

CITY OF DILLINGHAM, ALASKA

**ORDINANCE NO. 2021-07**

**AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING CHAPTER 15.04 FLOODPLAIN REGULATION TO BE IN COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM**

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WHEREAS, State Coordinator for the National Flood Insurance Program (NFIP) have requested the city update floodplain regulations to be in compliance with NFIP regulations; and

WHEREAS, the Planning Commission reviewed the changes requested by NFIP and recommended updating Dillingham Municipal Code; now

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

**Section 1. Classification.** This is a code ordinance.

**Section 2. Amendment to Section 15.04.010.** Dillingham Municipal Code Section 15.04.010 is hereby amended to read as follows [new language **underlined and emboldened** and deleted text displayed in ~~strike-out font~~]:

**15.04.010 Statutory authorization, findings of fact and purpose.**

The Legislature of the State of Alaska has in Statute 201 of the Flood Disaster Protection Act of 1973, delegated the responsibility to local government units to adopt regulations to promote the public health, safety, and general welfare of its citizenry. The City of Dillingham is further authorized under AS 29.40.040 to adopt and amend land use regulations in accordance with the Comprehensive Plan. Therefore, the City Council of Dillingham, Alaska, does ordain as follows:

A. **The flood hazard** areas within the city are periodically subject to inundation which **may** results 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. Areas within the city have been designated as floodprone pursuant to Section 201 of the Flood Disaster Protection Act of 1973 and the city is required to join the National Flood Insurance Program to make flood insurance and federally regulated financial assistance available to the residents within the flood hazard areas.

**C. Flood losses may be caused by the cumulative effect of obstructions in flood hazard areas which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage, also contribute to flood loss.**

~~C. D.~~ The purpose of this chapter is to promote the public health, safety and general welfare and to minimize **public and private** these losses **due to flooding in flood hazard areas by provisions designed to:** described in subsection A of this section and to meet the requirements for participation in the National Flood Insurance Program. To accomplish this purpose, it is the intent of this chapter to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in flood hazard areas;
6. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;
7. Notify potential buyers that the property is in a Special Flood Hazard Area;
8. Notify those who occupy flood hazard areas that they assume responsibility for their actions; and
9. Participate in and maintain eligibility for flood insurance and disaster relief.
10. Methods of reducing flood losses.

E. To accomplish its purposes, this chapter includes methods and provisions to:

1. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters Establish a land use permit system for development occurring in the flood hazard areas of the city;
2. Require that **development** land-uses vulnerable to floods, including public facilities and utilities which serve such uses, shall be protected against flood damages at the time of initial construction or substantial improvement;
3. Restrict or prohibit **development** land-uses which **is** are dangerous to health, safety and or property **due to water or erosion hazards, or which result in damaging increases in erosion;** in times of flood or cause excessive increases in flood heights or velocity
4. Control filling, grading, dredging, and other development which may increase flood damage; and Insurance that subdivision and development of land within the city are consistent with the need to minimize flood hazards.

5. **Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.**

**Section 3. Repeal and Re-enactment of Section 15.04.020.** Dillingham Municipal Code Section 15.04.020 is hereby repealed. A new Section 15.04.020 is hereby adopted to read as follows:

**15.04.020 Definitions.**

A. As used in this chapter, the following words have the meanings ascribed to them in this section:

1. Appeal: a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.
2. Base flood elevation (BFE): The elevation to which floodwater is anticipated to rise during the base flood.
3. Federal Insurance Administration or FIA: The FIA of the Federal Emergency Management Agency (FEMA) is responsible for administration of the National Flood Insurance Program.
4. Fill: Nonload bearing material susceptible to wash or erosion such as dredge spoils, debris, sand or dirt.
5. Floodplain administrator: The community official designated by title to administer and enforce the floodplain management regulations.

B. As used in this chapter, the following words have the meanings ascribed to by 44 CFR 59.1 as amended from time to time. As of the adoption of this ordinance, the meanings ascribed to by 44 CFR 59.1 are as follows.

