A reasonable copying cost for copying documents for members of the public may be charged and may require payments of the costs before providing the copies.

Sec. 6-1633. AMENDMENT OF REGULATIONS

These regulations may be amended after notice and public hearing in regard to the amendments to these regulations. The amendments must be found adequate and acceptable by DNRC and FEMA to be effective and must be submitted for review at least 30 days prior to official adoption.

Sec. 6-1634. LAND DIVISIONS AND SUBDIVISION REVIEW

Any land divisions and subdivision approval including new or expansion of existing manufactured home parks within the Regulated Flood Hazard Area must be designed to meet the following criteria:

(a) The base flood elevations and boundary of the Regulated Flood Hazard area are determined and considered during lot layout and building location design;

(b) Locations for future structures and development are reasonably safe from flooding;

(c) Adequate surface water drainage is provided to reduce exposure to flood hazards;

(d) Public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage; and

(e) For development within the Regulated Flood Hazard Area, permits according to these regulations must be obtained before development occurs.

Sec. 6-1635. DISASTER RECOVERY

In the event of a natural or man-made disaster, the

Floodplain Administrator should participate in the coordination of assistance and provide information to structure owners concerning Hazard Mitigation and Recovery measures with the Federal Emergency Management Agency, Montana Disaster Services, Montana Department of Natural Resources and Conservation, and other state, local and private emergency service organizations. Upon completion of cursory street view structure condition survey within the Regulated Flood Hazard Area, the Floodplain Administrator shall notify owners that a permit may be necessary before repair or reconstruction commences on damaged structures that have sustained an estimated 50% or more in damages caused by natural or man-made disasters such as floods, fires or winds. Owners should be advised that structures that have suffered substantial damage and will undergo substantial improvements require a floodplain application and permit and must be upgraded to meet the minimum building standards herein during repair or reconstruction.

Sec. 6-1636. METHODS TO REDUCE LOSSES

These regulations are intended to reduce flood losses through the following methods:

(a) Restrict or prohibit uses that are dangerous to health, safety or property in times of flooding or that may cause excessive increases in flood heights or velocities;

(b) Require that uses of land vulnerable to floods, including public facilities, be developed or constructed to at least minimum standards or to otherwise minimize flood damage;

(c) Regulate the alteration of natural floodplains, stream channels, and natural protective barriers which are needed to accommodate floodwaters;

(d) Regulate filling, grading, dredging and other development which may increase flood damage;

(e) Prevent or regulate the construction of flood barriers which will impact other land, flood water depth or velocity of floodwaters;

(f) Distinguish between the land use regulations applied to the floodway within the Regulated Flood Hazard Area and those applied to that portion of the Regulated Flood Hazard Area not contained in the floodway;

(g) Apply more restrictive land use regulations within the floodway of the Regulated Flood Hazard Area; and

(h) Ensure that regulations and minimum standards balance the greatest public good with the least private injury.

Secs. 6-1637 - 6-1640. Reserved.

DIVISION 4. ADMINISTRATION

Sec. 6-1641. FORMS.

The following forms may be required by the Floodplain Administrator:

(a) Floodplain Permit Application - is the "Joint Application for Proposed Work in Montana's Steams, Wetlands, Regulated Flood Hazard Areas, and Other Water Bodies", and the "City of Billings Floodplain Permit Application Form." A completed FEMA MT-1 form may be required to accompany the application when required by the Floodplain Administrator.

(b) Floodplain Permit Compliance Report - required to be submitted by the Applicant to the Floodplain Administrator once the permitted project in the Regulated Flood Hazard Area is completed or within the designated time stipulated on the Floodplain Permit. A compliance report including an elevation and or Floodproof Certificate may be required where specified.

(c) Floodplain Variance Application -submitted by the Applicant to the Floodplain Administrator for review of the proposed project prior to the initiation of the project requiring a variance.

(d) Floodplain Appeal -submitted by the Applicant or an aggrieved party as a notice and request for review of the decision to grant, grant with conditions or deny a Floodplain Permit as issued by the Floodplain Administrator and to be reviewed pursuant to Section 1652.

(e) Floodplain Emergency Notification - required to be used by persons to notify the Floodplain Administrator of projects undertaken during an emergency to safeguard life or structures. This is not a permit application and the person must take additional steps, as outlined in Section 6-1645.

(f) Official Complaint Form - may be used by any person to notify the Floodplain Administrator of an activity taking place without an official signed Floodplain Permit. Persons may make complaints without use of this form.

Sec. 6-1642. PERMIT REQUIREMENTS

(a) A permit is required within the Regulated Flood Hazard Area for a person to establish or alter an artificial obstruction, nonconforming use or development;

(b) Artificial obstructions, nonconforming uses and uses not specifically listed in this Section and Sections 6-1647, 6-

1661 and 6-1662 require a permit except as allowed without a permit in Sections 6-1661(a) and 6-1662(a) or as prohibited as specified in Sections 6-1661(e) and 6-1662(c);

(c) Artificial obstructions and nonconforming uses in a Regulated Flood Hazard Area not exempt under Sections 6-1661(a) and 6-1662(a) are public nuisances unless a Floodplain Permit has been obtained;

(d) A Floodplain Permit is required for an alteration of an established artificial obstruction or nonconforming use that increases the external size or increases its potential flood hazard and not exempt under Sections 6-1661(a) and 6-1662(a);

(e) A permit is required to reconstruct or repair an existing established structure that has experienced substantial damage or will undergo substantial improvement;

(f) Maintenance of an artificial obstruction or nonconforming use is not an alteration. Maintenance cannot increase the external size or increase the flood hazard potential of the existing artificial obstruction or nonconforming use.

