

**MEETING AGENDA
5:30 P.M. / COUNCIL CHAMBERS**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES**
 - a. Minutes of December 12, 2019 page 3
- 4. APPROVAL OF AGENDA**
- 5. UNFINISHED BUSINESS**
 - a. Plastic Bag Use in Dillingham page 5
- 6. NEW BUSINESS**
 - a. Remote Online Sales Tax Sample Ordinance page 13
 - b. DMC 15.04 Floodplain Regulations page 43
 - c. Review Procurement Policy page 125
- 7. PUBLIC COMMENT/COMMITTEE COMMENTS**
- 8. ADJOURNMENT**

DATE ASSIGNED	TASK
August 2, 2018	Retail Plastic Bag Discussion
Dec. 6. 2018	Review Sales Tax exemption regarding lease
Dec. 6. 2018	Review personal use v commercial use; fishing vessels
April 4, 2019	Update Sales Tax Code, language for SCOTUS Wayfair decision, internet sales
April 11, 2019	Sales Tax Code review for casual and isolated sales (Revisit in 9/2020 to allow for more data)
Jan. 16, 2020	Review / update DMC 15.04 Floodplain regulation to be FEMA compliant

1. CALL TO ORDER

The Code Review Committee met on Thursday, December 12, 2019, in the City Council Chambers, Dillingham, AK. Council Member Chris Napoli chaired the meeting and called the meeting to order at 5:35 p.m.

2. ROLL CALL

Committee Members present:

Mayor Alice Ruby	Chris Napoli	Gregg Marxmiller
Lori Goodell	Tod Larson	Bill Rodawalt (<i>via phone at 5:38</i>)

3. APPROVAL OF MINUTES

- a. Minutes of September 12, 2019

MOTION: Alice Ruby moved and Gregg Marxmiller seconded the motion to approve the minutes of September 12, 2019.

VOTE: The motion passed unanimously by voice vote.

4. APPROVAL OF AGENDA

MOTION: Alice Ruby moved and Gregg Marxmiller seconded the motion to approve the agenda.

VOTE: The motion passed unanimously by roll call vote.

5. UNFINISHED BUSINESS

- a. Code Committee's To Do List

A review date of 9/2020 will be added to the casual and isolated sales line. No other changes were made to the list.

- b. Plastic Bag Use in Dillingham

- This is a citizen originated issue, with the general consensus being in favor of a ban with a common sense approach.
- The negative aspects regarding implementation will be researched for the next meeting.
- Impact for cost of bags was discussed. Paper bag usage is not an end all solution.

6. NEW BUSINESS

- a. Remote Online Sales Tax

- AML is still developing the process.
- The resolution authorizes the City Manager as the representative for Dillingham.
- Next steps: adopt resolution to join group, sign agreement, and update municipal code.
- A legal review of the process from the City Attorney was requested.

MOTION: Gregg Marxmiller moved and Alice Ruby seconded the motion to recommend Resolution 2019-35 to council for consideration, contingent on a legal opinion from the City Attorney.

VOTE: The motion passed unanimously by roll call vote.

b. DMC 4.30.050 C Update

- This item is to bring in line municipal code with current business practice.

MOTION: Alice Ruby moved and Chris Napoli seconded the motion to recommend increasing the manager’s signatory authority from \$500 dollars to \$1,000 dollars and have the City Clerk prepare an ordinance to update 4.30.050 C in municipal code.

VOTE: The motion passed unanimously by roll call vote.

MOTION: Alice Ruby moved and Bill Rodawalt seconded the motion to recommend to Council the procurement policy DMC 4.30 be reviewed by the Code Review Committee.

VOTE: The motion passed unanimously by roll call vote.

c. Liquor License Renewal, Dillingham Liquor Store

- It was noted that a company that attempts to run itself well is appreciated.
- No problems with a license renewal were observed.

MOTION: Alice Ruby moved and Gregg Marxmiller seconded the motion to recommend that Council waives the right to protest Dillingham Liquor Store liquor license renewal.

The sales tax amount noted on the review form will be verified with the finance department.
Question called.

VOTE: The motion passed unanimously by roll call vote.

7. PUBLIC COMMENT/COMMITTEE COMMENTS

Bill Rodawalt: Spoke regarding an excise tax on marijuana.

Alice Ruby: Wished all Merry Christmas and Happy New Year. Directed Tod to enjoy his vacation. Noted if the Tribe supports the CBG application a special council meeting will be scheduled.

8. ADJOURNMENT

The meeting adjourned at 6:55 p.m.

Chris Napoli, Chair

ATTEST:

Lori Goodell, City Clerk

Approval Date: _____

Sonya Pevan <spevan@houston-ak.gov>
to Kim, me

Fri, Dec 27, 9:30 AM (3 days ago)

Good Morning Kim and Lori,

My council put an advisory question to the voters this last election, (I did try to talk them out of it). I am not a fan of advisory questions.

The results were two votes apart!

I struggled with the legislation being a Resolution versus an Ordinance. I attached some email correspondence I had to help me decide.

Feel free to call me to chat if you want.

Sonya



Alekka Fullerton
to Kim, me

Dec 27, 2019, 9:44 AM (3 days ago)

Good Morning-

The Haines Borough just passed such a ban. It goes into effect 1/1/20 although it was passed last May (we wanted there to be plenty of time for vendors to use up their existing supply of bags). It was (unusually for Haines) non-controversial. Our ordinance doesn't go as far as some...

Alekka Fullerton, CMC

Borough Clerk
Haines Borough
P.O. Box 1209
Haines, AK 99827
(907)766-6402
fax (907)766-2716

Jennie Peter

9:56 AM (2 minutes ago)

to me

Hi Kim,

We passed an Ordinance to ban plastic bags and also banned burning personal burn barrels here in Ruby.

Jennie Peter

City of Ruby

Lori Strickler <lstrickler@cityofbethel.net>
To: Lori Goodell <cityclerk@dillinghamak.us>

Mon, Dec 16, 2019 at 8:35 AM

Hello Lori,

So the City of Bethel isn't being very effective in our ban of non biodegradable bags- we are not really enforcing anything. BUT we have learned a lot through the process.... It is likely many communities are banning biodegradable because there are many plastic like bags that are biodegradable but only under the perfect circumstances which requires warm soil of which we don't have. I think it is likely our community will be considering a full ban within the 2020 calendar year as well.

Good luck!

Lori Strickler, CMC

City Clerk, City of Bethel

[300 Chief Eddie Hoffman Highway](#)

[Bethel, AK 99559](#)

907-543-1384

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[Quoted text hidden]

Plastic Bag Ban



*****UPDATE 10/8/19: *Restaurants and vendors at temporary markets no longer have to charge for alternative bags.* The plastic bag ban still applies to restaurants.*****

Effective September 15, 2019, retailers will no longer be able to provide plastic bags to shoppers in Anchorage. Sellers shall provide non-plastic bags, such as paper, at a minimum cost of \$0.10 per bag up to a maximum of \$0.50 per transaction. Do your part to reduce waste and bring your own shopping bags!

Resources

- [Assembly Ordinance 2018-63 Prohibiting Certain Retail Sellers from Distributing Disposable Plastic Shopping Bags](#)
- [Anchorage Municipal Code Chapter 15.95 - Plastic Shopping Bags](#)
- [Plastic Bag Ban Poster Download](#)
- [10-8 Ordinance Update.pdf](#)

Have questions about the new law? Email PlasticBagBan@anchorageak.gov or call (907) 343-7123.

Request a Presentation

If your business or community organization would like to request a presentation about the plastic bag ordinance, please fill out [this form](#).

Plastic Bag Ordinance Frequently Asked Questions

When does the ordinance go into effect?

September 15, 2019

Are there any exceptions?

Yes. The prohibition doesn't apply to a plastic bag that is

1. Used by customers inside stores to contain a product that does not have other packaging, including bulk foods, fruits, nuts, vegetables, bakery goods, etc.;

2. Used to contain dampness or leaks from items such as frozen foods, meat or fish;
3. Used only to contain ice;
4. Used only to contain or wrap flowers or potted plants;
5. Provided by a pharmacist for the sole purpose of containing prescription drugs;
6. Used only to package an unconsumed portion of a bottle of wine;
7. Used only to contain a newspaper, laundry, or dry cleaning;
8. Sold in packages containing multiple bags intended for consumer use off the retail seller's premises, such as for the collection and disposal of garbage, pet waste, or dog waste.

What counts as a reusable bag?

A bag counts as reusable if it “a. is designed and manufactured to withstand repeated use over time; b. is made from cloth, other machine washable fabric, or is made from other woven material that can be cleaned and disinfected regularly; and c. has handles.”

Where can I get a reusable bag?

Reusable bags are sold at most grocery stores in Anchorage. You may also repurpose items such as tote bags or book bags for shopping.

What counts as an alternative bag?

Generally, paper bags will be available as an 'alternative' bag. An alternative bag is defined as “any bag that is designed to carry customer purchases from the retail seller premises that is neither a disposable plastic shopping bag nor a reusable bag.”

What should my business do with the revenue from alternative bag charges?

Businesses may either keep or donate this revenue, but may not absorb or discount the fee. For example, if you sell something for \$50 and the customer wants a paper bag, you must charge them \$50.10 and the bag fee must show as a separate item on the invoice.

Do I need to charge \$0.10 for small paper bags to protect postcards?

No. Bags used to protect postcards are exempt from the ordinance.

I have a large number of plastic bags that I won't be able to distribute to customers before September 15th. What should I do?

Please send an email to PlasticBagBan@anchorageak.gov or call 343-7123 with a description of your situation, and we will attempt to connect you with a community organization to either donate the bags or dispose of them. Nonretailers, such as food distribution nonprofits, can still distribute plastic bags.

I want to use my own signs / communications strategy to tell my customers about this change. Is that allowed?

Yes. Businesses are welcome to use the materials provided by the municipality, but are not mandated to do so.

Does the alternative bag charge apply to reusable bags my business provides to its customers?

No. Businesses are encouraged to provide and/or sell reusable bags.

Are there any exceptions to the \$0.10 bag fee?

Yes.

Restaurants and vendors at temporary markets are now exempt from the fee requirement. They may charge, if they choose to.

The alternative bag fee is waived for any purchases made with state or federal supplemental nutrition assistance programs, commonly known as food stamps, food coupons or other type of allotment issued under 7 U.S.C. 2011-2036, or with food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children), or other similar programs.

Also, a retail seller or other organization is not required to charge a fee when they distribute alternative bags at temporary events where the bags are provided for a general use without a clearly associated sale. For example, events like Kids Day or trade shows.

Can I use biodegradable plastic bags?

No. Currently, plastic bags labeled as biodegradable do not biodegrade well in our climate.

My business is a restaurant. Is it considered a retailer?

Yes. A retail seller is any commercial business located within the municipality that “sells goods or prepared food directly to final consumers.” If you currently provide bags for takeout food, you will no longer be able to use plastic bags.

How will this ordinance be enforced?

Anchorage Code Enforcement will be the primary enforcer. The first offense for retailers is a warning. A second offense could carry a \$250 fine and third and subsequent offenses are \$500 each. See [Anchorage Municipal Code section 14.60.030](#) for the fine schedule.

Plastic Bag Ban

Bag Requirements - New City of Wasilla bag requirements, effective July 1, 2018



What the requirements mean

- Prohibits all establishments in City limits from providing single-use plastic disposable shopping bags for the purpose of carrying away goods from the point of sale.
- Allows establishments to provide customers with any size recyclable paper or reusable carryout bags.
- Allows establishments to provide carryout bags made of plastic 2.25 mil or thicker, with or without charge at their discretion.
- Imposes a warning to the establishment for the first offense, second offense \$100, and third offense \$300.
- Promotes reusable carryout bags as the best alternative to single-use plastic bags.

Exemptions

- Bags used in stores for bulk items or to protect vegetables, meat, frozen foods, and similar items are exempt.
- Bags sold in packages containing multiple bags intended for use as garbage bags or to contain pet waste, or yard waste bags are exempt.

Additional information

- [Read Ordinance Serial No. 17-24 \(AM\)](#)
- [Wasilla Municipal Code Chapter 9.44](#)

Contact us:

City of Wasilla Police Department - Code Compliance

1800 E. Parks Highway

Wasilla, AK 99654

Phone: 907.352.5401

Fax: 907.357.7877

Email: wpdadmin@ci.wasilla.ak.us

Jamie Newman

11:33 AM (21 minutes ago)

to me

Hi Lori,

Our single use disposable plastic bag ban seems to be working well. We have not had to amend the original ordinance.

This link may help ...

<https://www.cityofwasilla.com/valley-residents/plastic-bag-ban>

Merry Christmas.

Jamie Newman, MMC | City Clerk | **City of Wasilla**
907-373-9090 | 290 E Herning Avenue Wasilla, AK 99654 | cityofwasilla.com

[Visit the Meetings Portal](#)

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City Hall Closed:
December 25, Christmas
January 1, New Year's Day

BOYD, CHANDLER, FALCONER, & MUNSON LLP

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911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcfaklaw.com

MEMORANDUM

TO: Tod Larsen
City Manager
City of Dillingham



FROM: Brooks W. Chandler
City Attorney

RE: Taxation of Internet Sales

DATE: January 29, 2020

This memorandum summarizes the draft of the sales tax ordinance which will fulfill Dillingham's obligation to adopt the Alaska Remote Seller Sales Tax Code. This obligation flows from the City Council authorizing Dillingham to become a member of the Alaska Remote Sellers Sales Tax Commission and sign the Alaska Intergovernmental Remote Sellers Sales Tax Agreement. Article V of that Agreement requires Dillingham to adopt "by reference or otherwise, the Remote Sellers Sales Tax Code ("the Code") in its entirety" within 120 days after the Commission adopts the Code. Article V of the Agreement also requires Dillingham to delegate "remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission". This delegation will only apply to internet sales. The City will continue to administer Chapter 4.20.

The draft ordinance follows a modified version of adopting the Code "by reference". The Code included extensive definitions. Some of those definitions included words or phrases already defined in Chapter 4.20. Some of those definitions included words used in Chapter 4.20 but not currently defined in Section 4.20.020. To ensure uniformity in application of definitions

to on line and “brick and mortar” sellers both categories of definitions have been adopted by amending Section 4.20.020 (and by making this section applicable the new Chapter 4.23). This is done in Section 4 of the draft ordinance.

Not all definitions in the Code were applicable to Dillingham and many definitions are only relevant to internet/remote sellers. Definitions relevant only to remote sellers are included in proposed section 4.23.030. Definitions not applicable to Dillingham are included in the Supplemental Definitions referenced in the proposed section 4.23.040.

The alternative to the “adoption by reference” format is to set out all the provisions of the Code in the body of proposed Chapter 4.23. We choose not to do this because the City will not be administering the Code and the merchants to which it applies will have easy access to the Code through the Commission. But if you prefer the provisions could easily be included in the draft ordinance.

The changes to Chapter 4.20 made in sections 5, 6 and 7 of the draft ordinance are recommended. The Intergovernmental Agreement does not require these changes to city code. The changes are recommended because we believe it is important for the City to treat local businesses and remote businesses equally. If remote sellers were treated more harshly than local sellers there is a possible basis to challenge applying the Code to remote sellers. This is more of a concern because the Code provisions on penalties and interest are more severe than existing provisions of Chapter 4.20. So if the City adopts the Code by reference but does not also make changes to interest and penalty provisions two different sellers will be treated differently. Here are the changes.

