

# AGENDA ITEM SUMMARY

November 19, 2013

City Council

## STAFF

---

Marsha Hilmes-Robinson, Floodplain Administrator  
Jon Haukaas, Water Engineer Field Operations Manager  
Ken Sampley, Stormwater/Floodplain Program Manager  
Brian Varrella, Floodplain Administrator

## SUBJECT

---

Items Relating to the Adoption of the Colorado Water Conservation Board Floodplain Regulations.

## EXECUTIVE SUMMARY

---

- A. Second Reading of Ordinance No. 160, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Conform to Colorado Water Conservation Board Floodplain Regulations.
- B. Second Reading of Ordinance No. 161, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Clarify Certain Provisions.
- C. Second Reading of Ordinance No. 162, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Revise Certain Requirements.

These Ordinances, adopted on First Reading on November 5, 2013 by a vote of 5-0 (Campana recused; Weitkunat absent) adopt new minimum statewide floodplain regulations promulgated by the Colorado Water Conservation Board (CWCB) in January 2011 and additional proposed Code language clarifications and City policy revisions. All communities must adopt the CWCB regulations by January 2014. The City of Fort Collins already has adopted many of these standards. Therefore, there are relatively few changes needed to meet the CWCB statewide regulations.

## STAFF RECOMMENDATION

---

Staff recommends adoption of the Ordinances on Second Reading.

## ATTACHMENTS

---

- 1. : First Reading Agenda Item Summary, November 5, 2013 (without attachments) (PDF)
- 2. : Ordinance No. 160, 2013 (PDF)
- 3. : Ordinance No. 161, 2013 (PDF)
- 4. : Ordinance No. 162, 2013 (PDF)

**AGENDA ITEM SUMMARY**

November 5, 2013

City Council

**STAFF**

Marsha Hilmes-Robinson, Civil Engineer III  
 Jon Haukaas, Water Engineer Field Operations Manager  
 Ken Sampley, Stormwater/Floodplain Program Manager  
 Brian Varrella, Civil Engineer III

**SUBJECT**

Items Relating to the Adoption of the Colorado Water Conservation Board Floodplain Regulations.

**EXECUTIVE SUMMARY**

- A. First Reading of Ordinance No. 160, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Conform to Colorado Water Conservation Board Floodplain Regulations.
- B. First Reading of Ordinance No. 161, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Clarify Certain Provisions.
- C. First Reading of Ordinance No. 162, 2013, Amending Chapter 10 of the City Code Regarding Flood Hazard Areas to Revise Certain Requirements.

The purpose of this item is to adopt new minimum statewide floodplain regulations promulgated by the Colorado Water Conservation Board (CWCB) in January 2011 and additional proposed Code language clarifications and City policy revisions. All communities must adopt the CWCB regulations by January 2014. The City of Fort Collins already has adopted many of these standards. Therefore, there are relatively few changes needed to meet the CWCB statewide regulations.

**STAFF RECOMMENDATION**

Staff recommends adoption of the Ordinances on First Reading.

**BACKGROUND / DISCUSSION**

**CWCB Adoption Rules and Regulations Adoption Process**

For a community to participate in the National Flood Insurance Program (NFIP), it must adopt and enforce floodplain management regulations that meet or exceed the minimum NFIP standards, as well as any more restrictive state requirements. The Colorado Water Conservation Board (CWCB) is the state agency responsible for floodplain management. The CWCB commenced a process in 2010 to revise and update the Floodplain Rules and Regulations (Rules) governing floodplains within the State of Colorado. The Rules were initially promulgated in 1987, revised in 2005 and updated in January 2011. As provided in the Colorado Revised Statutes, flooding is considered to be an issue of statewide concern, and therefore any rules governing it will apply statewide in all municipalities and counties, regardless of home rule status.

A number of goals were formulated by CWCB staff leading to the stimulus to initiate the revision process.

- 1. The need for increased public safety in times of ever-growing flood losses around the country.

2. Regulations that would result in lower flood insurance premiums statewide.
3. Clarification that all state agencies must comply with the Rules.
4. Housekeeping language clarifications and other small items to correct known conflicts from the prior revisions.

The CWCB initiated a considerable public outreach process prior to adoption of the Rules. The City of Fort Collins Stormwater staff engaged in various opportunities to learn more about the regulations and informally comment on the proposed standards. The City also discussed the proposed changes with the various City boards and commissions and community organizations, including:

- Downtown Development Authority, March 7, 2010
- Chamber of Commerce, March 16, 2010
- Water Board, March 25, 2010
- Council's Legislative Review Committee, April 13, 2010.

**Attachment 1** is a letter from Mayor Hutchinson providing formal comment to the CWCB. The City also formally commented in writing (**Attachment 2**) and orally as part of the official Rule Making Process in November 2010. The City strongly supported the CWCB's efforts and the CWCB was responsive to the City's comments and concerns on specific issues.

Effective January 14, 2011, the State of Colorado adopted higher standards for floodplain management, which are outlined in the Rules and Regulations for Regulatory Floodplains in Colorado (Rules). The Rules are the minimum standards for the State of Colorado and by extension, the NFIP in Colorado. A three-year implementation was provided, such that all communities have until January 14, 2014 to adopt the new regulations. The Federal Emergency Management Agency and the CWCB both must review any proposed changes to a community's floodplain regulations to ensure conformance with the minimum standards. Staff has received comments from the CWCB and FEMA and has made minor changes to the proposed revisions to address these comments. This includes updates to the variance Code language related to historic structures and clarifying that freeboard is still required for annexed properties that have a Letter of Map Revision Based on Fill.

### **Comparison of City of Fort Collins Floodplain Regulations to CWCB Minimum Standards**

The National Flood Insurance Program's (NFIP) Community Rating System (CRS) is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. As a result, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community actions meeting the three goals of the CRS:

1. Reduce flood damage to insurable property
2. Strengthen and support the insurance aspects of the NFIP
3. Encourage a comprehensive approach to floodplain management.

The City of Fort Collins is recognized by FEMA as one of the top 1% of communities in the country with regard to the Community Rating System (CRS) and is the highest rated community in the State of Colorado. Compared to many other communities in Colorado, the City of Fort Collins is required to only make minor code changes to be in compliance with the State Rules. For many communities, the new regulations are more restrictive than their current adopted standards and will result in a major shift in floodplain regulation.

The differences between the City's Current Floodplain Regulations, FEMA minimum standards, new State standards and the proposed City regulations are shown in **Attachment 3**.

**A. Ordinance No. 160, 2013 – Amending Chapter 10 of City Code Regarding Flood Hazard Areas to Conform to Colorado Water Conservation Board Floodplain Regulations.**

There are two criteria from the State Rules that need to be directly included in the City of Fort Collins Regulations. Listed below are the City Code sections and corresponding State Rule with detailed explanations of the changes:

1. **10-16 - Critical Facilities Definition** - Rule 6 A (p. 12-14, Attachment 4) - The definition of Critical Facilities has expanded from the definition the City of Fort Collins currently utilizes. **Attachment 5** is a table comparing the two definitions. The State has categorized critical facilities into four categories:
  - Essential Services
  - Hazardous Material Facilities
  - At-Risk Population Facilities, and
  - Government Services.

Staff proposes to adopt the State's general definition for critical facilities and add separate definitions for each of the above categories, providing specific details on what types of facilities are included. Facilities currently regulated by the City and not included in the State's list have been included into the appropriate category.

The State outlines regulatory requirements for Critical facilities in Rule 6 D and E (p. 15, **Attachment 4**). The State Rules offer communities the option of prohibiting critical facilities in the 100-year floodplain or requiring them to elevate and have dryland access. The City has had the prohibition of critical facilities since 1995. Staff recommends maintaining the prohibition of all critical facilities in the 100-year floodplain because of the truly critical nature of these facilities. In addition, dry access is very difficult to obtain and in many cases infeasible. Only essential services and at-risk population critical facilities will be prohibited in the 500-year floodplain. This change has been incorporated into City Code Section 10-81(a). This matches with Larimer County and the alignment of regulations for the Poudre River that took place in 2007 between the City and County.