1. Area of shallow flooding: A designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three 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.
2. Area of special flood hazard: The land in the floodplain within the community subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). Special flood hazard area is synonymous in meaning with the phrase "area of special flood hazard".
3. Base flood: The flood having a one percent chance of being equaled or exceeded in any given year.
4. Basement: Any area of the building having its floor sub-grade – i.e., below ground level – on all sides.

5. Building: See “Structure.”
6. 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 or storage of equipment or materials.
7. Flood or Flooding:
  - a. A general and temporary condition of partial or complete inundation of normally dry land areas from
    - i. The overflow of inland or tidal waters;
    - ii. The unusual and rapid accumulation or runoff of surface waters from any source;
    - iii. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(ii) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.;
  - b. 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 paragraph (1)(a) of this definition.
8. Flood elevation study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.
9. Flood Insurance Rate Map or FIRM: The official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
10. Flood Insurance Study or FIS: See “Flood elevation study”.
11. Floodplain or flood-prone area: Any land area susceptible to being inundated by water from any source. See “Flood or flooding.”
12. Flood plain management: The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.
13. Flood plain management regulations: Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain

ordinance, grading ordinance and erosion control ordinance) and other application of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

14. Flood proofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.
15. 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 a designated height. Also referred to as "Regulatory Floodway."
16. Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, fuel storage facilities, and seafood processing facilities, and ~~but~~ does not include long-term storage or related manufacturing facilities.
17. Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
18. Historic structure: Any structure that is:
  - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of 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 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.
19. Lowest floor: 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 non-elevation design requirements of this ordinance.

20. Manufactured home: A structure, transportable in one 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" does not include a "recreational vehicle."
21. Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
22. Mean sea level: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.
23. New construction: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial 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.
24. One-hundred-year flood or 100-year flood: See "Base flood."
25. Recreational vehicle: A vehicle which is:
  - a. Built on a single chassis;
  - b. 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.
26. Regulatory floodway: See "Floodway".
27. Sheet flow area: See "Area of shallow flooding".
28. Start of construction: Includes substantial improvement 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 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 slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction 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 other structural part of a building, whether or not that alteration affects the external dimensions of the building.\*Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

29. 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 50 percent of the market value of the structure before the damage occurred.
30. Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 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."
31. Variances: A grants of relief from the requirements of this chapter which permit construction in a manner that would otherwise be prohibited by this chapter.
32. Violation: The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.
33. Water surface elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Section 4. Amendment to Section 15.04.031.** Dillingham Municipal Code Section 15.04.031 is hereby amended to read as follows [new language **underlined and emboldened** and deleted text displayed in ~~strike-out font~~]:

**15.04.031 Floodplain use permit—General provisions.**

- A. **LANDS TO WHICH THIS ORDINANCE APPLIES.** This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Dillingham.
- B. **BASIS FOR ESTABLISHING SPECIAL FLOOD HAZARD AREAS.** The areas of special flood hazard identified by the Federal Insurance Administration **Administrator** in a



scientific and engineering report entitled, "The Flood Insurance Study (**FIS**) for the City of Dillingham, Alaska," dated September 30, 1982, with accompanying Flood Insurance Rate Maps (**FIRMs**), is **are** hereby adopted by reference and declared to be a part of this chapter. The **FIS and FIRM panels are** Flood Insurance Study is on file at City Hall.

C. **COMPLIANCE. All development within special flood hazard areas is subject to** ~~No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with~~ the terms of this chapter and other applicable regulations. Penalties and remedies for violations of this chapter are found in Section 15.04.125.

D. **ABROGATION AND GREATER RESTRICTIONS.** This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. **INTERPRETATION.** In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

F. **DISCLAIMER OF LIABILITY. The degree of flood protection required by this ordinance 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 ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Dillingham, any officer or employee thereof, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.**

**Section 5. Repeal and Re-enactment of Section 15.04.040.** Dillingham Municipal Code Section 15.04.040 is hereby repealed. A new Section 15.04.020 is hereby adopted to read as follows:

**15.04.040 Establishment of development permit.**

A. **APPLICATION.** Floodplain Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any Special Flood Hazard Area established in Section 15.04.031(B). Application for a floodplain development permit for each development or structure shall be filed with the planning department 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.



B. INFORMATION REQUIRED. The information furnished in the application shall include, but is not limited to:

1. The name and address of the owner of the tract;
2. A legal description of the tract;
3. For A Zones (A, A1-30, AE, AH, AO):
  - a. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent grade and proposed elevation of lowest floor of all structures;
  - b. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
  - c. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 15.04.063;
  - d. Base Flood Elevation data for subdivision proposals or other development, including manufactured home parks or subdivisions, greater than 50 lots or 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.
4. For V Zones (VE, V1-30 and V):
  - a. Proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement;
  - b. Base Flood Elevation data for subdivision proposals or other development, including manufactured home parks or subdivisions, greater than 50 lots or 5 acres, whichever is the lesser; and
  - c. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

C. EVALUATION. Following the filing of the application, the planning department shall review the submittal, request any additional information deemed necessary, and evaluate the application based upon the provisions of this chapter. The department may retain the services of a professional engineer licensed in Alaska to assist in the review of the submittal. The cost shall be commercially reasonable and an estimate shall be provided to the applicant and reviewed with the applicant at their request. The costs of the engineering services shall be paid for by the permit applicant.

**Section 6. Repeal and Re-enactment of Section 15.04.041.** Dillingham Municipal Code Section 15.04.041 is hereby repealed. A new Section 15.04.041 is hereby adopted to read as follows:

**15.04.041 Floodplain permit—Administration.**

A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR. The planning director is appointed to administer and implement and enforce this chapter by granting or denying development floodplain permit applications in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR. Duties of the Floodplain Administrator shall include, but not be limited to:

1. Permit Review. Review all development permits to determine that:
  - a. The permit requirements of this ordinance have been satisfied;
  - b. All required state and federal permits have been obtained; and
  - c. The site is reasonably safe from flooding.
2. USE OF OTHER BASE FLOOD DATA. When Base Flood Elevation data has not been provided in accordance with Section 15.04.031(B) the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data available from a federal, state or other source, in order to administer this chapter. Any such information shall be consistent with the requirements of the Federal Insurance Administrator. Where elevation is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.
3. OBTAIN AND MAINTAIN FOR PUBLIC INSPECTION. Obtain and maintain copies of the following for public inspection and make available as needed:
  - a. Registered professional engineer, architect, and surveyor certifications required by Section 15.04.050;
  - b. Records of all variance actions, including justification for their issuance;
  - c. Improvement and damage calculations.
4. NOTIFICATION TO OTHER ENTITIES.
  - a. Whenever a watercourse is to be altered or relocated, notify adjacent communities and the State Coordinating Office prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means, and

assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.

- b. Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator 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.
  - c. Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.
5. Remedial Actions. Take actions on violations of this ordinance as required in 15.04.125 herein.
  6. Interpretation of Flood Insurance Rate Map (FIRM) Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special 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 15.04.110.

**Section 7. Repeal and Re-enactment of Section 15.04.050.** Dillingham Municipal Code Section 15.04.050 is hereby repealed. A new Section 15.04.050 is hereby adopted to read as follows:

**15.04.050 Floodplain general development standards for flood hazard reduction.**

In all special flood hazard areas, compliance following standards shall be required.

- A. ANCHORING. 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.
- B. CONSTRUCTION MATERIALS AND METHODS.
  1. All new construction and substantial improvements shall be constructed with materials resistant to flood damage;
  2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;
  3. All new construction and substantial improvement 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; and

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

C. STANDARDS FOR STORAGE OF MATERIALS AND EQUIPMENT

1. 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.
2. 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

D. STANDARDS FOR WATER SUPPLY AND WASTE DISPOSAL SYSTEMS

1. 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.
2. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

E. DEVELOPMENT PROPOSALS. All new development proposals, including subdivisions and manufactured home parks, shall:

1. Be consistent with the need to minimize flood damage;
2. Have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage; and
3. Provide adequate drainage to reduce exposure to flood hazards.
4. Include Base Flood Elevation data for all proposals of 50 lots or 5 acres, whichever is the lesser.

F. FLOODWAYS. Located within the special flood hazard areas established in 15.04.031(B) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. If (F)(1) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of chapter 15.04.
3. Encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that City of Dillingham first applies for and fulfills the requirements for a Conditional Letter of Map Revision (CLOMR), and receives approval from the Federal Insurance Administrator to revise the FIRM and FIS in accordance with applicable regulations.

G. 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 be designed and certified by a registered engineer or architect or, alternatively, meet or exceed the following criteria:

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

H. FLOOD PROTECTION REQUIREMENTS. In determining if the requirements of Sections 15.04.050-15.04.054 have been fulfilled, the intent of this chapter and at least the following items shall be considered:

1. The adequacy of anchorage to resist flotation and lateral movement;
2. The installation of watertight doors, bulkheads, and shutters, or similar methods of closure;
3. The reinforcement of walls to resist water pressures;
4. The use of paint, membranes, or mortars to reduce seepage of water through walls;
5. The addition of mass or weight to structures to resist flotation;
6. The installation of pumps to lower water levels in structures;
7. The construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters;
8. The installation of pumps or comparable facilities for subsurface drainage systems to relieve external foundation wall and basement flood pressures;
9. The building design and construction to resist rupture or collapse caused by water pressure or floating debris;

10. The location and installation of all electrical equipment, circuits, appliances and heating systems so that they are protected from inundation;
11. The location of storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials which could be hazardous to public health, safety and welfare; or design such facilities to prevent flotation of storage containers which could result in the escape of toxic materials into floodwaters;
12. The use of materials such as sheathing, siding, subflooring and underlayment that are not subject to water damage due to prolonged submersion;
13. The use of closed-cell insulation to prevent waterlogging and consequent loss of insulating ability;
14. The location of oil storage tanks outside the structure and anchoring to prevent disturbance by floodwater. Tanks should be placed upon and secured to a concrete base slab of sufficient volume to prevent flotation. In the calculation of required anchorage, little recognition should be given to shear of friction values of the soils as they will be substantially reduced due to saturation. Both fill and vent pipes should extend above the high water level;
15. The installation of a backwater valve in sewer lines in an accessible location immediately adjacent to the exterior foundation wall.

**Section 8. Adoption of Section 15.04.051.** Dillingham Municipal Code Chapter 15.04 is hereby amended by the addition of a new Section 15.04.051 to read as follows:

**15.04.051 Residential Construction**

- A. In all special flood hazard areas, all new and substantially improved residential and nonresidential structures shall be flood-proofed as required by this section.
- B. 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.
- C. For A Zones (A, AE, A1-30, AH, AO) have the lowest floor, including basement, elevated to or above the Base Flood Elevation; and
  1. In a Zone AO, the Base Flood Elevation is determined from the FIRM panel as the depth number specified. If no depth is specified, the required elevation is at minimum two feet above highest adjacent grade.
  2. In a Zone A where the Base Flood Elevation has not been determined, the Base Flood Elevation is determined locally by the criteria set by Section 15.04.041. A minimum of 2 feet above highest adjacent grade may result in a lower insurance premium.

3. In Zones AE, A1-30, and AH, the Base Flood Elevation is determined from the FIS and/or FIRM.
4. A garage attached to a residential structure, constructed with the garage floor slab below the Base Flood Elevation, must be designed to allow for the automatic entry and exit of flood waters. See Section 15.04.053.

D. For V Zones (VE, V1-30 and V), residential construction, new or substantial improvement, shall comply with the requirements of this subsection. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this subsection.

1. Be located landward of the reach of mean high tide;
2. Have the bottom of the lowest structural member of the lowest floor (excluding pilings and columns), elevated to or above the Base Flood Elevation;
3. Have the pile or column foundation and structure attached thereto be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards;
4. Have the space below the lowest floor, usable solely for parking of vehicles, building access, or storage, either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot;
5. Prohibit the use of fill for structural support of buildings; and
6. Prohibit man-made alteration of sand dunes and mangrove stands.

**Section 9. Adoption of Section 15.04.052.** Dillingham Municipal Code Chapter 15.04 is hereby amended by the addition of a new Section 15.04.052 to read as follows:

**15.04.052 Non-Residential Construction.**

A. In all special flood hazard areas, all new and substantially improved nonresidential structures shall be flood-proofed as required by this section.

B. 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 design of this section is satisfied, including the specific elevation in relation



to mean sea level to which such structures are floodproofed, shall be provided to the Floodplain Administrator for verification.

C. For A Zones (A, AE, A1-30, AH, AO):

1. Have the lowest floor either elevated to conform with 15.04.051, or
2. Together with attendant utility and sanitary facilities,
  - a. be floodproofed below the elevation recommended under 15.04.051 so that the structure is watertight with walls substantially impermeable to the passage of water, and
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

D. For V Zones (VE, V1-30, V), floodproofing of non-residential structures is prohibited. All structures must be elevated and constructed according to the requirements set forth in 15.04.051.

**Section 10. Adoption of Section 15.04.053.** Dillingham Municipal Code Chapter 15.04 is hereby amended by the addition of a new Section 15.04.053 to read as follows:

**15.04.53 APPURTENANT STRUCTURES (DETACHED GARAGES & STORAGE):**

A. Appurtenant structures used solely for parking of vehicles or storage may be newly constructed or substantially improved in special flood hazard areas such that the floor is below the Base Flood Elevation, provided the structure is designed and constructed in accordance with the requirements by this section.

B. Upon completion of the structure, certification that the requirements of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

C. For A Zones (A, AE, A1-30, AH, AO), appurtenant structures used solely for parking of vehicles or storage with the floor is below the Base Flood Elevation, provided the structure is designed and constructed in accordance with the following requirements:

1. Use of the appurtenant structure must be limited to parking of vehicles or storage.
2. The portions of the appurtenant structure located below the Base Flood Elevation must be built using flood resistant materials.
3. The appurtenant structure must be adequately anchored to prevent flotation, collapse and lateral movement.
4. Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the Base Flood Elevation.
5. The appurtenant structure must comply with floodway encroachment provisions in 15.04.050(F).

6. The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with 15.04.050(G).

D. For V Zones (VE, V1-30 and V), floodproofing of non-residential structures is prohibited. All structures must be elevated and constructed according to the requirements set forth in 15.04.051.

**Section 11. Adoption of Section 15.04.054.** Dillingham Municipal Code Chapter 15.04 is hereby amended by the addition of a new Section 15.04.54 to read as follows:

**15.04.054 Manufactured homes and recreational vehicles.**

A. Upon completion of installation of the manufactured home in any all special flood hazard areas, 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.

1. For A Zones (A, AE, A1-30, AH, AO):

- a. All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored 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.
- b. Manufactured homes that are placed or substantially improved within Zone AO shall meet the residential construction standards in A Zones in 15.04.051.
- c. Manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites:
  - i. Outside of a manufactured home park or subdivision,
  - ii. In a new manufactured home park or subdivision,
  - iii. In an expansion to an existing manufactured home park or subdivision,  
or
  - iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,
- d. 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 be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.

Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the

community's FIRM that have not incurred substantial damage as the result of a flood are to be elevated so that either:

- i. The lowest floor of the manufactured home is at or above the base flood elevation, or
  - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
2. Manufactured homes placed or substantially improved within Zones V1-30, V, and VE on the community's FIRM on sites:
- a. Outside of a manufactured home park or subdivision,
  - b. In a new manufactured home park or subdivision,
  - c. In an expansion to an existing manufactured home park or subdivision, or
  - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,

Meet the standards of residential construction in V Zones in Section 15.04.051.

3. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones V1-30, V, and VE on the community's FIRM that have not incurred substantial damage as the result of a flood are to:
- a. Meet the standards of residential construction in V Zones in Section 15.04.051; and
  - b. Be elevated so that either:
    - i. The lowest floor of the manufactured home is at or above the base flood elevation, or
    - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
- B. All recreational vehicles placed on site in a special flood hazard area shall:
1. Be on site for fewer than 180 consecutive days,
  2. 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

3. Meet the permit requirements of 15.04.041 of this ordinance and the applicable elevation and anchoring requirements for manufactured homes.

**Section 12. Amendment to Section 15.04.055.** Dillingham Municipal Code Section 15.04.055 is hereby amended to read as follows [new language **underlined and emboldened** and deleted text displayed in ~~strike-out font~~]:

**15.04.055 Functionally dependent uses.**

A. The **Floodplain Administrator** ~~planning director~~ may grant a floodplain permit for a structure that has a functionally dependent use and is located in the coastal high hazard area (zones V1-V30) as designated in the most recent flood insurance rate map only upon determining that the following conditions have been met:

1. Any new or substantially improved structure shall be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure.
2. Construction materials and utility equipment that are resistant to flood damage and construction practices and methods that will minimize flood damages shall be utilized.
3. A failure to grant the permit would result in exceptional hardship to the applicant.
4. Granting the permit 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.
5. The requirements of Section 15.04.064(A)(2) through (5) will be met.

B. In deciding whether to grant a floodplain permit for a proposed functionally dependent use the **Floodplain Administrator** ~~planning director~~ shall consider:

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 compatibility of the proposed use with existing and anticipated development;
6. The relationship of the proposed use to the Comprehensive Plan and Flood Plain Management Program for that area;
7. The safety of access to the property in times of flood for ordinary and emergency vehicles;

8. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
9. The cost of providing governmental services to the facility 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; and
10. Whether granting the permit would 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 and ordinances.

C. Upon consideration of the factors of subsection B of this section, the **Floodplain Administrator** ~~planning director~~ may attach such conditions to the granting of permits for functionally dependent uses as the director deems necessary to further the purposes of this chapter.

**Section 13. Repeal and Re-enactment of Section 15.04.0100.** Dillingham Municipal Code Section 15.04.100 is hereby repealed. A new Section 15.04.100 is hereby adopted to read as follows:

**15.04.100 Variances.**

A. NATURE OF VARIANCES. The variance criteria set forth in this section of the ordinance 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 ordinance 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 Planning Commission 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 Base 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 ordinance 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. CONDITIONS FOR VARIANCES. Variances shall only be issued:

1. 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;

2. For the repair, rehabilitation or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
3. Upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
4. Upon a showing of good and sufficient cause;
5. Upon a determination that failure to grant the variance would result in exceptional hardship to the applicant;
6. 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 15.04.020 of this ordinance in the definition of "Functionally Dependent Use" and

C. VARIANCE CRITERIA. In considering variance applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger of 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 Flood Plain 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 heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
11. The cost 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.

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

E. Variances may be issued for nonresidential buildings to allow a lesser degree of floodproofing than watertight or dry floodproofing, where the economic activity and resulting benefit to the community outweighs the damage potential.

F. The city shall notify the applicant in writing over the signature of the planning director that:

1. The issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
2. Such construction below the Base Flood Elevation ~~level~~ increases risks to life and property.

G. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

**Section 14. Effective Date.** This ordinance is effective upon adoption.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on September 2, 2021.

\_\_\_\_\_  
Alice Ruby, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Lori Goodell, City Clerk