

**CHAPTER 23**

**Flooding, Sedimentation and Erosion Control**

**Article I Flood Damage Prevention**

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## ARTICLE I

### Flood Damage Prevention

#### *Division 1 Generally*

#### **Sec. 23-1. Scope; purpose.**

(A) This Article shall apply to all development in a flood hazard area within the jurisdiction of the City.

(B) It is the purpose of this Article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health.
- (2) To minimize expenditure of public money for costly flood control projects.
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) To minimize prolonged business interruptions.
- (5) To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges, located in areas of flood hazard.
- (6) To help maintain a stable tax base by providing for the second use and development of areas of flood hazard so as to minimize future flood blight areas.
- (7) To ensure that potential buyers are notified that property is in an area of flood hazard.
- (8) To ensure that those who occupy the areas of flood hazard assume responsibility for their actions.

(Ord. 8 §1, 2006)

#### **Sec. 23-2. Methods of accomplishing purpose.**

(A) In order to accomplish its purposes, this Article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters.
- (4) Controlling filling, grading, dredging and other development which may increase flood damage.
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(B) In addition to the regulations set forth in this Article, the requirements for flood-resistant construction contained in the City's Building Code, specifically Appendix G, shall also apply. Where the regulations contained herein and the regulations in the Building Code conflict, the more restrictive regulations shall apply.

(Ord. 8 §1, 2006)

#### **Sec. 23-3. Flood Insurance Rate Map adopted.**

The areas of flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the Idaho Springs Area," dated March 17, 2007, as amended, with

an accompanying Flood Insurance Rate Map, is hereby adopted by reference and declared to be a part of this Article. The flood insurance study is on file at the City Clerk's office. (Ord. 8 §1, 2006; Ord. 1 §1, 2007)

#### **Sec. 23-4. Definitions.**

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application:

*Appeal.* A request for a review by the Variance Board of the Floodplain Administrator's interpretation of any provision of this Article.

*Area of flood hazard.* The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year.

*Base flood.* The flood having a one-percent chance of being equaled or exceeded in any given year.

*Development.* Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of flood hazard.

*Existing manufactured home park or subdivision.* A manufactured home park for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) was completed before June 12, 1989.

*Expansion to an existing manufactured home park or manufactured home subdivision.* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

*Flood or flooding.* A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

*Flood Insurance Rate Map (FIRM).* The official map on which the Federal Emergency Management Agency has delineated both the areas of flood hazards and the risk premium zones applicable to the community.

*Flood insurance study.* The official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map and the water surface elevation of the base flood.

*Floodplain Administrator.* The Floodplain Administrator shall be the Superintendent of the Public Works Department.

*Floodway.* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

*Lowest floor.* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Article.

*Manufactured home.* A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *manufactured home* also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for one hundred eighty (180) consecutive days or longer. The term *manufactured home* does not include a recreational vehicle.

*Manufactured home park or subdivision.* A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*New construction.* Structures for which the start of construction commenced on or after June 12, 1989.

*New manufactured home park or manufactured home subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) was completed on or after June 12, 1989.

*Recreational vehicle.* A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Start of construction* includes substantial improvement, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The *actual start* means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of pilings, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. *Permanent construction* does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

*Structure.* A walled and roofed building or manufactured home that is principally aboveground.

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

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

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an historic structure.

*Variance.* A grant of relief from the requirements of this Article which permits construction in a manner that would otherwise be prohibited by this Article.

(Ord. 8 §1, 2006; Ord. 1 §2, 2007)

#### **Sec. 23-5. Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Article and other applicable regulations.

(Ord. 8 §1, 2006)

**Sec. 23-6. Interpretation.**

(A) This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(B) In the interpretation and application of this Article, all provisions shall be considered minimum requirements, liberally construed in favor of the City Council and deemed neither to limit nor repeal any other powers granted under state statutes.

(C) The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the City, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder. (Ord. 8 §1, 2006)

**Sec. 23-7—23-10. Reserved.**

*Division 2  
Administration and Enforcement*

**Sec. 23-11. Development permit.**

(A) A development permit shall be obtained before construction or development begins within any area of flood hazard.