Other sections of code were revised to reflect the new critical facility categories.

2. **10-37(c)(2) b-c - Freeboard** - Rule 11 B (p. 23, Attachment 4) - Minimum freeboard for additions and substantial improvements in City and FEMA designated floodplains will change from six inches to one foot to meet the State standard. For reference, it should be noted that in 2005, the City lowered the freeboard for additions and substantial improvements from eighteen inches to 6 inches in City and FEMA designated floodplains.
3. **10-80 and 10-113 - LOMR-Fill Freeboard** - Rule 11 C (p.23, **Attachment 4**) - Requires 1 foot of freeboard for all LOMR-Fill areas, including those where the LOMR-Fill occurred in the past and for those properties annexed into the City of Fort Collins. The requirement for a floodplain use permit is also included.

There are three policies in the City of Fort Collins Regulations that are no longer valid given the adoption of the State Rules. Listed below are the City Code sections and corresponding State Rule with explanations of the changes:

1. **10-29(c) and 10-29(d) - Hardship Exemption** - Rule 15 (p. 27. Attachment 4) - Variances. The City currently does not require hardship to be shown when seeking a variance in a City Basin Floodplain. The new State standards require hardship be shown for any variances to the State Rules.

Attachment 13.1: First Reading Agenda Item Summary, November 5, 2013 (without attachments) (SR Floodplain Regulations)

2. **10-138(3)b-c., 10-139(3)c-d., and 140(3)c-d -Remodeling** - Rule 11 A (p. 23, Attachment 4) - Remodeling criteria in City Basin floodplains will need to meet the minimum FEMA standards. (i.e., “Pop-top” additions in City Floodplains will no longer be treated differently than any other remodel. All improvements, including those on floors above the flood elevation, will be counted toward substantial improvement.) For reference, it should be noted that in 2005, this standard was lowered from the minimum NFIP regulation to accommodate easier redevelopment in City Basins, such as Old Town.
3. **10-114 - Waivers** - Rule 5 (p. 11, Attachment 4) - Waivers for properties expected to be removed from a City Basin floodplain by construction of a Capital Improvement Project will no longer be allowed. The property will be required to conform to the floodplain regulations of Chapter 10 until the Capital Project is complete and the mapping has been updated to formally remove the property from the floodplain. The waiver policy was implemented in 2005 to allow development in City Basin floodplains to not have to wait for completion of a project and the corresponding remapping.

**New Section Heading for Division 5** - Because the City Basin Floodplains will now be administered nearly identically to the FEMA Basin Floodplains, Division 6 has been removed. Division 5 will be renamed to be “FEMA BASIN and CITY BASIN FLOODPLAINS”. Necessary code sections from Division 6 that are not already included in Division 5, have been moved and incorporated into Division 5. (Example: Section 10-143 moved to now be 10-114)

**Additional Required Changes**

**10-16 Definitions** - Add a definition for the word “Colorado Floodplain Regulations.”

**10-16 Definitions** - Add a definition for the word “Conditional Letter of Map Revision. (CLOMR)”

**10-16 - Definitions** - *Flood Hazard Area* is modified to include areas removed from the floodplain by a LOMR-Fill

**10-16 - Definitions** - Add a definition for the word “Physical Map Revision (PMR).”

**10-16 - Definitions** - Add a definition for the word “Preliminary Map Revision.”

**10-20 - Application to Certain Lands** - Clarification that properties removed from the floodplain by a LOMR-Fill are subject to the provisions of this Article.

**10-27 Floodplain Use Permit** - minor wording change

**10-29 Conditions for Variance** - wording changes required by FEMA for historic structures.

**10-41 Specific Standards for Mobile Buildings and Manufactured Homes** - Details regarding acceptable methods for mobile home installation are removed from code. Many of these methods are no longer used. The FEMA publication has been updated and will be used for determining acceptable installation methods.

**B. Ordinance No. 161, 2013 – Amending Chapter 10 of City Code Regarding Flood Hazard Areas to Clarify Certain Provisions.**

Several clarification items have been identified by staff to assist in implementing the CWCB regulations and the City’s current Code language. These items include references to updated FEMA publications, code language that is not written clearly, and clarification of long-standing policies and practices that will help staff and applicants with understanding the floodplain requirements. Listed below are the City Code sections along with an explanation of the proposed change:



**10-16 - Definitions** - Add a definition for the word “Abandoned” to facilitate implementation of the nonconforming structures standards in Section 10-46(1).

**10-16 Definitions - Cumulative Substantial Improvements** - clarify that this value is tracked only during the time period that the structure is mapped in the floodplain. A provision is being added clarifying ordinary maintenance repairs are not to be included in the calculation of cumulative substantial improvement so long as there are no other structural improvements taking place. If structural improvements are taking place, then these items are still to be included in the calculation of substantial improvement or cumulative substantial improvement. This has been standard practice for over 16 years.

**10-16 - Definitions** - Add a definition for the word “hardship”. This was at the request of the Water Board. The definition is based on FEMA guidance.

**10-16 - Definitions** - *Letter of Map Amendment and Letter of Map Revision* revise by removing the word “National.”

**10-16 - Definitions** - *Market value* is modified with minor clarifications.

**10-16 - Definitions** - *Start of Construction* is modified with minor clarifications.

**10-16 - Definitions** - *Substantial Improvement* is modified to clarify how the time period for calculation of substantial improvement is determined. A provision is being added clarifying ordinary maintenance repairs are not to be included in the calculation of substantial improvement so long as there are no other structural improvements taking place. If structural improvements are taking place, then these items are still to be included in the calculation of substantial improvement or cumulative substantial improvement. This has been standard practice for over 16 years.

**10-26(4) Executive Director’s Powers and Duties** - Revise to only allow a Professional Land Surveyor to complete a FEMA Elevation Certificate. This is per State law regarding who is allowed to certify elevations.

**10-26(11)** - Provide the Executive Director the ability to require escrow for improvements that are required as part of approval of a floodplain use permit.

**10-27 Floodplain Use Permit** - Add several clarifications:

- Clarify the standards that should be used when preparing floodplain mapping. All floodplain mapping should meet the requirements set forth in the latest version of the FEMA publication, “Guidelines and Specifications for Flood Hazard Mapping Partners.”
- Clarify that an escrow may be required.

**10-37 General Provisions related to Elevation of Structures** - Add a provision clarifying that a FEMA Elevation Certificate or FEMA Floodproofing Certificate is required to be submitted and approved for any structure required to elevate under the provisions of 10-37. This is a minimum FEMA requirement and has been in practice by the City for over 20 years per 10-26 (4) Executive Director’s Power’s and Duties. Stating this requirement in Section 10-37 will provide clarification on this requirement for applicants.

**10-38 Specific Standards for Floodproofing** - clarified that Section 10-38(3)a. is a “pre-construction” floodproofing certificate and 10-38(4) is a “post-construction” elevation certificate.

**C. Ordinance No. 162, 2013 – Amending Chapter 10 of City Code Regarding Flood Hazard Areas to Revise Certain Requirements.**

Unrelated to the State mandatory changes, City staff has identified policy and procedure changes to the City's floodplain regulations. Listed below are the City code sections along with an explanation of the proposed change:

**10-45 - Map Revision Criteria** - Refine the criteria for when map revisions are needed when working in the floodway and the flood elevation is decreasing. This allows projects to progress to construction faster, by shifting some of the documentation to the end of the project, rather than the beginning. This new standard will be in alignment with State minimum requirements. The City's Streets Department Pavement Management Program will benefit from this change. However, it may result in portions of projects needing to be redone because not enough analysis was provided at the front-end of the project and problems are then discovered at the back-end. In certain situations, this may also lead to the City's mapping becoming out-of-date and/or shifting the responsibility of updates to subsequent private applicants or the City's Stormwater Department.