Sec. 6-1643. REQUIRED PERMIT APPLICATION INFORMATION

A permit application shall include, but is not limited to the following:

(a) A completed and signed Floodplain Permit Application;

(b) The required review fee;

(c) Plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed project (i.e.; landscape alterations, existing and proposed structures, including the placement of manufactured homes, etc.) and the location of the foregoing in relation to the Regulated Flood Hazard Areas and if applicable the Floodway boundary;

(d) A copy of other required applicable permits which may include but is not limited to a 310 permit, SPA 124 permit, Section 404 Permit, a 318 Authorization, 401 Certification or a Navigable Rivers Land Use License or Easement from other permits from federal, state, and local agencies, for the proposed floodplain project and must show that the application is not in conflict with other relevant and applicable permits; and

(e) Additional information related to the specific use or activity that demonstrates the design criteria and construction standards are met or exceeded as specified in the Specific Standards.

Sec. 6-1644. NOTICE REQUIREMENTS FOR FLOODPLAIN PERMIT APPLICATIONS

Upon receipt of a complete application for a permit, the Floodplain Administrator shall:

(a) Prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in Yellowstone County, Montana;

(b) Serve notice by first-class mail upon adjacent property owners.

(c) The State National Flood Insurance Program Coordinator located in DNRC shall also receive notice by the most efficient method. Notice to other stream activity permitting agencies or other impacted property owners shall also be considered;

(d) Additionally provide notice to FEMA and adjacent communities prior to any alteration or relocation of a watercourse in the Regulated Flood Hazard Area,; and

(e) The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity.

Sec. 6-1645. EMERGENCY WAIVER.

(a) Emergency repair and replacement of severely damaged artificial obstructions and development including public transportation facilities, public water and sewer facilities, flood control works, and private projects in the Regulated Flood Hazard Area are subject to the permitting requirements of these regulations.

(b) The provisions of this ordinance are not intended to affect other actions that are necessary to safeguard life or structures during periods of emergency.

(c) Emergency Notification and Application Requirements

(1) The property owner and any person responsible for taking emergency action must notify the Floodplain Administrator prior to initiating any emergency action in a Regulated Flood Hazard Area normally requiring a Floodplain Permit. An Emergency Notification Form must be submitted to the Floodplain Administrator within five (5) days of the action taken as a result of an emergency.

(2) Unless otherwise specified by the Floodplain Administrator, within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit a Floodplain Permit Application that describes what action has taken place during the emergency and describe any additional work that may be required to bring the project in compliance with these regulations.

(3) The Floodplain Administrator may require a person who

has undertaken an emergency action to modify or remove the project in order to meet the permit requirements.

Sec. 6-1646. REVIEW.

(a) The Floodplain Administrator shall review and evaluate the application and shall approve, approve with conditions, or deny the application within 60 days of receipt of a correct and complete application.

(b) The Floodplain Administrator shall determine whether the application contains the applicable elements required in these regulations and shall notify the applicant of the Floodplain Administrator's determination.

(c) If the application is found insufficient and if the applicant corrects the identified deficiencies and resubmits the application, the Floodplain Administrator shall notify the applicant whether the resubmitted application contains all the elements required by these regulations, as applicable.

(d) This process shall be repeated until the applicant submits a complete application containing all the elements required by these regulations, or the application is withdrawn.

(e) If after a reasonable effort the Floodplain Administrator determines that the application remains incomplete, the Floodplain Administrator shall deny the application and notify the applicant of missing elements. No further action shall be taken on the application by the Floodplain Administrator until the application is resubmitted.

(f) A determination that an application contains the appropriate information for review does not ensure that the Floodplain Permit Application will be approved or conditionally approved and does not limit the ability of the Floodplain Administrator in requesting additional information during the review process.

Sec. 6-1647. PERMIT CRITERIA

(a) Floodplain Permit Applications shall be approved provided the proposed new construction, substantial improvement, or alteration of an artificial obstruction or nonconforming use meets the requirements of the minimum standards and criteria in Sections 6-1661(a) and 6-1662(a) and other requirements of these regulations, unless otherwise prohibited by this code.

(b) A Floodplain Permit Application for a development that will cause an increase of more than 0.00 feet to the Base Flood Elevation of the Floodway or more than 0.50 feet to the Base Flood Elevation of the Regulated Flood Hazard Area without a

Floodway, will not be approved unless an Alteration pursuant to Section 6-1624 has been approved and the Regulated Flood Hazard Area is amended herein.

(c) The Floodplain Administrator must determine that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendment of 1972, 36 U.S.C. 1334.

Sec. 6-1648. FEES.

Reasonable fees may be adopted for permit applications, notices, variances, inspections, certifications or other administrative actions required by these Regulations.

Sec. 6-1649. DECISION.

(a) The Floodplain Administrator shall approve, conditionally approve, or deny the proposed application. The Floodplain Administrator shall notify the applicant of his action and the reasons thereof within 60 days of receipt of a correct and complete application unless otherwise specified. A copy of the approved permit must be provided to DNRC.

(b) The granting of a permit does not affect any other type of approval required by any other statute or ordinance of the state, any political subdivision or the United States but is an added requirement.

