

ORDINANCE NO. 13-5616

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THAT ARTICLE 6-1600 OF THE BILLINGS, MONTANA CITY CODE, KNOWN AS "THE BILLINGS, MONTANA FLOODPLAIN REGULATIONS," BE REPEALED IN ITS ENTIRETY, AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT; AND, ENACTING A NEW ARTICLE 6-1600 TO BE KNOWN AS "THE CITY OF BILLINGS FLOODPLAIN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The Billings, Montana Floodplain Regulations codified as Article 6-1600 of the Billings Montana City Code, are hereby repealed in its entirety and declared to be null and void and of no effect.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 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