**10-80 - Emergency Response and Preparedness Plan Requirement for LOMR-Fill Areas** - Adds a provision that an Emergency Response and Preparedness Plan (ERPP) as specified in City Code Section 10-48 shall remain applicable when a Letter of Map Revision based on Fill (LOMR-F) has been issued. This provision should have been included in March 2013 when the ERPP code language was adopted.

**10-80 - Freeboard for LOMR-Fill Areas** - For LOMR-Fill areas that did not have a required freeboard as a condition of their approval or that were annexed into the City of Fort Collins, this provision increases the required freeboard for LOMR-Fill from the minimum one foot State requirement, as provided in Ordinance A, to the elevation requirements set forth in Section 10-37.

**10-80 - Removal of Property from the Poudre River Flood Fringe** - Adds a provision that the requirements of this section apply even if the Letter of Map Revision (LOMR-F) occurred when not located in the City. This closes a loop-hole of obtaining a LOMR-F prior to annexation and then not being subject to the conditions established for properties in the City that go through the same processes. This is especially important related the prohibition of residential structures and critical facilities on LOMR-F areas in the Poudre River floodplain. A provision is included that stipulates that this requirement does not apply to properties already annexed into the City, except for the freeboard requirement, as required by the CWCB.

**10-113 - Freeboard for LOMR-Fill Areas** - For LOMR-Fill areas that did not have a required freeboard as a condition of their approval or that were annexed into the City of Fort Collins, this provision increases the required freeboard for LOMR-Fill from the minimum one foot State requirement, as provided in Ordinance A, to the elevation requirements set forth in Section 10-37.

**10-113 - Removal of Property from the Flood Fringe of FEMA Basin Floodplains** - Adds a provision that the requirements of this section apply even if the LOMF-F occurred when not located in the City. This closes a loop-hole of obtaining a LOMR-F prior to annexation and then not being subject to the conditions established for properties in the City that go through the same processes. This is especially important related the prohibition of critical facilities on LOMR-F areas in the FEMA Basin floodplains. A provision is included that stipulates that this requirement does not apply to properties already annexed into the City, except for the freeboard requirement, as required by the CWCB.

**FINANCIAL / ECONOMIC IMPACT**

---

There will be some short-term financial impacts to some floodplain properties due to the adoption of the Statewide Floodplain Regulations that require properties to follow certain new regulations. However,

these regulations are also designed to provide long-term financial benefits by protecting properties from flood damage. If the CWCB regulations were not to be adopted by the City, there could be significant financial impacts because the community could be placed on probation or be suspended from the National Flood Insurance Program. **Attachment 6** is a letter from FEMA to the State outlining the consequences for communities that do not adopt the CWCB's Rules and Regulations.

### ENVIRONMENTAL IMPACTS

---

There are no significant environment impacts or benefits to the proposed regulation changes.

### BOARD / COMMISSION RECOMMENDATION

---

The Water Board and Planning and Zoning Board each had a work session on this issue and then took action at a regular meeting. The Water Board voted unanimously in favor of the proposed changes. **Attachment 7** is an excerpt from the Water Board minutes. The Planning and Zoning Board motion to recommend the proposed changes failed by a 3-3 vote. **Attachment 8** is an excerpt for the Planning and Zoning Board Minutes.

### PUBLIC OUTREACH

---

City staff conducted public outreach during July and August to make the public aware of these required changes. A press release was issued and a web site was created. Presentations were given to the following groups/organizations:

- Chamber of Commerce - August 23, 2013
- Home Builders Association - August 27, 2013
- City Staff - August 20, 2013 and August 29, 2013
- Landmark Preservation Commission - scheduled for October 23, 2013

The following groups were contacted, but declined a presentation:

- North Fort Collins Business Association
- South Fort Collins Business Association
- Downtown Development Authority
- Board of Realtors
- Natural Resources Advisory Board

Based on feedback from Council during the September 24, 2013 Work Session, staff sent a postcard to all floodplain property owners to notify them of the proposed changes (**Attachment 9**).

### Feedback

The majority of the attendees of the presentations understood the reason for the proposed changes and that it was important for the City to adopt these State-mandated standards. A key concern from these meetings was the impact on remodels and additions in the Old Town Basin. Staff understands these concerns and will work closely with property owners and design professionals to explain the regulations and to work toward creative design solutions that meet the floodplain regulations. It is important to note that past capital projects have reduced the floodplain and removed over 300 structures from the Old Town floodplain since 1997, thereby reducing by approximately 37% the number of properties in Old Town that must comply with the City's floodplain regulations. Future capital projects will continue to reduce the number of properties at risk of flooding and that must comply with the floodplain regulations. Furthermore, it is important to note that there is a variance provision for historically designated structures that can be utilized when the floodplain standards cannot be met.

There was also concern that the definition of "abandoned" was too harsh and that foreclosed properties could easily be considered abandoned. A suggestion was made to not consider a property abandoned if



## Agenda Item 18

property taxes were still being paid. Floodplain staff in consultation with the City Attorney's office did not feel that this was meeting the intent of defining abandoned and therefore, this suggestion was not incorporated.

In addition, staff responded in writing to questions from Mickey Willis regarding the regulations.

There were several calls received from the postcard that was sent. Many property owners wanted to know if the changes required them to purchase flood insurance. A few wanted to know specifics about their property and any impacts specific to them. However, most callers did not have any plans to modify or redevelop their property and therefore were not concerned about the regulations.

### ATTACHMENTS

---

1. Letter from Mayor Hutchinson
2. City Formal Comment on CWCB Regulations
3. Floodplain Regulation Comparison Table
4. CWCB Rules and Regulations
5. Critical Facility Comparison
6. FEMA Letter
7. Water Board minutes, August 15, 2013
8. Planning and Zoning Board minutes, August 8, 2013
9. CWCB postcard
10. Work Session Summary, September 24, 2013
11. Power Point Presentation

COPY

ORDINANCE NO. 160, 2013  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF FORT COLLINS  
REGARDING FLOOD HAZARD AREAS TO CONFORM TO  
COLORADO WATER CONSERVATION BOARD  
FLOODPLAIN REGULATIONS

WHEREAS, requirements and restrictions specific to development and related activities in the flood hazard areas in the city are set forth in Article II of Chapter 10 of the Code of the City of Fort Collins (the “City Code”); and

WHEREAS, the City’s regulation of flood hazard areas is subject to the requirements of the Federal Emergency Management Agency (“FEMA”) and the Colorado Water Conservation Board (“CWCB”), which each promulgate and enforce their own related regulations; and

WHEREAS, in January 2011, the CWCB promulgated new minimum statewide floodplain regulations (the “CWCB Regulations”), which require that all local communities adopt regulations at least as strict as the CWCB Regulations by January 2014; and

WHEREAS, although many of the requirements included in the CWCB Regulations are already included in the City Code, some revisions to the City Code are needed in order to fully comply with the CWCB Regulations; and

WHEREAS, the City Council considered the proposed revisions to the City Code to conform to the CWCB Regulations, together with other proposed City Code changes related to regulation of flood hazard areas, at its work session on September 24, 2013; and

WHEREAS, the City Council believes it would be in the best interests of the City to approve the revisions set forth herein, in order to conform to the requirements of CWCB and the CWCB Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 10-16 of the Code of the City of Fort Collins is hereby amended by adding the following new definitions and amending existing definitions, to read in their entirety as follows:

...

*At-risk population facilities* shall mean facilities that house or provide shelter or services to children, the infirm, or other persons requiring special assistance or care or life support. *At-risk population facilities* shall include, but not be limited to: hospitals; non-ambulatory surgery centers; elder care, nursing homes and assisted living facilities; congregated care facilities, residential care facilities, and group homes; housing intended for occupants who may not be sufficiently mobile to avoid death or injury during a flood without special assistance; day care

and child care facilities; public and private schools for all grade levels below high-school graduation; and before-school and after-school care facilities and summer day-camp facilities.