Sec. 6-1650. PERMIT CONDITIONS AND REQUIREMENTS

Upon approval or conditional approval of the Floodplain Permit Application, the Floodplain Administrator shall provide the applicant with a permit including but not limited to the following requirements and conditions:

(a) The Floodplain Permit will not become valid until all other necessary permits are in place.

(b) A time limit of no more than one (1) year from the date of permit issuance or as commensurate with the project construction time line within which the project or development shall be completed. The applicant may request an extension for completion for up to an additional year. The request must be made at least 30 days prior to the completion deadline;

(c) All subsequent property owners and their agents and potential buyers shall be given actual notice of the Floodplain Development Permit issued on the property and that such property is located within a Regulated Flood Hazard Area;

(d) The artificial obstruction or use shall be maintained

to comply with the conditions and specifications of the permit;

(e) The applicant shall allow the Floodplain Administrator to enter upon all property affected by the permit at any time to perform on site inspections at select intervals during construction or completion.

(f) Periodic engineering oversight and/or interim reports during the construction period to shall be submitted to the Floodplain Administrator to confirm constructed elevations and other project elements;

(g) A certificate of compliance report including certifications where required and applicable including floodproof, elevation, surface drainage, proper enclosure openings and materials shall be submitted to the Floodplain Administrator within 30 days of completion or other time as specified; and

(h) The applicant shall submit an annual performance and maintenance report on bank stabilization or other projects utilizing maturing vegetative components to the Floodplain Administrator; and

(i) The applicant shall submit evidence of an approved FEMA Letter of Map Revision to FEMA within 6 months of completion.

Sec. 1651. VARIANCES

(a) A variance from the minimum development standards of these regulations may be allowed. An approved variance would permit construction in a manner otherwise as required or prohibited by these regulations.

(b) Variance application requirements:

(1) A completed Floodplain Permit Application and required supporting material must be submitted.

(2) Additionally, a completed Variance Application specific to the variance request including facts and information addressing the criteria in this section must be submitted; and

(3) If the Floodplain Permit Application and variance application is deemed not correct and complete, the Floodplain Administrator shall notify the applicant of deficiencies within a reasonable time not to exceed 30 days. Under no circumstances should it be assumed that the variance is automatically granted.

(b) Floodplain Variance Application notice requirements. Public Notice of the Floodplain Permit and Variance Application shall be given pursuant to Section 6-1644.

(c) Evaluation of variance application

(1) A variance shall only be issued upon a determination that the variance is the minimum allowance necessary,

considering the flood hazard, to afford relief from these regulations when all of the findings are met:

a. There is a good and sufficient cause other than or in addition to financial hardship.

b. Failure to grant the variance would result in exceptional hardship to the applicant;

c. There is no basement or residential dwelling that has the lowest floor elevation below the Base Flood Elevation.

d. Any enclosure including a crawl space must meet the requirements of Section 6-1662(b)(1)m., Wet Floodproof, if the enclosure interior grade is at or below the Base Flood Elevation

e. Granting of a variance will not result in increased flood heights to existing insurable buildings, additional threats to public safety, extraordinary public expense, the creation of any public nuisances, fraud upon or victimization of the public, or create any conflict with other existing local laws or ordinances;

f. The proposed use is adequately floodproofed;

g. The variance is the minimum necessary, considering the flood hazard, to afford relief;

h. Reasonable alternative locations are not available;

i. No encroachment that causes an increase to the Base Flood Elevation unless an Alteration has been approved pursuant to Section 6-1662(b); and

j. All other criteria for a Floodplain Permit besides the specific development standard requested by variance are met.

(d) Special Considerations for variance approval:

(1) If the new construction or substantial improvements on a lot of one-half (1/2) acre or less is contiguous to and surrounded by lots of existing structures constructed below the base flood elevation, a variance may be approved. However, as lot sizes increase beyond one-half (1/2) acre additional technical justification the Floodplain Administrator may require additional technical justification; and

(2) Historic Structures - variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum relief necessary to preserve the historic character and design of the structure. If the historic nature of the building has been designated as a preliminary or historic structure by U.S. Secretary of Interior or an approved state or local government historic preservation program.

(e) Decision. The Board of Adjustment shall:

(1) Evaluate the application using the criteria and findings in this section, the application requirements and minimum development standards in Division 9 and 10;

(2) Hear, make findings, and approve, conditionally approve or deny a variance within 60 days of a complete application.

(3) Attach conditions to the granting of variance including a project completion date and inspections during and after construction.

(4) Notify the applicant that the issuance of a variance and permit to construct a structure below the base flood level may result in increased premium rates for flood insurance and that flood insurance premiums are determined by actuarial risk and will not be modified by the granting of a variance.

(5) Submit to the Floodplain Administrator a record of all actions involving a Floodplain Permit and Variance, including the findings and decision and send a copy of each variance granted to DNRC.

(f) Judicial review. Any person or persons aggrieved by the variance decision may appeal such decision in accordance with BMCC Section 6-1652, et seq.

Section 6-1652. APPEALS

(a) GENERAL. An appeal is a formal review by the Board of Adjustment of the Floodplain Administrator's order, or granting or denial of a Floodplain Development Permit or interpretation of the Regulated Flood Hazard Area boundary.

(b) APPEALS REQUIREMENTS. An Appeal to the Board shall include:

(1) An appeal shall include the basis of the appeal and supporting information including specific findings and conclusions of the Floodplain Administrator's decision being appealed;

(2) An appeal must be submitted by an applicant or anyone who may be aggrieved by the Floodplain Administrator's decision or order;

(3) Appeals must be received within 30 days of the date of the decision or order of the Floodplain Administrator; and

(4) Additional information specific to the appeal request may be requested.