(B) Application for a development permit shall be made on forms furnished by the City and shall include but not be limited to:

- (1) Description of the land on which the proposed development is to be conducted by legal description or similar description that will readily identify and definitely locate the site.
  - (2) Plans in duplicate, drawn to scale showing:
    - (a) The nature, location, dimensions and current elevations of the area in question;
    - (b) Delineation of flood hazard areas, floodway boundaries, flood zones and flood elevations; and
    - (c) Proposed excavation, fill and grading with resulting proposed elevations of the area.
  - (3) Existing or proposed structures and the intended use of each.
  - (4) Location of fill, storage of materials and drainage facilities.
  - (5) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures.
  - (6) Elevation in relation to mean sea level to which any structure has been floodproofed.
  - (7) Certification by a registered professional engineer that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Paragraph 23-22(2) of this Article.
  - (8) Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
  - (9) Payment of a fee as set forth in the City's fee schedule.
- (Ord. 8 §1, 2006)

**Sec. 23-12. Floodplain Administrator.**

(A) The duties of the Floodplain Administrator shall include, but not be limited to, the duty to:

- (1) Review all development permit applications to determine that the requirements of this Article have been satisfied.
- (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) Review all development permit applications to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Paragraph 23-26(1) of this Article are met.

(B) For all new or substantially improved floodproofed structures, the Floodplain Administrator shall:

- (1) Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed;
- (2) Maintain the floodproofing certifications required in Section 23-11 above;
- (3) Maintain for public inspection all records pertaining to the provisions of this Article;
- (4) Notify adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- (5) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and
- (6) Make interpretations where needed as to the exact location of the boundaries of the areas of flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 23-13 below.

(C) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this Article and the following relevant factors:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services provided by the proposed facility to the community.
- (5) The necessity to the facility of a waterfront location, where applicable.
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area.
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (10) The expected height, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.

(Ord. 8 §1, 2006; Ord. 1 §3, 2007)

**Sec. 23-13. Variances and appeals.**

(A) The Variance Board shall hear and decide requests for variances from the requirements of this Article. The Variance Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this Article.

(B) Those aggrieved by the decision of the Variance Board or any taxpayer may appeal such decisions to the District Court of the County, as provided under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(C) Upon consideration of the factors in this Section and the purposes of this Article, the Variance Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.

(D) The City Clerk shall maintain the records of all appeal actions, including technical information. The Floodplain Administrator shall report any variances to the Federal Emergency Management Agency.

(E) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this Section, so long as the reconstruction, rehabilitation or restoration will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(F) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(G) Variances shall only be issued upon:

- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances or fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

(Ord. 8 §1, 2006; Ord. 1 §4, 2007)

**Sec. 23-14—23-20. Reserved.**

*Division 3  
Provisions for Flood Hazard Reduction*

**Sec. 23-21. Generally.**

(A) In all areas of flood hazards, the following standards are required:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure and shall be capable of resisting the hydrostatic and hydrodynamic loads.
- (2) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Specific requirements are:

- (a) Over-the-top ties shall be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations, with manufactured homes more than fifty (50) feet long requiring one (1) additional tie per side;
- (b) Frame ties shall be provided at each corner of the home with five (5) additional ties per side at intermediate points, with manufactured homes more than fifty (50) feet long requiring four (4) additional ties per side;
- (c) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds; and
- (d) Any additions to the manufactured home shall be similarly anchored.

(B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage. New construction and substantial improvements shall be constructed with the electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(Ord. 8 §1, 2006)

#### **Sec. 23-22. Areas where base flood elevation data known.**

In all areas of flood hazards where base flood elevation data has been provided, the following provisions are required:

- (1) New construction and substantial improvement of any residential structure shall have the lowest floor, including the basement, elevated to or above base flood elevation.
- (2) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including the basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
  - (a) Be floodproofed so that, below the base flood level, the structure is watertight with walls substantially impermeable to the passage of water;
  - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  - (c) Be certified by a registered professional engineer that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Paragraph. Such certifications shall be provided to the Floodplain Administrator as set forth in this Article.

(Ord. 8 §1, 2006; Ord. 1 §5, 2007)

#### **Sec. 23-23. Manufactured homes.**

(A) Manufactured homes shall be anchored in accordance with this Article.

(B) All manufactured homes that are placed or substantially improved within Zones AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(C) All manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions within Zones A1 30, AH and AE that are not subject to the provisions of Subsection (B) above shall be elevated so that either:

- (1) The lowest floor of the manufactured home is at or above the base flood elevation; or

- (2) The manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than thirty-six (36) inches in height above grade, and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(Ord. 8 §1, 2006)

**Sec. 23-24. Subdivision proposals.**

All subdivision proposals shall be consistent with the need to minimize flood damage. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage. Base flood elevation data shall be provided for subdivision proposals and other proposed developments.

(Ord. 8 §1, 2006)

**Sec. 23-25. Water and sewer systems.**

All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 8 §1, 2006)

**Sec. 23-26. Floodways.**

Located within the areas of flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- (1) Encroachments, including fill, new construction, substantial improvements and other development, are prohibited unless certification by a registered professional engineer is provided, demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Paragraph (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Division.

(Ord. 8 §1, 2006)

**Sec. 23-27. Below-grade residential crawlspace construction.**

New construction and substantial improvement of any below-grade crawlspace shall:

- (1) Have the interior grade elevation that is below base flood elevation no lower than two (2) feet below the lowest adjacent grade.
- (2) Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not to exceed four (4) feet at any point.
- (3) Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood.
- (4) Be anchored to prevent flotation, collapse or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads.
- (5) Be constructed with materials and utility equipment resistant to flood damage.
- (6) Be constructed using methods and practices that minimize flood damage.
- (7) Be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

- (8) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
- (a) A minimum of two (2) openings having a total net area of not less than one (1) square inch to every square foot of enclosed area subject to flooding shall be provided;
  - (b) The bottom of all openings shall be no higher than one (1) foot above grade; and
  - (c) Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(Ord. 1 §6, 2007)

**Sec. 23-28—23-30. Reserved.**

## **ARTICLE II**

### **Erosion and Sedimentation Control**

**Sec. 23-31. Legislative intent.**

This Article is intended to preserve the public health, welfare, safety and environment through the reduction or control of erosion, runoff, sediment loading and water pollution from earth-disturbing activities by regulating such activities and excavation and requiring measures to control erosion, runoff and water pollution both during and after the time such activities are undertaken.

(Ord. 8 §1, 2006)

**Sec. 23-32. Definitions.**

The following terms, when used in this Article, shall have the meanings ascribed to them in this Section, except where context clearly indicates a different meaning:

*Administrator.* The person appointed to oversee the Public Works Department, who shall be responsible for administration and enforcement of this Article.

*Best management practices* or *BMPs.* Permanent measures and measures taken during construction described in or adapted from the Manual to protect water quality and control runoff and erosion from earth-disturbing activities.

*BMP plan.* A detailed, site-specific description of the BMPs to be implemented, both during the earth-disturbing activity and permanently.

*Construction.* Construction of any building or other structure above, below or above and below grade.

*Earth-disturbing activity.* Any change to the natural vegetation, soil, rock, drainage or topography, and includes all grading, filling, excavating, clearing vegetation, clearing timber, snow plowing or removal, snow storage, construction of buildings or other improvements. Any activity that may result in or contribute to accelerated soil erosion or sediment transport is included.

*Excavating.* Any act by which soil or rock is cut into, exposed, dug, quarried, removed or relocated.

*Exempt activity.* Any earth-disturbing activity exempted by Section 23-34 below from certain requirements.

*Filling.* Any act by which soil, rock, gravel, concrete, asphalt or other construction materials are placed, stock-piled, dumped or relocated onto the land, whether the land is in its natural state or has been altered by grading, excavating or prior filling.

*Grading.* Any alteration of the existing topography.

*Large-scale activity.* Any earth-disturbing activity that disturbs more than one (1) acre or moves more than three thousand five hundred (3,500) cubic yards of material. Earth-disturbing activities at separate locations within one (1)

site or project, such as different lots in a subdivision under common ownership or development, will be considered together.

*Manual.* The Guide to Water Quality Protection and Erosion Control adopted herewith, or as it may be amended.

*Permit.* Any City grading or excavating permit, building permit, sanitation permit, road cut permit, road construction permit, special use permit, planned unit development approval, conditional use permit, final development plan or mining permit.

*Sand storage.* Stockpiling salt, sand or other substances used for deicing or improving traction on roads and parking lots.

*Snow storage.* Stockpiling snow removal from a street, road, highway, driveway or other site off the site from which it is removed.

(Ord. 8 §1, 2006)

### **Sec. 23-33. Best management practices required.**

(A) No person shall engage in any earth-disturbing activity without utilization of best management practices to prevent erosion and sedimentation which could adversely affect water quality during and after the time such activities are undertaken.

(B) Best management practices are described in the Manual. Since the circumstances of each earth-disturbing activity are different, different BMPs may be required. The Administrator shall approve the selection of applicable BMPs. The Administrator may approve other practices or variations from the standards in the Manual where the BMP prescribed in the Manual is not practical, or which will be at least as effective in meeting the goals of this Article.

(C) No person shall undertake any large-scale earth-disturbing activity except pursuant to an approved BMP plan. No permit shall be issued for any activity or project that includes any large-scale, earth-disturbing activity without incorporating an approved BMP plan. The proposed BMP plan must be submitted by the owner of the land on which the activity is to occur.

(D) BMP plans for large-scale activities shall incorporate sufficient measures, identified in the Manual or by qualified individuals, to prevent accelerated erosion, off-site sediment transport or adverse effects on water quality.

(E) Persons undertaking exempt activities shall use best management practices during the activity.

(F) The Manual may be amended from time to time by resolution of the City Council.

(G) Installation of all permanent improvements required pursuant to this Article is required prior to issuance of final project approval or a certificate of occupancy.

(H) No graded, excavated or fill material or snow shall be deposited or stockpiled in a natural watercourse or where eroded material or melted snow will directly enter a natural watercourse.

(Ord. 8 §1, 2006)

### **Sec. 23-34. Best management practices; exemptions.**

(A) Notwithstanding the provisions of Section 23-33 above, no BMP plan shall be required for the following exempt activities:

- (1) Earth-disturbing activities that disturb less than one (1) acre, unless occurring within the one-hundred-year floodplain as described for Clear Creek, Chicago Creek or Soda Creek within the boundaries of the City.
- (2) Earth-disturbing activities involving less than three thousand five hundred (3,500) cubic yards of material, unless occurring within the one-hundred-year floodplain as described for Clear Creek, Chicago Creek or Soda Creek within the boundaries of the City, in which case the exemption shall apply to earth-disturbing activities involving less than eight (8) cubic yards of material.
- (3) Clearing vegetation or timber from less than one (1) acre.

- (4) Routine maintenance, including grading of state highways, county roads or City streets by the State, County, City or its contractors.
- (5) Digging and filling graves in a cemetery.
- (6) Tillage of land for agricultural or silvicultural purposes, and harvesting agricultural crops.
- (7) Earth-disturbing activity authorized by an existing building permit.
- (8) Snow plowing or removal where the snow is deposited on the shoulder or edge of the plowed road, driveway or site.

(B) Where exempt activity is part of a project requiring a permit, the applicant for such permit shall so state in the application.

(C) If the Administrator determines that unreasonable erosion, off-site sediment transport or water pollution is threatened by or results from an exempt activity, the Administrator may order the activity to cease until a BMP plan is approved and implemented.

(Ord. 8 §1, 2006)

**Sec. 23-35. Fees; performance guaranty.**

(A) Fees. Fees for applications, review, inspection, enforcement and exemption shall, from time to time, be set by resolution of the City Council. In addition, the Administrator may require the applicant to advance the cost of expected expenditures for consultation with a registered professional engineer or other expert to review the plan or confirm compliance. Any fees incurred by the City in excess of the amount advanced will be paid by the applicant prior to plan approval.

(B) Performance guaranty. A bond or other performance guaranty in a form acceptable to the City Attorney must be furnished prior to issuance of a permit. The amount of the bond or other performance guaranty shall be determined by the Administrator, and shall be adequate to reasonably assure that the City can permanently stabilize any unfinished earth-disturbing activity. The bond or other performance guaranty shall be released when the site is permanently stabilized. Re-vegetation will be considered permanently stabilized no sooner than one (1) year after initial planting.

(Ord. 8 §1, 2006)

**Sec. 23-36. Administration.**

(A) Review and approval of plans. The Administrator shall review BMP plans promptly, but in no case longer than sixty (60) days after submittal, and may approve, disapprove or approve with conditions. Findings by the Administrator shall be in writing.

(B) Inspection. The Administrator may enter on public or private property at any time to investigate compliance with this Article. The Administrator shall inspect the work and may order the owner to take necessary measures to assure compliance, including hiring a registered professional engineer or other expert to confirm compliance.

(C) Enforcement. The Administrator may issue such written orders as are necessary to ensure compliance with this Article, which may include an order to stop work or to repair any damage. The owner or owner's agents or contractors shall thereupon take all actions specified in the written order no later than the date specified therein. Notwithstanding the availability or use of any other remedy, the Administrator may institute action in any court of competent jurisdiction to permit inspection or to enjoin, restrain or prevent violation of this Article or of a BMP plan.

(D) Posting of plan. A copy of the BMP plan and approval shall be kept on the job site.

(E) Validity of plan approval. Approval of a BMP plan is valid for two (2) years. A new application and approval are required if the project is not complete in two (2) years.

(F) Appeals. Any decision of the Administrator may be appealed to the City Council by filing a notice of appeal within twenty (20) days.

(Ord. 8 §1, 2006)

**Sec. 23-37. Penalty.**

In addition to any other remedy that may be available, the Administrator may, by written order, levy a fine for violation of this Article not to exceed one thousand dollars (\$1,000.00) per day per violation.  
(Ord. 8 §1, 2006)

**Sec. 23-38. Liability of City.**

Nothing herein or in any permit, approval or exemption shall render the City or any of its officers, employees or agents liable for any injury or damage to persons or property, other consequence of any action or failure to act of any permittee or other person acting pursuant to or in violation of this Article or any permit, approval or exemption.  
(Ord. 8 §1, 2006)

**Sec. 23-39—23-50. Reserved.**