*Colorado Floodplain Regulations* shall mean the Rules and Regulations for Regulatory Floodplains in Colorado, issued November 17, 2012, by the Colorado Department of Natural Resources, Colorado Water Conservation Board, 2 Code of Colorado Regulations 408-1 (2010).

*Conditional letter of map revision (CLOMR)* shall mean a letter from FEMA officially commenting on, but not revising, the effective Flood Insurance Rate Map, for a proposed project that would, upon completion, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in a revision to the effective Flood Insurance Rate Map to show changes in zones, delineations and flood elevations of floodplains and floodways.

*Critical facilities* shall mean structures or facilities, but not the land on which they are situated, that if flooded may result in significant hazards to public health and safety or interruption of essential services and operations for the community at any time before, during or after a flood. *Critical facilities* shall include essential services facilities, hazardous materials facilities, at-risk population facilities, and government services facilities.

...

*Essential services facilities* shall mean facilities for the provision of services needed before, during and after a flood event in order to protect public health and safety. *Essential services facilities* shall include, but not be limited to: public safety facilities such as police stations, fire and rescue stations, emergency operations centers, storage facilities for emergency vehicles and equipment; emergency medical facilities such as hospitals, ambulance service centers, urgent care centers and non-ambulatory surgical centers; designated emergency shelters; communications facilities such as main hubs and control centers for telephone service, cable broadcasting, satellite dish broadcasting, cellular systems, television, radio and other emergency warning systems (excluding towers, poles, lines, cables and conduits); public and private utility plant facilities for generation, treatment and distribution, such as transmission and distribution hubs and control centers, water treatment plants, electric substations, and pumping stations for water, power and gas (excluding towers, poles, power lines, buried pipelines, transmission lines, distribution lines and service lines, and excluding hydroelectric power generating plants and related appurtenances); and air transportation lifelines, such as general aviation and commercial airports, helicopter pads and appurtenances serving emergency functions, and associated infrastructure such as aviation control towers, air traffic control centers, and emergency equipment aircraft hangars.

*Flood hazard area* shall mean the Poudre River floodplain, a FEMA basin floodplain, a City basin floodplain, an area removed from a floodplain by a LOMR-Fill, or an erosion buffer zone.

*Government services facilities* shall mean facilities that are not essential services facilities but are vital for the restoration of normal governmental operations. *Government services facilities* shall include, but not be limited to: central governmental operations facilities, such as facilities for public records storage, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers (excluding facilities that

are redundant of like facilities that are not within a regulatory floodplain); and essential structures such as dormitories, offices, classrooms and laboratories for public higher educational facilities such as colleges, universities, community colleges and vocational schools.

...

*Hazardous materials facilities* shall mean facilities that produce, use or store highly volatile, hazardous, flammable, explosive, toxic and/or water-reactive materials, liquids, gases or solids, as defined under Chapter 9 of the Code, and cemeteries. *Hazardous materials facilities* shall include, but not be limited to: chemical and pharmaceutical plants; laboratories; refineries; hazardous waste storage and disposal sites; gasoline storage or sales facilities; automobile oil and lubrication, repair or paint facilities; warehouses; manufacturing facilities; and propane storage or sales facilities. *Hazardous materials facilities* shall not include retail structures and facilities that only stock and store products in factory-sealed containers.

...

*Physical map revision (PMR)* shall mean a formal action by FEMA physically revising and republishing one or more map panels of the effective National Flood Insurance Rate Map to show changes in flood risk zones, delineations and flood elevations of floodplains and floodways, and/or planimetric features.

*Preliminary map revision* shall mean a letter from the Utilities Executive Director officially commenting on, but not revising, the effective floodplain map, for a proposed project in a City basin floodplain that would, upon completion, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in a revision to the effective floodplain map to show changes in delineations and flood elevations of floodplains and floodways.

...

Section 2. That Section 10-19 of the Code of the City of Fort Collins is hereby amended to read as follows:

...

The floodplain studies or reports incorporated herein by this reference are as follows:

- (1) Poudre River floodplain (see Division 4).
- (2) FEMA basin floodplains (see Division 5):
  - a. Dry Creek floodplain.
  - b. Spring Creek floodplain.
  - c. Boxelder Creek floodplain.
  - d. Cooper Slough floodplain.

(3) City basin floodplains (see Division 5):

- a. Old Town floodplain.
- b. West Vine floodplain.
- c. Canal Importation floodplain.
- d. Fossil Creek floodplain.
- e. Mail Creek floodplain.
- f. McClellands Creek floodplain.
- g. Foothills floodplain.

(4) Erosion buffer zones (see Division 7):

- a. Fossil Creek erosion buffer zone.
- b. Boxelder Creek erosion buffer zone.
- c. McClellands Creek erosion buffer zone.
- d. Mail Creek erosion buffer zone.

Section 3. That Section 10-20 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-20. Application to certain lands.**

The provisions of this Article shall apply to all areas within the jurisdiction of the City. If a lot or parcel lies partly within a floodplain, floodway, flood fringe, erosion buffer zone or other designated area, or has been removed from a flood fringe by a LOMR-Fill, the part(s) of such lot or parcel lying within such area or areas shall meet all the standards and requirements applicable to such area as prescribed by this Article. If lands located outside the City limits are included within a flood hazard area, the requirements of this Article shall apply to such lands upon annexation and thereafter, and any development activities upon such lands after the date of annexation shall comply with this Article.

Section 4. That Section 10-26 of the Code of the City of Fort Collins is hereby amended to read as follows:

...

(9) Making interpretations, where needed, as to the exact location of the boundaries of flood hazard areas, for example, where there appears to be a conflict between the map boundary and actual field conditions. The person contesting the location of such boundary shall be



given a reasonable opportunity to appeal the interpretation as provided by the variance procedure in this Article;

(10) Receiving applications for and determining whether to issue erosion buffer zone waivers, pursuant to Division 7 of this Article; and

(11) Collecting and administering escrow accounts for floodplain use permits.

Section 5. That Section 10-27 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-27. Floodplain use permit.**

(a) A floodplain use permit shall be obtained from the Utilities Executive Director before any construction or development begins within any flood hazard area established pursuant to this Article. A floodplain use permit shall also be required for any construction or development of or affecting a critical facility in the Poudre River five-hundred-year floodplain or a zone X shaded area, if that critical facility is regulated pursuant to §§ 10-46 or 10-81. Application for a floodplain use permit shall be made on forms furnished by the Utilities Executive Director and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the areas in question; structures already present and proposed, fill, storage of materials and drainage facilities; and the location of the foregoing...

Section 6. That Section 10-29 of the Code of the City of Fort Collins is hereby amended to read as follows:

...

(b) Variances may be issued, without regard to the requirements set forth in the remainder of this Section, for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(c) If the variance sought under this Section would exempt the applicant's property from the application of any provision under this Article that is more restrictive than any comparable provision of the Federal Floodplain Regulations established in 44 C.F.R. Parts 59-78 and the Colorado Floodplain Regulations, such variance shall not be subject to the required finding of Paragraph (f)(2) of this Section.

(d)

Variances shall not be issued within any designated floodway if any increase in base flood elevations would result.

(e) Variances shall only be issued upon the determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(f) Variances shall only be issued upon:

- (1) The showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) A determination that the granting of the variance would not result in any increased flood elevations contrary to the applicable requirements of this Article or any additional threat to public safety or to public or private property, any extraordinary public expense, any nuisance or trespass, any fraud on or victimization of the public as identified in this Article, or conflict with local laws or ordinances.

(g) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 7. That Section 10-37 of the Code of the City of Fort Collins is hereby amended to read as follows:

...

(2) FEMA basin and City basin floodplains:

- a. For new construction and redevelopments, eighteen (18) inches above the base flood elevation;
- b. For additions and substantial improvements, twelve (12) inches above the base flood elevation; and
- c. For accessory structures, twelve (12) inches above the base flood elevation;

...