(c) NOTICE AND HEARING

(1) Notice of the pending appeal and public hearing shall be provided pursuant to Section 6-1644. The Floodplain Administrator may notify DNRC and FEMA of pending appeals.

(2) A public hearing must be held within 30 days of the Notice unless set otherwise.

(d) **DECISION**

A judgment on an appeal shall be made within 30 days of the hearing unless set otherwise. The decision must grant the permit, modify or deny the permit or remand the application to the Floodplain Administrator with instructions or directions. A decision on an appeal of a permit cannot grant or issue a variance. A decision may support, reverse or remand an order or determination of a boundary of the Regulated Flood Hazard Area by the Floodplain Administrator.

(e) **JUDICIAL REVIEW**

Any person or persons aggrieved by the decision may appeal such decision to a court of competent jurisdiction.

Section 6-1653. ENFORCEMENT

(a) **INVESTIGATION REQUEST** An investigation of an artificial obstruction or nonconforming use within the Regulated Flood Hazard Area may be made either on the initiative of the Floodplain Administrator or on the written request of three (3) titleholders of land which may be affected by the activity within the Regulated Flood Hazard Area. The names and addresses of the persons requesting the investigations shall be released if requested.

(b) **NOTICE TO ENTER AND INVESTIGATE LANDS OR WATERS** The Floodplain Administrator may make reasonable entry upon any lands and waters for the purpose of making an investigation, inspection or survey to verify compliance with these regulations.

(1) The Floodplain Administrator shall provide notice of entry by mail, electronic mail, phone call, personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered.

(2) If none of these persons can be found, the Floodplain Administrator shall affix a copy of the notice to one (1) or more conspicuous places on the property for five (5) days.

(3) If the owners do not respond, cannot be located or refuse entry to the Floodplain Administrator, the Floodplain Administrator may only enter the property through a Search Warrant.

(c) **NOTICE TO RESPOND AND ORDER TO TAKE CORRECTIVE ACTION** When the Floodplain Administrator determines that a violation may have occurred, the Floodplain Administrator may issue written notice to the owner or an agent of the owner, either

personally or by certified mail. Such notice shall cite the regulatory offense and include an order to take corrective action within a reasonable time or respond requesting an administrative review.

(d) ADMINISTRATIVE REVIEW The order is final, unless within five (5) working days or any granted extension, after the order is received, the owner submits a written request for an administrative review before the Floodplain Administrator. A request for an administrative review does not stay the order.

(e) APPEAL OF ADMINISTRATIVE DECISION Within ten (10) working days or any granted extension of receipt of the Floodplain Administrator's decision concluding the administrative review, the property owner or owner's agent may appeal the decision to the Board.

(f) FAILURE TO COMPLY WITH ORDER TO TAKE CORRECTIVE ACTION If the owner fails to comply with the order for corrective action, remedies may include administrative or legal actions, or penalties through court.

(g) JUDICIAL REVIEW. Any person aggrieved by the decision may appeal to a court of competent jurisdiction.

(h) OTHER REMEDIES. This section does not prevent efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. Action under this part shall not bar enforcement of these regulations by injunction or other appropriate remedy.

Sec. 6-1654. DECLARATION TO THE FEDERAL FLOOD INSURANCE ADMINISTRATOR

Upon finding of a violation and failure of the owner to take corrective action as ordered, the Floodplain Administrator may submit notice to the Federal Insurance Administrator and request that a Violation Declaration be issued. The Federal Insurance Administrator has the authority to deny the issuance of a new flood insurance policy and the renewal of an existing flood insurance policy for a structure upon finding a valid violation declaration.

The Floodplain Administrator shall provide the Federal Insurance Administrator the following declaration:

(a) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(b) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(c) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(d) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(e) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

Sec. 6-1655. Penalties.

Violation of the provisions of these regulations or failure to comply with any of the requirements, including failure to obtain permit approval prior to development in the Regulated Flood Hazard Area, shall constitute a misdemeanor and may be treated as a public nuisance. Each day such violation continues shall constitute a separate offense.

Secs. 6-1656-6-1660. Reserved.

DIVISION 5. SPECIFIC STANDARDS

Sec. 6-1661. FLOODWAY.

(a) Uses allowed without permits. The following open space uses shall be allowed without a permit in the Regulated Flood Hazard Area, provided that such uses are not prohibited by any other resolution or statute, do not require structures, and do not require alteration of the Floodplain such as fill, grading, excavation or storage of materials or equipment:

(1) Agricultural uses, not including related structures, such as tilling, farming, irrigation, ranching, harvesting, grazing, etc;

(2) Accessory uses, not including structures, such as loading and parking areas, or emergency landing strips associated with industrial or commercial facilities;

(3) Forestry, including processing of forest products with portable equipment;

(4) Recreational vehicle use provided that the use is on the site for fewer than 180 consecutive days and the vehicle is fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions;

(5) Residential uses such as lawns, gardens, parking areas, and play areas;

(6) Maintenance of the existing state of an existing open space uses including preventive maintenance activities such as bridge deck rehabilitation and roadway pavement preservation activities. Maintenance cannot increase the external size or increase the hazard potential of the existing open space use;

(7) Public or private recreational uses not requiring structures such as picnic grounds, swimming areas, parks, campgrounds, golf courses, driving ranges, archery ranges, wildlife management and natural areas, alternative livestock ranches (game farms), fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails;

(8) Fences that have a low impact to the flow of water such as barbed wire fences and wood rail fences, and not including permanent fences crossing channels. Fences that have the potential to stop or impede flow or debris such as a chain link or privacy fence requires a Floodplain Permit;

(9) Addition of highway guard rail, signing and utility poles that have a low impact to the flow of water along an existing roadway.