Elimination of the 1% collection discount. (Section 5). Since a similar discount is not being offered to remote sellers it is problematic to continue to offer this to local sellers.

Establishment of a \$25 per month late filing fee. Change the penalty from a one time 10% penalty to a monthly 5% penalty which could increase to 20% if a seller is four months late in filing or remitting sales tax. Adding the possibility of waiving a penalty for a seller who is less than forty-five days late in remitting tax. (Section 6). Again this will result in sellers subject to Chapter 4.20 (local sellers) being treated the same as sellers subject to Chapter 4.23 (remote sellers).

Increase the interest rate on late payments to fifteen per cent. (Section 7). This is the maximum interest rate on past due sales tax allowed by state law. AS 29.45.650(d).

Adoption of codes by reference is allowed under state law subject to special procedures. AS 29.25.040. At least five copies of the Code must be available to the public for a period of 15 days before the public hearing on the ordinance. The hearing notice must say where the public can review the Code. Compliance with these requirements has been included as proposed

Tod Larsen
January 29, 2020
Page 3

section 4.23.020. This section is identical to DMC 15.08.030 enacted when Dillingham adopted uniform building codes.

The deadline for adoption of the Code is May 5, 2020. Let me know if there are any questions about the draft ordinance.

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**CITY OF DILLINGHAM
ORDINANCE NUMBER XXXX**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF DILLINGHAM AMENDING
TITLE 4 OF THE DILLINGHAM CITY CODE TO ADOPT BY REFERENCE THE ALASKA
REMOTE SELLERS SALES TAX CODE AND TO AMEND CHAPTER 4.20 TO ADD AND
AMEND DEFINITIONS, REPEAL SECTION 4.20.150, ADOPT A LATE FILING FEE, AND
AMEND PENALTY AND INTEREST PROVISIONS**

WHEREAS, Section 4.20.050(H)(1) of the Dillingham City Code currently exempts from sales tax sales which the City is prohibited from taxing by the Constitution of the United States; and

WHEREAS, historically the Constitution of the United States prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska who did not have a physical presence within city boundaries; and

WHEREAS, the United States Supreme Court decided on June 21, 2018 in the case South Dakota v. Wayfair that the United States Constitution no longer prohibited the City from levying sales tax on mail order or internet purchases from businesses located outside the State of Alaska; and

WHEREAS, in response to the Wayfair decision, several Alaskan municipalities formed the Alaska Remote Sellers Sales Tax Commission (“the Commission”); and

WHEREAS, on January 6, 2020, the Commission adopted the Alaska Remote Sellers Sales Tax Code and Supplemental Definitions (“Uniform Code”); and

WHEREAS, on January __, 2020, the Dillingham City Council adopted Resolution 2020-__ authorizing the City of Dillingham to become a member of the Commission and authorizing the City Manager to sign the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”) and to obtain and maintain membership in the Commission; and

WHEREAS, the Agreement requires Commission members to adopt the Uniform Code by reference or otherwise in its entirety by May 5, 2020; and

WHEREAS, some provisions of the Uniform Code differ from existing requirements of Chapter 4.20 of the Dillingham Municipal Code; and

WHEREAS, it is preferable to harmonize definitions and administrative provisions of Chapter 4.20 with the Uniform Code;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dillingham, Alaska, as follows:

Section 1: Sections 3 through 8 of this ordinance are of a permanent and general nature and shall be included in the Dillingham City Code.

Section 2: Legislative Findings.

(1) The inability to effectively collect city sales tax from remote sellers who deliver tangible personal property, any products transferred electronically, or services directly to the citizens of Dillingham is seriously eroding the sales tax base of Dillingham, causing revenue losses and imminent harm to this city through the loss of critical funding for services;

(2) The harms from the revenue losses are especially serious in Dillingham because sales tax revenues are essential in funding local services;

(3) The structural advantages of remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that further erosion of this city's sales tax base is likely soon;

(5) Remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from this state's market, including the economy generally, as well as state and city infrastructure;

(6) In contrast with the expanding harms caused to the city from this exemption of sales tax collection duties for remote sellers, the costs of that collection have fallen. Given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska generally and Dillingham specifically.

(7) The failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities;

(8) Delivery of goods and services into local municipalities rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services;

Section 3: Amendment of Section 4.10.010. Section 4.10.010 of the Dillingham Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

The city shall levy and collect a tax on sales, rents, and services provided within the city, pursuant to the provisions of AS 29.45.700(c) and AS 29.45.650 through AS 29.45.670, this Chapter and Chapter 4.23, to be deposited in the general fund of the city and used for general revenue for the city.

Section 4: Amendment of Section 4.10.020. Section 4.10.020 of the Dillingham Code of Ordinances is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter and in chapter 4.23, have the following meanings:

“Advertising” means services rendered to promote a product, service, idea, concept, issue, or the image of a person, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including research; design; layout; preliminary and final art preparation; creative consultation, coordination, direction, and supervision; script and copywriting; editing; and account management services.

“Alcoholic beverage” means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume. ~~spirituous, vinous, malt or other fermented or distilled liquids, whatever the origin, that are intended for human consumption as a beverage and that contain alcohol.~~

“ATV” or “off-highway vehicle” means a vehicle designed or adapted for cross-country operation over unimproved terrain, ice or snow, and which has been declared by its owner at the time of registration and determined by the department to be unsuitable for general highway use, although the vehicle may make incidental use of a highway as provided in this title; it does not include implements of husbandry and special mobile equipment.

“Banking services” means deposit account services, loan transaction fees, transactions relating to the sale or exchange of currency or securities, transactions for conversion of negotiable instruments, safe deposit services, escrow collection services, late fees, overdraft fees, and interest charged on past due accounts.

“Boat” means a vessel used or capable of being used as a means of transportation on the water.

“Buyer” means a person to whom a sale of property or product is made or to whom a service is furnished and includes persons who are purchasers of personal or real property, rental space or services.

“Child care” means a regular service of care and education provided for compensation for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children.

“Coin-operated machine” means a slot machine, marble machine, juke box, merchandise vending machine, laundry, dry cleaning and any other service dispensing machine or amusement device of any kind which requires the insertion of currency to make it operative.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

- A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- C. Intended to affect the structure or any function of the body.

“Dues, Membership and Subscription” means monies paid for the purpose of membership, or qualifying or becoming eligible for goods or services, or discounts to goods or services.

“Food stamps” means obligations of the United States government issued or transferred by means of food coupons or food stamps to enable the purchase of food for the eligible household.

“Fuel” means refined petroleum and petroleum-based products used for internal combustion engines and as the primary source for residential heating or domestic hot water. This may also include other types of fossil fuels as well as fuel sources that are renewable.

“Government” means the federal government and any agency or instrumentality thereof; any State and any agency or instrumentality thereof; any local government within a State, and any unit, agency, or instrumentality of such local government; any tribal government; any other governmental instrumentality.

“Hotel” means any structure, or any portion of a structure, which is used, occupied, intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist

home or house, bed and breakfast, motel, home or house trailer at a fixed location, or other similar structure or portion thereof.

“Insurance” means a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

“Internet service” means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

“Medical equipment and supplies, and prescriptions” means all medicines, medical goods or equipment prescribed by a health care provider licensed to practice in Alaska or any other state in the United States.

“Medical services” means those professional services rendered by persons duly licensed under the laws of this state to practice medicine, surgery, chiropractic, podiatry, dentistry, and other professional services rendered by a licensed midwife, certified registered nurse practitioners, and psychiatric and mental health nurse clinical specialists, and appliances, drugs, medicines, supplies, and nursing care necessary in connection with the services, or the expense indemnity for the services, appliances, drugs, medicines, supplies, and care, as may be specified in any nonprofit medical service plan. “Medical services” include hospital services.

“Monthly” means occurring once per calendar month.

“Newspaper” means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of not more than two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

“Person” means and includes individual and every person recognized in law and every group of persons who act as a unit an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Professional services” means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations that require a professional license under Alaska Statute.

“Property” and “product” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive” means

- A. Taking possession of property;
- B. Making first use of services;

C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” or “sale at retail” means any transfer of property for consideration for any purpose other than for resale, every sale or rental of real property or sale or rental of personal property (whether tangible or intangible), every sale or exchange of services, including barter, credit, lease, installment and conditional sales, for any purpose other than resale when such resale is made in the regular course of business and includes, but is not limited to the following transactions:

- a. Selling property; or
- b. Renting, leasing, or letting of real or personal property, accommodations, facilities, or services of any nature whatsoever; or
- c. Storing for use or consumption any item or article of personal property; or
- d. Rendering occupational or professional services of any nature whatsoever; or
- e. Furnishing materials and rendering services in connection therewith to accomplish the installation, construction, repair or completion of a specific end product or project; or
- f. Selling real estate comprising parcels of land and buildings or improvements thereto, either separately or conjunctively; provided, however, that an isolated sale of property by an owner not engaged in the real estate business shall not be taxable; but in the event a commission or other fee on such isolated sales is collected by a real estate agent or broker, the tax shall be applicable to the commission or service charge of the agent or broker; or
- g. Transfer of the product of a manufacture or construction process to the user of the product; or
- h. Importing, or causing to be imported, property from outside the city for sale or for rent, storage, distribution, use or consumption within the city; or
- i. Soliciting business, either directly or indirectly, as a representative or agent of a manufacturer, wholesaler, retailer, or distributor of merchandise or by the distribution of catalogs or other advertising matter or by any means whatever, and by reason thereof receiving orders for property from buyers or consumers for use, consumption or distribution for use, consumption or storage within the city; and the foregoing shall include every person who, as a representative, agent or solicitor receives and accepts orders from buyers or consumers from within the city for future delivery; or
- j. Selling or furnishing, preparing and serving food or beverages, alcoholic or nonalcoholic, for consumption on or off the premises of the seller; or
- k. Selling bingo cards or pull tabs; or

- l. Every use or play of a coin-operated machine; or
- m. Transacting or engaging in any type of business not enumerated herein.

“Sale within the City”

1. For the purpose of the tax levied by this chapter, a sale of personal property is made within the city if:

- a. The sale is made by a business located within the city;
- b. The sale is made by a seller located outside of the city as a result of solicitation inside of the city and payment or delivery occurs within the city;
- c. The sale is made by a seller whose principal place of business is outside of the city if such seller maintains any office, distribution, sales house, warehouse or any other place of business or solicits business or receives orders through any agency, salesperson or other type of representative within the city.

2. For the purposes of the tax levied by this chapter, services are within the city if, regardless of the location of the business rendering the services:

- a. The services, or any essential or substantial part thereof, are rendered within the city; or
- b. The order for the services is solicited or received within the city or payment is received within the city, or the services are rendered by a business maintaining an office, agent, or employee within the city.

“Sales price” or “selling price” or purchase price means the total amount of any consideration paid by a buyer in terms of money and in the case of a sale involving an exchange of property and/or services, the fair market value of the property or services exchanged, ~~including delivery or installation costs,~~ means consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, but excluding the sales tax without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means and includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales including consignees and persons who conduct sales where items will be sold for a commission or fee or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means and includes all services of every manner and description which are performed or furnished for compensation of any kind, except services rendered to an employer by an employee, including but not limited to:

1. Professional services;
2. Services in which a product or sale of property may be involved including personal property made to order;
3. The sale of transportation services;
4. Services rendered for compensation by any person who furnishes any services in the course of their business or occupation;
5. Services wherein labor and materials are used to accomplish a specified result;
6. Commissions earned during business conducted within the city; and
7. Any other services including advertising, maintenance, recreation, amusement and craftsmen’s services.

“Snow Machine” means a motor vehicle designed to travel over ice or snow, and supported in part by skis, belts, cleats, or low-pressure tires.

“Tax cap” means a maximum taxable transaction.

“Telephone service” means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

“Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the occupant has paid in advance for over thirty days’ occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

“Transportation services” means the transportation of individuals for hire.

“Wholesaler” means a merchant who sells goods, in the regular course of his business, to retailers who sell to consumers, or sells goods in the regular course of his business to jobbers, dealers, or other wholesalers, for the purpose of taxable resale in the city. To qualify as a wholesaler, the merchant must be regularly recognized as such, and known to the trade as such.

“Wholesale sale” means a sale of goods by a merchant selling them in the regular course of his business; or a sale of goods by a merchant selling them in the regular course of his business at wholesale prices to jobbers, dealers, or other wholesalers for the purpose of taxable resale in the city. The term does not include a sale by a wholesaler to users or customers when such sale is not for taxable resale in the city.

Section 5. Repeal of Section 4.20.150. Section 4.20.150 of the Dillingham Municipal Code is hereby repealed in its entirety.

Section 6. Amendment of Section 4.20.210. Section 4.20.210 of the Dillingham Municipal Code is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

A. It is unlawful for any seller who is required to obtain a certificate of authority to collect city sales tax:

1. To fail to obtain a certificate of authority within the time prescribed by this chapter.
2. To fail to file a return as required by this chapter, or fail to remit taxes collected or which should have been collected. The filing of an incomplete return is the equivalent of filing no return.
3. To falsify or knowingly misrepresent any record required by this chapter.
4. To deny the city permission to inspect records required to be kept by this chapter.

B. In addition to penalties for violations of this section set forth in Section 1.20.040, the city may recover by civil action the amount which the seller should have remitted to the city as sales tax, plus a late filing fee of twenty-five dollars per month, plus a penalty of ten five percent of the taxes collected but not remitted, or which should have been collected per month or fraction thereof until a total of 20% of delinquent tax has been reached. The city may also recover full actual reasonable attorney’s fees in any action against a delinquent seller.

C. The city may also have any person or business that violates this section, or any vessel owned by any such person or business, placed on the city’s denied services list using the procedures set forth in Chapter 4.40.

D. Fees, penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to fees, penalties and interest, second to past due sales tax.

E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.

F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the City, upon written application of the seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the seller, within forty-five (45) calendar days after the date of delinquency. A seller may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year.

Section 7. Amendment of Section 4.20.220. Section 4.20.220 of the Dillingham Municipal Code is hereby amended to read as follows: [additions are underlined, deletions are overstruck]

A seller who fails to remit payments in a timely manner shall be liable for interest charges of ~~six~~ fifteen percent per annum on the amount of delinquent taxes accruing from the due date until paid in full. Interest shall not accrue on any penalty imposed under Section 4.20.210(B).

Section 8: Adoption by Reference of Alaska Remote Sellers Sales Tax Code. The Dillingham Code of Ordinances is hereby amended by adopting a new Chapter 4.23 to read as follows:

**Chapter 4.23
TAX ON SALES MADE BY REMOTE SELLERS**

Sections

4.23.010	Scope
4.23.020	Copies on File
4.23.030	Definitions
4.23.040	Adoption of Alaska Remote Sellers Sales Tax Code
4.23.050	Delegation of Authority

4.23.010 Scope

This chapter applies only to sales made by remote sellers as defined herein.

4.23.020 Copies on File

At least five copies of the Alaska Remote Sellers Sales Tax Code shall be made available for public inspection at least fifteen days prior to the public hearing for adoption of this Chapter at the time and place set out in the notice published for the hearing of the ordinance. Copies shall be available for public review at the following locations: one copy at the office of the city clerk; one copy at the city planning department; one copy at the city fire department; and, two copies at the city library. A person may request, and the city clerk shall provide, a copy of the code(s) at no more than cost.

4.23.030 Definitions

A. When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.

B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.

C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller’s products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;

2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller’s ability to establish or maintain a market for its products in this state.

3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;

4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.

B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.