Section 8. That Section 10-41 of the Code of the City of Fort Collins is hereby amended to read in its entirety as follows:

**Sec. 10-41. Specific standards for mobile buildings and manufactured homes.**

Any mobile building or manufactured home, where permitted, that is placed, relocated, redeveloped or substantially improved after the effective date of this Section, and any addition to a mobile building or manufactured home, shall meet the following requirements:

- (1) The mobile building or manufactured home must meet the requirements of § 10-37, including, but not limited to, the requirement to be elevated so that the lowest floor is at or above the regulatory flood protection elevation.

(2) The mobile building or manufactured home must be securely anchored on a permanent foundation to resist flotation, collapse or lateral movement and shall be capable of resisting the hydrostatic and hydrodynamic flood forces calculated to occur in a one-hundred-year flood.

(3) The mobile building or manufactured home must meet the requirements and guidelines applicable to an individual manufactured home or mobile building set forth in the FEMA publication entitled "Protecting Manufactured Homes from Floods and Other Hazards," FEMA P-85, November 2009.

(4) The mobile building or manufactured home must be placed in such a location and manner as to provide adequate access to allow the mobile building or manufactured home to be hauled from the site.

(5) The mobile building or manufactured home must be placed in a manner and location such that the requirements of § 26-544 are met.

Section 9. That Section 10-80 of the Code of the City of Fort Collins is hereby amended to read in its entirety as follows:

**Sec. 10-80. Removal of property from Poudre River flood fringe.**

(a) LOMR/PMR. Property located in the flood fringe of the Poudre River shall be considered removed from the flood fringe, if

a FEMA Letter of Map Revision (LOMR) or Physical Map Revision (PMR) removing the property from the flood fringe based on revised floodplain modeling and technical analysis has been issued by FEMA and remains in effect. Any property removed from the flood fringe pursuant to this Subsection (a) that remains in the five-hundred-year floodplain shall be subject to all requirements and prohibitions of this Article pertaining to the five-hundred-year floodplain.

(b) LOMR-F. Property located in the flood fringe of the Poudre River shall be considered removed from the flood fringe if a FEMA Letter of Map Revision based on Fill (LOMR-F) removing the property from the flood fringe based on fill has been issued by FEMA and remains in effect.

(1) LOMR-F Review and Approval. The Utilities Executive Director shall review any application for a LOMR-F removing property from the flood fringe, and the following conditions shall apply to any LOMR-F certified by the City as reasonably safe from flooding:

- a. A floodplain use permit shall be obtained for any development in a LOMR-F area.
- b. Construction of any new residential or mixed-use structure is prohibited.

c. Any addition to a residential or mixed-use structure is prohibited, except that an addition to a mixed-use structure that results in expansion of only nonresidential floors of said structure is allowed.

d. Any new structure, accessory structure, attached garage or addition, substantial improvement or redevelopment must meet all requirements applicable to construction in the Poudre River flood fringe, including, but not limited to, the requirements of § 10-37, except that:

1. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the applicable requirements of Subsection 10-37(b).

e. Critical facilities and expansions of critical facilities are prohibited.

f. Manufactured homes and mobile buildings other than a nonconforming manufactured home or mobile building are prohibited, except that:

1. A manufactured home or mobile building may be replaced, provided that the replacement manufactured home or mobile building complies with all requirements applicable to manufactured homes or mobile buildings in the Poudre River flood fringe, including, but not limited to, the requirements of § 10-41.

2. Manufactured home parks and mobile building developments, other than nonconforming manufactured mobile home parks and mobile building developments are prohibited.

3. Expansion of a manufactured home park or a mobile building development is prohibited.

(2) Unconditional or Annexed LOMR-F Approvals. For any new structure, accessory structure, attached garage or addition, substantial improvement or redevelopment based on a LOMR-F that did not include the conditions described in Subsection (b)(1) or that was approved prior to annexation to the city, the development must meet the requirements of § 10-37, in addition to meeting all conditions of the LOMR-F approval, except that:

1. The applicable flood protection elevation required shall be twelve (12) inches above the base flood elevation, regardless of the elevation level stated in § 10-37; and

2. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the elevation requirement in this Subsection (b)(2).

(3) Five-Hundred Year Floodplain Requirements Applicable. Any property considered removed from the flood fringe pursuant to this Subsection (b) that remains in the five-hundred-year floodplain shall be subject to all requirements and prohibitions of this Article pertaining to the five-hundred-year floodplain.

Section 10. That Section 10-81(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-81. Specific standards for Poudre River five-hundred-year floodplain and zone X shaded areas.**

(a) Critical facilities. In any portion of the Poudre River five-hundred-year floodplain or a zone X shaded area, as designated pursuant to § 10-19, essential services facilities, and at-risk population facilities are prohibited.

Section 11. That the title of Division 5 of the Code of the City of Fort Collins is hereby amended to read as follows:

*Division 5  
FEMA Basin and City Basin Floodplains*

Section 12. That Section 10-102 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-102. Specific standards for residential development in floodways.**

In addition to complying with all other applicable provisions of this Article, all residential development in the floodway of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 13. That Section 10-103 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-103. Specific standards for nonresidential development in floodways .**

In addition to complying with all other applicable provisions of this Article, all nonresidential development in the floodway of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 14. That Section 10-104 of the Code of the City of Fort Collins is hereby amended to read as follows:



**Sec. 10-104. Specific standards for mixed-use development in floodways.**

In addition to complying with all other applicable provisions of this Article, all mixed-use development in the floodway of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 15. That Section 10-105 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-105. Specific standards for nonstructural development in floodways.**

In addition to complying with all other applicable provisions of this Article, all nonstructural development in the floodway of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 16. That the title of Section 10-106 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-106. Floodway encroachments.**

...

Section 17. That Section 10-107 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-107. Change of use in floodways.**

No person shall change the use of any structure or property, or any portion thereof, located in the floodway of a FEMA basin floodplain or a City basin floodplain so as to result in a use or expansion of a use that is inconsistent with the requirements of this Article.

Section 18. That Section 10-108 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-108. Specific standards for residential development in flood fringe.**

In addition to complying with all other applicable provisions of this Article, all residential development in the flood fringe of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions unless removed from the flood fringe by approval of a LOMR in accordance with § 10-113. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

Section 19. That Section 10-109 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-109. Specific standards for nonresidential development in flood fringe.**

In addition to complying with all other applicable provisions of this Article, all nonresidential development in the flood fringe of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions unless removed from the flood fringe by approval of a LOMR in accordance with § 10-113. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 20. That Section 10-110 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-110. Specific standards for mixed-use development in flood fringe.**

In addition to complying with all other applicable provisions of this Article, all mixed-use development in the flood fringe of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions unless removed from the flood fringe by approval of a LOMR in accordance with § 10-113. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 21. That Section 10-111 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-111. Specific standards for nonstructural development in flood fringe.**

In addition to complying with all other applicable provisions of this Article, all nonstructural development in the flood fringe of a FEMA basin floodplain or a City basin floodplain shall comply with the following provisions unless removed from the flood fringe by approval of a LOMR or Physical Map Revision in accordance with § 10-113. If there is any conflict between any of the following provisions and any other provision of this Article, the more restrictive provision shall control.

...

Section 22. That Section 10-112 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-112. Change of use in flood fringe.**

No person shall change the use of any structure or property, or any portion thereof, located in the flood fringe of a FEMA basin floodplain or a City basin floodplain so as to result in a use or expansion of a use that is inconsistent with the requirements of this Article.

Section 23. That Section 10-113 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-113. Removal of property from flood fringe.**

(a) LOMR/PMR. Property located in the flood fringe of a FEMA basin floodplain shall be considered removed from the flood fringe if a FEMA Letter of Map Revision (LOMR) or Physical Map Revision (PMR) removing the property from the flood fringe based on revised floodplain modeling and technical analysis has been issued by FEMA and remains in effect.