(10) Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells and with the top of casing 18" above the Base Flood Elevation.

(b) Uses requiring permits. Uses specifically listed in this section may be allowed by permit within the Floodway, subject to the described requirements.

(1) General Requirements. An application for a permit shall meet the following requirements:

a. The project is designed and constructed to ensure that they do not adversely affect the flood hazard on other properties and are reasonably safe from flooding; and

b. The project assures that the carrying capacity of the Floodway is not reduced. All projects in the Floodway must be supported as shown by an encroachment analysis, a thorough hydrologic and hydraulic analysis prepared by an engineer to demonstrate the effect on flood flows, velocities and the Base Flood Elevation, and this documentation must meet all of the following criteria:

1. No increase (0.00 feet) to the Base Flood Elevation is allowed, unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Section 1624 and an approved FEMA

Conditional Letter of Map Revision occurs before permit issuance; and

2. Although all other development standards herein apply, a minimal or qualitative encroachment analysis may be accepted when the project or development does not require a structure, alteration of the Floodway, involve fill, grading, excavation or storage of materials or equipment and also is certified by an engineer to not exceed the allowable encroachment.

c. An application for a Floodplain Permit must also demonstrate the following factors are considered and incorporated into the design of the use or artificial obstruction in the Floodway:

1. The danger to life and property due to backwater or diverted flow caused by the obstruction or use is reduced;

2. The danger that the obstruction or use may be swept downstream to the injury of others is reduced;

3. Alternative locations for the project were considered and evaluated;

4. The construction or alteration of the obstruction or use will be done in such manner as to lessen the flooding danger;

5. The permanence of the obstruction or use;

6. The impact the anticipated development will have in the foreseeable future of the area which may be affected by the obstruction or use;

7. Relevant and related permits for the project have been obtained;

8. Such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the accompanying Administrative Rules of Montana;

(2) Mining of material requiring excavation from pits or pools provided that:

a. A buffer strip of undisturbed land of sufficient width as determined by an engineer to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;

b. The excavation meets all applicable laws and regulations of other local and state agencies; and

c. Excavated material may be processed on site but is stockpiled outside the Floodplain.

(3) Railroad, highway and street stream crossings provided that:

a. Crossings are designed to offer minimal obstructions to the flood flow;

b. Where failure or interruption of public transportation facilities would result in danger to public health or safety and where practicable and in consideration of FHWA Federal-Aid Policy Guide 23 CFR 650A:

1. Bridge lower chords shall have freeboard to at least two (2) feet above the Base Flood Elevation to help pass ice flows, the base flood discharge and any debris associated with the discharge; and

2. Culverts are designed to pass the base flood discharge and maintain at least two (2) feet freeboard on the crossing surface.

3. If possible, normal overflow channels are preserved to allow passage of sediments to prevent aggradations;

4. Mid stream supports for bridges, if necessary, have footings buried below the maximum scour depth; and

5. An encroachment analysis is prepared by an engineer.

(4) Limited filling for road, and railroad embankments not associated with stream crossings and bridges provided that:

a. The fill is the suitable fill;

b. Reasonable alternate transportation routes outside the floodway are not available; and

c. The encroachment is located as far from the stream channel as possible.

(5) Buried or suspended utility transmission lines provided that:

a. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six (6) feet higher than the Base Flood Elevation;

b. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows;

c. When technically feasible, the crossing will not disturb the bed and banks of the stream and alternatives such as alternative routes, directional drilling, and aerial crossings are considered; and

d. Utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum scour depth determined by an engineer for the base flood.

(6) Storage of materials and equipment provided that:

a. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; and

b. The material or equipment is readily removable within

the limited time available after flood warning. Storage of flammable, toxic or explosive materials shall not be permitted.

(7) Domestic water supply wells provided that:

a. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;

b. They require no other structures (e.g. a well house);

c. Well casings are water tight to a distance of at least twenty-five (25) feet below the ground surface and the well casing height shall be a minimum of eighteen (18) inches above the base flood elevation or capped with a watertight seal and vented eighteen (18) inches above the Base Flood Elevation;

d. Water supply and electrical lines have a watertight seal where the lines enter the casing;

e. All pumps and electrical lines and equipment are either of the submersible type or are adequately floodproofed; and

f. Check valves are installed on main water lines at wells and at all building entry locations.

(8) Buried and sealed vaults for sewage disposal in campgrounds and recreational areas provided they meet applicable laws and standards administered by Montana Department of Environmental Quality. Only those wastewater disposal systems that meet the requirements and separation distances under the appropriate health and sanitation regulations are allowed.

