

TOWN OF PINETOP-LAKESIDE

RESOLUTION NO. 23-1657

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, DECLARING AS PUBLIC RECORD A CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "TOWN CODE REPEALING ORDINANCE NO. 14-384 AND REPLACING CHAPTER 15.12 FLOODPLAIN REGULATIONS."

WHEREAS, that certain document entitled **"Town Code Repealing Ordinance No.14-384 and Replacing Chapter 15.12 Floodplain Regulations,"** attached hereto as Exhibit A, three (3) copies of which shall be filed in the Office of the Town Clerk pursuant to this Resolution, shall remain on file with the Town Clerk.

WHEREAS, A.R.S. § 9-802 permits the enactment and publication by reference of a code or public record, including statute, rule, or regulation of the municipality, in the interest of economy, and

WHEREAS, the document entitled **Town Code Repealing and Replacing Chapter 15.12 Floodplain Regulations**" is a lengthy ordinance to be adopted by Ordinance No. 23-458, which would qualify for enactment by reference.

NOW, THEREFORE, BE IT RESOLVED, the Mayor and Town Council of the Town of Pinetop-Lakeside hereby declare that the document entitled **"Chapter 15.12 Floodplain Regulations"** is hereby declared a Public Record for the purpose of adoption by reference pursuant to Ordinance No. 23-458, and order that three (3) copies of the document entitled **"Town Code Repealing and Replacing Chapter 15.12 Floodplain Regulations,"** be permanently filed in the Office of the Town Clerk and available for public inspection.

PASSED AND ADOPTED at a regular meeting by the Mayor and Town Council of the Town of Pinetop-Lakeside this 2nd day of February 2023.



TOWN OF PINETOP-LAKESIDE

Stephanie Irwin
Mayor

ATTEST:

Kristi Salskov
Town Clerk

APPROVED AS TO FORM:

William J. Sims, III
Town Attorney

EXHIBIT "A"

Chapter 15.12 Floodplain Regulations

15.12.010 Statutory authorization.

In A.R.S. § 48-3610, the Arizona State Legislature enabled the Town of Pinetop-Lakeside to assume the powers and duties for floodplain management and adopt regulations in conformance with A.R.S. § 48-3609 designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Town Council of the Town of Pinetop-Lakeside, Arizona, does ordain as follows. (Ord. 14-384 § 1 (part))

15.12.020 Findings of fact.

A. The SPECIAL Flood Hazard Areas of Pinetop-Lakeside are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. ~~These flood losses may be caused by the cumulative effect of obstructions~~ The cumulative effect of obstructions may cause these flood losses in areas of Special Flood Hazard Areas which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage, also contribute to the flood loss. (Ord. 14-384 § 1 (part))

15.12.030 Statement of purpose.

It is the purpose of this chapter 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 to:

- A. Protect human life and health;
- B. Minimize the expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. 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 Special Flood Hazard Areas;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of Special Flood Hazard Areas ~~so as~~ to minimize future flood blight areas caused by flooding;

G. Ensure that potential buyers are notified that the property is in an area of special flood hazard the Special Flood Hazard Area;

H. Ensure that those who occupy ~~the areas of special flood hazard~~ Special Flood Hazard Areas assume responsibility for their actions;

I. Participate in and maintain eligibility for flood insurance and disaster relief. (Ord. 14-384 § 1 (part))

15.12.040 Methods of reducing flood losses.

~~In order to~~ To accomplish its purposes, this chapter includes methods and provisions to:

A. Restrict or prohibit uses ~~which~~ that are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;

B. Require that uses vulnerable to floods, including facilities ~~which~~ that serve such uses, be protected against flood damage at the time of initial construction;

C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Control filling, grading, dredging, and other development which may increase flood damage; and

E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. (Ord. 14-384 § 1 (part))

15.12.050 Definitions.

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

1. "Accessory structure" means a structure ~~that is~~ on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

2. "Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

3. "Area of shallow flooding" means a designated Zone AO or AH, AR/AO or AR/AH on a community's Flood Insurance Rate Map (FIRM) with a one (1%) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist,

where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

4. "Base flood" means a flood ~~which~~ that has a one (1%) percent chance of being equaled or exceeded in any given year.
5. "Base flood elevation (BFE)" means the computed elevation to which floodwater is anticipated to rise during the base flood.
6. "Basement" means any area of the building having its floor sub-grade, i.e., below ground level on all sides.
7. "Breakaway wall" means a wall which is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.
8. Building. See "Structure."
9. "Community" means any state, area₁ or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has the authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
10. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations₁ or storage of equipment or materials.
11. "Elevation certificate" means an administrative tool of the National Flood Insurance Program (NFIP) that is used to provide elevation information necessary to ensure compliance with community floodplain management ordinances, to determine the proper insurance premium rate, and to support a request for a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F).
12. "Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures₁ or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
13. "Erosion" means the process of the gradual wearing away of landmasses. This peril is not, per se, covered under the National Flood Insurance Program.

14. "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (a) the overflow of flood waters; (b) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (c) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

15. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (SFHAs) and the risk premium zones applicable to the community.

16. "Flood Insurance Study (FIS)" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, Flood Insurance Rate Maps, and the water surface elevation of the base flood.

17. "Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source. See "Flood or flooding."

18. "Floodplain Administrator" means the community official designated by title to administer and enforce the floodplain management regulations.

19. "Floodplain Board" means the Town Council of Pinetop-Lakeside, at such times as they are engaged in the enforcement of this chapter.

20. "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

21. "Floodplain management regulations" means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

22. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to nonresidential structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents by means other than elevation.

23. "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

24. "Floodway" means 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 a designated height. Also referred to as "regulatory floodway."

25. "Functionally dependent use" means a use ~~which~~that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading ~~of~~ cargo or passengers, and ship-building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

26. "Governing body" means the local governing unit, i.e., county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety, and general welfare of its citizenry.

27. "Hardship" means as related to Section 15.12.280, meaning the exceptional hardship that would result from a failure to grant the requested variance. The Town of Pinetop-Lakeside requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All ~~of~~ these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

28. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

29. "Historic structure" means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - i. By an approved state program as determined by the Secretary of the Interior; or
 - ii. Directly by the Secretary of the Interior in states without approved programs.

30. "Levee" means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

31. "Lowest floor" means the lowest floor of the lowest enclosed area₁ including the basement. See "Basement." An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access₂ or storage in an area other than a basement area₁ is not considered a building's lowest floor₃; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

32. "Manufactured home" means 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 connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

33. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for sale or rent.

34. "Market value" means the replacement cost of a structure less depreciation since construction.

35. "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or an other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

36. "New construction" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of a Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

37. "Nonconforming use" means the lawful use of any building, lot, parcel, or tract of land existing at the time the ordinance codified in this chapter, or amendments thereto, becomes effective which does not conform with the use regulations of the zoning district in which it is located.

38. "Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

39. "One-hundred-year flood" or "100-year flood" means a common name for the flood having a one (1%) percent chance of being equaled or exceeded in any given year. See "Base flood."

40. "Person" means an individual or the individual's agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or this state or its agencies or political subdivisions.

41. "Recreational vehicle" means a vehicle which is:

- a. Built on a single chassis;

- b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light-duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

42. "Regulatory flood elevation (RFE)" means an elevation one (1) foot above the base flood elevation.

43. "Regulatory floodway" means 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 a designated height.

44. "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

45. Sheet Flow Area. See "Area of shallow flooding."

46. "Special Flood Hazard Area (SFHA)" means an area in the floodplain subject to a one (1%) percent or greater chance of flooding in any given year. It is shown on a Flood Insurance Rate Map as Zone A, AO, AE, AH₁ or A99.

47. "Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days from the date of the permit. The actual start means either 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. 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. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or another structural part of a building, whether or not that alteration affects the external dimensions of the building.

48. "Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

49. "Substantial damage" means 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.

50. "Substantial improvement" means any reconstruction, 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:

- a. 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
- b. Any alteration of a "historic structure"; provided, that the alteration will not preclude the structure's continued designation as a "historic structure."

51. "Variance" means a grant of relief from the requirements of this chapter which permits construction or other uses of property in a manner that would otherwise be prohibited by this chapter.

52. "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

53. "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or another datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

54. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel, or other natural topographic feature on or over which waters flow at least periodically. Watercourse also includes manmade open channel stormwater conveyances engineered to accommodate one (1%) percent chance of flooding. Watercourse includes specifically designated areas in which substantial flood damage may occur.

55. "Zone A" means no base flood elevation determined.
56. "Zone AE" means base flood elevations determined.
57. "Zone AH" means flood depths of one (1) to three (3) feet (usually areas of ponding); base flood elevations determined.
58. "Zone AO" means flood depths of one (1) to three (3) feet (usually sheet flow on sloping terrain); average depth determined. For areas of alluvial fan flooding, velocities also determined.
59. "Zone AR" means special flood hazard area formerly protected from the one (1%) percent annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the one (1%) percent annual chance or greater flood.
60. "Zone A99" means area to be protected from one (1%) percent annual chance flood by a federal flood protection system under construction; no base flood elevations determined.
61. "Zone D" means areas in which flood hazards are undetermined, but possible.
62. "Zone X (unshaded)" means areas determined to be outside the two-tenths (0.2%) percent annual chance floodplain.
63. "Zone X (shaded)" means areas of two-tenths (0.2%) percent annual chance flood; areas of one (1%) percent annual chance flood with average depths of less than one (1) foot or with drainage areas less than one (1) square mile; and areas protected by levees from one (1%) percent annual chance flood. (Ord. 14-384 § 1 (part))

15.12.060 Lands to which this chapter applies.

~~A.R.S. § 48-3603.~~ This chapter shall apply to all areas of Special Flood Hazard Areas within the corporate limits of Pinetop-Lakeside. (Ord. 14-384 § 1 (part))

15.12.070 Basis for establishing the Special Flood Hazard Areas ~~areas of special flood hazard.~~

The ~~areas of Special Flood Hazard Areas~~ identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for Navajo County, AZ and Incorporated Areas" dated September 26, 2008, with accompanying Flood Insurance Rate Maps (FIRMs dated September 26, 2008) and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. This FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas ~~which~~ that allow

implementation of this chapter and which are recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the Federal Emergency Management Agency and the Director of Arizona Department of Water Resources. The FIS and FIRM panels are on file at the Town of Pinetop-Lakeside, Community Development Department. (Ord. 14-384 § 1 (part))

15.12.080 Compliance.

All development of land, construction of residential, commercial, or industrial structures, or future development within delineated floodplain areas is subject to the terms of this chapter and other applicable regulations. (Ord. 14-384 § 1 (part))

15.12.090 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 14-384 § 1 (part))

15.12.100 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body ~~charged with floodplain regulation, based on scientific and engineering conclusions;~~ and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 14-384 § 1 (part))

15.12.110 Warning and disclaimer of liability.

The degree of flood protection required by this chapter 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 manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Pinetop-Lakeside, any officer or employee thereof, the State of Arizona, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 14-384 § 1 (part))

15.12.120 Statutory exceptions.

A. In accordance with A.R.S. § 48-3609(IH), unless expressly provided, this and any regulation adopted pursuant to this chapter do not affect:

1. Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for twelve (12) months, or destroyed to the extent of fifty (50%) percent of its market value as determined by a competent appraiser, any further use shall comply with this chapter and regulations of the Town of Pinetop-Lakeside;
2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or on the date any regulations affecting such property takes effect, except that any alteration, addition, or repair to a nonconforming building or structure which would result in increasing its flood damage potential by fifty (50%) percent or more shall be either floodproofed or elevated to or above the regulatory flood elevation;
3. Reasonable repair of structures constructed with the written authorization required by A.R.S. § 48-3613;
4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to A.R.S. Title 40, Chapter 2, Article 6.2; and
5. In accordance with A.R.S. § 48-3613(D), in addition to other penalties or remedies otherwise provided by law, this state, a political subdivision, or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to A.R.S. Title 48, Chapter 21, Article 1. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the Floodplain Board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.

B. Before the following types of construction authorized by A.R.S. § 48-3613(B) begin, the responsible person must submit plans for the construction to the Floodplain Board for review and comment pursuant to A.R.S. § 48-3613(C):

1. The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse (see "Watercourse" definition);
2. The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse, or dams for the conservation of flood waters as permitted by A.R.S. Title 45, Chapter 6;
3. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This subsection does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the Floodplain Board pursuant to regulations adopted by the Floodplain Board under this chapter;
4. Other construction upon a determination by the Floodplain Board that written authorization is unnecessary;
5. Any flood control district, county, city, town, or other political subdivision from exercising powers granted to it under A.R.S. Title 48, Chapter 21, Article 1;
6. The construction of streams, waterways, lakes, and other auxiliary facilities in conjunction with the development of public parks and recreation facilities by a public agency or political subdivision; and
7. The construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility, whether a public service corporation or a political subdivision. (Ord. 14-384 § 1 (part))

15.12.130 Unlawful acts.

A. It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by A.R.S. § 48-3613. Where the watercourse is a delineated floodplain, it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by A.R.S. § 48-3613. A person shall also not create a manmade watercourse that diverts, retards, or obstructs flow without securing written authorization of the Floodplain Board.

B. Any person found guilty of violating any provision of this chapter shall be guilty of a class 2 misdemeanor. Each day that a violation continues shall be a separate offense punishable as hereinabove described. (Ord. 14-384 § 1 (part))

C. A person who violates this Ordinance may be assessed a civil penalty not to exceed the fine chargeable for a class 2 misdemeanor or, by agreement with the person in violation, a non-monetary penalty that serves the purposes of the community. Each day the violation continues constitutes a separate violation.

D. A person who without written authorization damages or interferes with a facility that is owned, operated, or otherwise under the jurisdiction of the community is liable for both of the following:

1. Any actual damages to persons or property that is caused by the damage or interference.
2. Payment of costs to the community for remediating the damage or interference.

15.12.140 Declaration of public nuisance.

All development located or maintained within any area of Special Flood Hazard Area after August 8, 1973, in violation of this chapter, is a public nuisance per se and may be abated, prevented or restrained by action of this political subdivision. (Ord. 14-384 § 1 (part))

15.12.150 Abatement of violations.

Within thirty (30) days of discovery of a violation of this chapter, the Floodplain Administrator shall submit a report to the Floodplain Board, which shall include all information available to the Floodplain Administrator which is pertinent to said violation. Within thirty (30) days of receipt of this report, the Floodplain Board shall either:

- A. Take any necessary action to effect the abatement of such violation; or
- B. Issue a variance to this chapter in accordance with the provisions of Section 15.12.280; or
- C. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the Floodplain Administrator within thirty (30) days of such order, and the Floodplain Administrator shall submit an amended report to the Floodplain Board within twenty (20) days. At the next regularly scheduled public meeting, the Floodplain Board shall either order the abatement of said violation, or they shall grant a variance in accordance with the provisions of Section 15.12.280; or

D. Submit to the Federal Emergency Management Agency a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation, or ordinance, pursuant to Section 1316 of the National Flood Insurance Act of 1968 as amended. (Ord. 14-384 § 1 (part))

15.12.160 Severability.

This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid. (Ord. 14-384 § 1 (part))

15.12.170 Nonconforming uses.

A. In the event that a nonconforming use of land, building, or structure is discontinued for a period of ~~twelve~~ six (6) consecutive months, any further use thereof shall be in conformity with the provisions of this chapter. Any alteration, addition, or repair to nonconforming buildings or structures shall be adequately protected in conformity with the floodplain management ordinance.

B. In the event that any such nonconforming use of land, building, or structure is destroyed by fire, explosion, natural disaster, or act of the public to the extent of fifty-one (51%) percent of its value, according to the appraisal thereof by competent appraisers, then and without further action by the Floodplain Board, the further use thereof shall from and after the date of such destruction be subject to all of the provisions of this chapter. (Ord. 14-384 § 1 (part))

15.12.180 Designation of the Floodplain Administrator.

The Community Development Director is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions. The Town Engineer will provide technical guidance to support the Floodplain Administrator's duties. (Ord. 14-384 § 1 (part))

15.12.190 Duties and responsibilities of the Floodplain Administrator.

Duties of the Floodplain Administrator shall include, but not be limited to:

A. Permit Review. Review all development permits to determine that:

1. The permit requirements of this chapter have been satisfied;
2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding;

4. In areas where a floodway has not been designated, the proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined.

For the purposes of this chapter, “adversely affect” means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point.

B. Substantial Improvement and Substantial Damage Assessments. Review all development permits for improvements and/or damages to existing structures to determine if the application of the substantial improvement rules apply, including establishing a definition of market value determination and verifying that the estimated improvement and/or repair costs are less than fifty (50%) percent of the market value of the structure.

C. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.12.070, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, or other sources, in order to administer Section 15.12.210. Any such information shall be consistent with the requirements of the Federal Emergency Management Agency and the Director of the Arizona Department of Water Resources and shall be submitted to the Floodplain Board for adoption.

D. Obtain and Maintain for Public Inspection. Obtain and maintain the following for public inspection and make available as needed:

1. Certification required by Sections 15.12.210(A)(3)(a) and 15.12.250 (lowest floor elevations, bottom of the structural frame, and utilities);
2. Certification required by Section 15.12.210(A)(3)(b) (lowest floor elevations or floodproofing of nonresidential structures and utilities);
3. Certification required by Section 15.12.210(A)(6) (flood vents);
4. Certification of elevation required by Section 15.12.240(A)(2) (subdivisions and other proposed development standards);
5. Certification required by Section 15.12.270(A) (floodway encroachments);
6. Records of all variance actions, including justification for their issuance.

7. Obtain and maintain improvement and damage calculations required in subsection B of this section.

E. Notification of Other Entities.

1. Whenever a watercourse is to be altered or relocated:
 - a. Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency through appropriate notification means; and
 - b. Assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.
2. Base Flood Elevation and Rate of Flow Due to Physical Alterations.
 - a. Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
 - b. Within one hundred twenty (120) days after completion of construction of any flood control protective works which changes the rate of flow during the base flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the Director of the Arizona Department of Water Resources.
3. Corporate Boundary Changes.
 - a. Notify the Federal Emergency Management Agency of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

F. Map Determinations. Make interpretations, where needed, as to the exact location of the boundaries of the areas of Special Flood Hazards Areas (e.g., 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 15.12.280.

G. Remedial Actions. Take actions on violations of this chapter as required in Section 15.12.150. (Ord. 14-384 § 1 (part))

15.12.200 Establishment of development permit.

A development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any special flood hazard area established in Section 15.12.070.

Application for a development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

A. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, the elevation of the existing highest adjacent grade and the proposed elevation of the lowest floor of all structures;

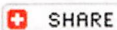
B. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;

C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 15.12.210(A)(3)(b);

D. Base flood elevation data for subdivision proposals or other development greater than fifty (50) lots or five (5) acres, whichever is the lesser; and

E. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 14-384 § 1 (part))

15.12.210 Provisions for flood hazard reduction.



A. Standards of Construction. In all special flood hazard areas the following standards are required:

1. Anchoring.

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

b. All manufactured homes shall meet the anchoring standards of Section [15.12.250\(B\)](#).

2. Construction Materials and Methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. Within Zone AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.

3. Elevation and Floodproofing.

a. Residential construction, new or substantial improvement, shall have the lowest floor, including basement, elevated to or above the regulatory flood elevation.

i. In a Zone AO, the base flood elevation is determined from the FIRM panel. If unspecified, the required elevation is at minimum two (2) feet above highest adjacent grade.

ii. In a Zone A where the base flood elevation has not been determined, the base flood elevation is determined locally by the criteria set out in Section [15.12.190\(C\)](#).

iii. In Zones AE and AH, the base flood elevation is determined from the FIS and/or FIRM.

iv. A garage attached to a residential structure, constructed with the garage floor slab below the regulatory flood elevation, must be designed to allow for the automatic entry and exit of flood waters. See subsection (A)(6)(a) or (b) of this section.

Upon completion of the structure, certification by a registered professional engineer or surveyor that the elevation requirements of the lowest floor, including basement, of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

b. Nonresidential construction, new or substantial improvement, shall have the lowest floor either elevated to conform with subsection (A)(3)(a)(i), (ii), or (iii) of this section as appropriate, or, together with attendant utility and sanitary facilities:

- i. Be floodproofed below the elevation recommended under subsection (A)(3)(a) (i), (ii), or (iii) of this section as appropriate so that the structure is watertight with walls substantially impermeable to the passage of water; and
- ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Upon completion of the structure, certification by a registered professional engineer or surveyor that the elevation requirements of the lowest floor, including basement, of this section have been satisfied shall be provided to the Floodplain Administrator for verification; or certification by a registered professional engineer or architect that the floodproofing standards of this section are satisfied shall be provided to the Floodplain Administrator for verification.

4. Manufactured Homes. Manufactured homes shall meet the standards in Section [15.12.250](#).

5. Accessory Structures (Detached Garages and Storage Structures). Accessory structures used solely for parking of vehicles or storage may be constructed such that the floor is below the regulatory flood elevation, provided the structure is designed and constructed in accordance with the following requirements:

- a. Use of the accessory structure must be limited to parking of vehicles or storage;
- b. The portions of the accessory structure located below the regulatory flood elevation must be built using flood resistant materials;
- c. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- d. Any machinery or equipment servicing the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation;
- e. The accessory structure must comply with floodway encroachment provisions in Section [15.12.270](#); and
- f. The accessory structure must be designed to allow for the automatic entry and exit of flood waters in accordance with subsection (A)(6)(a) or (b) of this section.

Detached garages, storage structures and other accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in subsection (A)(3)(a)(i), (ii), or (iii) of this section as appropriate.

Upon completion of the structure, certification by a registered professional engineer or surveyor that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

6. Flood Openings. All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following criteria:

For nonengineered openings:

- a. Have a minimum of two (2) openings, on different sides of each enclosed area, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
- b. The bottom of all openings shall be no higher than one (1) foot above grade;
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwater; or

~~Alternatively, a registered engineer or architect may design and certify engineered openings.~~

For engineered openings:

- a) Engineered openings (or covers and devices) that are specifically designed and certified by a registered engineer or architect as meeting the required performance and design requirements.
- b) Engineered openings (or covers and devices) for which an Evaluation Report has been issued by the International Code Council (ICC) Evaluation Service, Inc. (ICC-ES), a subsidiary of the International Code Council, Inc

7. Machinery and Service Equipment. All new construction, substantial improvement, and other proposed new development shall 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.
(Ord. 14-384 § 1 (part))

15.12.220 Standards for storage of materials and equipment.

- A. The storage or processing of materials that could be injurious to human, animal or plant life if released due to damage from flooding is prohibited in special flood hazard areas.
- B. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning. (Ord. 14-384 § 1 (part))

15.12.230 Standards for water supply and waste disposal systems.

- A. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.
- B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- C. Waste disposal systems shall not be installed wholly or partially in a regulatory floodway. (Ord. 14-384 § 1 (part))

15.12.240 Additional development standards, including subdivisions.

- A. All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), greater than fifty (50) lots or five (5) acres, whichever is the lesser, shall:
 - 1. Identify the special flood hazard area and the elevation of the base flood; and
 - 2. Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood elevation, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.
- B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

D. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards. (Ord. 14-384 § 1 (part))

15.12.250 Standards for manufactured homes.

All manufactured homes that are placed on site or substantially improved shall:

A. Be elevated to conform with Section 15.12.210(A)(3)(a)(i), (ii), or (iii) as appropriate so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation; and

B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be 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.

Upon completion of installation of the manufactured home, certification by a registered professional engineer or surveyor that the elevation requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification. (Ord. 14-384 § 1 (part))

15.12.260 Standards for recreational vehicles.

All recreational vehicles placed on site shall:

A. Be on site for fewer than one hundred eighty (180) consecutive days;

B. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

C. Meet the permit requirements of Section 15.12.200 and the elevation and anchoring requirements for manufactured homes in Section 15.12.250. (Ord. 14-384 § 1 (part))

15.12.270 Floodways.

Located within ~~areas of~~ Special Flood Hazard Areas established in Section 15.12.070 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:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer or architect is provided,

demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If this section is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section 15.12.210. (Ord. 14-384 § 1 (part))

15.12.280 Variance procedure.

A. Nature of Variances. The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

It is the duty of the Town of Pinetop-Lakeside to help protect its citizens from flooding. This need is so compelling, and the implications of the cost of insuring a structure built below the regulatory flood elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

B. Floodplain Review Board.

1. The Town Council may establish a board of review, which may be the Advisory Board or a committee of the Advisory Board, to sit in review and make decisions.
2. The Floodplain Review 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 chapter.
3. In considering such applications, the Floodplain Review Board shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this chapter; and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger of life and property due to flooding or erosion damage;

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in time of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 - k. 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.
4. Upon consideration of the factors of subsection C of this section and the purposes of this chapter, the Floodplain Review Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
5. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:
- a. The issuance of a variance to construct a structure below the regulatory flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and
 - b. Such construction below the regulatory flood elevation increases risks to life and property; and
 - ~~c. The land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided by A.R.S. § 37-610. A copy of the notice shall be recorded in the office of the Navajo County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.~~
6. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.
7. A person aggrieved in any manner by an action of the Floodplain Review Board may within thirty (30) days appeal to the Floodplain Review Board.

C. Conditions for Variances.

1. Variances shall only be issued:

- a. Upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances;
- b. For the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures' continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
- c. Upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- d. Upon a showing of good and sufficient cause;
- e. Upon a determination that failure to grant the variance would result in exceptional hardship to the applicant;
- f. Upon a showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 15.12.050 in the definition of "Functionally dependent use."

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

3. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation, provided the procedures of Sections 15.12.200 and 15.12.210 have been fully considered. As the lot size increases beyond one-half (1/2) acre, the technical justification required for issuing the variance increases. (Ord. 14-384 § 1 (part))