(b) LOMR-F. Property located in the flood fringe of a FEMA basin floodplain shall be considered removed from the flood fringe if a FEMA Letter of Map Revision based on Fill (LOMR-F) removing the property from the flood fringe. If FEMA has issued a LOMR-F removing the property from the flood fringe based on fill has been issued by FEMA and remains in effect.

- (1) LOMR-F Review and Approval. The Utilities Executive Director shall review any application for a LOMR-F removing property from the flood fringe based on fill, and the following conditions shall apply to any LOMR-F certified by the City as reasonably safe from flooding:
  - a. A floodplain use permit shall be obtained for any development in a LOMR-F area.
  - b. Any new structure, accessory structure, attached garage, or addition, substantial improvement or redevelopment must meet all applicable requirements, including, but not limited to, the requirements of § 10-37, except that:
    1. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the applicable requirements of Subsection 10-37(b).
  - c. Critical facilities and expansions of critical facilities are prohibited.
  - d. Manufactured homes and mobile buildings other than a nonconforming manufactured home or mobile building are prohibited, except that:
    1. A manufactured home or mobile building may be replaced, provided that the replacement manufactured home or mobile building complies with all applicable requirements, including, but not limited to, the requirements of § 10-41.

2. Manufactured home parks and mobile building developments, other than nonconforming manufactured home parks and mobile building developments, are prohibited.

3. Expansion of a manufactured home park or a mobile building development is prohibited.

(2) Unconditional or Annexed LOMR-F Approvals. For any new structure, accessory structure, attached garage or addition, substantial improvement or redevelopment based on a LOMR-F that did not include the conditions described in Subsection (b)(1) or that was approved prior to annexation to the city, the development must meet the requirements of § 10-37, in addition to meeting all conditions of the LOMR-F approval, except that:

1. The applicable flood protection elevation required shall be twelve (12) inches above the base flood elevation, regardless of the elevation level stated in § 10-37; and

2. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the elevation requirement in this Subsection (b)(2).

Section 24. That Section 10-114 of the Code of the City of Fort Collins is hereby deleted and replaced with a new Section 10-114 to read as follows:

**Sec. 10-114. Removal of property from flood fringe of City basin floodplains.**

The Utilities Executive Director may remove property from the flood fringe of a City basin floodplain upon approval of a final map revision based upon floodplain modeling and technical analysis consistent with floodplain modeling guidelines and standards established or approved by the Utilities Executive Director demonstrating that the property is no longer located in the flood fringe. Such modeling and analysis shall be required as the basis for a map revision regardless of fill or other physical changes to a property.

Section 25. That Division 6 of Article 2 of Chapter 10 of the Code of the City of Fort Collins regarding City Basin Floodplains is hereby deleted in its entirety as follows and reserved for future use:

Section 26. In the event that Ordinance No. 162, 2013, is adopted by the City Council on second reading at the same meeting that this Ordinance is adopted on second reading, in a form containing revisions to Section 10-80 of the Code of the City of Fort Collins, then such Section as revised in Ordinance No. 162 shall take precedence over Section 9 of this Ordinance, and in such event Section 9 of this Ordinance shall be null and void.

Section 27. In the event that Ordinance No. 162, 2013, is adopted by the City Council on second reading at the same meeting that this Ordinance is adopted on second reading, in a form containing revisions to Section 10-113 of the Code of the City of Fort Collins, then such

Section as revised in Ordinance No. 162 shall take precedence over Section 23 of this Ordinance, and in such event Section 23 of this Ordinance shall be null and void.

Introduced, considered favorably on first reading, and ordered published this 5th day of November, A.D. 2013, and to be presented for final passage on the 19th day of November, A.D. 2013.

\_\_\_\_\_  
Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 19th day of November, A.D. 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



ORDINANCE NO. 161, 2013  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF FORT COLLINS  
REGARDING FLOOD HAZARD AREAS TO  
CLARIFY CERTAIN PROVISIONS

WHEREAS, requirements and restrictions specific to development and related activities in the flood hazard areas in the city are set forth in Article II of Chapter 10 of the Code of the City of Fort Collins (the “City Code”); and

WHEREAS, the City’s regulation of flood hazard areas is subject to the requirements of the Federal Emergency Management Agency (“FEMA”) and the Colorado Water Conservation Board (“CWCB”), which each promulgate and enforce their own related regulations; and

WHEREAS, in January 2011, the CWCB promulgated new minimum statewide floodplain regulations (the “CWCB Regulations”), which require that all local communities adopt regulations at least as strict as the CWCB Regulations by January 2014; and

WHEREAS, although many of the requirements included in the CWCB Regulations are already included in the City Code, some revisions to the City Code are needed in order to fully comply with the CWCB Regulations; and

WHEREAS, in its review of the City Code for conformance to the CWCB Regulations, staff identified certain revisions that would improve the clarity and consistency of Chapter 10; and

WHEREAS, the City Council considered the proposed revisions to the City Code to clarify and correct existing provisions in Chapter 10, together with other related revisions, at its work session on September 24, 2013; and

WHEREAS, the City Council believes it would be in the best interests of the City to approve the revisions set forth herein, in order to clarify and correct existing provisions in the City Code regarding activities in flood hazard areas.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 10-16 of the Code of the City of Fort Collins is hereby amended by adding the following new definitions, and amending existing definitions, to read in their entirety as follows:

...

*Abandoned* shall mean any structure that has been used or was intended for use as an occupied structure, in whole or in part, including an accessory building, that has become vacant or unused for a period of at least three hundred sixty-five (365) consecutive days, and meets at least two (2) of the following conditions:

1. Is open to casual entry or trespass;
2. Is damaged by fire, flood, weather, or vandalism to an extent that prevents safe occupation;
3. Is the site of loitering or vagrancy;
4. Demonstrates a lack of property maintenance and upkeep as evidenced by one or more violations of the International Property Maintenance Code, as adopted in § 5-47;
5. Is under notice for being in violation of one or more City ordinances;
6. Has been secured or boarded up for at least three hundred sixty-five (365) consecutive days;
7. Has utilities disconnected or not in use;
8. Is subject to a condemnation notice or legal order to vacate;
9. Is structurally unsound to an extent that prevents safe occupation; or
10. Is a potential hazard or danger to the public.

...

*Cumulative substantial improvement* shall mean any combination of repairs, demolition, reconstruction, rehabilitation or other improvements of a structure, taking place during the time the structure has been located in a designated floodplain, the cumulative cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement, provided that the footprint of the structure is not increased. The term *cumulative substantial improvement* shall include any repair or reconstruction work on structures that have incurred substantial damage. It shall not include any project for improvement of a structure to correct violations of state or local health, sanitary or safety code specifications that have been identified by the local code enforcement official, including only the minimum improvements necessary to assure safe living conditions. Also, *cumulative substantial improvement* shall not include ordinary maintenance activities such as interior or exterior painting or decoration, replacement of windows, doors or other nonstructural elements, repair or replacement of heating or air conditioning appliances or hot water heaters, reroofing, and utility connections, provided that such improvements shall not be excluded from the overall work when carried out in connection with structural improvements.

...

*Hardship* shall mean the effect of a floodplain designation on the use of a property in light of unusual physical characteristics of the land that are exceptional or peculiar to the property and not shared by adjacent parcels. *Hardship* does not include personal or financial circumstances of the current owner of the land, such as increased costs, inconvenience, aesthetic considerations,

physical disability, timing, mistakes by contractors or advisors, personal preferences, or the disapproval of neighbors.

...

*Letter of map amendment (LOMA)* shall mean a letter from FEMA officially revising the effective Flood Insurance Rate Map that establishes that a property is not located in a FEMA special flood hazard area.

*Letter of map revision (LOMR)* shall mean a letter from FEMA officially revising the effective Flood Insurance Rate Map to show changes in zones, delineations and flood elevations of floodplains and floodways.

*Market value* shall mean the value of a structure, excluding the value of the underlying land, based upon the market for comparable properties in the local real estate market among willing buyers and sellers. Market value may be established by the County Assessor's assessment of the actual value of the structure, or may be established by an independent certified appraisal consistent with FEMA standards for the appraisal of improvements.