(9) Public and private campgrounds provided that:

a. Access roads require only limited fill and do not obstruct or divert flood waters;

b. Meet the accessory structures requirements;

c. No dwellings or permanent mobile homes are allowed; and

d. Recreational vehicles and travel trailers are ready for highway use with wheels intact, with only quick disconnect type utilities and securing devices, and have no permanently attached additions

(10) Structures accessory or appurtenant to permitted uses such as boat docks, loading and parking areas, marinas, sheds, emergency airstrips, permanent fences crossing channels, picnic shelters and tables and lavatory, that are incidental to a principal structure, provided that:

a. The structures are not intended for human habitation or supportive of human habitation;

b. The structures will have low flood damage potential;

c. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the

channel as possible;

d. The structures will be constructed and placed so as to offer a minimal obstruction to flood flows;

e. Any wastewater disposal systems meet the requirements and separation distances under health and sanitation regulations are allowed;

f. Service facilities within these structures such as electrical, heating and plumbing are floodproofed according to the requirements in Section 6-1662(b)(1)(i);

g. Structures are firmly anchored to prevent flotation;

h. The structures do not require fill or substantial excavation; and

i. The structures or use cannot be changed or altered without permit approval.

(11) Construction of or modifications to surface water diversions provided that the design is prepared and approved by an engineer and includes:

a. Measures necessary to minimize potential erosion from a base flood;

b. Plans that demonstrate any permanent structure crossing the stream is designed to substantially resist or withstand the forces associated with hydrodynamic and hydrostatic pressures, including flood depths, velocities, impact, ice, buoyancy, and uplift forces associated with the base flood.

(12) Flood control and bank protection measures. A design must be reviewed and approved by an engineer and constructed to substantially resist or withstand the forces associated with hydrodynamic and hydrostatic pressures, including flood depths, velocities, impact, ice, buoyancy, and uplift forces associated with the Base Flood in addition to an encroachment analysis. The design must also comply with the following applicable criteria:

a. Levee and floodwall construction or alteration:

1. Must be designed and constructed with suitable fill and to safely convey a base flood;

2. Must be constructed at least 3 feet higher than the elevation of the base flood except when protecting agricultural land only;

3. That protects structures of more than one (1) land owner must be engineered and constructed to meet state and federal levee standards and be publicly owned for the purpose of construction, operation and maintenance; and

4. For any increase in the elevation of the base flood the following information must be provided:

- a. The estimated cumulative effect of other reasonably anticipated future permissible uses;
- b. The type and amount of existing flood prone development in the affected area; and
- c. Impacts to existing or foreseeable development.
- d. Bank stabilization projects, pier and abutment protection projects if:
 - 1. The materials for the project should be the least environmentally damaging and practicable designed to withstand a base flood within five (5) years or other time as required by the Floodplain Administrator and does not require substantial yearly maintenance after that period.
 - 2. Materials for the project may be designed to erode over time but not fail catastrophically and impact others. Erosions, sedimentation, and transport of the materials may be designed to be at least similar in amount and rate to existing natural stream banks during the base flood.
 - 3. The project must not increase erosion upstream, downstream, or adjacent to the site in excess of the existing stable natural stream bank during the Base Flood.
 - 4. Materials for the project may include but not limited to rip rap, root wads, brush mattresses, willow wattles, woody debris or combinations of analogous materials.
- c. Channelization projects where the excavation and/or construction of an artificial channel is for the purpose of diverting the entire flow of a stream from its established course the project must:
 - 1. Not increase the magnitude, velocity, or elevation of the Base Flood; and
 - 2. Meet the requirements of Section 6-1661(b)(12)(b).
- d. Dams provided:
 - 1. The design and construction is in accordance with the Montana Dam Safety Act and applicable safety standards; and
 - 2. The project will not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design.
- (13) Stream and bank restoration projects intended to reestablish the terrestrial and aquatic attributes of a natural stream and not for protection of a structure or development provided:
 - a. The project will not increase velocity or erosion upstream, downstream, across from or adjacent to the site;
 - b. Materials may include but are not limited to boulders, rock cobble, gravel, native stream bed materials, root wads,

brush mattresses, willow wattles, natural woody debris or combinations of analogous materials;

c. Erosion, sedimentation, and transport of the materials are not more than the amount and rate of existing natural stream banks during the Base Flood;

d. The project may be designed to allow vegetative materials to mature within a period up to 5 years or other time as required by the Floodplain Administrator. Once vegetation is mature and established it should not require substantial yearly maintenance after the initial period.

(14) Alterations to existing residential and non-residential buildings in the floodway where any change or addition to an existing building either increases the external dimensions or increases the potential flood hazard, provided the requirements of Section 6-1661(b)(1) and the applicable requirements for residential and non-residential buildings in Section 1662 are met.

(e) Prohibited Uses. The following obstructions and nonconforming uses are prohibited in the Floodway within the Regulated Flood Hazard Area:

(1) A building for residential or non-residential purposes;

(2) A structure, fill or excavation that would cause water to be diverted from the Floodway, cause erosion, obstruct the natural flow of waters or reduce the carrying capacity of the Floodway. Notwithstanding these requirements, excavation or fill may be allowed when it is a component to a permitted use allowed in these regulations;

(3) The construction or storage of an object (artificial obstruction) subject to flotation or movement during flood level periods;

(4) Solid and Hazardous waste disposal and individual and multiple family sewage disposal systems unless the systems meet the local health and sanitation regulations and when permitted pursuant to these regulations and are designed to minimize or eliminate infiltration of flood waters and avoid impairment or contamination; and

(e) Storage of toxic, flammable, hazardous or explosive materials.

Sec. 6-1662. FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITHOUT A FLOODWAY.

(a) Uses allowed without permits. All uses allowed in the floodway, according to the provisions of section 6-1661(a) of these regulations, shall also be allowed without a permit in the flood fringe or flood hazard area without a floodway. In addition, individual or multiple family subsurface sewage disposal systems are allowed only when they are reviewed and approved under laws and regulations administered by the Department of Health and Environmental Sciences or the local health board.