C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

A. Professional services;

B. Services in which a sale of property or product may be involved, including property or products made to order;

C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;

D. The sale of transportation services;

E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;

F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

4.23.040 Adoption of Alaska Remote Sellers Sales Tax Code

The City adopts by reference the January 6, 2020 edition of all provisions of the Alaska Remote Sellers Sales Tax Code (including the definitional section included in section 4.23.030 above) and that portion of the Supplemental Definitions thereto not included in section 4.20.020.

4.23.050 Delegation of Authority

The City hereby delegates the authority to administer and collect tax on sales made by remote sellers to the Commission including remote seller sales tax registration, exemption certification, collection, remittance, and audit authority.

Section 9: Effective Date. This ordinance shall be effective upon adoption. No obligation to collect tax resulting from adoption of this ordinance shall be applied retroactively.

CITY OF DILLINGHAM

Hon. Alice Ruby, MAYOR

ATTEST:

Lori Goodell
CITY CLERK

First Reading:
Second Reading:
Effective Date:

TERM	Working Definition	SSUTA	Notes
Alcoholic beverages	Beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.	Same	
Booking Commissions	Monies received from contracted or subcontracted guides, and lodging or other services sold as components of a recreational package are considered intermediate sales for resale, taxable at the final sale of the package to the buyer.		
Buyer	A person to whom a sale of personal property is made or to whom a service is furnished (see purchaser).		
Certified Automated System (CAS)	Software certified under the SSUTA to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.	Same	
Certified Service Provider (CSP)	An agent certified under the SSUTA to perform all the seller's sales tax functions, other than the seller's obligation to remit tax on its own purchases.	Same	
Common carrier	An individual or a company, which is in the regular business of transporting freight for hire. This is distinguished from a private carrier which transports its own goods and equipment, and makes deliveries of goods sold to its customers.		
Computer	An electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions	Same	
Computer Software	A set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.	Same	
Construction materials	Materials, goods, components, fixtures or other items that are incorporated into the construction of real property and become a permanent component of that real property.		
Delivered electronically	Delivered to the purchaser by means other than tangible storage media.	Same	
Delivery charges	Charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.	Same	SSUTA provides interpretive guidance as part of their definition, not indicated here.
Digital Product	See Specified Digital Product.		
Drug	A compound, substance or preparation, and any component of a compound, substance or preparation, other than "food and food ingredients," "dietary supplements" or "alcoholic beverages." A. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or C. Intended to affect the structure or any function of the body.		SSUTA provides interpretive guidance as part of their definition, not indicated here.
Dues, Membership and Subscription	Monies paid for the purpose of membership, or qualifying or becoming eligible for goods or services, or discounts to goods or services.	Same.	
Durable medical equipment	Equipment including repair and replacement parts for same, but does not include "mobility enhancing equipment," which: A. Can withstand repeated use; and B. Is primarily and customarily used to serve a medical purpose; and C. Generally is not useful to a person in the absence of illness or injury; and D. Is not worn in or on the body.		SSUTA provides interpretive guidance
Electronic	Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.	Same.	
Entity-Based Exemption	An exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.	Same.	Do we need to define different entities - tribe, governments, religious institutions
Farming supplies	Animal food, seed, plants, fertilizers and other consumables used in an agriculture or mariculture business that sells its harvested grains, produce, meats, animal products or other farm production.		
Feminine hygiene products	Tampons, panty liners, menstrual cups, sanitary napkins and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle.	Same	

Food	Any food or food product for home consumption except alcoholic beverages, tobacco, and prepared food. Food or food products includes, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.	Included.	
Gasoline, heating fuels and other consumable fuels	Refined petroleum and petroleum-based products used for internal combustion engines and as the primary source for residential heating or domestic hot water. This may also include other types of fossil fuels as well as fuel sources that are renewable.		
Goods for resale	The sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; Sales to a wholesaler or retail dealer who deals in the property sold, for the purpose of resale by the dealer. B. Sales of personal property as raw material to a person engaged in manufacturing for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of a product manufactured for sale by the manufacturer. C. Sale of personal property as raw material to a licensed building contractor where the property sold becomes part of the permanent structure.		
Intangible personal property	Anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copywright and patents).		
Lease or Rental	Any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.	Same	
Load and leave	Delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.	Same.	
Long-term vehicle lease	Means a lease of a motor vehicle, as defined below, for a period of 24 months or longer. As used herein a "motor vehicle" is a motor vehicle, as defined in AS 28.40.100(12), that is either required to be registered under AS 28.10.011, or is exempted from registration under AS 28.10.011(6) and (11). However, "motor vehicle" does not include either an "off-highway vehicle" as defined in 13 AAC 40.010(30) or a "snowmobile" as defined in 13 AAC 40.010(49).		Considerations of capital vs operating lease definitions and include equipment other than vehicles
Manufacturing components	Sales of personal property as raw material to a person engaged in manufacturing for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of a product manufactured for sale by the manufacturer.		
Marijuana accessories	Any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body;		
Marijuana and marijuana products	Per AS 17.38.900 all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products, or industrial hemp as defined in AS 03.05.100;		

	<p>A person that contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person, and engages:</p> <ul style="list-style-type: none"> (a) Directly or indirectly, through one or more affiliated persons in any of the following: <ul style="list-style-type: none"> (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller; (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together; (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and <p>(b) In any of the following activities with respect to the seller's products:</p> <ul style="list-style-type: none"> (i) Payment processing services; (ii) Fulfillment or storage services; (iii) Listing products for sale; (iv) Setting prices; (v) Branding sales as those of the marketplace facilitator; (vi) Order taking; (vii) Advertising or promotion; or (viii) Providing customer service or accepting or assisting with returns or exchanges. 		
Marketplace Facilitator			
Medical equipment and supplies, and prescriptions	<p>All medicines, medical goods or equipment prescribed by a health care provider licensed to practice in the United States.</p>	<p>Equipment including repair and replacement parts to same, but does not include "durable medical equipment," which:</p> <ul style="list-style-type: none"> A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and B. Is not generally used by persons with normal mobility; and C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. 	<p>See Durable Medical Equipment, Drug, and Prescription.</p>
Mobility enhancing equipment		<p>Same</p>	
Newspaper		<p>A publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of at least two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.</p>	
Nexus		<p>The seller has established a taxable connection within Alaska of \$100,000 in sales or 100 transaction.</p>	
Nonprofit organization		<p>A business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual.</p>	
Over the counter drug		<p>A drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude "grooming and hygiene products" from this definition. The "over-the-counter-drug" label includes:</p> <ul style="list-style-type: none"> A. A "Drug Facts" panel; or B. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation. 	<p>Same</p>

Periodical	Any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and format to make it evident that it is one of a series.			
Person	An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity	Same		
Point of Delivery	See "Sourcing".			
Precious metals	Any precious metal, including but not limited to gold, silver, platinum and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content (such as an ingot or bar) and not its form (such as jewelry or artwork)			
Prepared food	A. Food sold in a heated state or heated by the seller; B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food. "Prepared food" in B. does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.	same		
Prescription	An order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.	Same.		
Prewritten computer software	"computer software," including rewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or rewritten portions thereof does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a rewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software;" provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."	Same		
Product-Based Exemptions	An exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.	Same		
Prosthetic Device	Replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to: A. Artificially replace a missing portion of the body; B. Prevent or correct physical deformity or malfunction; or C. Support a weak or deformed portion of the body.	Same		
Purchaser	A person to whom a sale of personal property is made or to whom a service is furnished.	Same		
Quarter	Trimonthly periods of calendar year: January-March, April-June, July-September, and October-December.			
Receive or Receipt	A. Taking possession of tangible personal property, B. Making first use of services, or C. Taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.			
Resale of Services	Sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer			

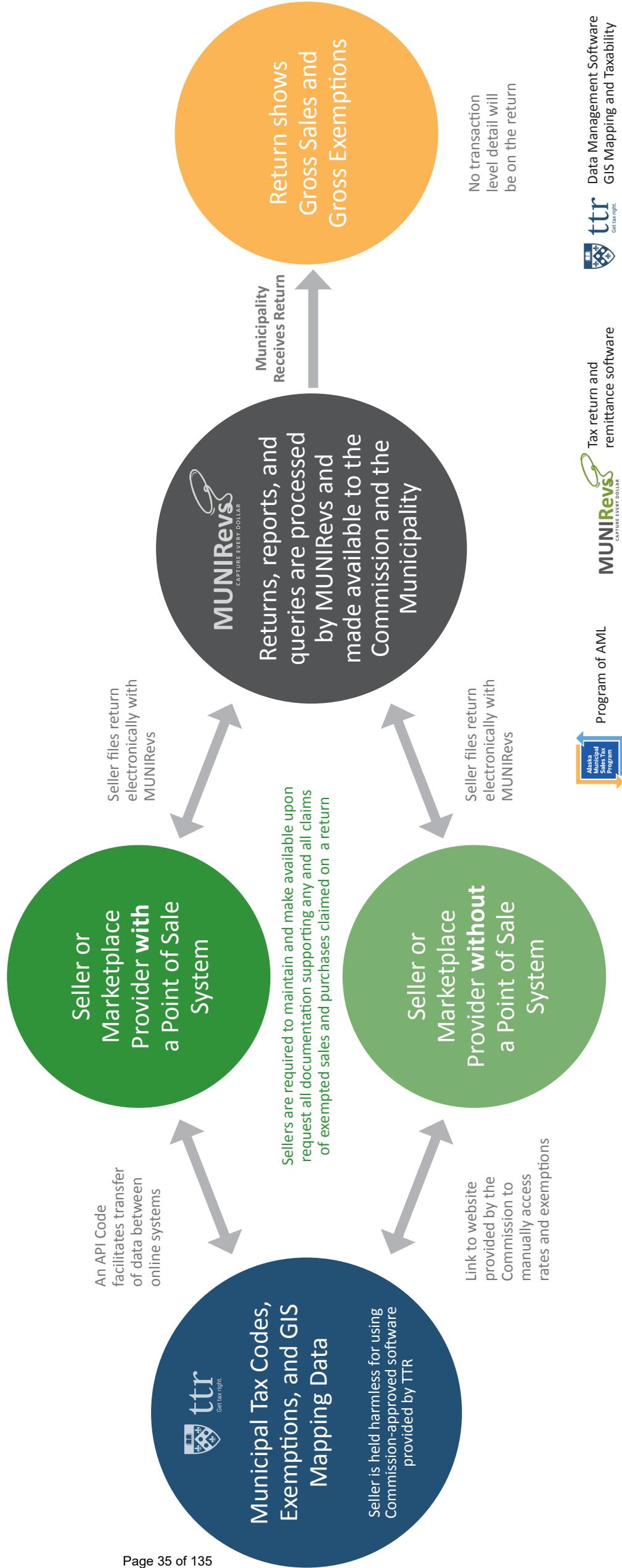
Sale or retail sale	Any sale, lease, or rental for any purpose other than for resale, sublease, or subrent	Same	
Sales or purchase price	<p>The total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:</p> <p>A. The seller's cost of the property sold;</p> <p>B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;</p> <p>C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;</p> <p>D. Delivery charges;</p> <p>E. Installation charges; and</p> <p>F. Credit for any trade-in, as determined by state law.</p>	Same	Need to negotiate.
Sales-Type Lease	<p>At lease commencement, (1) the lease transfers ownership of the underlying property, goods, or services to the lessee by the end of the lease term; (2) the lease grants the lessee an option to purchase the underlying property, goods, or services that the lessee is reasonably certain to exercise; (3) the lease term is for the major part of the remaining economic life of the underlying property, goods, or services. However, if the commencement date falls at or near the end of the economic life of the underlying property, goods, or services, this criterion shall not be used for purposes of classifying the lease; (4) the present value of the sum of the lease payments and any residual value guaranteed by the lessee that is not already reflected in the lease payments equals or exceeds substantially all of the fair value of the underlying property, goods, or services; (5) the underlying property, goods, or services is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term.</p>	Same	
Seller	A person making sales, leases, or rentals of personal property or services.	Same	SSUTA provides interpretive guidance
Senior citizen	<p>Any individual defined by a taxing jurisdiction as qualifying for an age-based exemption.</p> <p>includes all services of every manner and description, which are performed or furnished for compensation, including but not limited to:</p> <ol style="list-style-type: none"> 1. Professional services; 2. Services in which a product or sale or property may be involved, including personal property made to order; 3. Utilities and utility services not constituting a sale of personal property, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services; 4. The sale of transportation services; 5. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission; 6. Any other services, including advertising, maintenance, recreation, amusement, and craftsman services 		
Services			
Short term rental	Provision of room or unit for lodging less than 30 days.		
Software downloads	Software, applications, services and other digital programming for computers, tablets, smartphones and other electronic devices shall be subject to sales and use taxes. This includes online subscriptions or purchases of news services, publications, audio books and other similar electronic versions of printed materials.		

<p>Software maintenance contracts</p>	<p>A “computer software maintenance contract” is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.</p> <p>A “mandatory computer software maintenance contract” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.</p> <p>An “optional computer maintenance contract” is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.</p> <p>The retail sale, excluding lease or rental, of a product shall be sourced as follows:</p> <ol style="list-style-type: none"> 1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location. 2. When the product is not received (or paid for) by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser’s recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller. 3. For products transferred electronically, or other sales where the remote merchant lacks a delivery address for the purchaser, the merchant shall source the sale to the billing address of the buyer. 			<p>For purposes of the tax imposed by this chapter, a retailer shall source sales of tangible personal property, any product transferred electronically, and services to the location where the tangible personal property, the product transferred electronically, or service is received. The department shall promulgate rules, pursuant to chapter 1-26, defining the location of receipt. The rules promulgated pursuant to this section may provide an alternative method of sourcing telecommunication services. /</p>
<p>Sourcing</p>				
<p>Specified digital product</p>	<p>A product sold to a purchaser who is an end user or with less than the right of permanent use granted by the seller or use which is conditioned upon continued payment from the purchaser. “Specified digital products” means electronically transferred:</p> <p>“Digital Audio-Visual Works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any,</p> <p>“Digital Audio Works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones, and</p> <p>“Digital Books” which means works that are generally recognized in the ordinary and usual sense as “books”.</p>	<p>Same.</p>		
<p>Streaming services</p>	<p>Digital content provided online for on-demand consumption rather than downloadable consumption. This typically includes, but is not limited to, video and audio files.</p>			
<p>Tangible personal property</p>	<p>Personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software.</p>	<p>Same</p>		<p>SSUTA provides interpretive guidance</p>
<p>Telecommunications</p>	<p>Cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.</p>			<p>See SSUTA for full list of terms</p>
<p>Tobacco</p>	<p>Obtained by the purchaser by means other than tangible storage media.</p>	<p>Same.</p>		
<p>Transferred electronically</p>	<p>A room or single space that is customarily advertised and rented at a flat rate regardless of the number of occupants.</p>	<p>Same.</p>		
<p>Unit</p>				