...

*Start of construction* shall mean the date the building permit was issued for the relevant improvements, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurred within one hundred eighty (180) days of the building permit date and the work proceeded in accordance with such building permit. For structural development, the *actual start of construction* shall mean the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. *Permanent construction* shall not include land preparation, such as clearing, grading and filling; nor shall it include the installation of streets and/or walkways; nor shall it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor shall it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* shall mean the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. For nonstructural development, the *actual start of construction* shall mean the physical installation or addition of materials or improvements that constitute all or any portion of the nonstructural development.

*Substantial improvement* shall mean any combination of repairs, demolition, reconstruction, rehabilitation or other improvements of a structure for which the actual start of construction occurred during the twelve-month period preceding the floodplain use permit application date, the cumulative cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement, provided that the footprint of the structure is not increased. *Substantial improvement* shall include any repair or reconstruction work performed within said period of time on structures that have incurred substantial damage. A *substantial improvement* that meets the definition of *redevelopment* shall be regulated

hereunder as redevelopment. The term *substantial improvement* shall not include any project for improvement of a structure to correct violations of state or local health, sanitary or safety code specifications that have been identified by the local code enforcement official, including only the minimum improvements necessary to assure safe living conditions. Also, *substantial improvement* shall not include ordinary maintenance activities such as interior or exterior painting or decoration, replacement of windows, doors or other nonstructural elements, repair or replacement of heating or air conditioning appliances or hot water heaters, reroofing, and utility connections, provided that such improvements shall not be excluded from the overall work when carried out in connection with structural improvements.

Section 2. That Section 10-26(4) of the Code of the City of Fort Collins hereby is amended to read as follows:

(4) Requiring the obtaining and recording by a professional land surveyor of the actual elevation in relation to mean sea level of the lowest floor, including basement, of all new or improved structures and whether or not the structure contains a basement;

Section 3. That Section 10-27 of the Code of the City of Fort Collins is hereby amended by the addition of a new subsection (g), and revision of newly renumbered subsection (h), to read as follows, with all subsequent subsections renumbered accordingly:

...

(g) All floodplain mapping shall meet the requirements set forth in the version of the FEMA publication "Guidelines and Specifications for Flood Hazard Mapping Partners" in effect at the time of the completion of the mapping.

(h) If the Utilities Executive Director determines that the application meets the purposes and requirements of this Article, he or she shall issue the permit and may attach such conditions as he or she deems necessary to further the purposes of this Article or to ensure compliance with the same. The Utilities Executive Director may require the deposit of escrowed funds or other means of securing the performance of permit conditions, and may request that the City building official condition the release of a certificate of occupancy or other final approval upon submission of final documentation of compliance with conditions, as appropriate.

(i) A floodplain use permit shall expire three (3) years after its date of issuance if the permittee has not started construction (see definition of *start of construction*) under the permit. If a floodplain use permit is issued in connection with the issuance of a building permit, and the building permit expires, then the floodplain use permit shall be reevaluated based on any new criteria or data established or available since the issuance of the permit, and a new floodplain use permit may be required in connection with a new building permit, if the permit would not comply with this Article in light of such new criteria or data.

(j) No person who has obtained a floodplain use permit shall fail to construct in accordance with the approved application and design or terms of said permit.

(k) An applicant for a floodplain use permit shall pay twenty-five dollars (\$25.). If the Utilities Executive Director, pursuant to this Article, requires the applicant to furnish a floodplain modeling analysis, the applicant shall pay an additional fee of three hundred dollars (\$300.).

Section 4. That Section 10-37 of the Code of the City of Fort Collins is hereby amended by the addition of a new subsection (e), which reads in its entirety as follows:

...

(e) Elevation certificate required. A FEMA elevation certificate, signed and certified by a registered professional land surveyor, accurately documenting the as-built elevation of the improvements, must be submitted to the Utilities Executive Director and accepted before release of a certificate of occupancy for the structure.

Section 5. That Section 10-38(3)(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

a. A pre-construction floodproofing certificate, signed and certified by a registered professional engineer or architect, accurately documenting the proposed floodproofing elevation;

Section 6. That Section 10-38(4) of the Code of the City of Fort Collins is hereby amended to read as follows:

(4) A post-construction floodproofing certificate, signed and certified by a registered professional engineer or architect, accurately documenting the as-built elevation of the floodproofing improvements, must be submitted to the Utilities Executive Director and accepted before release of a certificate of occupancy for the structure.

Section 7. That Section 10-41 of the Code of the City of Fort Collins is hereby amended to read in its entirety as follows:

**Sec. 10-41. Specific standards for mobile buildings and manufactured homes.**

Any mobile building or manufactured home, where permitted, that is placed, relocated, redeveloped or substantially improved after the effective date of this Section, and any addition to a mobile building or manufactured home, shall meet the following requirements:

(1) The mobile building or manufactured home must meet the requirements of § 10-37, including, but not limited to, the requirement to be elevated so that the lowest floor is at or above the regulatory flood protection elevation.

(2) The mobile building or manufactured home must be securely anchored on a permanent foundation to resist flotation, collapse or lateral movement and shall be capable of resisting the hydrostatic and hydrodynamic flood forces calculated to occur in a one-hundred-year flood.

(3) The mobile building or manufactured home must meet the requirements and guidelines applicable to an individual manufactured home or mobile building set forth in the FEMA publication entitled "Protecting Manufactured Homes from Floods and Other Hazards," FEMA P-85, November 2009.

(4) The mobile building or manufactured home must be placed in such a location and manner as to provide adequate access to allow the mobile building or manufactured home to be hauled from the site.

(5) The mobile building or manufactured home must be placed in a manner and location such that the requirements of § 26-544 are met.

Introduced, considered favorably on first reading, and ordered published this 5th day of November, A.D. 2013, and to be presented for final passage on the 19th day of November, A.D. 2013.

\_\_\_\_\_  
Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 19th day of November, A.D. 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



ORDINANCE NO. 162, 2013  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF FORT COLLINS  
REGARDING FLOOD HAZARD AREAS TO  
REVISE CERTAIN REQUIREMENTS

WHEREAS, requirements and restrictions specific to development and related activities in the flood hazard areas in the city are set forth in Article II of Chapter 10 of the Code of the City of Fort Collins (the “City Code”); and

WHEREAS, the City’s regulation of flood hazard areas is subject to the requirements of the Federal Emergency Management Agency (“FEMA”) and the Colorado Water Conservation Board (“CWCB”), which each promulgate and enforce their own related regulations; and

WHEREAS, in its implementation and enforcement of the City Code, City floodplain staff has identified certain revisions that would refine the requirements applicable to certain activities in flood hazard areas to address certain policy concerns; and

WHEREAS, the City’s current requirements for floodway mapping are stricter than required by FEMA, and go beyond the minimum necessary to prevent harmful impacts from development in the floodway that will reduce, rather than increase, flood elevations; and

WHEREAS, pursuant to FEMA regulations, properties may be removed from a regulated floodplain by the addition of fill, upon issuance by FEMA of a Letter of Map Revision - Fill (“LOMR-Fill”); and

WHEREAS, the City Council has determined that the City Code should be amended to impose certain requirements in areas for which a LOMR-Fill has been issued, so as to extend the emergency planning and preparedness requirements enacted earlier this year to LOMR-Fill areas in the Poudre River floodplain; and

WHEREAS, the City Council has further determined that the City Code should be amended to impose requirements and limitations that the City imposes on new LOMR-Fill areas to new development in areas for which a LOMR-Fill was previously issued; excluding LOMR-Fill areas that were annexed to the city before January 2014; and

WHEREAS, the City Council considered these proposed revisions to the City Code, together with other related revisions, at its work session on September 24, 2013; and

WHEREAS, the City Council believes it would be in the best interests of the City to approve the revisions set forth herein, in order to revise existing provisions in the City Code regarding activities in flood hazard areas.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 10-45(2) of the Code of the City of Fort Collins is hereby amended to read as follows:

...