(b) Uses requiring permits. All uses allowed by permit in the Floodway shall also be allowed by permit within the Flood Fringe or Regulated Flood Hazard Area with no Floodway. Such uses are subject to the requirements in Section 6-1661, with the exception of the encroachment limit of Section 6-1661(b)(1)b. Instead, such uses are subject to the encroachment limits of this Section.

Except for artificial obstructions in Sections 6-1661(e) and 6-1662(c), all other artificial obstructions including new construction, substantial improvements, alterations to residential, and nonresidential structures including manufactured homes, and related suitable fill or excavation shall be allowed by permit and are subject to the requirements in this Section and General Requirements of Section 6-1662(b)(1), with the exception of the encroachment limit of Section 6-1662(h).

(1) General requirements:

a. Base Flood Elevation. The appropriate base flood elevation(s) shall be determined by appropriate methods and utilized in the design and layout of the project by an engineer demonstrating the appropriate design and construction criteria herein are met. Regulated Flood Hazard Areas that do not have computed and published base flood elevations in the adopted flood hazard study referenced in Division 4, Jurisdictional Area, the Base Flood Elevation must be computed as well, utilizing appropriate engineering methods and analysis;

b. Flood Damage. Projects must be constructed by methods and practices that minimize flood damage and are reasonably safe from flooding

c. Surface Drainage. Adequate surface drainage must be provided around structures

d. Materials. Structures are reasonably safe from flooding and constructed with materials resistant to flood damage; and

e. Artificial Obstructions. Structures or fill must not be

prohibited by any other statute, regulation, ordinance, or resolution; and must be compatible with subdivision, zoning and any other land use regulations, if any;

f. Anchoring. All construction and substantial improvements shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

g. Certification. Certification by an engineer, architect, or other qualified person must accompany the application as to an encroachment analysis where required, adequacy of structural elevations, determination of the base flood elevation, floodproofing, wet floodproofing, dry floodproofing, design and construction to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the base flood. A certification is not intended to constitute a warranty or guarantee of performance, expressed or implied;

h. Encroachment Analysis.

1. All applications in the Regulated Flood Hazard Area without a Floodway must be supported by an encroachment analysis of the proposed use, a thorough hydrologic and hydraulic analysis except as provided in following paragraph 4, Section 1662(b)(1)h., prepared by an engineer to demonstrate the effect of the structure on flood flows, velocities and the Base Flood Elevation;

2. The maximum allowable encroachment is certified to be at or less than 0.5 feet increase to the Base Flood Elevation unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Section 6-1621 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance;

3. An encroachment analysis is not required for any development in the Flood Fringe where an accompanying Floodway has been designated within the Regulated Flood Hazard Area; and

4. Although all other development standards herein apply, a minimal or qualitative encroachment analysis may be accepted when the project or development does not require a structure, alteration of the Floodplain, involve fill, grading, excavation or storage of materials or equipment and also is certified by an engineer to not exceed the allowable encroachment.

i. Electrical Systems Floodproof. All electrical service materials, equipment and installation for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two (2) feet above the Base Flood Elevation.

2. Portable and movable electrical equipment may be placed below the elevation of the Base Flood Elevation, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type;

3. The main power service lines must have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the Floodplain or two (2) feet above the Base Flood Elevation; and

4. All electrical wiring systems installed below the base flood elevation must be suitable for continuous submergence and may not contain fibrous components.

j. Heating and Cooling Systems Floodproof Heating and cooling systems for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Be installed with float operated automatic control valves so that fuel supply is automatically shut off when flood waters reach the floor level where located;

2. Have manually operated gate valves installed in gas supply lines. The gate valves must be operable from a location above the Base Flood Elevation;

3. Be installed in accordance with the provisions of Electrical Systems Floodproof; and

4. Have furnaces and cooling units and ductwork installed at least two (2) feet above the Base Flood Elevation.

k. Plumbing Systems Floodproof. Plumbing systems for uses in the Regulated Flood Hazard Area must be certified to meet the following requirements

1. Sewer lines, except those to be buried and sealed, must have check valves installed to prevent sewage backup into permitted structures; and

2. All toilets, stools, sinks, urinals, vaults, and drains must be located so the lowest point of possible entry is at least two (2) feet above the Base Flood Elevation.

1. Structural Fill Floodproof: Fill used to elevate structures, including but not limited to residential, commercial, and industrial structures must be suitable and meet the following requirements:

1. The filled area is at or above the Base Flood Elevation and extends at least 15 feet beyond the structure in all

directions;

2. Fill material must be suitable fill, that is stable, compacted, well graded, and pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, tree stumps or other organic material; and is fitting for the purpose of supporting the intended use and/or permanent structure;

3. The fill is compacted to minimize settlement and compacted to 95 percent of the maximum density. Compaction of earthen fill must be certified by a registered professional engineer;

4. No portion of the fill is within the floodway;

5. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters.

m. Wet Floodproof. Building designs with an enclosure below the lowest floor must be certified to meet the following:

1. The use of the enclosure is limited to parking, loading areas, building access, and storage of equipment or materials not appreciably affected by floodwaters;

2. Materials used for walls and floors are resistant to flooding to an elevation two (2) feet or more above the Base Flood Elevation;

3. The enclosure must be designed to equalize hydrostatic forces on walls by allowing for entry and exit of floodwaters. Opening designs must either be certified by an engineer or architect or meet or exceed the following:

i. Automatically allow entry and exit of floodwaters through screens, louvers, valves, and other coverings or devices;

ii. Have two (2) or more openings with a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area below the Lowest Floor, except if the enclosure is partially subgrade, a minimum of 2 openings may be provided on a single wall; and

iii. Have the bottom of all openings no higher than one (1) foot above the exterior or interior adjacent grade or floor immediately below the openings.

n. Dry Floodproof. Building designs that do not allow internal flooding must be certified to meet the following:

1. Be for non-residential use only;

2. Be floodproofed to an elevation no lower than two (2) feet above the Base Flood Elevation;

3. Be constructed of impermeable membranes or materials for

floors and walls and have water tight enclosures for all windows, doors and other openings; and

4. Be designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the Base Flood and the effects of buoyancy.

o. Elevation. The lowest floor elevation (including basement) must be two (2) feet above the Base Flood Elevation. A determination of the Base Flood Elevation is SHALL BE certified by an engineer. Elevating may be by either suitable fill, stem walls, pilings or other acceptable means;

p. Enclosure. Any enclosure below the lowest elevated floor must be designed to meet the wet floodproof requirements and the enclosure floor must be at or above the Base Flood Elevation.

q. Basement. Basements are not allowed in the Floodplain except where the basement floor is two (2) feet or more above the Base Flood Elevation;

r. Crawl Spaces. Crawl space foundation enclosures including sub grade crawlspace enclosures below the lowest floor must meet the wet floodproof requirements and be designed so that the crawl space floor is at or above the Base Flood Elevation. Crawl space foundations must have an inside dimension of not more than five (5) feet from the ground to the top of the living floor level and a sub grade crawlspace must also have the interior ground surface no more than two (2) feet below the exterior lowest adjacent ground surface on all sides. A sub grade foundation exceeding either dimension is a basement;

s. Variance. Where strict compliance with floodproof provisions is impossible because of existing streets, utilities, lot dimensions, or additions onto existing structures, alternative fill or floodproof measures may be permitted only by variance approval;

t. Manufactured Home Anchors. For new placement, substantial improvement or replacement of manufactured homes for residential or nonresidential use including additions, the chassis must be secure and must resist flotation, collapse or lateral movement by anchoring with anchoring components capable of carrying a force of 4,800 pounds and as follows:

1. For manufactured homes less than fifty (50) feet long, over-the-top ties to ground anchors are required at each of the four (4) corners of the home, with two (2) additional ties per side at intermediate locations; or

2. For manufactured homes more than fifty (50) feet long, frame ties to ground anchors are required at each corner of the

home with five (5) additional ties per side at intermediate points.

(2) Additional requirements for residential buildings.

a. New construction, alterations, and substantial improvements of residential dwellings manufactured homes, including replacement of manufactured homes, must be constructed such that:

1. Floodproofing. The Lowest Floor must be two (2) feet or more above the Base Flood Elevation and cannot be wet floodproofed or dry floodproofed;

2. Enclosure. Use for a crawlspace enclosure is limited to facilitating building component access. The enclosure cannot be dry floodproofed. An attached garage must meet the wet floodproof requirements except for both the required flood openings and limits on use but the attached garage floor must be two (2) or more feet above the Base Flood Elevation; and

b. Recreation Vehicles. Recreational vehicles on site for more than 180 days or not ready for highway use must meet the requirements for manufactured homes for residential use.

c. Non-residential building, exceptions or additional requirements. New construction, alterations, and substantial improvements of non-residential including agricultural, commercial and industrial buildings must be constructed in accordance with the following requirements:

1. Floodproof. The Lowest Floor of the building must be elevated two (2) feet above the Base Flood Elevation or adequately dry floodproofed according to this Section;

2. Enclosure. Enclosures below the Lowest Floor on elevated buildings must be wet floodproofed and the use must be limited to parking, access or storage or dry floodproofed;

d. Manufactured homes. Manufactured homes proposed for use as commercial or industrial buildings cannot be dry floodproofed; and

e. Agricultural structures. Agricultural structures which are not intended to be insurable, which are used solely for agricultural purposes, have low flood damage potential, which are used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities including raising of livestock, and which are not intended for human habitation are exempt from the elevation requirement, dry floodproofed or wet floodproof, but shall:

1. Be located on higher ground and as far from the channel as possible;

2. Offer minimal obstruction to flood flows;

- 3. Be adequately anchored to prevent flotation or collapse;
- 4. Where electrical, heating and plumbing systems are installed, meet the floodproof requirements in this Section; and
- 5. Meet the elevation or dry floodproof requirements if the structure is an animal confinement facility.

(c) Prohibited uses. The following artificial obstructions and nonconforming uses are prohibited in the Flood Fringe or Floodplain without a Floodway of the Regulated Flood Hazard Area:

(1) Solid and hazardous waste disposal and individual and multiple family sewage disposal systems unless the systems meet the local health and sanitation regulations and when permitted pursuant to these regulations and are designed to minimize or eliminate infiltration of flood waters and avoid impairment or contamination; and

(2) Storage of toxic, flammable, hazardous or explosive materials.

Secs. 6-1663 - 6-1670. Reserved."

Section 3. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

PASSED by the City Council on first reading this _____ day of _____, 2013.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2013.

CITY OF BILLINGS

By _____
THOMAS W. HANEL, Mayor

ATTEST:

By _____
CARI MARTIN, City Clerk