FLOW OF DATA

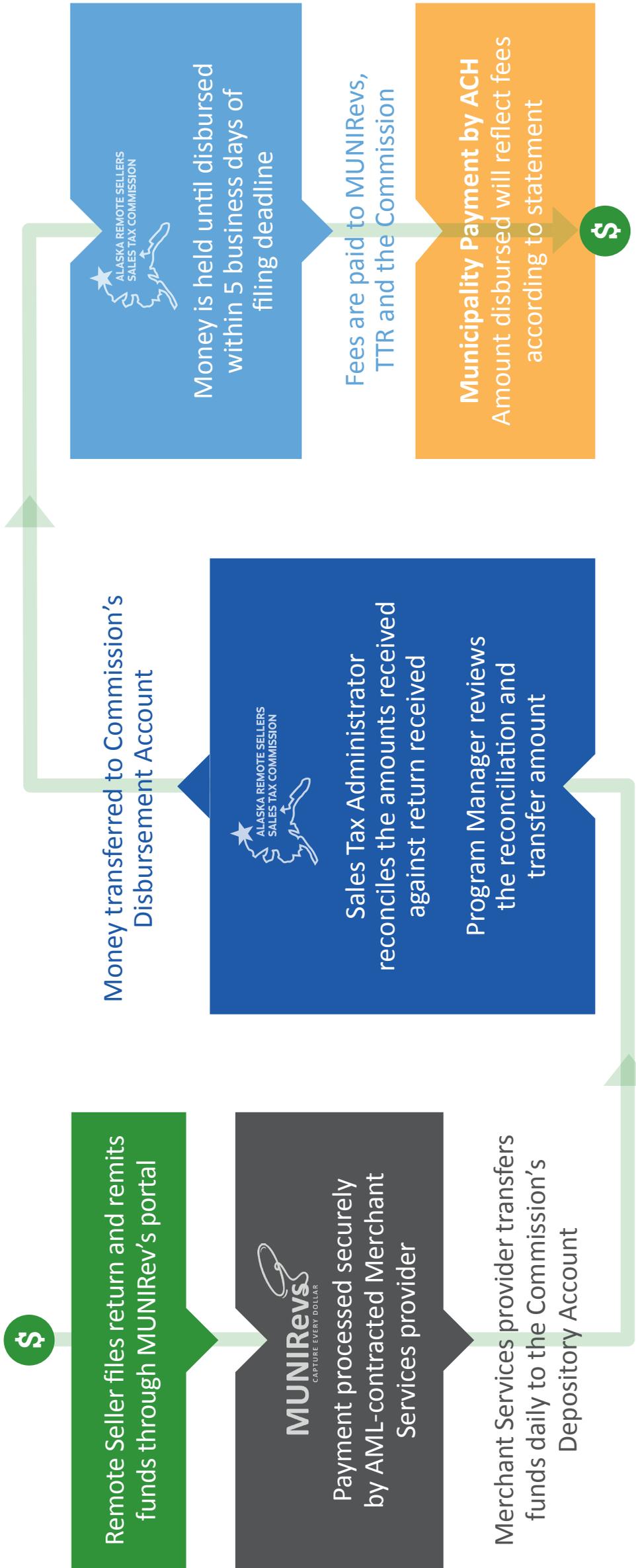
- TTR
- Remote Seller
- MUNIRevs Portal
- Municipality





FLOW OF FUNDS

- Remote Seller
- MUNIRevs Portal
- ARSSTC Depository Account
- ARSSTC Disbursement Account
- Municipality





Memo: Code Compliance – January 14.2020

The Uniform Code is administrative in substance and tone. It does not set sales tax rates, exemptions, or any other policy element of a local government’s current sales tax code or practice. What follows is a high-level summary of the various sections of the Uniform Code:

XX.XX.010 – Interpretation	Taxability broadly construed
XX.XX.020 – Title to Collected Sales Tax	Tax receipts property of the Commission/Member
XX.XX.030 – Imposition – Rate	Remote sellers must impose sales tax
XX.XX.040 – Obligation to Collect Tax	Threshold for collection is \$100,000 or 200 transactions
XX.XX.050 – No Retroactive Application	No retroactivity
XX.XX.060 – Payment and Collection	Seller must collect taxes and hold in trust
XX.XX.070 – Registration Requirement	Timing for registration if collection thresholds are met
XX.XX.080 – Tax Filing Schedule	Monthly or quarterly return filing
XX.XX.090 – Estimated Tax	Estimated tax may be assessed on non-filers
XX.XX.100 – Returns – Filing Contents	Returns include gross, nontaxable, and taxable amounts
XX.XX.110 – Refunds	Commission may issue refunds
XX.XX.120 – Amended Returns	Sellers may file amended returns
XX.XX.130 – Extension for Return	Commission may allow extensions
XX.XX.140 – Audits	Sellers subject to audit by the Commission
XX.XX.150 – Audit protest	Sellers may protest to the Commission
XX.XX.160 – Penalties/Interest for Late Filing	Sets penalties and interest for late filing
XX.XX.170 – Repayment Plans	Commission may allow payment plans
XX.XX.180 – Record Retention	Sellers must keep records for six years
XX.XX.190 – Cessation/Transfer of Business	Terms for business cessation/transfer
XX.XX.200 – Use of Information	Confidentiality of tax return information
XX.XX.210 – Violations	Terms for violations of this code
XX.XX.220 – Penalties for Violations	Penalties for violations (ranging from \$25 to \$500)
XX.XX.230 – Physical presence	Delineates how sellers file (locally or with Commission)
XX.XX.240 – Hold Harmless	Sellers protected for misfiling due to Commission errors
XX.XX.250 – Definitions	Common definitions
XX.XX.260 – Supplemental Definitions	Definitions that apply to exemptions used by members

If you are not yet a signatory to the Intergovernmental Agreement, this is simply done by resolution, a model of which is on our website at <https://www.akml.org/member-services/online-sales-tax/>.

Upon becoming a signatory, and for those who have already taken this step, the Agreement then sets out these terms, “Within one hundred twenty (120) days, adopts, by reference or otherwise, the Remote Seller Sales Tax Code in its entirety as it pertains to collection of sales tax from remote sellers and marketplace facilitators.”



The Commission recommends, then, that you take the following set of steps:

- Review the uniform Remote Seller Sales Tax Code and Supplemental Definitions
- Review your own Code as it applies to Sales Tax
- If your Code currently exempts the collection of sales tax on remote sales, then you must remove that exemption
- In comparing your Code with the uniform Code, consider the extent to which you are able to align the two. The Commission strongly recommends aligning the two codes on:
 - Definitions
 - For the Code’s definitions, the greater alignment the better, but the Commission respects the individual integrity of each local government’s authority
 - For supplemental definitions, you only need to align the definitions that apply to your current exemptions
 - Penalties and fees – these are generally consistent with best practice and State Statutes
 - Timing of compliance – these are generally consistent with best practice and State Statutes
- Contact the Commission with any significant deviation between the two, or to present an argument for parity
 - Parity within the Codes should 1) reduce the burden on remote sales tax collection, and 2) seek to avoid discriminating against remote sellers
- Adopt the uniform Remote Seller Sales Tax Code, alongside any revisions to the rest of your Code that you are able
- Where there are sections of your local sales tax Code that remain unaligned, the Commission will work with you to develop a work plan toward alignment. Essentially, the Commission may allow a grace period of one year in which the local government and Commission may come to agreement on significant differences.
 - This action may result in changes to the uniform Code, which will see updates in any event as the Commission identifies needs
 - This action should also result in a negotiation that address any local concerns of changes at that level
- This process is not dissimilar from the SSUTA, wherein many states have yet to adopt all of the provisions therein
- The Commission is committed to working with local governments to see successful implementation of local sales tax collection on remote sales while preserving to the greatest extent possible local control.



A PATHWAY TO ONLINE SALES TAX COLLECTION

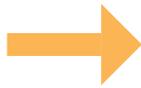
1

Join the Alaska Remote Sellers Sales Tax Commission (ARSSTC)



2

Provide Current Tax Code and Verification of Boundaries



3

Pass Uniform Tax Code



\$

Receive Tax Return and Remittance of Taxes Collected

YOU WILL NEED TO

- Pass a resolution agreeing to join the Alaska Remote Sellers Sales Tax Commission (ARSSTC)
- Send your current Code and confirm that your sales tax boundaries match your municipal boundaries
- Pass ordinance adopting the Uniform Tax Code
- Review your existing Code to make sure remote sales are not exempt
- Consider aligning with Uniform Tax Code on deadlines, compliance, definitions, etc.

THE COMMISSION WILL

- Notify remote sellers of your participation with a 30-day notice to comply
- Sellers will report and remit funds monthly
- Commission remits funds to the municipality

RESULTS

- Access to all reporting for your municipality
- A likely revenue increase for you

Remote Sellers Sales Tax Responsibility

	Commission	Jurisdiction	TTR	Munirevs	Seller or Marketplace Facilitator
Make address and tax rate database available to remote sellers by way of API or lookup tool			X		
Is held harmless for any tax, charge or fee liability to any taxing jurisdiction if the certified database provider is used					X
Collect taxes from the buyer and hold those taxes in trust for the taxing authority					X
Register with the Commission if the one of the sales thresholds, \$100,000 or 200 transactions statewide in the prior year, are met					X
File timely monthly or (upon approval) quarterly returns & pay tax due to municipality via the MUNIREvs Portal					X
Notify Commission of termination or sale of business					X
File a "no tax due" return and the intent to continue doing business					X
Maintain all documentation supporting any and all claims of exempted sales and purchases claimed on a return					X
Keep and maintain documentation of a filed Sales tax Return				X	X
Estimate tax due by a seller or Marketplace facilitator based on evidence in their possession	X				
Notify the seller or marketplace facilitator, in writing, of estimated tax owed	X				
Approval of Seller or marketplace facilitator request for quarterly filing (as opposed to monthly)	X				
Provide a means of electronically filing a tax returns (No paper returns will be accepted at this time)				X	
Provide a means of remitting Sales tax electronically via Check, ACH or Credit Card				X	
Provide online access to filed returns and summary reports for Commission & Jurisdictions				X	
Attest to the completeness and accuracy of filed return					X

Make address and tax rate database available to remote sellers by way of API or lookup tool

Is held harmless for any tax, charge or fee liability to any taxing jurisdiction if the certified database provider is used

Collect taxes from the buyer and hold those taxes in trust for the taxing authority
Register with the Commission if the one of the sales thresholds, \$100,000 or 200 transactions statewide in the prior year, are met

File timely monthly or (upon approval) quarterly returns & pay tax due to municipality via the MUNIREvs Portal

Notify Commission of termination or sale of business

File a "no tax due" return and the intent to continue doing business

Maintain all documentation supporting any and all claims of exempted sales and purchases claimed on a return

Keep and maintain documentation of a filed Sales tax Return

Estimate tax due by a seller or Marketplace facilitator based on evidence in their possession

Notify the seller or marketplace facilitator, in writing, of estimated tax owed

Approval of Seller or marketplace facilitator request for quarterly filing (as opposed to monthly)

Provide a means of electronically filing a tax returns (No paper returns will be accepted at this time)

Provide a means of remitting Sales tax electronically via Check, ACH or Credit Card

Provide online access to filed returns and summary reports for Commission & Jurisdictions

Attest to the completeness and accuracy of filed return

Remit tax, penalty, & interest subject to deductions of fees (MUNIREvs, TTR and Commission) to taxing jurisdictions by 5th business day after filing deadline

Retain ___% fee from sales tax, penalty & interest before remitting to jurisdictions
 Retain the respective fee percentage from sales tax, penalty & interest due to
 MUNIREvs (12%/8%/4%)
 Retain the respective fee percentage from sales tax, penalty & interest due to TTR
 (1.5%/1.0%,.75%)

X					
X					
x					
x					

Chapter 15.04

FLOODPLAIN REGULATIONS

Sections:

- 15.04.010 Statutory authorization, findings of fact and purpose.
- 15.04.020 Definitions.
- 15.04.030 Floodplain permit—Required.
- 15.04.031 Floodplain use permit—General provisions.
- 15.04.040 Floodplain permit—Application.
- 15.04.041 Floodplain permit—Administration.
- 15.04.050 Floodplain permit—Flood protection requirements.
- 15.04.055 Functionally dependent uses.
- 15.04.060 Subdivision and utility regulations.
- 15.04.061 Residential structures.
- 15.04.062 Nonresidential structures.
- 15.04.063 Floodproofing.
- 15.04.064 Coastal high hazard areas.
- 15.04.065 Flood-related erosion hazard areas.
- 15.04.070 Existing structures.
- 15.04.075 Authority to enter contracts.
- 15.04.080 Conflicting provisions.
- 15.04.090 Warning and disclaimer of liability.
- 15.04.100 Variances.
- 15.04.110 Appeals.
- 15.04.120 Violation—Enforcement.
- 15.04.125 Violation—Penalties and remedies.

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. Areas within the city are periodically subject to inundation which 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. The purpose of this chapter is to promote the public health, safety and general welfare and to minimize those losses 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. Establish a land use permit system for development occurring in the flood hazard areas of the city;
 - 2. Require that 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 land uses which are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocity;

4. Insurance that subdivision and development of land within the city are consistent with the need to minimize flood hazards. (Ord. 75-2 § 1, 1975; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987.)

15.04.020 Definitions.

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

- A. “Area of special flood hazard” means the land in the floodplain within the community subject to a one percent or greater change of flooding in any given year, as identified in the flood insurance rate map.
- B. “Base flood” or “one-hundred-year flood” means a flood that has a one percent chance of being equaled or exceeded in a given year.
- C. “Federal Insurance Administration” (FIA) of the Federal Emergency Management Agency (FEMA) is responsible for administration of the National Flood Insurance Program.
- D. “Fill” means nonload bearing material susceptible to wash or erosion such as dredge spoils, debris, sand or dirt.
- E. “Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) overflow of inland or tidal waters; (2) unusual and rapid accumulation or runoff of surface waters from any source; (3) mudflow; (4) collapse or subsidence of land along the shore of a 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, that result in overflow of inland or tidal waters.
- F. “Flood insurance rate map” (FIRM) means the map of the city issued by the Federal Insurance Administration which delineates the area subject to the one-hundred-year flood and the risk premium zones applicable to the community.
- G. “Floodplain” or “flood-prone area” means any land area susceptible to being inundated by water from any source.
- H. “Functionally dependent use” means 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, ship building and ship repair facilities, fuel storage facilities, and seafood processing facilities but does not include long-term storage facilities.
- I. “Lowest floor” means the lowest enclosed area (including basement).
- J. “Manufactured home” means 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 connected to the required utilities. For floodplain management purposes, the term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.
- K. “Mean lower low water” means the elevation datum (0.00 feet) referenced on the flood insurance rate maps. MLLW is 10.0 feet below the National Geodetic Vertical Datum of 1929 (NGVD) in Dillingham.
- L. “Special flood hazard area (SFHA)” means areas subject to the base flood. The SFHA includes A and V zones.
- M. “Structure” means a walled and roofed building including a gas or liquid storage tank, that is principally above ground and which is used for residential, business, agricultural or religious purposes, or which is occupied by a private, nonprofit organization, or which is owned by a state or local government or any agency thereof; the term includes mobile homes and other modular units.
- N. “Substantially improved” means any remodeling, repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the fair market value of the property either as such value exists

before the improvement is started or if the property has been damaged and is being restored, as such value existed before the damage occurred.

O. “Variances” are grants of relief from the requirements of this chapter which permit construction in a manner that would otherwise be prohibited by this chapter. (Ord. 75-2 § 7, 1975; Ord. 82-6 § 1, 1982; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 15-10 § 1, 2015.)

15.04.030 Floodplain permit—Required.

No party shall make any changes to improved or unimproved real estate, including mine, dredge, fill, grade, pave, excavate, construct, construct an addition to, substantially improve or relocate a structure within areas of the city within a special flood hazard area without first securing from the city planning department, a floodplain permit for each structure. It is not the intent of this chapter to require a floodplain permit outside of flood hazard areas. (Ord. 75-2 § 2, 1975; Ord. 82-6 § 2, 1982; Ord. 86-13 § 1, 1986; Ord. 92-21 § 2 (part), 1992; Ord. 15-10 § 2, 2015.)

15.04.031 Floodplain use permit—General provisions.

A. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Dillingham.

B. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled, “The Flood Insurance Study for the City of Dillingham, Alaska,” dated September 30, 1982, with accompanying flood insurance rate maps, is hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at City Hall.

C. 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. 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. 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. (Ord. 87-04 § 1, 1987; Ord. 92-21 § 2 (part), 1992; Ord. 15-10 § 3, 2015.)

15.04.040 Floodplain permit—Application.

A. Application. Application for a floodplain permit for each development or structure shall be filed with the planning department and shall be accompanied by the required fee. The application for a permit shall be made on a form furnished by and returned to the planning department.

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. Statement of the following elevations:
 - a. The ground elevation after site preparation,
 - b. Projected lowest floor elevation (including basement) in relation to mean low water of all structures,
 - c. Elevation in relation to mean lower low water to which any nonresidential structure has been dry-floodproofed.

4. Certification by a registered professional engineer, architect, surveyor or city permit official that the proposed floodproofing methods for any nonresidential structure meet the floodproofing criteria in this chapter;
5. Information which demonstrates that the structure will be adequately protected against flood damage and that the structure or site preparation will not adversely affect flood elevations or velocities. The required protective measures are set forth in Section 15.04.050.

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. (Ord. 75-2 (part), 1985; Ord. 82-6 § 3, 1982; Ord. 86-13 § 1, 1986; Ord 92-21 § 2 (part), 1992; Ord. 15-10 §§ 4, 5, 2015.)

15.04.041 Floodplain permit—Administration.

A. Administrator. The planning director is appointed to administer and implement this chapter by granting or denying floodplain permit applications in accordance with its provisions.

B. Alternate to Director. In the event that the planning director is out of town, the position is vacant, or the director is otherwise unavailable for more than one week, the city manager has the option of designating an interim administrator of this chapter. The interim administrator may include the city manager, another city employee, or the planning commission.

C. Duties of the Director. Duties of the planning director shall include, but not be limited to:

1. Permit Review.
 - a. Review all land use permits to determine that the permit requirements of this ordinance have been satisfied;
 - b. Review all land use permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
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 planning director 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.

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. Information to be Obtained and Maintained.
 - a. Where base flood elevation data is provided or required through the Flood Insurance Study, obtain and record the actual elevation, (in relation to mean lower low water sea level), of the lowest floor, (including basement), of all new or substantially improved structures, and record whether or not the structure contains a basement. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less).
 - b. For all new or substantially improved floodproofed structures: (i) verify and record actual elevation, (in relation to mean lower low water sea level); (ii) maintain the floodproofing certifications required; and (iii) maintain for public inspection all records pertaining to this chapter.
4. Alteration of Watercourses.

- a. Notify adjacent communities and the State Department of Community and Regional Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. 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. (Ord. 87-04 § 1, 1987; Ord. 92-21 § 2 (part), 1992.)

15.04.050 Floodplain permit—Flood protection requirements.

A. Within flood hazard areas no permit shall be approved by the planning director unless all of the following requirements are satisfied:

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. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)
3. Construction materials and utility equipment that are resistant to flood damage and construction practices and methods that will minimize flood damages shall be utilized.
4. Construction or substantial improvement shall not be permitted unless the applicant demonstrates that any associated new or replacement water supply system and sanitary sewage system, including on-site systems, will be designed and constructed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
5. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

B. In determining if the requirements of this section 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. (Ord. 75-2 § 4, 1975; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 92-21 § 2 (part), 1992.)

15.04.055 Functionally dependent uses.

A. The 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 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 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. (Ord. 15-10 § 6, 2015.)

15.04.060 Subdivision and utility regulations.

A. The city shall deny permission to subdivide or develop land within flood hazard areas unless the following requirements have been fulfilled:

1. The land subdivision and development are consistent with the need to minimize flood damages;
2. All public utilities and facilities such as sewer, gas, electrical and water systems shall be located, elevated or constructed to minimize or eliminate flood damage;
3. Adequate drainage shall be provided to reduce the exposure of structures, utilities and facilities to flood hazards;
4. The preliminary and final plat shall include the ground elevation at convenient reference points and as approved by the planning director.

B. All new or replacement water supply systems and sanitary sewage systems, including on-site systems, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

C. All new or replacement public utilities such as gas, electric and telephone systems shall be designed or constructed to eliminate disruptions due to flooding and associated hazards.

D. In determining if the requirements of this section are fulfilled, the city shall consider the intent of this chapter and at least:

1. The danger to life and property due to the increased flood heights or velocities caused by subdivision fill, roads and intended uses;
2. The danger that intended uses may be swept onto other lands or downstream to the injury of others;
3. The adequacy of proposed water supply systems and the ability of these systems to prevent disease, contamination and unsanitary conditions under flood conditions;
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
5. The importance of the services provided by the proposed facility to the community;

6. The requirements of the subdivision for a waterfront location;
7. The availability of alternative locations not subject to flooding for the proposed subdivision and land uses;
8. The compatibility of the proposed uses with existing development and development anticipated in the foreseeable future;
9. The relationship of the proposed subdivision to the comprehensive plan and floodplain management program for the area;
10. The safety of access to the property for emergency vehicles in times of flood;
11. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site;
12. 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;
13. The installation of valves or controls on sanitary and storm drains which permit the drains to be closed to prevent backup of sewage and stormwaters into buildings or structures. (Ord. 75-2 § 5, 1975; Ord. 86-13 § 1, 1986.)

15.04.061 Residential structures.

The lowest floor of new construction or substantial improvement shall be located at or above the base flood elevation. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.04.050(A)(2). (Ord. 94-01, 1994; Ord. 15-10 § 7, 2015.)

15.04.062 Nonresidential structures.

- A. The lowest floor of new construction or substantial improvement shall be located at or above the one-hundred-year flood level or dry-floodproofed to that level.
- B. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.04.050(A)(2). (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 15-10 § 8, 2015.)

15.04.063 Floodproofing.

Where floodproofing is utilized for a particular structure either:

- A. A registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specified elevation to which such structures are floodproofed shall be maintained by the community; or
- B. A certified copy of a local regulation containing detailed floodproofing specifications which incorporate standard, accepted watertight performance standards shall be submitted to the Federal Emergency Management Agency (FEMA) for approval. (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986.)

15.04.064 Coastal high hazard areas.

- A. Within coastal high hazard areas (V zones) the city shall:
 1. Require that all new construction other than functionally dependent uses within zones V1-V30 on the FIRM be located landward of the reach of mean high tide;

2. Provide, that all new construction and substantial improvements within zones V1-V30 on the FIRM are elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;
3. It shall be the responsibility of the applicant that a registered professional engineer or architect certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and storm wave wash;
4. Provide, that all new construction and substantial improvements within zones V1-V30 on the FIRM have the space below the lowest floor free of obstructions, or be constructed with breakaway walls intended to collapse under stress due to abnormally high tides or wind-driven water without jeopardizing the structural support of the structure. Such temporarily enclosed space shall not be used for human habitation;
5. Prohibit the use of fill for structural support of buildings within zones V1-V30 on the FIRM.

B. *Repealed by Ord. 15-10. (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986; Ord. 15-10 §§ 9, 10, 2015.)*

15.04.065 Flood-related erosion hazard areas.

A. In floodprone areas not covered by the Dillingham flood insurance study and maps, all structures shall be set back from the tidal waterfront sufficiently to avoid possible damage from wave runup flooding; to protect shoreline resources from unnecessary degradation, and maintain public access and scenic values. All new or expanded shoreline development which does not require a water edge or water surface location shall be set back twenty-five feet from the ordinary high water mark; provided, that on erosional or otherwise geologically unstable bluffs or banks exceeding ten feet in height or on banks sloping more than thirty percent, any setback shall be measured from bank rim to top of such slope respectively. These setbacks apply to primary structures and accessory buildings. These setbacks do not apply to shoreline-dependent development that requires an over-water or water-edge location (e.g., seafood processing) or to outdoor decks or patios. Water-dependent structures that require an over-water or water-edge location shall be elevated at least two feet above the ordinary high tide or at or above base flood elevation, whichever is the higher.

B. Shoreline setbacks may be altered by the planning commission if site-specific conditions (e.g., topography) make the setback impracticable. (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986; Ord. 15-10 § 11, 2015).

15.04.070 Existing structures.

Nothing in this chapter shall be construed as applying to any structures existing prior to the effective date of the ordinance codified in this chapter unless they are substantially improved or relocated after the effective date of the ordinance codified in this section, or September 30, 1982, the effective date of the flood insurance rate maps. (Ord. 82-6 § 5, 1982; Ord. 75-2 § 6, 1975; Ord. 86-13 § 1, 1986.)

15.04.075 Authority to enter contracts.

The city is authorized to enter into contracts and agreements with other government entities for the purpose of implementing the provisions of this chapter. (Ord. 75-2 § 6(c), 1975; Ord. 86-13 § 1, 1986.)

15.04.080 Conflicting provisions.

Permits issued pursuant to this chapter shall conform to all ordinances or regulations as are from time to time established or amended; however, this chapter shall control in the event of any conflict unless specifically stated otherwise or unless the conflicting ordinance is more restrictive. (Ord. 75-2 § 6(a), 1985; Ord. 86-13 § 1, 1986.)

15.04.090 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 may occur on rare occasions and 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 city, any officer or employee thereof or the Federal Insurance Administration for any flood damages that may result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 86-13 § 1, 1986.)

15.04.100 Variances.

- A. Variances may be issued by the planning commission for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this section.
- B. Standards for the granting of variances by the city are as follows:
1. Variances may be issued by the city for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level.
 2. Variances shall only be issued by the city upon:
 - a. A showing of good and sufficient cause,
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant,
 - c. 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 ordinances, and
 - d. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. In passing upon 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 to life and property due to flooding or erosion damage;
 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. The importance of the services provided by the proposed facility to the community;
 5. The necessity to the facility of a waterfront location, where applicable;
 6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 7. The compatibility of the proposed use with existing and anticipated development;
 8. The relationship of the proposed use to the Comprehensive Plan and 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 and the effects of wave action, if applicable, 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. Upon consideration of the factors of subsection C of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

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 level will result in increased premium rates for flood insurance; and

2. Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in subsection G of this section; and

G. The planning department shall:

1. Maintain a record of all variance actions, including justification for their issuance; and

2. Report such variances issued in its annual report submitted to the Federal Insurance Administrator. (Ord. 82-6 § 6, 1982; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 15-10 § 12, 2015.)

15.04.110 Appeals.

Appeals of decisions by the planning director or planning commission alleging errors in any requirement, decision or determination made in the enforcement or administration of the floodplain regulations shall be heard by the board of adjustment pursuant to the procedures established at Chapter 18.56. (Ord. 86-13 § 1, 1986; Ord. 92-21 § 2 (part), 1992.)

15.04.120 Violation—Enforcement.

The planning director will administer and enforce this chapter, unless otherwise designated under Section 15.04.041(B). The planning director or designee may order the discontinuance of unlawful uses of land, buildings or structures; the removal or abatement of unlawful buildings or structures or any unlawful additions or alterations thereto; the discontinuation of construction or preparatory activity leading to an unlawful structure or use of land; or any other action necessary to ensure compliance with this chapter. City police officers are also authorized to issue citations to any person who violates any provision of this chapter. (Ord. 92-21 § 2 (part), 1992; Ord. 13-19 § 20, 2013.)

15.04.125 Violation—Penalties and remedies.

A. Violation. A violation of provisions of this chapter shall be an infraction. Upon conviction, the court shall levy a fine of three hundred dollars for each day the violation exists up to a maximum fine of one thousand dollars and assess any surcharge required to be imposed under AS 12.55.039. Each day that an unlawful act or condition continues constitutes a separate violation.

B. Remedies.

1. In case any structure is constructed or substantially improved in violation of this chapter, the city, in addition to other remedies, shall institute any proper actions or proceedings necessary, including enjoining of connections to public utilities, to restrain, correct or abate such violations.

2. Pursuant to AS 29.40.190, the city or an aggrieved person may institute a civil action against a person who violates a provision of this chapter, or a term, condition or limitation imposed by the planning commission. (Ord. 75-2 § 6(b), 1975; Ord. 86-13 § 1, 1986; Ord. 92-21 § 2 (part), 1992; Ord. 99-04 § 18, 1999; Ord. 13-19 § 21, 2013.)

RESOLUTION 2019-05

A RESOLUTION OF THE DILLINGHAM PLANNING COMMISSION

Recommend FEMA Model Flood Ordinance Update to Chapter 15.04 – Floodplain Regulations

WHEREAS, the City of Dillingham Municipal Code 15.04.010 states 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; and

WHEREAS, 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 area; and

WHEREAS, the City of Dillingham received a Community Assistance Visit (CAV) to ensure the City is in compliance with the NFIP program based on the CAV; and

WHEREAS, the City subsequently received a CAV Compliance Plan on July 7, 2014; and

WHEREAS, the Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, visited the City in July of 2019 to follow up on the CAV; and

WHEREAS, significant areas of the current chapter on floodplain regulations are required to be FEMA NFIP compliant; and

WHEREAS, the Planning Director has reviewed the recommended FEMA Model Flood Ordinance and has provided suggested updates to this chapter (see attachments);

NOW THEREFORE, BE IT RESOLVED that the Dillingham Planning Commission recommends and supports these updates.

ADOPTED by the Dillingham Planning Commission January 8, 2020.

Gregg Marxmiller, Chair		Cynthia Rogers, Planning Director
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This Model Floodplain Management Ordinance has been developed as a tool to help communities meet the minimum requirements of the National Flood Insurance Program (NFIP). Communities choosing not to use this model ordinance must ensure their ordinance meets the minimum requirements of the NFIP. This model does not include any applicable State law requirements.

FEMA Model

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FEMA Model

INSTRUCTIONS FOR CREATING YOUR COMMUNITY FLOODPLAIN MANAGEMENT ORDINANCE

Before adopting your community floodplain management ordinance, it is advised that you discuss the ordinance with your community attorney.

Provide community specific information as requested in brackets:

- This model ordinance contains **{brackets}** that must be replaced with community specific information such as your community name, address, or job title.
- If you choose to re-number the sections in your ordinance differently than what is presented in this model, please check that the cross-referenced sections in your ordinance match.

Please note:

- This model ordinance contains language from the Code of Federal Regulations (CFR). Your community should review this language on an annual basis for any amendments to these provisions.
- Section 2.0 Definitions must be included. Definitions marked with an asterisk (*) are cited in 44 CFR 59.1 These are Program definitions and may vary from common understanding of the term. Therefore, these definitions must be included in your Ordinance.
- Definitions not marked with an asterisk are recommended as they are important to the meaning and understanding of this model ordinance. Additional definitions may be found in Appendix A and on the National Flood Insurance Program (NFIP) website <http://www.fema.gov/national-flood-insurance-program/definitions> and are optional. You may add any other definitions that apply to floodplain management in your community, provided those definitions do not contradict 44 CFR or applicable State law.
- Flood Boundary and Floodway Maps (FBFM) and Flood Hazard Boundary Maps (FHBM) have been superseded by Flood Insurance Rate Maps (FIRM). FBFM and FHBM are not referenced in this model ordinance. These definitions, if applicable for your community, have been included in Appendix A.
- NFIP Compliance:
This model ordinance meets the minimum standards required to participate in the National Flood Insurance Program (NFIP). Any community may exceed the minimum standards by adopting more comprehensive floodplain management regulations. Any community choosing to adopt higher regulatory standards will be held accountable for enforcing the higher standards.
- Additional floodplain management language can be found in Appendix B.

The following table of citations is provided as reference only. The citations from 44 CFR do not need to be included in your ordinance.

<i>Section</i>	<i>CFR citation</i>
1.1	59.22(a)(2)
1.2	59.22(a)(1)
1.3	59.2; 59.22(a)(1), (a)(8); 60.22
1.4	60.22
2.0	59.1
3.1	59.22(a)
3.2	59.22(a)(6); 60.2(h)
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3.5	60.1(b)-(d)
3.6	59.2(b)
3.7	
3.8	
4.1	59.22(b)(1)
4.2.1-A	60.3(a)(1)
4.2.1-B	60.3(a)(2)
4.2.1-C	60.3(a)(3)
4.2.1-D	60.3(c)(10)
4.2.2	60.3(b)(4)
4.2.3	59.22(a)(9)(iii)
4.2.3-A	60.3(b)(5)(i),(5)(iii)
4.2.3-B	60.3(b)(5)(ii),(5)(iii),(c)(4)
4.2.3-C	60.3(b)(5)(iii)
4.2.3-D	60.3(b)(3)
4.2.3-E	60.3(d)(3)
4.2.3-F	60.6(a)(6)
4.2.3-G	
4.2.4-A	60.3(b)(6), (b)(7)
4.2.4-B	65.3
4.2.4-C	59.22(a)(9)(v)
4.2.5	
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5.1.2-B	60.3(a)(3)(iii)
5.1.2-C	60.3(a)(3)(iv)
5.1.2-D	60.3(c)(11)
5.1.3.1	60.3(c)(2), (c)(7)
5.1.3.2	60.3(c)(3), (c)(4), (c)(8)
5.1.3.3	60.3(a)(3)(iv), (c)(5), Tech. Bulletin 7

5.1.3.4	60.3(c)(5)
5.2	
5.3-A	60.3(a)(5), (a)(6)(i)
5.3-B	60.3(a)(6)(ii)
5.4-A	60.3(a)(4)(i)
5.4-B	60.3(a)(4)(ii)
5.4-C	60.3(a)(4)(iii)
5.4-D	60.3(b)(3)
5.5	60.3(b)(8), (c)(6), (c)(12)
5.6	60.3(c)(14)
5.7	60.3(d)(3)
6.1	
6.2-A.1	60.6(a)(3)(iii)
6.2-A.2	60.6(a)
6.2-A.3	60.6(a)(4)
6.2-A.4	60.6(a)(3)(i)
6.2-A.5	60.6(a)(3)(ii)
6.2-A.6	60.6(a)(7)
6.2-B	60.6(a)(1)
6.2-C	60.6(a)(2)
6.3-A	
6.3-B	60.6(a)(5)
6.3-C	60.6(a)(6)

SECTION 1.0

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

1.1 STATUTORY AUTHORIZATION

In **{applicable State citation}**, the **{State Name}** State Legislature has delegated the responsibility to each community to adopt floodplain management regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the **{Governing Body}** of the **{Community Name}** does ordain as follows:

1.2 FINDINGS OF FACT

- A. The flood hazard areas of **{Community Name}** 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 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.

1.3 STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize 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; and streets and bridges located in flood hazard areas;
- F. 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;
- G. Notify potential buyers that the property is in a Special Flood Hazard Area
- H. Notify those who occupy flood hazard areas that they assume responsibility for their actions; and
- I. Participate in and maintain eligibility for flood insurance and disaster relief.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions to:

- A. Restrict or prohibit development which is dangerous to health, safety, and property due to water or

erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;

- B. Require that development vulnerable to floods, including facilities, 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 floodwaters;
- 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 floodwaters, or which may increase flood hazards in other areas.

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SECTION 2.0

DEFINITIONS

Definitions marked with an asterisk () are cited 44 CFR 59.1.*

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

***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.

***Area of special flood hazard.** The land in the floodplain within a community subject to a 1 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".

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

Base flood elevation (BFE). The elevation to which floodwater is anticipated to rise during the base flood.

***Basement.** Any area of the building having its floor sub-grade - i.e., below ground level - on all sides.

***Building.** See "Structure."

***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.

***Flood or Flooding.**

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) 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 (a)(1) of this definition.

***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.

***Flood Insurance Rate Map (FIRM).** The official map of a community, on which the Federal Insurance Administrator has delineated both the special 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).

***Flood Insurance Study (FIS).** See "Flood elevation study".

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

Floodplain administrator. The community official designated by title to administer and enforce the floodplain management regulations.

***Floodplain 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.

***Floodplain 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.

***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.

***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."

***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 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.

***Highest adjacent grade.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

***Historic structure.** Any structure that is:

1. 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;
2. 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;
3. 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
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior or

b. Directly by the Secretary of the Interior in states without approved programs.

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

***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."

***Manufactured Home Park or Subdivision.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

***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.

***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.

***One-hundred-year flood or 100-year flood.** See "Base flood."

***Recreational vehicle.** A vehicle which is:

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

***Regulatory floodway.** See “Floodway”.

***Sheet flow area.** See "Area of shallow flooding".

***Special Flood Hazard Area (SFHA).** See “Area of special flood hazard”.

***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.

***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.

***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:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. *Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."* **

***Variance.** A grant of relief by a community from the terms of a flood plain management regulation.

***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.

***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.

** Per FEMA P-467-2 (May 2008) *Floodplain Management Bulletin Historic Structures* and FEMA P-993 (July 2014) *Floodplain Management Bulletin Variances and the National Flood Insurance Program*, communities have the option of using either the Substantial Improvement Definition exclusion or the Variance criteria per 44CFR 60.6(a) to regulate Historic Structures.

SECTION 3.0

GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the boundaries of **{community name}**.

3.2 BASIS FOR ESTABLISHING SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report titled “The Flood Insurance Study (FIS) for **{exact title of study}**” dated **{date}**, with accompanying Flood Insurance Rate Maps (FIRMs) dated **{date}**, are hereby adopted by reference and declared to be a part of this ordinance. The FIS and FIRM panels are on file at **{list the address or the building, i.e. County Administration Building, Department of Planning, Public Works etc.}**.

3.3 COMPLIANCE

All development within special flood hazard areas is subject to the terms of this ordinance and other applicable regulations.

3.4 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.

3.5 INTERPRETATION

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

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

3.6 PENALTIES FOR NON-COMPLIANCE

Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall **{insert applicable penalty(ies) per State/local law}**. Nothing herein contained shall prevent the **{community name}** from taking such other lawful action as is necessary to prevent or remedy any violation.

3.7 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

{community name}, any officer or employee thereof, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

3.8 SEVERABILITY

This ordinance and the various parts thereof are hereby declared to be severable. Should any Section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

FEMA Model

SECTION 4.0

ADMINISTRATION

4.1 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The **{job title}** is hereby appointed to administer, implement and enforce this ordinance by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

4.2 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

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

4.2.1 PERMIT REVIEW

Review all development permits to determine that:

- A. The permit requirements of this ordinance have been satisfied;
- B. All other required state and federal permits have been obtained;
- C. The site is reasonably safe from flooding;
- D. In areas where a floodway has not been designated, require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE unless it is demonstrated 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 foot at any point within the community. **{Do not include item D if not applicable to community}**

4.2.2 USE OF OTHER BASE FLOOD DATA

When Base Flood Elevation data has not been provided in accordance with Section **3.2 {or the numbering system used by the community}**, 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 Section **5.0 {or the numbering system used by the community}**. Any such information shall be consistent with the requirements of the Federal Insurance Administrator.

4.2.3 OBTAIN AND MAINTAIN FOR PUBLIC INSPECTION

Obtain and maintain the following for public inspection and make available as needed:

- A. Certification required by Section **5.1.3.1** and Section **5.5 {or the numbering system used by the community}** (lowest floor elevations, bottom of the lowest horizontal structural member, and service facilities/mechanical equipment);
- B. Certification required by Section **5.1.3.2 {or the numbering system used by the community}** (lowest floor elevations or floodproofing of non-residential structures and service facilities/mechanical equipment);
- C. Certification required by Section **5.1.3.3 {or the numbering system used by the community}** (flood openings);

- D. Certification required by Section **5.7.A {or the numbering system used by the community}** (floodway encroachments);
- E. Records of all variance actions, including justification for their issuance;
- F. Improvement and damage calculations.

4.2.4 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.

4.2.5 REMEDIAL ACTIONS

Take actions on violations of this ordinance as required in Section **3.6 {or the numbering system used by the community}** herein.

4.3 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 **3.2 {or the numbering system used by the community}**. Application for a Development Permit may 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:

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 **5.1.3.2 {or the numbering system used by the community}**;

- 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.

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.

FEMA Model

SECTION 5.0

PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 STANDARDS OF CONSTRUCTION

In all special flood hazard areas, the following standards are required:

5.1.1 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 **5.5 {or the numbering system used by the community}**.

5.1.2 Construction Materials and Methods

- A. All new construction and substantial improvements shall be constructed with materials resistant to flood damage;
- B. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and
- C. 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.
- D. Within Zones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.

5.1.3 Elevation and Floodproofing

5.1.3.1 Residential Construction

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

Residential construction, new or substantial improvement, shall have the lowest floor, including basement, elevated to or above the Base Flood Elevation.

- A. 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 (2) feet above highest adjacent grade.
- B. 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 **4.2.2 {or the numbering system used by the community}**. A minimum of 2 feet above highest adjacent grade may result in a lower insurance premium.
- C. In Zones AE, A1-30, and AH, the Base Flood Elevation is determined from the FIS and/or FIRM.

- D. 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 **5.1.3.4 {or the numbering system used by the community}**.

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.

For V Zones (VE, V1-30 and V):

Residential construction, new or substantial improvement, shall:

- A. Be located landward of the reach of mean high tide;
- B. Have the bottom of the lowest structural member of the lowest floor (excluding pilings and columns), elevated to or above the Base Flood Elevation;
- C. 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;
- D. 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;
- E. Prohibit the use of fill for structural support of buildings; and
- F. Prohibit man-made alteration of sand dunes and mangrove stands.

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 Section.

Upon completion of construction, certification by a registered professional engineer or architect that these design standards have been satisfied, and certification by a registered professional engineer or surveyor that the elevation requirements of the bottom of the lowest structural member of the lowest floor, excluding pilings and columns, of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

5.1.3.2 Non-residential Construction

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

Non-residential construction, new or substantial improvement, shall have the lowest floor either elevated to conform with Section **5.1.3.1(A), (B), or (C) as appropriate {or the numbering**

system used by the community},

Or, together with attendant utility and sanitary facilities,

- A. Be floodproofed below the elevation recommended under Section **5.1.3.1(A), (B), or (C) as appropriate {or the numbering system used by the community}** 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.

A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice meeting the provisions listed above.

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.

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 Section **5.1.3.1 {or the numbering system used by the community}**.

5.1.3.3 Appurtenant Structures (Detached Garages & Storage Structures)

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

Appurtenant structures used solely for parking of vehicles or storage may be constructed such that the floor is below the Base Flood Elevation, provided the structure is designed and constructed in accordance with the following requirements:

- A. Use of the appurtenant structure must be limited to parking of vehicles or storage;
- B. The portions of the appurtenant structure located below the Base Flood Elevation must be built using flood resistant materials;
- C. The appurtenant structure must be adequately anchored to prevent flotation, collapse and lateral movement;
- D. Any machinery or equipment servicing the appurtenant structure must be elevated or floodproofed to or above the Base Flood Elevation;
- E. The appurtenant structure must comply with floodway encroachment provisions in Section **5.7 {or the numbering system used by the community}**; and

- F. The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with Section **5.1.3.4 {or the numbering system used by the community}**.

Detached garages, storage structures and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in Section **5.1.3.1(A), (B), or (C) as appropriate {or the numbering system used by the community}**.

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

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 Section **5.1.3.1 {or the numbering system used by the community}**.

5.1.3.4 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 non-engineered openings:

- A. 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;
- B. The bottom of all openings shall be no higher than one 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.

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

5.2 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

5.3 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.

5.4 DEVELOPMENT PROPOSALS

All new development proposals, including subdivisions and manufactured home parks, shall:

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

5.5 STANDARDS FOR MANUFACTURED HOMES

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

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.

- A. Manufactured homes that are placed or substantially improved within Zone AO shall meet the residential construction standards in A Zones in Section **5.1.3.1 {or the numbering system used by the community}**.
- B. Manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE 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,

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 floatation collapse and lateral movement.

- C. 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:
 - a. The lowest floor of the manufactured home is at or above the base flood elevation, or
 - b. 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.

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.

For V Zones (VE, V1-30 and V):

- A. 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 **5.1.3.1 {or the numbering system used by the community}**.

- B. 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 **5.1.3.1 {or the numbering system used by the community}**; **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.

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.

5.6 STANDARDS FOR RECREATIONAL VEHICLES

All recreational vehicles placed on site shall:

- A. Be on site for fewer than 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 **4.0 {or the numbering system used by the community}** of this ordinance and the applicable elevation and anchoring requirements for manufactured homes in Section **5.5 {or the numbering system used by the community}**.

5.7 FLOODWAYS

Located within the special flood hazard areas established in Section **3.2 {or the numbering system used by the community}** 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:

- A. 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;
- B. If Section **5.7 (A) {or the numbering system used by the community}** is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section **5.0 {or the numbering system used by the community}**.
- C. Encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that **{community name}** 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 Section **4.2.4.B {or the numbering system used by the community}**.

SECTION 6.0

VARIANCE PROCEDURE

6.1 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 **{governing body}** 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.

6.2 CONDITIONS FOR VARIANCES

A. 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 Section **2.0 {or the numbering system used by the community}** of this ordinance in the definition of "Functionally Dependent Use."

** Per FEMA P-467-2 (May 2008) *Floodplain Management Bulletin Historic Structures* and FEMA P-993 (July 2014) *Floodplain Management Bulletin Variances and the National Flood Insurance Program*, communities have the option of using either the Substantial Improvement Definition exclusion or the Variance criteria per 44CFR 60.6(a) to regulate Historic Structures.

- B. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
- C. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation, provided the procedures of Sections **4.0** and **5.0 {or the numbering system used by the community}** of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

6.3 VARIANCE CRITERIA

- A. In considering variance applications, the **{Governing Body}** shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, 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 floodplain management program for that area;
 - 9. The safety of access to the property in time 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 costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.
- B. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official 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 increases risks to life and property; and
- C. The Floodplain Administrator shall maintain a record of all variance actions, including justification

for their issuance.

FEMA Model

APPENDIX A

ADDITIONAL DEFINITIONS

Definitions marked with an asterisk () are cited 44 CFR 59.1.*

Appurtenant structure: 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.

Alluvial fan. A geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

***Apex.** A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

***Area of special flood-related erosion hazard.** The land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

***Area of special mudslide (i.e., mudflow) hazard.** The land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

***Breakaway wall.** A wall that 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.

***Coastal high hazard area.** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

***Community.** Any state or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

***Elevated Building.** For insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Elevation Certificate. An administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, 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).

***Erosion.** The process of the gradual wearing away of landmasses. This peril is not, per se, covered under the National Flood Insurance Program.

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

management regulations adopted by a community.

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

***Flood Hazard Boundary Map.** An official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A., M, and/or E.

***Flood-related erosion.** 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.

***Flood-related erosion area or flood-related erosion prone area.** A land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

Floodway fringe. The special flood hazard area outside the "Regulatory Floodway".

***Freeboard.** A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Hardship. As related to **Section 6.0 {or the numbering system used by the community}** of this ordinance, meaning the exceptional hardship that would result from a failure to grant the requested variance. The **{community governing body}** 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.

***Levee.** A man-made 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.

***Levee system.** A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

***Mudslide (i.e., mudflow).** Describes a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

***New manufactured home park or subdivision.** A manufactured home park or subdivision for which

the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

***Person.** Any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

***Primary Frontal Dune.** A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

***Program.** The National Flood Insurance Program authorized by 42 U.S.C. 4001 through 4128.

***Program deficiency.** A defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

Reasonably safe from flooding. Base flood waters will not inundate the land or damage and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

***Remedy a violation.** To bring the structure or other development into compliance with Federal, State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

***Riverine.** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

***Structure.** For insurance purposes:

- (1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
- (2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- (3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For insurance purposes, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

APPENDIX B

ADDITIONAL REGULATORY STANDARDS

Floodplain management criteria for areas of flood protection restoration (AR) (44 CFR 60.3(f)):

For Zones designated AR, AR/A1-30, AR/AE, AR/AH, AR/AO and AR/A, the community shall:

- A. Meet all the applicable requirements listed in Section **5.0 {or the numbering system used by the community}**;
- B. Adopt the official map or legal description in those areas that are designated developed areas in accordance with the eligibility procedures under 44CFR 65.14
- C. For all new construction of structures in areas within Zone AR that are designated as developed areas and in other areas within Zone AR where the AR flood depth is 5 feet or less:
 - a. Determine the lower of either the AR base flood elevation or the elevation that is 3 feet above highest adjacent grade; and
 - b. Using this elevation, require the standards of **5.0 {or the numbering system used by the community}**.
- D. For all new construction of structures in those areas within Zone AR that are not designated as developed areas where the AR flood depth is greater than 5 feet:
 - a. Determine the AR base flood elevation; and
 - b. Using that elevation require the standards of Section **5.0 {or the numbering system used by the community}**.
- E. For all new construction of structures in areas within Zone AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:
 - a. Determine the applicable elevation for Zone AR from items **C or D (above) { or the numbering system used by the community}**;
 - b. Determine the base flood elevation or flood depth for the underlying A1-30, AE, AH, AO and A Zone; and
 - c. Using the higher elevation from **E(a) or (b) {or the numbering system used by the community}**, require the standards of **5.0 {or the numbering system used by the community}**.
- F. For all substantial improvements to existing construction within Zones AR/A1-30, AR/AE, AR/AH, AR/AO, and AR/A:
 - a. Determine the A1-30 or AE, AH, AO, or A Zone base flood elevation; and
 - b. Using this elevation apply the requirements of **5.0 {or the numbering system used by the community}**.
- G. Notify the permit applicant that the area has been designated as an AR, AR/A1-30, AR/AE, AR/AH, AR/AO, or AR/A Zone and whether the structure will be elevated or protected to or above the AR base flood elevation.

Per 44 CFR 60.22: Planning considerations for flood-prone areas (these are not mandatory):

- A. The flood plain management regulations adopted by a community for **flood-prone areas** should:
 - a. Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;
 - b. Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

- B. In formulating community development goals after the occurrence of a flood disaster, each community shall consider—
 - a. Preservation of the flood-prone areas for open space purposes;
 - b. Relocation of occupants away from flood-prone areas;
 - c. Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;
 - d. Acquisition of frequently flood-damaged structures;

- C. In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—
 - a. Human safety;
 - b. Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;
 - c. Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;
 - d. Adverse effects of flood plain development on existing development;
 - e. Encouragement of floodproofing to reduce flood damage;
 - f. Flood warning and emergency preparedness plans;
 - g. Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;
 - h. Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;
 - i. Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;
 - j. Coordination of plans with neighboring community's flood plain management programs;
 - k. The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten-year period;
 - l. For riverine areas, requiring subdividers to furnish delineations for floodways before approving a subdivision;
 - m. Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;
 - n. Requirement of setbacks for new construction within Zones V1-30, VE, and V on a

- community's FIRM;
- o. Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones A1-30, AE, V1-30, and VE on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;
 - p. Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;
 - q. Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;
 - r. Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured;
 - s. Requirement that a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas be developed and filed with and approved by appropriate community emergency management authorities.

FEMA Model

Floodplain management criteria for mudslide (i.e., mudflow)-prone areas (44 CFR 60.4):

The Federal Insurance Administrator will provide the data upon which flood plain management regulations shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Federal Insurance Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Federal Insurance Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in 44 CFR 64.3. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

When the Federal Insurance Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

- A. Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;
- B. Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;
- C. Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

When the Federal Insurance Administrator has delineated Zone M on the community's FIRM, the community shall:

- A. Meet the requirements listed above; and;
- B. Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Federal Insurance Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, sub-drains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports.

Per 44 CFR 60.23: Planning considerations for mudslide (i.e., mudflow)-prone areas (these are not mandatory):

The planning process for communities identified under part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to §59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

- A. The existence and extent of the hazard;
- B. The potential effects of inappropriate hillside development, including:
 - a. Loss of life and personal injuries, and
 - b. Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;
- C. The means of avoiding the hazard including the (i) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (ii) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, and (iii) advisability of preserving mudslide (i.e., mudflow) areas as open space;
- D. The means of adjusting to the hazard, including the (i) establishment by ordinance of site exploration, investigation, design, grading, construction, filing, compacting, foundation, sewerage, drainage, sub-drainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (ii) provision for proper drainage and sub-drainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;
- E. Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;
- F. Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;
- G. Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and
- H. Provision for emergencies, including:
 - a. Warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow),
 - b. Enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow),
 - c. Fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides,
 - d. Provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems,
 - e. Similar provisions for sewers which in the event of rupture pose both health and site stability hazards, and
 - f. Provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);
- I. The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;
- J. Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

Flood plain management criteria for flood-related erosion-prone areas (44 CFR 60.5):

The Federal Insurance Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Federal Insurance Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Federal Insurance Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Federal Insurance Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in §64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Federal Insurance Administrator. Minimum standards for communities are as follows:

When the Federal Insurance Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

- A. Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;
- B. Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and
- C. If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

When the Federal Insurance Administrator has delineated Zone E on the community's FIRM, the community shall:

- A. Meet the requirements listed above; and
- B. Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Federal Insurance Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

Per 44 CFR 60.24: Planning considerations for flood-related erosion-prone areas (these are not mandatory):

The planning process for communities identified under part 65 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to §59.22 of this subchapter that they have flood-related erosion areas should include;

- A. The importance of directing future developments to areas not exposed to flood-related erosion;
- B. The possibility of reserving flood-related erosion-prone areas for open space purposes;
- C. The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;
- D. Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;
- E. Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

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Chapter 15.04 FLOODPLAIN REGULATIONS

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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](#) 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 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.](#) 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.

[STATEMENT OF PURPOSE](#)

The purpose of this chapter is to promote the public health, safety and general welfare and to minimize [public and private losses due to flooding in flood hazard areas by provisions designed to:](#)

[A. Protect human life and health;](#)

[B. Minimize 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; and streets and bridges located in flood hazard areas;](#)

[F. 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;](#)

[G. Notify potential buyers that the property is in a Special Flood Hazard Area](#)

H. Notify those who occupy flood hazard areas that they assume responsibility for their actions; and

I. Participate in and maintain eligibility for flood insurance and disaster relief.

METHODS OF REDUCING FLOOD LOSSES In order to accomplish its purposes, this ordinance includes methods and provisions to:

1. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
2. Require that development vulnerable to floods, including facilities, be protected against flood damages at the time of initial construction;
3. Restrict or prohibit development which is dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocity;
4. Control filling, grading, dredging, and other development which may increase flood damage; and;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

15.04.020 Definitions. 

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

Definitions marked with an asterisk (*) are cited 44 CFR 59.1.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

***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.

***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".

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

Base flood elevation (BFE). The elevation to which floodwater is anticipated to rise during the base flood.

***Basement.** Any area of the building having its floor sub-grade – i.e., below ground level – on all sides.

***Building.** See "Structure."

***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. **Federal Insurance Administration (FIA).** The FIA of the Federal Emergency Management Agency (FEMA) is responsible for administration of the National Flood Insurance Program.

Fill. Nonload bearing material susceptible to wash or erosion such as dredge spoils, debris, sand or dirt.

***Flood or Flooding.**

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

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(c) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) 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.

2. 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.

***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.

“Flood Insurance Rate Map” (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).

Flood Insurance Study (FIS). See “Flood elevation study”.

Floodplain or flood-prone area. Any land area susceptible to being inundated by water from any source. See “Flood or flooding.”

Floodplain administrator. The community official designated by title to administer and enforce the floodplain management regulations.

***Floodplain 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.

***Floodplain 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.

***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.

***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.”**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](#) does not include long-term storage [or related manufacturing](#) facilities.

***Highest adjacent grade.** [The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.](#)

***Historic structure.** [Any structure that is:](#)

- [1. 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;](#)
- [2. 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;](#)
- [3. 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](#)
- [4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - \[a. By an approved state program as determined by the Secretary of the Interior or\]\(#\)
 - \[b. Directly by the Secretary of the Interior in states without approved programs.\]\(#\)](#)

***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.](#)

***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."](#)

***Manufactured Home Park or Subdivision.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

***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.

***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.

***One-hundred-year flood or 100-year flood.** See "Base flood."

***Recreational vehicle.** A vehicle which is:

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

***Regulatory floodway.** See "Floodway".

***Sheet flow area.** See "Area of shallow flooding".

***Special Flood Hazard Area (SFHA).** See "Area of special flood hazard".

***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.

*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:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." **

"Variances" are grants of relief from the requirements of this chapter which permit construction in a manner that would otherwise be prohibited by this chapter. (Ord. 75-2 § 7, 1975; Ord. 82-6 § 1, 1982; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 15-10 § 1, 2015.)

*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.

*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.

** Per FEMA P-467-2 (May 2008) *Floodplain Management Bulletin Historic Structures* and FEMA P-993 (July 2014) *Floodplain Management Bulletin Variances and the National Flood Insurance Program.*

[communities have the option of using either the Substantial Improvement Definition exclusion or the Variance criteria per 44CFR 60.6\(a\) to regulate Historic Structures.](#)

15.04.030 Floodplain permit—Required. 

No party shall make any changes to improved or unimproved real estate, including mine, dredge, fill, grade, pave, excavate, construct, construct an addition to, substantially improve or relocate a structure within areas of the city within a special flood hazard area without first securing from the city planning department, a floodplain permit for each structure. It is not the intent of this chapter to require a floodplain permit outside of flood hazard areas. (Ord. 75-2 § 2, 1975; Ord. 82-6 § 2, 1982; Ord. 86-13 § 1, 1986; Ord. 92-21 § 2 (part), 1992; Ord. 15-10 § 2, 2015.)

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 in a scientific and engineering report titled, "The Flood Insurance Study (FIS) for the City of Dillingham, Alaska," dated September 30, 1982, with accompanying [Flood Insurance Rate Maps \(FIRMs\)](#), are hereby adopted by reference and declared to be a part of this chapter. The [FIS and FIRM panels](#) are on file at City Hall.
- C. **[COMPLIANCE.](#)** [All development within special flood hazard areas is subject to](#) 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. (Ord. 87-04 § 1, 1987; Ord. 92-21 § 2 (part), 1992; Ord. 15-10 § 3, 2015.)

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.

G. SEVERABILITY. This ordinance and the various parts thereof are hereby declared to be severable. Should any Section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

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 3.2 for the numbering system used by the community. 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. Specifically, the following information is required:

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):

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- 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 5.1.3.2 (for the numbering system used by the community);**
 - 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.
- A. 4. For V Zones (VE, V1-30 and V): 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. (Ord. 75-2 (part), 1985; Ord. 82-6 § 3, 1982; Ord. 86-13 § 1, 1986; Ord 92-21 § 2 (part), 1992; Ord. 15-10 §§ 4, 5, 2015.)

Deleted: Information which demonstrates that the structure will be adequately protected against flood damage and that the structure or site preparation will not adversely affect flood elevations or velocities. The required protective measures are set forth in Section [15.04.050](#)

15.04.041 Floodplain permit—Administration. 

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

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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 the following for public inspection and make available as needed:

1. Certification required by Section 5.1.3.1 and Section 5.5 {or the numbering system used by the community} (lowest floor elevations, bottom of the lowest horizontal structural member, and service facilities/mechanical equipment);
2. Certification required by Section 5.1.3.2 {or the numbering system used by the community} (lowest floor elevations or floodproofing of non-residential structures and service facilities/mechanical equipment);

3. Certification required by Section 5.1.3.3 {or the numbering system used by the community} (flood openings);

4. Certification required by Section 5.7.A {or the numbering system used by the community} (floodway encroachments);

5. Records of all variance actions, including justification for their issuance;

6. 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 **Section 3.6 {or the numbering system used by the community}** herein.

5. 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](#). (Ord. 87-04 § 1, 1987; Ord. 92-21 § 2 (part), 1992.)

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15.04.050 Floodplain Development permit— PROVISIONS FOR FLOOD HAZARD REDUCTION,

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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 5.5 \(or the numbering system used by the community\)](#).

2. Construction Materials and Methods

A. All new construction and substantial improvements shall be constructed with materials resistant to flood damage;.

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

C. 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.

D. Within Zones 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

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

Residential construction, new or substantial improvement, shall have the lowest floor, including basement, elevated to or above the Base Flood Elevation.

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 (2) 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 out in Section 4.2.2 **{or the numbering system used by the community}**. 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 5.1.3.4 **{or the numbering system used by the community}**.

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.

For V Zones (VE, V1-30 and V):

Residential construction, new or substantial improvement, shall:

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.

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 Section.

Upon completion of construction, certification by a registered professional engineer or architect that these design standards have been satisfied, and certification by a registered professional engineer or surveyor that the elevation requirements of the bottom of the lowest structural member of the lowest floor, excluding pilings and columns, of this section have been satisfied shall be provided to the Floodplain Administrator for verification.

2. Non-residential Construction

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

Non-residential construction, new or substantial improvement, shall have the lowest floor either elevated to conform **with Section 5.1.3.1(A), (B), or (C) as appropriate (or the numbering system used by the community)**,

Or, together with attendant utility and sanitary facilities,

1. Be floodproofed below the elevation recommended under **Section 5.1.3.1(A), (B), or (C) as appropriate (or the numbering system used by the community)** so that

the structure is watertight with walls substantially impermeable to the passage of water; and

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice meeting the provisions listed above.

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.

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 Section 5.1.3.1 (or the numbering system used by the community).

3. Appurtenant Structures (Detached Garages & Storage Structures)

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

Appurtenant structures used solely for parking of vehicles or storage may be constructed such that 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 Section 5.7 (or the numbering system used by the community); and
6. The appurtenant structure must be designed to allow for the automatic entry and exit of flood waters in accordance with Section 5.1.3.4 (or the numbering system used by the community).

Detached garages, storage structures and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 5.1.3.1(A), (B), or (C) as appropriate (or the numbering system used by the community).

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

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 Section 5.1.3.1 (or the numbering system used by the community).

4. 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 non-engineered openings:

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;
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.

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

5. 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

6. 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.