(2) Map revisions.

a. Conditional map revisions. A Conditional Letter of Map Revision must be approved by FEMA, or, for a City basin floodplain, a preliminary map revision must be approved by the Utilities Executive Director, prior to issuance of a floodplain permit or initiation of construction or permitted activities for any proposed development or activity in the floodway that:

1. results in any of the following:

- i. an increase in base flood elevation of more than 0.00 feet;
- ii. a decrease in base flood elevation of more than 0.30 feet;
- iii. a change in watercourse location;
- iv. the addition of new area within the floodway; or

v. a physical change to the hydrology of the floodway or hydraulic conveyance with the floodway; or

2. requires any of the following in order to meet the requirements for a floodplain use permit:

- i. technical analysis to correct existing map errors;
- ii. technical analysis that incorporates improved technical data; or
- iii. technical analysis that applies improved or alternative hydrologic or hydraulic methodologies.

b. Final map revisions. Upon completion of development or other activities for any development or activity in the floodway that results in a change to base flood elevations, floodway or flood fringe boundaries, regardless of whether a Conditional Letter of Map Revision has been required pursuant to § 10-45(2)(a), a Letter of Map Revision or Physical Map Revision must be approved by FEMA, or, for a City basin floodplain, a final map revision must be approved by the Utilities Executive Director, prior to issuance of a certificate of occupancy, or, in the event no certificate of occupancy is required, upon completion of the improvements.

Section 2. That Section 10-80 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-80. Removal of property from Poudre River flood fringe.**

(a) LOMR/PMR. Property located in the flood fringe of the Poudre River shall be considered removed from the flood fringe, if

a FEMA Letter of Map Revision (LOMR) or Physical Map Revision (PMR) removing the property from the flood fringe based on revised floodplain modeling and technical analysis has been issued by FEMA and remains in effect. Any property removed from the flood fringe pursuant to this Subsection (a) that remains in the five-hundred-year floodplain shall be subject to all requirements and prohibitions of this Article pertaining to the five-hundred-year floodplain.

(b) LOMR-F. Property located in the flood fringe of the Poudre River shall be considered removed from the flood fringe if a FEMA Letter of Map Revision based on Fill (LOMR-F) removing the property from the flood fringe based on fill has been issued by FEMA and remains in effect.

(1) LOMR-F Review and Approval. The Utilities Executive Director shall review any application for a LOMR-F removing property from the flood fringe, and the following conditions shall apply to any LOMR-F certified by the City as reasonably safe from flooding:

- a. A floodplain use permit shall be obtained for any development in a LOMR-F area.
- b. Construction of any new residential or mixed-use structure is prohibited.
- c. Any addition to a residential or mixed-use structure is prohibited, except that an addition to a mixed-use structure that results in expansion of only nonresidential floors of said structure is allowed.
- d. Any new structure, accessory structure, attached garage or addition, substantial improvement or redevelopment must meet all requirements applicable to construction in the Poudre River flood fringe, including, but not limited to, the requirements of § 10-37, except that:
  - 1. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the applicable requirements of Subsection 10-37(b).
- e. Critical facilities and expansions of critical facilities are prohibited.
- f. Manufactured homes and mobile buildings other than a nonconforming manufactured home or mobile building are prohibited, except that:
  - 1. A manufactured home or mobile building may be replaced, provided that the replacement manufactured home or mobile building complies with all requirements applicable to manufactured homes or mobile buildings in the Poudre River flood fringe, including, but not limited to, the requirements of § 10-41.

2. Manufactured home parks and mobile building developments, other than nonconforming manufactured mobile home parks and mobile building developments are prohibited.

3. Expansion of a manufactured home park or a mobile building development is prohibited.

g. The emergency planning and preparedness requirements of § 10-48 must be met for any new construction, addition to or cumulative substantial improvement, redevelopment or change of occupancy of any structure in the LOMR-F area.

(2)Unconditional or Annexed LOMR-F Approvals. For any development in an area removed from the flood fringe through a LOMR-F that did not include the conditions described in Subsection (b)(1), or that was approved prior to annexation to the city, the development must meet all requirements of Subsection (b)(1) in addition to meeting all conditions of the LOMR-F approval, except that, for properties annexed to the city prior to January 1, 2014, only the following shall apply:

a. The development must meet all conditions of the LOMR-F approval; and

b. For any new structure, accessory structure, attached garage or addition, substantial improvement or redevelopment, the development must meet the requirements of § 10-37, except that:

1. The applicable flood protection elevation required shall be twelve (12) inches above the base flood elevation, regardless of the elevation level stated in § 10-37; and

2. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the elevation requirement in Subsection (b)(2)(b)(1).

(3) Five-Hundred Year Floodplain Requirements Applicable. Any property considered removed from the flood fringe pursuant to this Subsection (b) that remains in the five-hundred-year floodplain shall be subject to all requirements and prohibitions of this Article pertaining to the five-hundred-year floodplain.

Section 3. That Section 10-113 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 10-113. Removal of property from flood fringe.**

(a) LOMR/PMR. Property located in the flood fringe of a FEMA basin floodplain shall be considered removed from the flood fringe if a FEMA Letter of Map Revision (LOMR) or Physical Map Revision (PMR) removing the property from the flood fringe based on revised floodplain modeling and technical analysis has been issued by FEMA and remains in effect.

(b) LOMR-F. Property located in the flood fringe of a FEMA basin floodplain shall be considered removed from the flood fringe if a FEMA Letter of Map Revision based on Fill (LOMR-F) removing the property from the flood fringe. If FEMA has issued a LOMR-F removing the property from the flood fringe based on fill has been issued by FEMA and remains in effect.

(1) LOMR-F Review and Approval. The Utilities Executive Director shall review any application for a LOMR-F removing property from the flood fringe based on fill, and the following conditions shall apply to any LOMR-F certified by the City as reasonably safe from flooding:

a. A floodplain use permit shall be obtained for any development in a LOMR-F area.

b. Any new structure, accessory structure, attached garage, or addition, substantial improvement or redevelopment must meet all applicable requirements, including, but not limited to, the requirements of § 10-37, except that:

1. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the applicable requirements of Subsection 10-37(b).

c. Critical facilities and expansions of critical facilities are prohibited.

d. Manufactured homes and mobile buildings other than a nonconforming manufactured home or mobile building are prohibited, except that:

1. A manufactured home or mobile building may be replaced, provided that the replacement manufactured home or mobile building complies with all applicable requirements, including, but not limited to, the requirements of § 10-41.

2. Manufactured home parks and mobile building developments, other than nonconforming manufactured home parks and mobile building developments, are prohibited.

3. Expansion of a manufactured home park or a mobile building development is prohibited.

(2) Unconditional or Annexed LOMR-F Approvals. For any development in an area removed from the flood fringe through a LOMR-F that did not include the conditions described in Subsection (b)(1), or that was approved prior to annexation to the city, the development must meet all requirements of Subsection (b)(1) in addition to meeting all conditions of the LOMR-F approval, except that, for properties annexed to the city prior to January 1, 2014, only the following shall apply:

c. The development must meet all conditions of the LOMR-F approval; and

- d. For any new structure, accessory structure, attached garage or addition, substantial improvement or redevelopment, the development must also meet requirements of § 10-37, except that:
  - 1. The applicable flood protection elevation required shall be twelve (12) inches above the base flood elevation, regardless of the elevation level stated in § 10-37; and
  - 2. For nonresidential structures and mixed-use structures with all residential use on a floor completely above the regulatory flood protection elevation, compliance with the requirements of § 10-38 may be substituted for compliance with the elevation requirement in Subsection (b)(2)(b)(1).

Introduced, considered favorably on first reading, and ordered published this 5th day of November, A.D. 2013, and to be presented for final passage on the 19th day of November, A.D. 2013.

\_\_\_\_\_  
Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 19th day of November, A.D. 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk