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Land Use Code

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TITLE 9

Land Use Code

Chapter 3 Overlay Districts¹

9-3-1. Purpose of Overlays and How to Use the Overlays.

- (a) Overlay regulations provide restrictions or additional requirements for all development within a geographic area, irrespective of the basic zone standards. Because these regulations "overlay" basic zone standards, it is important to understand how these regulations affect a particular property before investigating the basic zone standards. Overlay district standards described in this chapter include:
- (1) Floodplains;
 - (2) Wetlands;
 - (3) Airport Influence Zone; and
 - (4) Medium Density Overlay Zone.
- (b) There are additional regulations that must also be considered, including historic preservation designations (chapter 9-11, "Historic Preservation," B.R.C. 1981), and the various street access and network plans and sub-community, area and sub-area plans adopted as part of the Boulder Valley Comprehensive Plan. All overlays and their requirements applicable to a specific property should be carefully considered before evaluating the basic zone standards or proceeding with conceptual design.

9-3-2. Floodplains.

- (a) Legislative Intent: The purpose of this section is to regulate certain areas of the city subject to flooding in order to protect the public health, safety and welfare by:
- (1) Restricting or prohibiting certain uses that are hazardous to life or property in time of flood;
 - (2) Restricting the location of structures intended for human occupancy and regulating the manner in which such structures may be built in order to minimize danger to human life within and around such structures;
 - (3) Requiring that those structures allowed in the floodplain be expanded or enlarged, and equipment and fixtures be installed or replaced, in a manner designed to prevent their being washed away and to assure their protection from severe damage;
 - (4) Regulating the method of construction and replacement of water supply and sanitation systems in order to prevent disease, contamination and unsanitary conditions;
 - (5) Maintaining for public inspection available maps delineating areas subject to such provisions in order to protect individuals from purchasing or using lands for purposes that are not suitable;
 - (6) Protecting and preserving the water-carrying and water-retention characteristics and capacities of watercourses used for conveying and retaining floodwaters; and
 - (7) Obtaining and maintaining the benefits to the community of participating in the National Flood Insurance Program.
- (b) Flooding May Occur: The degree of flood protection provided by the terms of this section has been determined to be reasonable for regulatory purposes. Floods of greater magnitude will occur, and flood heights may be increased as a

¹ Adopted by Ordinance No. 7476.

result of natural or human-made causes. The provisions of this section do not imply that areas outside of the floodplain or land uses permitted within the floodplain are free from flooding, flood hazard or flood damages. A grant or approval by the city under the requirements of this section does not constitute a representation, guarantee or warranty of any kind or nature by the city or any city official or employee of the practicability or safety of any structure or proposed use, and it creates no liability to or cause of action against the city or any city official or employee for any damages from flood or otherwise that may result from such structure or use.

(c) Scope and Application:

- (1) The requirements of this section supplement those imposed on the same lands by any underlying zoning provisions of this code or other ordinance of the city. If there is a conflict between such requirements, the more restrictive controls.
- (2) If a lot or parcel of land lies partly within the high hazard zone or the conveyance zone or the flood fringe area, the part(s) of such lot or parcel lying within such area or areas shall meet all the standards and requirements of such respective area as prescribed by this section. For the purposes of new construction, if any portion of a structure lies partly within the high hazard zone or the conveyance zone or the flood fringe area, all the standards and requirements of this section shall apply to the entire structure.
- (3) If lands located outside the city limits are included within the floodplain, the flood fringe, the conveyance zone or the high hazard zone, the requirements of this section shall apply to such lands upon annexation.

(d) Administration: The city manager shall administer the requirements of this section and shall:

- (1) Determine that the requirements of this section have been met before issuing any permit for development in the floodplain;
- (2) Obtain and maintain for public inspection any certificates of floodproofing required by this section, and any information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures and information specifying whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;
- (3) Notify Boulder County and the Colorado Water Conservation Board before permitting any change in a watercourse and submit evidence of such notice to FEMA;
- (4) Adopt rules interpreting and implementing the requirements of this section including, without limitation, application procedures for floodplain development permits and specifications for the floodproofing of structures, substantial improvements and utilities;
- (5) Assure that the Boulder Valley Comprehensive Plan is consistent with the floodplain management objectives of this section and the regulations of FEMA;
- (6) Make necessary interpretations of the exact location of the boundaries of the floodplain, the flood fringe, the conveyance zone and the high hazard zone;
- (7) Amend the boundaries of the high hazard zone and the conveyance zone pursuant to subsection (f) of this section;
- (8) Determine that all necessary permits have been obtained from state, federal or local agencies the approval of which is required before issuing any permit for development in the floodplain;
- (9) Require that persons changing a watercourse maintain the watercourse so that its flood carrying capacity is not diminished;
- (10) Require that new and replacement water supply systems in the floodplain be designed to minimize or eliminate infiltration of floodwaters into the systems;

- (11) Require that new and replacement sanitary sewage systems within the floodplain be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;
 - (12) Require that on-site waste disposal systems be located to avoid impairment to them or contamination from them during flooding; and
 - (13) Obtain, review and reasonably utilize any base flood elevation and floodway data available from federal, state and other sources, including data developed pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, as criteria for requiring that all new development meet the requirements of this section.
- (e) Appeals: Any person contesting the city manager's interpretation of a boundary location under paragraph (d)(6) of this section, or any person aggrieved by the granting or denial of a floodplain development permit, may appeal such determination to the planning board through the process described in section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. The request shall set forth the reason and basis for the appeal and such other information as the manager may prescribe by rule.
 - (f) Map Amendments: As watercourse or flood channel improvements or mapping corrections are made, the city manager may amend the flood regulatory area maps to recognize the changed conditions produced by such improvements or corrections provided that no such amendments or corrections may change a FEMA "area of special flood hazard" or "regulatory floodway" unless the City is in receipt of a letter of map amendment or a letter of map revision issued by FEMA.
 - (g) Flood Regulatory Areas:
 - (1) The provisions of this section apply to the area shown as floodplain on the most recent maps adopted by the city council, as amended from time to time by the city manager pursuant to subsections (d), (e) and (f) of this section. The regulatory floodplain encompasses the one hundred-year floodplain, the flood fringe, the conveyance zone and the high hazard zone. The following regulations governing each portion of the floodplain are cumulative and not exclusive.
 - (2) In addition to the regulatory areas identified in paragraph (g)(1) of this section, the City has adopted the areas of special flood hazard identified in the Flood Insurance Study for Boulder County, effective October 4, 2002, and delineated on the Flood Insurance Rate Map for Boulder County and the City of Boulder as adopted by the City in compliance with 44 C.F.R. chapter 1. In no event will the regulations contained in this section be interpreted to permit any action not permitted under those regulations promulgated by FEMA for the regulation of areas of special flood hazard and regulatory floodways.

Ordinance Nos. 6034 (1998); 7522 (2007); 7756 (2010)

9-3-3. Regulations Governing the Floodplain.

- (a) General Provisions: In the entire floodplain, the following standards apply:
 - (1) Floodplain Development Permit: Except as specified in paragraph (a)(1)(A), no development in the floodplain may occur prior to the issuance of a floodplain development permit pursuant to section 9-3-6, "Floodplain Development Permits," B.R.C. 1981.
 - (A) Activities exempt from a floodplain development permit: The following activities are allowed within the flood regulatory area and do not require a floodplain development permit:
 - (i) "Maintenance" as defined in chapter 9-16 "Definitions" that do not constitute a substantial improvement and do not affect the efficiency or capacity of the conveyance zone or high hazard zone.
 - (ii) Sidewalks, concrete, asphalt or stone flatwork that does not result in the establishment or expansion of parking area and does not modify existing grade by more than six inches.
 - (iii) Underground utilities that do not modify existing grade.

- (iv) Poles, lines, cables, sign posts, landscaping and artwork that do not affect the efficiency or capacity of the conveyance zone or high hazard zone.
- (v) Temporary facilities that are not permanently attached to the ground such as tents, traffic control devices and lawn furniture provided that they will not affect the efficiency or capacity of the conveyance zone or high hazard zone, or they will remain in place for no more than thirty days.

(2) Anchoring:

- (A) All new construction and substantial improvements or substantial modifications shall be anchored to prevent flotation, collapse or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads.
- (B) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties connecting to permanent ground anchors, in addition to any anchoring requirements for resisting wind forces and any tie-down requirements of chapter 10-12, "Mobile Homes," B.R.C. 1981. Requirements shall include, without limitation, the following:
 - (i) Over-the-top ties shall be provided at each of the four corners of the manufactured homes. For manufactured homes fifty feet or longer, two additional ties per side are required at intermediate locations. For manufactured homes less than fifty feet long, one additional tie per side is required;
 - (ii) Frame ties shall be provided at each of the four corners of the manufactured homes. For manufactured homes fifty feet or longer, five additional ties per side are required at intermediate points. For manufactured homes less than fifty feet long, four additional ties per side are required;
 - (iii) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred pounds; and
 - (iv) Any additions to manufactured homes shall be similarly anchored.

(3) Construction Materials and Methods:

- (A) All new construction, substantial improvements and substantial modifications shall be constructed with materials and utility equipment resistant to flood damage as outlined in FEMA Technical Document 2-93, Flood-Resistant Materials Requirements.
- (B) All new construction, substantial improvements and substantial modifications shall be constructed using methods and practices that minimize flood damage.
- (C) All new construction, substantial improvements and substantial modifications shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and located (by elevating or floodproofing the components) so as to prevent water from entering or accumulating within the components during flooding conditions.

(4) Utilities:

- (A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (B) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
- (C) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.

(5) Subdivision Proposals:

- (A) All subdivision proposals shall demonstrate efforts to minimize flood damage.

- (B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
 - (C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
 - (D) Base flood elevation data shall be provided for subdivision proposals and other proposed development.
 - (E) No subdivision proposal shall create a lot which is unbuildable pursuant to this section.
- (6) Floodproofing: Whenever this section requires a building or structure to be floodproofed, the following standards shall be met:
- (A) Such building or structure shall be floodproofed in accordance with any rules for floodproofing promulgated by the city manager pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, and with current FEMA National Flood Insurance Program (NFIP) Technical Bulletins;
 - (B) Such building or structure shall be floodproofed to the flood protection elevation in such a manner that the building or structure is watertight with walls substantially impermeable to the passage of water and in a manner requiring no human intervention;
 - (C) Such building or structure shall have structural components capable of resisting projected hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (D) Such floodproofing shall be certified by a Colorado registered professional engineer or registered architect to comply with this paragraph. Such certifications shall be provided to the city manager as set forth in paragraph 9-3-2(d)(2), B.R.C. 1981.
- (7) Hazardous Materials: No person shall store a hazardous substance at or below the flood protection elevation for the area of the floodplain in which it is located, except for the storage of gasoline in existing and replacement underground tanks in existing gasoline service stations and service garages, which tanks are designed to prevent infiltration and discharge into floodwaters and which are adequately anchored and shielded against rupture. For purposes of this paragraph, *existing* means in place and in use on January 1, 1989.
- (8) Automobile Parking: Notwithstanding other provisions of this title, no person shall establish an area for automobile parking in any portion of the floodplain where flood depths exceed eighteen inches.
- (9) Flood Warning System: No owner of a hotel, a motel, a dormitory, a rooming house, a hostel, a school, a bed and breakfast, a daycare center, a group home or a residential or congregate care facility located in the Boulder Creek floodplain shall fail to provide a flood warning system approved by the city manager that is connected to a point of central communication in the building with twenty-four-hour monitoring. No such person shall fail to maintain such a flood warning system.
- (10) Rental Property: No owner of property that is located in a floodplain and subject to a city rental license under chapter 10-3, "Rental Licenses," B.R.C. 1981, shall fail to post on the exterior of the premises at the entrance a sign approved by the city manager stating that the property is subject to flood hazard and containing such further information and posted at such other locations inside the building as the city manager may require.
- (11) Manufactured Housing: All manufactured homes placed in the City after July 1, 1989, and all manufactured homes which are substantially improved or substantially modified shall be elevated on a permanent foundation so that the lowest floor of the manufactured home is at or above the flood protection elevation and is securely anchored to an adequately anchored foundation system, and shall meet the anchorage and tie-down requirements of paragraph (a)(2) of this section.
- (12) Recreational Vehicles: In order to reduce debris and hazard potential, recreational vehicles shall either: a) be in the floodplain for fewer than one hundred eighty consecutive days, b) be fully licensed and ready for highway use, or c) meet the permit requirements and elevation and anchoring requirements for manufactured homes.

- (13) Structure Orientation: In order to minimize the obstruction to flow caused by buildings, to the extent consistent with other city policies regarding solar access, new structures shall be placed with their longitudinal axes parallel to the predicted direction of flow of floodwaters or be placed so that their longitudinal axes are on lines parallel to those of adjoining structures.
- (14) Existing Uses: The use of any land or structure that was lawful before the application of this section or any amendment thereto but that does not conform to the requirements of this section may be continued subject to the requirements of this section. If such a use not conforming to the requirements of this section is discontinued for twelve consecutive months, no person shall use the land or structure thereafter unless such use conforms to the requirements of this section.
- (15) New Uses: All uses allowed by the underlying zoning district may be established, subject to the requirements of this section, except for the outdoor or uncontained storage of moveable objects below the flood protection elevation.
- (16) Existing Structures: Any structure in existence before the enactment of this section or any amendment thereto that does not conform to the requirements of this section may remain or may undergo rehabilitation subject to the requirements of this section. Further, any such structure may be otherwise improved as follows:
 - (A) Any person making an expansion or an enlargement to an existing residential structure shall elevate the lowest floor, including the basement, of the expanded or enlarged portion to or above the flood protection elevation.
 - (B) Any person making an expansion or an enlargement to an existing nonresidential structure shall floodproof or elevate the lowest floor, including the basement, of the expanded or enlarged portion to or above the flood protection elevation.
 - (C) Any person making a substantial modification or a substantial improvement to any existing nonresidential structure shall floodproof or elevate the lowest floor, including the basement, of the substantially modified or improved portion to or above the flood protection elevation and shall floodproof the remainder of the existing structure.
 - (D) Any person making a substantial modification or a substantial improvement to any existing residential structure shall elevate the lowest floor, including the basement, of the entire residential structure to or above the flood protection elevation.
- (17) New Structures: Construction of new structures shall meet the following requirements:
 - (A) Any person constructing a new residential structure shall elevate the lowest floor, including the basement, to or above the flood protection elevation;
 - (B) Any person constructing a new nonresidential structure shall floodproof in a manner requiring no human intervention or elevate the lowest floor, including the basement, to or above the flood protection elevation with the following exceptions:
 - (i) Open air carwashes;
 - (ii) Unheated pavilions;
 - (iii) Unfinished or flood resistant building entryways or access areas;
 - (iv) Garden storage sheds;
 - (v) Sidewalks, paving or asphalt, concrete or stone flatwork;
 - (vi) Fences; and
 - (vii) Poles, lines, cables or other transmission or distribution facilities of public utilities.

- (18) Enclosures: Enclosures below the lowest floor that are unfinished or flood resistant, usable solely for parking of vehicles, crawl spaces, building access or storage, in an area that is not a basement, and that are not flood-proofed as set forth in this section shall meet the following requirements:
- (A) Compliance with the provisions of paragraphs (a)(2), (a)(3) and (a)(4) of this section; and
 - (B) Design and construction that automatically equalizes hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
 - (i) Designs for meeting this requirement shall meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (ii) Any designs not in conformance with subparagraph (a)(18)(B)(i) of this section, shall be certified by a registered professional engineer or architect and shall conform with FEMA Technical Bulletin 1-93, Openings in Foundation Walls.
 - (C) Fully enclosed areas below the lowest floor subject to this provision, include the following:
 - (i) Residential garages placed at or above grade;
 - (ii) Enclosures or vestibules that are attached to structures and that are utilized for storage or entryways;
 - (iii) Crawl spaces; and
 - (iv) Outdoor pavilions and patio enclosures with removable walls not located in the high hazard zone.
- (19) Below Grade Crawl Space Construction: New construction, expansion or enlargement, substantial improvement and substantial modification of any below grade crawl space shall meet the following requirements:
- (A) Interior grade elevation that is below the base flood elevation shall be no lower than two feet below the lowest adjacent grade;
 - (B) The height of the below grade crawl space measured from the interior grade of the crawl space to the top of the foundation wall shall not exceed four feet at any point;
 - (C) Adequate drainage systems shall allow floodwaters to drain from the interior area of the crawl space following a flood; and
 - (D) The provisions of paragraphs (a)(2), (a)(3), (a)(4) and (a)(18) of this section shall be complied with.

Ordinance Nos. 6034 (1998); 7756 (2010)

9-3-4. Regulations Governing the Conveyance Zone.

In the conveyance zone, the following standards apply:

- (a) The provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981.
- (b) The provisions of section 9-3-5, "Regulations Governing the High Hazard Zone," B.R.C. 1981, if the land is also located in the high hazard zone.
- (c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or any ordinance of this City, may be established except that no person shall establish or change any use that results in any rise in the elevation of the one hundred-year flood.

- (d) All structures allowed under section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, may be established except that no person shall:
 - (1) Place any structure in the conveyance zone that will result in any rise in the elevation of the one hundred-year flood; or
 - (2) Place any obstruction in the conveyance zone, except a device reasonably necessary for flood management if the device is designed and constructed to minimize the potential hazards to life and property.
- (e) No person shall carry out any other development that results in any rise in the elevation of the one hundred-year flood.
- (f) Localized rises within flood channels or on a specific parcel that is being developed are permissible, if there is no adverse impact on nearby properties and there is no increase in the average water surface elevations along the cross sections of the floodplain.

Ordinance No. 7756 (2010)

9-3-5. Regulations Governing the High Hazard Zone.

In the high hazard zone of the floodplain, the following standards apply:

- (a) The provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981.
- (b) The provisions of section 9-3-4, "Regulations Governing the Conveyance Zone," B.R.C. 1981, if the land is also located in the conveyance zone.
- (c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or any other ordinance of the City, may be established, except that no person shall:
 - (1) Change the use of an existing structure intended for human occupancy from a nonresidential use to a residential use or use as a school, daycare center, group home, residential care facility or congregate care facility.
 - (2) Establish any new parking lot for motor vehicles.
 - (3) Establish any campground.
- (d) All structures allowed under the provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, may be established, except that no person shall:
 - (1) Construct or place any new structure intended for human occupancy.
 - (2) Expand, enlarge or make a substantial modification or substantial improvement to any existing structure intended for human occupancy. Notwithstanding this provision, a person may reconstruct a non-flood-damaged structure or portion thereof, which otherwise does constitute a substantial improvement, under the provisions of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981.
- (e) Unconditioned, unenclosed building elements such as balconies, awnings and roof overhangs may extend up to four feet into the high hazard zone if completely located above the flood protection elevation and the remainder of the structure complies with this chapter.

Ordinance No. 7756 (2010)

9-3-6. Floodplain Development Permits.

- (a) An applicant for a floodplain development permit shall pay the fee prescribed by section 4-20-44, "Floodplain Development Permits and Flood Control Variance Fees," B.R.C. 1981, and shall complete an application form provided by the city manager that shall include, without limitation, the following:

- (1) The written consent of the owners of all property subject to the development request;
 - (2) A written statement addressing the criteria for approval;
 - (3) A surface view plan showing elevations and contours of the ground; pertinent structures, fill and storage elevations; sizes, locations and spatial arrangements of all proposed, anticipated and existing structures on the site; location and elevations of streets, water supplies and sanitary facilities; and soil types; and
 - (4) Specifications for building construction and materials, filling, dredging, grading, channel improvements and changes, storage of materials, water supply and sanitary facilities.
- (b) The manager may require the applicant to furnish additional information and details deemed necessary to evaluate the effects of the proposed construction upon the floodplain, including, without limitation:
- (1) Valley cross sections showing the floodplain surrounding the watercourse, cross sections of the area to be occupied by the proposed development and one hundred-year flood maximum water surface elevation information;
 - (2) A profile showing the slope of the bottom of the channel or thalweg of the watercourse;
 - (3) A floodplain analysis by a Colorado registered professional engineer of the flood profile, elevation and velocity, using methodology acceptable to FEMA, including existing and anticipated uses and making a determination that the proposed construction or development will not cause a rise in the elevation of the water surface of a one hundred-year flood;
 - (4) A structural analysis by a Colorado registered professional engineer showing that any proposed structures will be adequately designed and constructed to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and scouring.
- (c) When reviewing an application for a permit, the city manager shall determine which portion or portions of the floodplain are affected by the particular development request and shall then apply the provisions of sections 9-3-3, "Regulations Governing the Floodplain," 9-3-4, "Regulations Governing the Conveyance Zone," and 9-3-5, "Regulations Governing the High Hazard Zone," B.R.C. 1981, as applicable. The manager also shall determine whether the application meets the intent of this chapter prescribed by subsection 9-3-2(a), B.R.C. 1981, after considering the following factors:
- (1) The effects upon the efficiency or capacity of the conveyance zone and high hazard zone;
 - (2) The effects upon lands upstream, downstream and in the immediate vicinity;
 - (3) The effects upon the one hundred-year flood profile;
 - (4) The effects upon any tributaries to the main stream, drainage ditches and any other drainage facilities or systems;
 - (5) Whether additional public expenditures for flood protection or prevention will be required;
 - (6) Whether the proposed use is for human occupancy;
 - (7) The potential danger to persons upstream, downstream and in the immediate vicinity;
 - (8) Whether any proposed changes in a watercourse will have an adverse environmental effect on the watercourse, including, without limitation, stream banks and streamside trees and vegetation;
 - (9) Whether any proposed water supply and sanitation systems and other utility systems can prevent disease, contamination and unsanitary or hazardous conditions during a flood;
 - (10) Whether any proposed facility and its contents will be susceptible to flood damage and the effect of such damage;

- (11) The relationship of the proposed development to the Boulder Valley Comprehensive Plan and any applicable floodplain management programs;
 - (12) Whether safe access is available to the property in times of flood for ordinary and emergency vehicles;
 - (13) Whether the applicant will provide flood warning systems to notify floodplain occupants of impending floods;
 - (14) Whether the cumulative effect of the proposed development with other existing and anticipated uses will increase flood heights; and
 - (15) Whether the expected heights, velocities, duration, rate of rise and sediment transport of the floodwaters expected at the site will adversely affect the development or surrounding property.
- (d) If the city manager determines that the applicant meets the purposes and requirements of this chapter, the manager shall issue the permit and may attach such conditions as deemed necessary to further the purposes of this chapter.
 - (e) A permit issued on or after April 7, 1985, expires three years after its date of issuance, if the permittee has not commenced construction under the permit. The term "commenced construction" shall mean the first placement of permanent construction of a structure on a site, such as the pouring of slabs 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; but does not include land preparation, grading and filling or installation of streets or sidewalks.
 - (f) No person who has obtained a permit shall fail to construct in accordance with their approved application and design.
 - (g) Floodplain development permits that allow for development in the conveyance zone or the high hazard zone, or which will involve a change of watercourse, shall be decided by the city manager. The decision of the city manager shall be subject to call-up by the planning board, or appeal by any aggrieved party to the planning board, subject to the call-up and appeal procedure of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
 - (h) A floodplain development permit for any of the following items is effective upon the date of its issuance:
 - (1) Sidewalks, parking lots or other concrete, asphalt or stone flatwork that do not modify existing grade;
 - (2) Uninhabited overhead structural projections, no portion of which extends below the flood protection elevation; or
 - (3) Rehabilitation of an existing structure in accordance with the definitions in chapter 9-16, "Definitions," B.R.C. 1981. In addition, for properties in the high hazard zone, the rehabilitation shall not result in a prohibited change in use as set forth in subsection 9-3-5(c), B.R.C. 1981.
 - (i) No person shall initiate any use after obtaining a permit under this section without first submitting to the city manager a certification by a Colorado registered professional engineer that the development has been completed in compliance with the approved permit application and that all conditions have been fulfilled.

Ordinance Nos. 6034 (1998); 7756 (2010)

9-3-7. Variances.

- (a) A person wishing to expand or enlarge an existing structure that does not conform to the requirements of this chapter and cannot be made to conform without unreasonable expense or unreasonable impact on the existing structure may apply to the city manager for a variance from the requirements of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981, except that no variance shall be granted for expansion or enlargement of any structure constructed after July 12, 1978, unless such expansion or enlargement conforms to the flood protection elevation requirement in effect at the time of the original construction.
- (b) The city manager shall not grant a variance under this section unless the manager determines that:
 - (1) Considering the flood hazard, the variance is the minimum necessary to afford relief;

- (2) To do so would not result in additional threats to public safety, extraordinary public expense, nuisance, fraud, victimization of the public, or for variances in the conveyance zone a rise in the elevation of the water surface of a one hundred-year flood, or be in conflict with existing provisions of this code or any ordinance of the City; and
 - (3) Failure to grant the variance would result in exceptional hardship to the applicant.
- (c) The manager shall examine the following factors in determining whether or not to grant a variance under this section:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The likelihood that the proposed development, in conjunction with existing and anticipated development, may increase flood hazards;
 - (3) The relationship of the proposed development to the Boulder Valley Comprehensive Plan and any applicable floodplain management programs; and
 - (4) The cost of providing essential services such as maintaining and protecting public utility systems, roads and bridges during and after floods.
- (d) The city manager shall not grant a cumulative total of variances that increases a structure's floor area by more than ten percent of the structure throughout the life of the structure.
- (e) An applicant for a variance shall apply on forms provided by the city manager and pay the fee prescribed by section 4-20-44, "Floodplain Development Permits and Flood Control Variance Fees," B.R.C. 1981, unless a floodplain development permit is required as well, in which case no fee is required for the variance.
- (f) Any decision by the city manager to approve a variance is subject to call-up by the planning board or appeal by any aggrieved party to the planning board as described by section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (g) When granting any variance that allows for construction below FEMA's one hundred-year flood protection elevation, the city manager shall provide to the recipient of the variance written notice that the proposed construction does not conform with FEMA guidelines and that the proposed construction and the original structure may be subject to increased flood insurance premiums.

9-3-8. Development Violating Chapter Is Nuisance.

- (a) Every development placed or maintained in the floodplain contrary to the terms of this chapter constitutes a public nuisance that may be enjoined and abated by suit or action by the City or any resident of the City.
- (b) In the event of a flood, when a structure intended for human occupancy located within a high hazard zone is damaged to an extent exceeding fifty percent of its market value before the flood damage occurred, it may not be repaired or replaced, and use of the structure for human occupancy shall cease. After written request of the property owner within ninety days after the date on which the damage occurred, subject to appropriation by the city council of sufficient funds therefore, the city manager shall agree to contract or purchase the land upon which the structure was located at its fair market value after the damage occurred.
- (c) When this section provides for acquisition of a structure and the city manager does not accept as reasonable the values submitted by an applicant, the fair market value shall be determined by an appraiser acceptable to the applicant and the manager, whose cost shall be borne equally by the City and the applicant. If the applicant and the manager are unable to agree upon an appraiser, each shall select an appraiser, whose cost shall be borne by each respective selector, and the two appraisers shall select a third appraiser, whose cost shall be borne equally by the City and the applicant. The value shall be the average of the values determined by the three appraisers.

9-3-9. Stream, Wetlands and Water Body Protection.

(a) Legislative Intent:

- (1) It is the intent of the city council in enacting this section to preserve, protect, restore and enhance the quality and diversity of wetlands and water bodies. The council finds that streams, wetlands and water bodies are indispensable and fragile natural resources with significant development constraints due to high groundwater, flooding, erosion and soil limitations and that development activities may threaten these resources. The preservation of streams, wetlands and water bodies under this section is consistent with the goal of wetland protection set forth in the Boulder Valley Comprehensive Plan.
- (2) The city council finds that many streams, wetlands and water bodies have been either lost or impaired by draining, dredging, filling, excavating, building, channelizing, polluting and other acts. Piecemeal and cumulative losses destroy or diminish the functions of the remaining streams, wetlands and water bodies.
- (3) The city council finds that it is necessary for the City to ensure protection by discouraging development activities in streams, wetlands and water bodies and those activities at adjacent sites that may adversely affect the visibility and functional values of these resources.
- (4) The city council finds that it is necessary to ensure no net loss of wetlands, by encouraging avoidance of direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of the City's water resources and adjacent buffers.
- (5) The city council acknowledges that much of the City was developed prior to awareness of the value of protecting streams, wetlands and water bodies. The city council seeks to find a reasonable balance between the property owners' desire to make reasonable uses of their properties and the public's interest in preserving and protecting these important water resources. When the destruction or diminution in function of these resources cannot be avoided, the city council finds that impacts on streams, wetlands and water bodies should be minimized and mitigation provided for unavoidable losses.
- (6) Nothing in this section shall be construed to prevent irrigation companies from altering water levels through the diverting, storage or delivery of water under their historic water rights or owners of such rights from exercising those historic rights.
- (7) Nothing in this section shall be construed to prevent compliance with applicable state or federal statutes and regulations.
- (8) It is not the intent of this section to prohibit all activities within the regulated area, but rather to encourage avoidance and minimization of regulated activities within the regulated area to mitigate the impact that these activities have on streams, wetlands and water bodies.

(b) Scope and Application: No person shall violate any provision of this section or fail to obtain a permit for any regulated activity or to use best management practices in regulated areas as required by this section.

(1) Regulated Area: This section applies to the following:

- (A) Areas within the City shown on the streams, wetlands and water bodies maps adopted pursuant to this subsection, as amended;
- (B) All streams, wetlands and water bodies on city owned or managed lands inside or outside the city limits;
- (C) All city activities affecting streams, wetlands and water bodies inside or outside of the city limits;
- (D) Inner and outer buffer areas associated with all of the above and as defined in paragraph (1)(3) of this section.

(2) Exempt Wetlands: Isolated wetlands with a size of less than four hundred square feet, regardless of property boundaries, are exempt from this section unless the wetland site provides habitat for the following species:

- (A) Plant, animal or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;
 - (B) Plant, animal or other wildlife species listed by the State of Colorado as rare, threatened or endangered, or as a species of special concern; or
 - (C) Plant, animal or other wildlife species listed in the Boulder County Comprehensive Plan as critical; or
 - (D) Plant, animal or other wildlife species listed in the Boulder Valley Comprehensive Plan as a species of local concern.
- (3) Regulatory Maps: Stream, wetland and water body regulatory maps are hereby adopted and will be maintained on file in the planning department.
- (4) Most Stringent Restrictions Prevail: It is not intended that this section repeal, abrogate, supersede or impair any existing federal, state or local law, easement, covenant or deed restriction. However, if this section imposes greater or more stringent restrictions or requirements, the provisions of this section shall prevail. Specifically, if an applicant for a wetlands permit pursuant to this section also acquires authorization under section 404 of the Clean Water Act from the United States Army Corps of Engineers, the applicant shall meet any greater or more stringent restrictions or requirements set forth in this section in addition to and independent of the restrictions of such permit.
- (c) Permitted, Allowed and Prohibited Uses within the Regulated Area: The purpose of this subsection is to describe activities that are exempted, conditionally permitted, requiring development review or prohibited:
- (1) Explanation of Table Abbreviations: The abbreviations used in the cells in table 3-1 have the following meanings:
 - "E" (Exempted Activities): indicates that the use type is allowed as a matter of right and no stream, wetland or water body permit is required.
 - "C" (Conditional Use Review): indicates that the use type will be reviewed in accordance with the requirements in paragraph (e)(3) of this section.
 - "S" (Standard Permit Review): indicates that the use type will be reviewed in accordance with the requirements in paragraph (e)(4) of this section.
 - "P" (Prohibited Activities): indicates that the use type is prohibited in the zone.
 - "N" (Allowed with Notice): indicates that the use type is allowed as a matter of right subject to the application of best management practices as defined in chapter 9-16, "Definitions," B.R.C. 1981, and provision of notice in paragraph (5) of this subsection. Such activity shall not significantly alter the function of the stream, wetland or water body. No person shall conduct any activity that is allowed with notice in violation of the best management practices.
 - (2) Interpretation: The city manager may decide questions of interpretation as to which category activities not specifically listed are properly assigned to, based on precedents, similar situations and relative impacts. If a proposed activity has more than one requirement, the most restrictive requirement applies.
 - (3) Table 3-1: No person shall engage in any regulated activity within a regulated area except in accordance with the requirements described in this section.

TABLE 3-1: REGULATED ACTIVITIES WITHIN REGULATED AREAS

<i>Types of Activities</i>	<i>Wetland, Stream or Water Body Zone (High and Low Functioning)</i>	<i>Inner Buffer (High Functioning)</i>	<i>Outer Buffer (High and Low Functioning)</i>
Buildings and Additions			
1. Construction of a new or an addition to a principal building and any attached structure (e.g., decks, carports, balconies) that would result in a cumulative total of 20% or more impervious surface in the zone on a single property.	P	P	S
2. Construction of a new or an addition to a principal building and any attached structure (e.g., decks, carports, balconies) that would result in a cumulative total of less than 20% impervious surface in the zone on a single property.	P	P	C
Other Structures			
3. Construction of a new accessory or minor structure (e.g., mechanical equipment, sheds, signs, decks, ramps, permanent recreational structures, hot tubs, gazebos) covering a total surface area of 25 feet or more and resulting in a cumulative total of 20% or more impervious surface in the zone on a single property.	P	P	S
4. Construction of a new accessory or minor structure (e.g., mechanical equipment, sheds, signs, decks, ramps, permanent recreational structures, hot tubs, gazebos) covering a total surface area of 25 feet or more and resulting in a cumulative total of less than 20% impervious surface in the zone on a single property.	P	P	C
5. Construction of a new accessory or minor structure covering a total surface area of less than 25 square feet.	P	C	E
6. Construction of a new fence.	P	C	E
7. Replacement or repair of an existing fence.	C	E	E
8. Construction of a retaining or other landscape wall.	S	S	E
9. Expansion or addition of a stormwater detention or retention facility for new development.	P	S	S
Pavement, Surfacing and Trails			
10. Construction of new or expansion of existing impervious surface (e.g., parking lots, driveways, utility pads or patios) covering a total surface area of 25 square feet or more and resulting in a cumulative total of 20% or more impervious surface in the zone on a single property.	P	S	S
11. Construction of new or expansion of existing impervious surface (e.g., parking lots, driveways, utility pads or patios) covering a total surface area of 25 square feet or more and resulting in a cumulative total of less than 20% impervious surface in the zone on a single property.	P	S	C
12. Construction of a new accessory or minor structure covering a total surface area of less than 25 square feet.	P	C	E
13. Grading that disturbs 25 square feet or more surface area (including construction of new or expansion of existing play fields, terracing, etc.)	S	C	C
14. Grading that disturbs less than 25 square feet surface area (including construction of new or expansion of existing play fields, terracing, etc.)	C	E	E
15. Construction of new paths, trails or steps for private use.	C	C	E
16. Temporary access roads associated with a public improvement or maintenance project.	S	C	E

Landscaping and Landscape Maintenance			
17. "Vegetation removal – major" as defined in chapter 9-16, "Definitions," B.R.C. 1981.	S	C	E
18. Addition of new plant material in a total area of 20% or more of the zone on a single property.	S	C	E
19. Addition of new plant material in a total area of less than 20% of the zone on a single property.	C	E	E
20. Installation of a permanent landscape irrigation system.	C	C	E
21. New lighting.	P	E	E
Stream Channel and Flood Improvements			
22. Water quality treatment facilities associated with a flood improvement project.	S	C	C
23. Construction of a new, addition to or complete replacement of a bridge or underpass.	S	S	E
24. Repair of an existing utility line and not involving complete replacement.	C	N	E
25. Installation, complete replacement or relocation of surface or subsurface utility lines, pipes, culverts, storm drains, inlets or stormwater quality facilities.	S	C	N
26. Installation or replacement of overhead utility lines through trenchless construction methods.	C	C	N
27. Stream channel widening, regrading or reconstruction; new drop structure installation; or sediment removal involving alteration of the existing side slope or banks.	S	S	C
28. Removal of sediment in a stream channel or outlet without altering existing side slopes or banks.	C	C	E
29. Drop-structure repair or replacement in existing location without enlargement of the existing structure and following best management practices.	C	E	E
30. Stream bank or slope stabilization.	S	C	C
31. Alteration of surface or subsurface hydrology through draining, ditching, trenching, impounding, pumping or flooding (including permanent or temporary dewatering for a structure or construction).	S	S	C

(4) Activities Exempt From a Stream, Wetland or Water Body Permit: In addition to the activities exempted in table 3-1, the following activities are allowed within a regulated area and do not require a permit:

- (A) Buildings, structures or improvements existing prior to June 4, 2009;
- (B) Construction of an addition to or replacement of an existing principal building and any attached structure, such as a deck, carport or balcony, that does not result in an increase in impervious surface area in the zone;
- (C) Placement of temporary objects that are not permanently attached to the ground such as planters, garden or lawn furniture, play equipment such as swing sets, and temporary irrigation systems;
- (D) Maintenance of an impervious or pervious surface not involving expansion of the existing surface area;
- (E) "Vegetation removal – minor" as defined in chapter 9-16, "Definitions," B.R.C., 1981;
- (F) Removal of trees or other live vegetation posing an immediate threat to the public or property; removal of damaged or disease-ridden trees or vegetation; or removal of vegetative debris and trash;

- (G) Weed management consistent with state and county laws;
 - (H) Grading or removal of vegetation or debris within six feet of an existing building or structure;
 - (I) Removal of vegetation or debris from an existing structure in order to maintain its structural integrity and function;
 - (J) Alteration of water levels through the diversion, storage or delivery of water under a water right;
 - (K) "Maintenance" as described in chapter 9-16, "Definitions," B.R.C. 1981;
 - (L) Emergency repair of utilities;
 - (M) Installation or replacement of overhead utility lines following best management practices;
 - (N) Herbicide and pesticide application consistent with federal, state and local laws;
 - (O) Continuing agricultural practices (harvesting of hay, pasturing of livestock);
 - (P) Outdoor recreation involving minimal or no harm or disturbance to a wetland, including, without limitation, fishing, bird watching, hiking, boating and swimming); and
 - (Q) Education, scientific research or field surveying.
- (5) Notice of Regulated Activities: Except for emergency activities required for the immediate protection of life, safety or property, or to restore essential public services, written notice of activities listed in table 3-1 above, shall be provided to the city manager at least two weeks prior to the commencement of work. The written notice shall include a full description of the activity, including duration and extent of impacts. Written notice of any emergency maintenance activity shall be provided immediately following the activity.
- (d) Stream, Wetland or Water Body Permit Applications:
- (1) All Permit Applications: An applicant for a stream, wetland or water body conditional use or standard permit shall pay the fee prescribed by Section 4-20-53, "Stream, Wetland or Water Body Permit and Map Revision Fees," B.R.C. 1981, and shall complete an application form provided by the city manager. The application shall include, at a minimum, the following information:
 - (A) The written consent of the owners of all property subject to the permit request;
 - (B) A detailed description of the proposed activity and how the application meets all applicable review criteria as set forth in subsection (e) of this section;
 - (C) A site plan which illustrates the regulatory stream, wetland or water body boundary and buffer area as set forth in subsection (b) of this section; the property boundary and the proposed area of impact; and all existing and proposed structures and roads on the property; and
 - (D) A description of and specifications for best management practices to be applied as part of the proposed activities;
 - (2) Standard Review Applications: The manager may require an applicant for a standard review to furnish additional information and details deemed necessary to evaluate the effects of the proposed activity upon the stream, wetland, water body or buffer area, including, without limitation:
 - (A) An evaluation of the direct and indirect impacts of the proposed activity;
 - (B) A description of the types and sizes of wetlands and buffer areas that will be impacted by the regulated activities;

- (C) An evaluation and analysis of the proposed design of an activity and all alternatives considered with respect to the criteria for review as set forth in subsection (e) of this section, including a description of why less damaging alternatives have been rejected by the applicant;
 - (D) Any applicable field investigation, monitoring and clearances for critical species which may be impacted by the proposed activities;
 - (E) The source, type and method of transport and disposal of any fill material to be used as applicable. Certification that placement of the fill material will not violate applicable state and federal statutes and regulations also shall be required; and
 - (F) A mitigation plan as set forth in subsection (f) of this section, prepared by a qualified wetland biologist where required by the city manager to mitigate direct or indirect impacts to a stream, wetland or water body as a result of the proposed activities.
- (e) Stream, Wetland and Water Body Permit Application Review:
- (1) Acceptance of Application: Applicants for stream, wetland or water body permits shall submit an application as set forth in subsection (d) of this section. Upon receipt of an application, the city manager shall review the application for completeness. A permit application will be accepted when the city manager determines that it is complete.
 - (2) Public Notification of Application: Upon acceptance of a complete standard review application, public notice shall be provided according to the requirements shown in section 9-4-3, "Public Notice Requirements," B.R.C. 1981, using Public Notice Type 5 from table 4-2. Public notice of a conditional use review application is not required.
 - (3) Criteria for Review: For an activity requiring conditional use or standard review, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:
 - (A) Criteria for all zones: In all zones, the following criteria apply:
 - (i) Any activity requiring conditional use or standard review shall not result in a significant change to the hydrology affecting the stream, wetland or water body. Percolation of storm runoff on-site through vegetated swales, permeable paving materials or other similar methods to slow and clean runoff being discharged directly into the wetland, stream or water body may be required as part of the permit.
 - (ii) Minimization: The applicant shall demonstrate that the activity is designed and located to minimize direct or indirect impacts to the adjacent wetland, stream or water body.
 - (iii) Mitigation: If required, the applicant shall demonstrate that unavoidable direct and indirect impacts to vegetation, pervious surface or hydrology affecting the adjacent stream, wetland or water body can be successfully mitigated through design of the activity or by compensating for the impact.
 - (iv) Restoration of Temporary Impacts: The applicant shall demonstrate that direct, temporary impacts to a wetland, stream water body, or buffer area will be successfully restored according to the requirements in subsection (f) of this section.
 - (v) Application of Best Management Practices: The applicant shall demonstrate compliance, at a minimum, with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981.
 - (B) Criteria for the Outer Buffer Zone: In the outer buffer zone, the following criteria shall apply:
 - (i) The provisions of subparagraph (e)(3)(A) of this section.
 - (ii) Impervious surface coverage: Any new building or attached structure, expansion of an existing building or attached structure, new surfacing or expansion of an existing surface that would result in a

cumulative total of twenty percent or more impervious surface in the outer zone on the property shall provide mitigation according to the requirements in subsection (f) of this section for the loss of pervious surface.

- (C) Criteria for the Inner Buffer Zone: In the inner buffer zone, the following criteria shall apply:
 - (i) The provisions of subparagraph (e)(3)(A) of this section.
 - (ii) The provisions of subparagraph (e)(3)(B) of this section.
 - (iii) Channel bank protection or stabilization shall utilize, to the extent feasible, techniques that involve landscaping with appropriate native plants rather than rock or artificially hardened structures.
 - (iv) All new plant material adjacent to wetlands or water bodies or along the banks of a stream shall be consistent with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981. Mitigation monitoring for restoration projects may be required by the city manager.
 - (v) "Vegetation removal – major" shall only be allowed to prevent noxious weed infestation, provide for native habitat restoration or for other permitted projects. Major removal of vegetation shall be mitigated within the inner buffer according to the requirements in subsection (f) of this section.
 - (vi) New steps, paths or other minor access to or over a stream on private property will be permitted if there is no more than one access on an individual property, the path or steps are designed to have minimal impact to the wetland, stream or water body, and the path and the area of impact does not exceed four feet in width.
- (D) Criteria for the Wetland, Stream or Water Body: In the wetland, stream, or water body, the following criteria shall apply:
 - (i) The provisions of subparagraph (e)(3)(A) of this section.
 - (ii) The provisions of subparagraph (e)(3)(B) of this section.
 - (iii) The provisions of subparagraph (e)(3)(C) of this section.
 - (iv) Replacement or repair of an existing fence shall be generally in the same location and not result in additional impacts to the wetland, stream, or water body.
 - (v) Utility line or drop structure maintenance or repair shall not impact the existing functions of the wetland, stream, or water body.
 - (vi) Activities conducted solely for the purpose of removing stream sediment shall not alter the flood capacity as shown on the adopted floodplain maps. Vegetated channel bottoms shall be restored and stabilized.
- (4) Criteria for Standard Review: In addition to the standards in paragraph (e)(3) of this section, the applicant shall demonstrate that the stream, wetland or water body permit application meets the following criteria:
 - (A) Minimization: Any direct or indirect adverse impact on a stream, wetland or water body and its associated buffer area has been minimized to the maximum extent feasible through a reduction in the size, scope or density of the project or a change of project configuration or design;
 - (B) Minimal Impact: The activity will result in minimal impact or impairment to any stream, wetland or water body function;
 - (C) Protection of Species: The activity will not jeopardize the continued existence of habitat for the following species:

- (i) Plant, animal or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;
 - (ii) Plant, animal or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern;
 - (iii) Plant, animal or other wildlife species listed in the Boulder County Comprehensive Plan as critical; and
 - (iv) Plant, animal or other wildlife species listed in the Boulder Valley Comprehensive Plan as a Species of Local Concern.
- (D) Mitigation Demonstration: Unavoidable direct and indirect impacts can be successfully mitigated based on the submission of a mitigation plan in conformance with the standards outlined in subsection (f) of this section.
- (5) Coordination With Other Development Reviews: The city manager may coordinate the application review process with other development review, administrative review or permit review processes.
- (f) Mitigation Plans:
- (1) Mitigation Plan Required: As a condition of a permit issued under this section, the approving authority may require a mitigation plan. A mitigation plan requires the applicant to engage in the enhancement, restoration or creation of a stream, wetland or water body in order to offset, in whole or in part, the losses or impacts resulting from that applicant's actions. This mitigation plan shall not be an alternative to the standards set forth in this subsection, but shall be used only to compensate for unavoidable losses or impacts. In making a determination of whether a mitigation plan will be required, and the degree to which it is required, the following factors will be considered:
 - (A) The type and value of the altered stream, wetland or water body adopted functions, the functions and associated resources to be impaired or destroyed as a result of the proposed regulated activity, and the ecological equivalency of the enhanced, restored or created stream, wetland or water body. In considering whether the enhanced, restored or created wetland is the ecological equivalent to the stream, wetland or water body impaired or destroyed, the city manager will accept an evaluation of functional values comparing the impaired or destroyed stream, wetland or water body and the proposed enhanced, restored or created stream, wetland or water body using the procedures described in "City of Boulder, Comprehensive Wetland Remapping Project," by Land Stewardship Consulting, October 18, 2004. In interpreting the provisions of this section, the city manager may adopt design standards pursuant to chapter 1-4, Rulemaking," B.R.C. 1981;
 - (B) The type, size and location of the altered stream, wetland or water body and gains or losses of this particular type of resource in the Boulder Valley planning area and in the area of the altered stream, wetland or water body; and
 - (C) The cost and probability of success of the mitigation measures.
 - (2) Mitigation Plan Requirements: A mitigation plan shall contain:
 - (A) An evaluation of all of the factors set forth in paragraph (1) above;
 - (B) The location and ownership of the proposed mitigation site;
 - (C) An evaluation of the suitability of the proposed mitigation site for establishing the restored or created stream, wetland or water body;
 - (D) The source and ownership of any water to be used for establishing or maintaining the restored or created stream, wetland or water body;

- (E) A description of the sizes and types of stream reaches, wetlands or water bodies to be impaired or destroyed and restored or created;
 - (F) The site hydrology of the restoration or creation area;
 - (G) A maintenance program for a period of up to five years, including, without limitation, weed control, litter and debris removal, temporary irrigation, repair of water control structures, maintenance of vegetation and wildlife habitat and clearing of culverts;
 - (H) A description of any critical elements and possible problems that may influence the success of the project;
 - (I) A timetable for construction and monitoring;
 - (J) A monitoring program, including monitoring schedule, technique and success criteria; and
 - (K) A demonstration of fiscal, administrative and technical competence to successfully execute the overall project.
- (3) Mitigation Location: Selection of a location for an enhancement, restoration or creation project shall consider the following order of geographic preferences in the context of the goals of this section:
- (A) On-site;
 - (B) Adjacent to the site;
 - (C) Within the sub-basin of the existing wetland;
 - (D) Within the Boulder Valley planning area; or
 - (E) In unusual cases, outside the Boulder Valley planning area.
- (4) Mitigation Type:
- (A) In a mitigation plan, replication of the same or greater stream, wetland or water body functional value is required (in-kind replacement), unless a wetland of a different type is justified based on the functions and values of the stream, wetland or water body which is proposed to be altered.
 - (B) Permanent, direct impacts to streams, wetlands or water bodies shall be compensated through restoration or creation.
 - (C) Temporary, direct impacts to streams, wetlands or water bodies shall be compensated through restoration or enhancement at the location of impact at a 1:1 ratio.
 - (D) Indirect impacts as a result of activities within a buffer area shall be compensated through enhancement of the buffer area that compensates for the impacted function.
- (5) Compensatory Mitigation Amount:
- (A) The guidelines for wetland compensation indicating the amount of impacted streams, wetlands or water bodies to be restored or created compared to the area destroyed or impaired are in table 3-2 of this subsection. Wetland and water body compensation shall be based on total surface area.

TABLE 3-2: WETLAND COMPENSATION

<i>Impacted Resource</i>	<i>Enhancement</i>	<i>Restoration</i>	<i>Creation</i>
Streams and water bodies	1:1	1:1	1:1
Wetlands	1:1	1.5:1	2:1
Rare or hard-to-create wetlands	1.5:1	2:1	2.5:1

- (B) Higher wetland compensation ratios may be applied to mitigation that is not in-kind and/or outside the sub-basin of the original wetland.
- (C) A combination of creation, restoration and enhancement for direct impacts that meets the above compensation requirements may be considered under the following conditions:
 - (i) Water rights for agricultural use within the sub-basin are unavailable;
 - (ii) Created, restored or enhanced wetlands are all within the basin of the original wetland; and
 - (iii) There is a high potential for long-term success of mitigation.
- (6) Mitigation Banking Program: Upon adoption of a wetland mitigation banking program by the city council, if the city manager, the planning board or the city council determines that the public interest is better served, a fee may be accepted in lieu of direct action on the part of the applicant to initiate a wetland restoration or wetland creation project to offset wetland destruction or impairment from the permitted activity. Fees for compensation of wetland destruction or impairment will be set based upon the amount that would be required to perform equivalent wetland restoration or creation. Such fees shall be held for the express use of wetland restoration and creation projects, including, without limitation, the acquisition of water rights for the use of compensatory mitigation.
- (7) Mitigation Monitoring and Release of Mitigation Plan Responsibilities:
 - (A) The applicant and any successor owner of any portion of any property subject to a wetland permit is responsible for the implementation of any related stream, wetland or water body mitigation plan for an initial period of up to five years from the date of completion of construction and planting of all vegetation required by the plan and acceptance of such construction and planting by the city manager.
 - (B) Any failure of a mitigation plan during the monitoring period shall be remedied by the applicant and any successor owner of any portion of the property, who shall be jointly and severally liable to the city for the costs of such remedy. Any such failure shall trigger a new guarantee period of equivalent length to that specified in the stream, wetland or water body permit. The city manager will release the financial guarantee required by subsection (h) of this section at the end of the monitoring period if the original goals of the plan have been achieved.
- (g) Permit Issuance:
 - (1) Permit Decision: The city manager shall determine whether the application meets the requirements of this section and shall approve a permit, approve a permit with conditions or deny the application. Standard permits shall be final fourteen days after issuance. Conditional use permits shall be final upon issuance.
 - (2) Permit Conditions: The approving authority may attach such conditions to the granting of a stream, wetland or water body permit as are reasonably necessary to carry out this section. To the extent necessary for the regulated activity to take place without adverse impact on the stream, wetland or water body, such conditions may include, without limitation:
 - (A) Requiring that structures be elevated on piles and otherwise protected against natural or man-made hazards;
 - (B) Restricting the use of an area;
 - (C) Requiring erosion control and stormwater management measures;
 - (D) Restricting fill, deposit of soil and other activities which may be detrimental to a stream, wetland or water body;

- (E) Modifying the project design to ensure continued water supply or other necessary protections for the purpose of maintaining stream, wetland or water body functions;
 - (F) Requiring compliance with best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981.
 - (G) Requiring or restricting maintenance of a regulated area for the purpose of maintaining stream, wetland or water body functions; and
 - (H) Requiring submission and approval of a mitigation plan as set forth in subsection (f) of this section.
- (3) General Permits: The city manager may issue a general permit for up to five years for on-going operational activities such as, without limitation, stormwater facility management, stream channel sediment removal and repair or replacement of other public facilities.
- (4) No person who has obtained a permit shall fail to conduct an activity in accordance with their approved application.
- (5) Referrals, Call-up or Appeal:
- (A) Conditional Use Permits: For conditional use permits, there shall be no referrals, call-ups or appeals. An applicant may resubmit a standard permit application for a denied conditional use application, pay the balance of the standard permit fee and proceed pursuant to the standard permit review process.
 - (B) Standard Review Permits: The decision of the city manager shall be subject to call-up by the planning board, or appealed by the applicant to the planning board, subject to the call-up and appeal procedure of section, 9-4-4 "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (h) Financial Guarantees:
- (1) The city manager may require a financial guarantee in an amount, and with surety and conditions, sufficient to secure compliance with the conditions and limitations set forth in the permit.
 - (2) Mitigation Plan Guarantee: Prior to receiving a final certificate of occupancy, the applicant and any successor owner of any portion of the property subject to a stream, wetland or water body mitigation requirements shall either complete the mitigation or provide a financial guarantee in an amount sufficient to guarantee the performance of the mitigation plan. If a building permit is not required for a proposed activity, a financial guarantee is required prior to issuance of a wetland permit. The guarantee shall be in an amount necessary to secure the full costs, as determined by the city manager, of construction and monitoring as described in the approved mitigation plan.
 - (3) The financial guarantee may be in any of the forms as described in subsection 9-12-13(f), B.R.C. 1981. If the financial guarantee is in the form of the escrow of funds, the city manager will take the measures described in subsection 9-12-13(g), B.R.C. 1981, to ensure that the funds are maintained in an appropriate manner.
 - (4) Annual Review: The city manager shall review the financial guarantee annually to assure that it meets the full current cost of installing or completing the mitigation plan that it guarantees and may require the recipient of the permit to augment the guarantee to meet such costs.
 - (5) Collection: If the mitigation plan is not completed within the required time, the city manager may cause it to be completed and collect against the financial guarantee, or, if the guarantee is exhausted, against the property owner for the full cost of completion.
- (i) Permit Amendment Procedures:
- (1) Changes to conditions of an approved permit or changes to an approved mitigation plan may be approved by the city manager without submittal of a new application if such changes are minor. Applicants for a minor change to a wetland permit must pay the fee for a revision as prescribed in section 4-20-53, "Stream, Wetland and Wa-

ter Body Permit and Map Revision Fees," B.R.C. 1981. All minor changes to the permit shall be noted, signed and dated on the approved permit.

- (2) If an applicant proposes to amend an approved permit and the proposed amendment is not considered minor by the city manager, the applicant must submit a complete application and pay the fee for a standard wetland permit as prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981.

(j) Expiration of Permit:

- (1) Unless otherwise specified, a stream, wetland or water body permit expires three years after the date of final approval.
- (2) For good cause, an applicant or any successor owner of any portion of land subject to a stream, wetland or water body permit may request an extension of an original permit by filing an application with the city manager prior to the expiration date of the permit, for up to an additional three year period. The city manager may deny the request if good cause is not shown, if the original intent of the permit is altered or extended by the renewal or if the applicant failed to abide by the terms of the original permit.

(k) Stream, Wetland and Water Body Boundaries:

- (1) For the purpose of mapping the boundaries a stream, wetland, or water body the following standards and criteria shall be used:
 - (A) Wetland boundary determinations shall be performed in accordance with the procedures specified in the 1987 Corps of Engineers Wetlands Delineation Manual or defined in chapter 9-16, "Definitions," B.R.C. 1981.
 - (B) The boundaries of a stream shall include the bank-full width of the channel.
 - (C) The boundaries of a water body shall include the ordinary high water mark.
- (2) Annexation: Prior to annexation, all stream, wetland, water bodies and buffer areas on the property to be annexed shall be mapped by the city after the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, is paid and according to the procedures set forth in this section. This mapping shall include a functional evaluation of the stream, wetland or water body performed by the city. The approved mapping and evaluation shall be adopted as an update to the regulatory maps as a part of the annexation ordinance.
- (3) Map Revisions: At the request of a property owner and after submittal of an application and payment of the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, or at the city manager's initiative, adopted stream, wetland and water body boundaries may be modified by the city manager by means of the performance of a boundary determination in accordance with the requirements of this subsection:
 - (A) Applications: An application for a stream, wetland or water body boundary revision shall include, at a minimum, the following information:
 - (i) The written consent of all the landowners of all property subject to the boundary change request;
 - (ii) A report completed by a qualified wetlands biologist that describes the methodology used in determining the proposed new stream, wetland or water body boundaries; and
 - (iii) A site plan showing the exact location of the current regulatory stream, wetland or water body boundary; the property boundary; and the proposed new boundary determination.
 - (B) Review of Map Revision Applications:

- (i) The city manager shall review the application in accordance with subsection (l) of this section, and may approve the proposed boundary change, approve the proposed boundary change with modifications or deny the proposed boundary change.
 - (ii) The decision of the city manager shall be subject to call-up by the planning board or appeal by the applicant, subject to the call-up and appeal procedure of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (l) Stream, Wetland and Water Body Functional Evaluations, Designations and Buffer Areas:
- (1) Stream, Wetland and Water Body Functional Evaluations: The functions of all regulated stream, wetland and water bodies within the city limits have been evaluated and are described in the "City of Boulder, Comprehensive Wetlands Remapping Project" by Land Stewardship Consulting, October 18, 2004. The detailed report, including functional evaluations, is adopted and maintained on file in the planning department.
 - (2) Stream, Wetland and Water Body Designations: Streams, wetlands and water bodies are designated as either high or low functioning on the adopted regulatory maps. Streams, wetlands and water bodies are designated according to the following criteria:
 - (A) High Functioning: The additive value of all adopted functional value ratings, excluding recreation, equals twenty-six or more; or at least one function, excluding recreation, is rated high or very high.
 - (B) Low Functioning: The additive value of all adopted functional value ratings, excluding recreation, equals twenty-five or below.
 - (3) Buffer Areas: All regulated streams, wetlands and water bodies shall have a buffer area. The extent of the buffer area boundaries shall vary according to the stream, wetland or water body designation.
 - (A) High Functioning buffer area widths: The buffer area width for High Functioning streams, wetlands and water bodies shall be fifty feet and shall include an inner and outer buffer area.
 - (i) The inner buffer area width shall be twenty-five feet from each point on the stream, wetland or water body boundary.
 - (ii) The outer buffer area width shall be twenty-five feet from each point on the inner buffer area boundary.
 - (B) Low Functioning buffer area widths: The total buffer area width for Low Functioning streams, wetlands and water bodies shall be twenty-five feet from each point on the stream, wetland or water body boundary and shall be considered an outer buffer area.
 - (4) Stream, Wetland or Water Body Functional Evaluation Request: At the request of all the owners of the majority of the land in the regulatory area of an individual wetland, water body or stream reach; and after payment of the fee prescribed in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981; or at the city manager's initiative, the city manager may perform a functional evaluation. Functional evaluations shall only be performed upon determination by the city manager that conditions have changed significantly from the adopted functional evaluation due to changes in land use or hydrology.
 - (A) Initial Request: An application for a stream, wetland or water body functional evaluation shall include the following information:
 - (i) Statement of request for the city to perform a functional evaluation of the stream, wetland or water body.
 - (ii) A description and other relevant information supporting potentially changed conditions of the stream, wetland or water body.

- (iii) Number of the wetland, stream reach or water body as specified in the "City of Boulder Comprehensive Wetland Remapping Project" by Land Stewardship Consulting, Inc, October 18, 2004.
- (iv) Signatures and addresses of the landowners party to the request.
- (v) Payment of the fee for a functional evaluation initial application as indicated in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981.

(B) Review Process:

- (i) The city manager shall review the request for a functional evaluation of a stream reach, wetland or water body and determine if conditions have changed sufficiently to warrant a new functional evaluation.
- (ii) If the city manager determines that conditions have changed sufficiently to warrant a new functional evaluation and upon receipt of the fee for a functional evaluation final application as indicated in section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, the city will perform a functional evaluation of the stream reach, wetland or water body described in the initial request.
- (iii) Upon receipt of the fee for a functional evaluation final application, mailed notice shall be provided to owners of all property affected by the regulated area described in the initial request according to the requirements shown in subsection 9-4-3(b), "Mailed Notice," B.R.C. 1981.
- (iv) Functional evaluations shall be performed in accordance with the procedure described in the report entitled: "City of Boulder Comprehensive Wetland Remapping Project" by Land Stewardship Consulting, Inc., October 18, 2004.
- (v) If the city manager determines that the functional values of an individual stream reach, wetland or water body have changed enough to result in a change to the designation of the stream reach, wetland or water body, a proposal shall be taken to the planning board for a recommendation and to city council for adoption by ordinance.

(m) Variances:

- (1) Purpose: It is the intent of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.
- (2) A person wishing to conduct an activity that does not conform to the requirements of this chapter and cannot be made to conform without unreasonable expense or unreasonable hardship may apply to the city manager for a variance from the requirements of paragraph (c)(3) of this section.
- (3) The manager may grant a variance only if it finds that the application satisfies at least one of the following criteria:
 - (A) There are unusual physical circumstances or conditions, including, without limitation, irregularity, narrowness or shallowness of the lot or exceptional topographical or other physical conditions peculiar to the affected property; because of these physical circumstances or conditions, the property cannot reasonably be developed or utilized in conformity with the provisions of the land use code; and any unnecessary hardship has not been created by the current property owner; or
 - (B) There is a physical disability affecting the owners of the property or any member of the family of an owner who resides on the property which impairs the ability of the disabled person to utilize or access the property;
- (4) For publicly funded projects, a variance may be issued if the city manager finds that the project is in the community interest and part of an approved master plan or capital improvements program.

- (5) Requirements for all Variance Approvals: Considering the functions of the wetland, stream or water body, the applicant must show that the variance is the minimum necessary to afford relief.
 - (6) An applicant for a variance shall apply on forms provided by the city manager and pay the fee prescribed by section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981.
 - (7) The decision of the city manager shall be subject to call-up by the planning board, or appeal by the applicant to the planning board, subject to the call-up and appeal procedure of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (n) Enforcement:
- (1) In order to carry out the provisions of this section, the city manager may enter upon private land not otherwise open to the public in a reasonable and lawful manner, with reasonable notice to the owner or manager of the property during reasonable business hours, for the purposes of inspection and observation.
 - (2) If denied access to any property or building, the city manager may apply to the municipal court for a search warrant or administrative inspection warrant.
 - (3) The city manager may suspend or revoke a wetland permit pursuant to the procedures set forth in sections 4-1-10, "Revocation of Licenses," and 4-1-11, "Revocation Not Exclusive Penalty," B.R.C. 1981. Permits may be suspended or revoked for a failure to comply with the provisions of the permit.
 - (4) In addition to other remedies, the city manager will have the following powers:
 - (A) In the event of a violation, the city manager will have the power to issue an appropriate order to any person responsible for a violation of this section and to the property owner. In the order, the manager may specify the initial corrective measures required, including, without limitation, wetland restoration and creation measures for the destroyed or impaired wetland. If the responsible person or property owner does not complete such measures within the time required by the order, or request an administrative hearing by the city manager within seven days of the issuance of such order, the city may restore the affected wetland to its prior condition and restore or create other wetlands for the purpose of offsetting losses sustained as a result of the violation. The person responsible for the original violation and the property owner shall be liable to the city for the cost of such actions, in addition to any fines that may be levied by the municipal court for violating this section.
 - (B) If any property owner fails or refuses to pay, when due, any charges imposed pursuant to this section, the city manager may charge the costs against the financial guarantee, pursue other collection remedies and certify due and unpaid charges, including interest, to the Boulder County Treasurer, to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.
 - (C) To guide stream, wetland and water body enhancement, restoration and creation actions, the city manager may order the violator to develop and amend a plan as described in subsection (f) of this section.
 - (o) Emergency Exemption: The city manager may suspend any portion of this section in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or the city's planning area or to the city's environment.
 - (p) Regulations: The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this section.

Ordinance Nos. 5562 (1993); 5604 (1993); 5725 (1995); 5788 (1996); 7182 (2002); 7373 (2004); 7366 (2004); 7522 (2007); 7658 (2009); 7681 (2009)

9-3-10. Airport Influence Zone.

- (a) Legislative Intent: The purpose of this section is to enact an airport influence overlay zone map and associated regulations, providing for certain land development controls on the area surrounding the airport which may be affected by aircraft accidents and by noise, vibrations, fumes, dust, smoke, fuel particles and other annoyances and influences from airport operations. Further, the use of land within the airport influence overlay zone affects the safe and efficient operation of the airport and aircraft using the airport, and this section is intended to minimize risks to public safety and hazards to aircraft users, and to protect the capacity of the airport to serve the city's air transportation needs. Finally, this section is intended to promote sound land use planning in the airport influence overlay zone.
- (b) Applicability of Section: The requirements of this section supplement those imposed on the same lands by any underlying zoning provision of this code or any other ordinance of the city. If there is a conflict between such requirements, the more restrictive controls.
- (c) City-Wide Restrictions:
 - (1) Prohibitions: No person shall establish or maintain any structure or use which:
 - (A) Creates any electrical interference with navigational signals or radio communications at the airport;
 - (B) Mimics airport lights; or
 - (C) Results in glare affecting aircraft using the airport.
 - (2) Hazards: No person shall establish or maintain any hazard.
 - (3) Development Permits: No development permit shall be granted or approved that would create a hazard or that would allow an existing structure or use to become a greater hazard. Notwithstanding the provisions of this paragraph and subsection 9-6-9(c), B.R.C. 1981, no person shall, on or after July 1, 1989, acquire any vested right to maintain any hazard which the city manager may subsequently determine to exist, nor shall the city be estopped from proceeding to remove such hazard, under the procedure set forth in paragraph (c)(4) of this section.
 - (4) Abatement: Any use or structure which the city manager determines to violate any provision of this subsection shall be discontinued upon order of the manager, subject to the procedures set forth in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, concerning quasi-judicial hearings.
- (d) Zones: In order to carry out the purposes of this section, overlay zones one through four are established as shown on the "Airport Influence Overlay Zone Map," which shall be an attachment to the Zoning District Map of the City of Boulder, Colorado, adopted by section 9-5-3, "Zoning Map," B.R.C. 1981, and on file with the City Planning Department, as amended.
- (e) Zone Regulations: The zones shall be regulated as follows:
 - (1) Zone Four:
 - (A) A person annexing to the city and thereafter constructing a new principal structure in the city shall be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded. An applicant for a development permit pursuant to chapter 9-2, "Review Processes," B.R.C. 1981, may be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded.
 - (B) All new utility lines shall be placed underground.
 - (2) Zone Three:
 - (A) An avigation easement may be required as set forth in subparagraph (e)(1)(A) of this section.
 - (B) All new utility lines shall be placed underground.

- (C) Applications for development shall be referred to the Airport Manager for review and comment.
- (3) Zone Two:
 - (A) An avigation easement may be required as set forth in subparagraph (e)(1)(A) of this section.
 - (B) All new utility lines shall be placed underground.
 - (C) No new residential use, including, without limitation, nursing homes, group homes, congregate care facilities, group care facilities and residential care facilities, is permitted.
 - (D) Schools, hospitals, churches, libraries, hotels and motels and daycare facilities are permitted only if permitted by the underlying zoning and determined to be sited and designed in a manner which substantially alleviates the concerns set forth in subsection (a) of this section. Such determination shall be made by the city manager, subject to a call-up by the planning board pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. No hearing shall be required for such review, but adjacent property owners shall be notified by first class mail at least fourteen days prior to approval by the city manager.
 - (E) Nonconforming uses are not permitted if discontinued for one year.
 - (F) Applications for development shall be referred to the Airport Manager for review and comment.
- (4) Zone One: Other than airport construction, no new construction is permitted. All new utility lines shall be placed underground. Nonconforming uses are not permitted if discontinued for one year.
- (f) Federal Regulations: In addition to the other provisions of this section, the city manager shall enforce all applicable federal regulations, including, without limitation, those contained at Federal Aviation Regulation Part 77, Objects Affecting Navigable Airspace, U.S. Department of Transportation, Federal Aviation Administration, January 1975, as amended, for the purpose of controlling heights of objects in the airport vicinity, as codified under subsection E, Airspace, of title 14 of the Code of Federal Regulations, incorporated herein by this reference. As of the date of adoption of this subsection, federal regulations require a clear area five hundred feet in width, centered on the centerline of the runway and extending outward from such point at a 7:1 slope.
- (g) Violations: No person shall violate any provision of any avigation easement or violate any prohibition relating to any zone. No variance shall be permitted of any of the requirements of this section.

Ordinance Nos. 5200 (1991); 5562 (1993)

9-3-11. Medium Density Overlay Zone.

- (a) Purpose and Scope: Medium density residential areas adjacent to the downtown central business district originally developed with a predominantly single-family character and are now redeveloping with higher densities. Development and redevelopment in certain RM-2 and RM-3 zoning districts has been very disruptive of the existing residential character of those areas, has failed to preserve certain historic structures, has led to many inappropriate structures being erected and thus has negatively affected the value of adjoining properties. The medium density overlay zone map which designates those portions of the medium density areas to which this section applies is set forth as appendix D, "Medium Density Overlay Zone," of this title.
- (b) Additional Regulations: The following additional regulations shall apply in the medium density residential overlay zone:
 - (1) No person shall construct a second detached dwelling on a lot as set forth in section 9-7-12, "Two Detached Dwellings on a Single Lot," B.R.C. 1981.
 - (2) No person shall create additional multiple-dwelling units except that one additional dwelling unit per lot may be created by internal conversions of existing principal structures that are not enlarged in size subsequent to September 2, 1993, and provided that such conversions do not involve exterior modifications other than for access, including, without limitation, doors, windows and stairways.

Ordinance No. 7684 (2009)