7. DEVELOPMENT PROPOSALS.

All new development proposals, including subdivisions and manufactured home parks, shall:

A. Be consistent with the need to minimize flood damage;

B. Have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage; and

C. Provide adequate drainage to reduce exposure to flood hazards.

D. Include Base Flood Elevation data for all proposals of 50 lots or 5 acres, whichever is the lesser.

8. STANDARDS FOR MANUFACTURED HOMES.

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

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.

A. Manufactured homes that are placed or substantially improved within Zone AO shall meet the residential construction standards in A Zones in **Section 5.1.3.1 (or the numbering system used by the community).**

B. Manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites:

1. Outside of a manufactured home park or subdivision,
2. In a new manufactured home park or subdivision,
3. In an expansion to an existing manufactured home park or subdivision, or
4. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,

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.

C. 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:

1. The lowest floor of the manufactured home is at or above the base flood elevation, or
2. The manufactured home chassis is supported by reinforced piers or other foundation elements 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 flotation, collapse, and lateral movement.

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.

For V Zones (VE, V1-30 and V):

A. Manufactured homes placed or substantially improved within Zones V1-30, V, and VE on the community's FIRM on sites:

1. Outside of a manufactured home park or subdivision,

2. In a new manufactured home park or subdivision,
3. In an expansion to an existing manufactured home park or subdivision, or
4. 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 5.1.3.1 (or the numbering system used by the community).**

B. 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:

1. Meet the standards of residential construction in V Zones in **Section 5.1.3.1 (or the numbering system used by the community); and**
2. Be elevated so that either:
 - a. The lowest floor of the manufactured home is at or above the base flood elevation, or
 - b. 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.

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.

9. STANDARDS FOR RECREATIONAL VEHICLES

All recreational vehicles placed on site shall:

- A. Be on site for fewer than 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

Meet the permit requirements of **Section 4.0 (or the numbering system used by the community)** of this ordinance and the applicable elevation and anchoring requirements for manufactured homes in **Section 5.5 (or the numbering system used by the community).**

10. FLOODWAYS

Located within the special flood hazard areas established in Section 3.2 (for the numbering system used by the community) 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:

- A. 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;
- B. If Section 5.7 (A) (for the numbering system used by the community) is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Section 5.0 (for the numbering system used by the community).
- C. 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 Section 4.2.4.B (for the numbering system used by the community).

B. Flood Protection Requirements

Within flood hazard areas no permit shall be approved by the planning director unless all of the following requirements are satisfied:

1. Construction or substantial improvement shall not be permitted unless the applicant demonstrates that any associated new or replacement water supply system and sanitary sewage system, including on-site systems, will be designed and constructed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

2. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

A. In determining if the requirements of this section have been fulfilled, the intent of this chapter and at least the following items shall be considered:

Commented [CR1]: These requirements seem duplicative in some places and/or more stringent than the FEMA requirement. They should be evaluated.

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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 or 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. (Ord. 75-2 § 4, 1975; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 92-21 § 2 (part), 1992.)

15.04.055 Functionally dependent uses. 

A. The [Floodplain Administrator](#) 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 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;

Commented [CR2]: Functionally dependent uses is one of the allowable reasons for a variance. Keeping this section essentially delegates authority to the Floodplain Administrator to grant a permit in those cases, rather than coming before the Planning Commission in the usual way for a variance.

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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 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. (Ord. 15-10 § 6, 2015.)

15.04.060 Subdivision and utility regulations.

A. The city shall deny permission to subdivide or develop land within flood hazard areas unless the following requirements have been fulfilled:

1. The land subdivision and development are consistent with the need to minimize flood damages;

2. All public utilities and facilities such as sewer, gas, electrical and water systems shall be located, elevated or constructed to minimize or eliminate flood damage;

3. Adequate drainage shall be provided to reduce the exposure of structures, utilities and facilities to flood hazards;

4. The preliminary and final plat shall include the ground elevation at convenient reference points and as approved by the planning director.

B. All new or replacement water supply systems and sanitary sewage systems, including on-site systems, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

C. All new or replacement public utilities such as gas, electric and telephone systems shall be designed or constructed to eliminate disruptions due to flooding and associated hazards.

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D. In determining if the requirements of this section are fulfilled, the city shall consider the intent of this chapter and at least:

1. The danger to life and property due to the increased flood heights or velocities caused by subdivision fill, roads and intended uses;

2. The danger that intended uses may be swept onto other lands or downstream to the injury of others;

3. The adequacy of proposed water supply systems and the ability of these systems to prevent disease, contamination and unsanitary conditions under flood conditions;

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

5. The importance of the services provided by the proposed facility to the community;

6. The requirements of the subdivision for a waterfront location;

7. The availability of alternative locations not subject to flooding for the proposed subdivision and land uses;

8. The compatibility of the proposed uses with existing development and development anticipated in the foreseeable future;

9. The relationship of the proposed subdivision to the comprehensive plan and floodplain management program for the area;

10. The safety of access to the property for emergency vehicles in times of flood;

11. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site;

12. 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;

13. The installation of valves or controls on sanitary and storm drains which permit the drains to be closed to prevent backup of sewage and stormwaters into buildings or structures. (Ord. 75-2 § 5, 1975; Ord. 86-13 § 1, 1986.)

15.04.065 Flood-related erosion hazard areas. [SHARE](#)

A. In floodprone areas not covered by the Dillingham flood insurance study and maps, all structures shall be set back from the tidal waterfront sufficiently to avoid possible damage from wave runoff flooding; to protect shoreline resources from unnecessary degradation, and maintain public access and scenic values. All new or expanded shoreline development which does not require a water edge or water surface location shall be set back twenty-five feet from the ordinary high water mark; provided, that on erosional or otherwise geologically unstable bluffs or banks exceeding ten feet in height or on banks sloping more than thirty percent, any setback shall be measured from bank rim to top of such slope respectively. These setbacks apply to primary structures and accessory buildings. These setbacks do not apply to shoreline-dependent development that requires an over-water or water-edge location (e.g., seafood processing) or to outdoor decks or patios. Water-dependent structures that require an over-water or water-edge location shall be elevated at least two feet above the ordinary high tide or at or above base flood elevation, whichever is the higher.

B. Shoreline setbacks may be altered by the planning commission if site-specific conditions (e.g., topography) make the setback impracticable. (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986; Ord. 15-10 § 11, 2015).

15.04.070 Existing structures. [SHARE](#)

Nothing in this chapter shall be construed as applying to any structures existing prior to the effective date of the ordinance codified in this chapter unless they are substantially improved or relocated after the effective date of the ordinance codified in this section, or September 30, 1982, the effective date of the flood insurance rate maps. (Ord. 82-6 § 5, 1982; Ord. 75-2 § 6, 1975; Ord. 86-13 § 1, 1986.)

15.04.075 Authority to enter contracts. [SHARE](#)

The city is authorized to enter into contracts and agreements with other government entities for the purpose of implementing the provisions of this chapter. (Ord. 75-2 § 6(c), 1975; Ord. 86-13 § 1, 1986.)

15.04.080 Conflicting provisions. [SHARE](#)

Permits issued pursuant to this chapter shall conform to all ordinances or regulations as are from time to time established or amended; however, this chapter shall control in the event of any conflict unless specifically stated otherwise or unless the conflicting ordinance is more restrictive. (Ord. 75-2 § 6(a), 1985; Ord. 86-13 § 1, 1986.)

15.04.090 Warning and disclaimer of liability. [SHARE](#)

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 may occur on rare occasions and

Deleted: 15.04.061 Residential structures.

[SHARE](#)

The lowest floor of new construction or substantial improvement shall be located at or above the base flood elevation. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.04.050(A)(2). (Ord. 94-01, 1994; Ord. 15-10 § 7, 2015.)

15.04.062 Nonresidential structures. [SHARE](#)

A. The lowest floor of new construction or substantial improvement shall be located at or above the one-hundred-year flood level or dry-floodproofed to that level.

B. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and shall be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.04.050(A)(2). (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 15-10 § 8, 2015.)

15.04.063 Floodproofing. [SHARE](#)

Where floodproofing is utilized for a particular structure either:

A. A registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood, and a record of such certificates indicating the specified elevation to which such structures are floodproofed shall be maintained by the community; or

B. A certified copy of a local regulation containing detailed floodproofing specifications which incorporate standard, accepted watertight performance standards shall be submitted to the Federal Emergency Management Agency (FEMA) for approval. (Ord. 82-6 § 4 (part), 1982; Ord. 86-13 § 1, 1986.)

15.04.064 Coastal high hazard areas. [SHARE](#)

A. Within coastal high hazard areas (V zones) the city shall:

1. Require that all new construction other than functionally dependent uses within zones V1-V30 on the FIRM be located landward of the reach of mean high tide;

2. Provide, that all new construction and substantial improvements within zones V1-V30 on the FIRM are elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;

3. It shall be the responsibility of the applicant that a registered professional engineer or architect certify that the structure is securely anchored to adequately

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 city, any officer or employee thereof or the Federal Insurance Administration for any flood damages that may result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 86-13 § 1, 1986.)

15.04.100 NATURE OF VARIANCES. SHARE

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.

CONDITIONS FOR VARIANCES.

A. 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 Section 2.0 {or the numbering system used by the community} of this ordinance in the definition of "Functionally Dependent Use."

** Per FEMA P-467-2 (May 2008) *Floodplain Management Bulletin Historic Structures* and FEMA P-993 (July 2014) *Floodplain Management Bulletin Variances and the National Flood Insurance Program*, communities have the option of using either the Substantial Improvement Definition exclusion or the Variance criteria per 44CFR 60.6(a) to regulate Historic Structures.

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

C. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation, provided the procedures of Sections 4.0 and 5.0 {or the numbering system used by the community} of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

VARIANCE CRITERIA

A. In considering variance applications, the {Governing Body} shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, 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 floodplain management program for that area;
9. The safety of access to the property in time 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 costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.

D. Upon consideration of the factors of subsection C of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

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 increases risks to life and property; and

G. The Floodplain Administrator shall:

1. Maintain a record of all variance actions, including justification for their issuance; (Ord. 82-6 § 6, 1982; Ord. 86-13 § 1, 1986; Ord. 87-04 § 1, 1987; Ord. 15-10 § 12, 2015.)

Commented [CR4]: I recommend removal, as this is covered under Variance Criteria.

15.04.110 Appeals. 

Appeals of decisions by the planning director or planning commission alleging errors in any requirement, decision or determination made in the enforcement or administration of the floodplain regulations shall be heard by the board of adjustment pursuant to the procedures established at Chapter [18.56](#). (Ord. 86-13 § 1, 1986; Ord. 92-21 § 2 (part), 1992.)

15.04.120 Violation—Enforcement. 

The planning director will administer and enforce this chapter, unless otherwise designated under Section [15.04.041](#)(B). The planning director or designee may order the discontinuance of unlawful uses of land, buildings or structures; the removal or abatement of unlawful buildings or structures or any unlawful additions or alterations thereto; the discontinuation of construction or preparatory activity leading to an unlawful structure or use of land; or any other action necessary to ensure compliance with this chapter. City police officers are also authorized to issue citations to any person who violates any provision of this chapter. (Ord. 92-21 § 2 (part), 1992; Ord. 13-19 § 20, 2013.)

15.04.125 Violation—Penalties and remedies. 

A. Violation. A violation of provisions of this chapter shall be an infraction. Upon conviction, the court shall levy a fine of three hundred dollars for each day the violation exists up to a maximum fine of one thousand dollars and assess any surcharge required to be imposed under AS [12.55.039](#). Each day that an unlawful act or condition continues constitutes a separate violation.

B. Remedies.

1. In case any structure is constructed or substantially improved in violation of this chapter, the city, in addition to other remedies, shall institute any proper actions or proceedings necessary, including enjoining of connections to public utilities, to restrain, correct or abate such violations.
2. Pursuant to AS [29.40.190](#), the city or an aggrieved person may institute a civil action against a person who violates a provision of this chapter, or a term, condition or limitation imposed by the planning commission. (Ord. 75-2 § 6(b), 1975; Ord. 86-13 § 1, 1986; Ord. 92-21 § 2 (part), 1992; Ord. 99-04 § 18, 1999; Ord. 13-19 § 21, 2013.)

[Evaluate the addition of Appendix A, Additional Definitions](#)

[Evaluate the addition of Appendix B, Additional Regulatory Standards](#)

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Chapter 4.30

CONTRACT AND PURCHASE PROCEDURES

Sections:

- 4.30.010 Authority.
- 4.30.020 Procedures, generally.
- 4.30.030 Definitions.
- 4.30.040 Limitations on contractual power.
- 4.30.050 Purchase orders.
- 4.30.060 Contracts/purchases of under one thousand dollars.
- 4.30.070 Contracts/purchases of one thousand dollars to five thousand dollars.
- 4.30.080 Contracts/purchases of five thousand dollars to twenty thousand dollars.
- 4.30.090 Contracts/purchases of twenty thousand dollars or more.
- 4.30.100 Competitive sealed bid or proposal procedure.
- 4.30.110 Contract clauses.
- 4.30.120 Negotiation for professional services.
- 4.30.130 Exemptions.

4.30.010 Authority.

In compliance with the provisions of this section, the city manager, or his/her designee, shall provide for the:

- A. Contract for purchase, or issue of purchase authorizations for all supplies, materials, equipment and services for the city;
- B. Sale of surplus, obsolete or unusable personal property of the city;
- C. Transfer of supplies, materials or equipment to or between the various offices, departments or agencies of the city; and
- D. Contract for the construction, repair or improvement of city facilities. (Ord. 86-10 § 1, 1986.)

4.30.020 Procedures, generally.

- A. Every undertaking of the city involving the expenditure of city money shall be in writing in the form of a purchase order, credit card, travel voucher or of a contract, as may be appropriate, and no officer or employee of the city shall have authority to enter into any oral agreement involving the expenditure of money. The city manager and city clerk shall sign all contracts on behalf of the city, and the city manager and the treasurer shall sign all purchase orders.
- B. The city manager shall establish procedures for emergency purchases and may provide for a petty cash fund and purchases.
- C. The treasurer shall examine all payrolls, bills, claims and other demands of the city, and shall issue no warrant for payment unless the claim is in proper form, correctly computed and approved, and is legally due and payable and appropriation has been made thereof which has not been exhausted and unless there is sufficient money in the city treasury to make payment.
- D. The city shall not contract for purchase, or issue purchase authorization for any supplies, materials, equipment or services for the city, or contract for the construction, repair or improvement of city facilities with any person and/or business on the delinquent list maintained by the Port of Dillingham pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff No. 400 or on the denied services list maintained by the city pursuant to Section 4.40.010.
- E. The city shall not sell surplus, obsolete or unusable personal property of the city or personal property seized by the city for payment of debts owed to the city to any person and/or business on the delinquent list maintained by the Port of Dillingham pursuant to Rule 34.1 of the Port of Dillingham Terminal Tariff No. 400, or on the denied

services list maintained by the city pursuant to Section 4.40.010. (Ord. 86-10 § 1, 1986; Ord. 99-9 § 1, 1999; Ord. 13-10 § 5, 2013.)

4.30.030 Definitions.

Whenever the following words or terms are used in this section, they shall be construed as follows unless the context clearly indicates otherwise:

A. **Lowest Responsible Bidder.** The successful low bidder shall possess financial ability to complete the contract; integrity, trustworthiness, skill, judgment and ability to perform faithful and conscientious work; experience and necessary facilities and equipment for doing the work, together with other essential factors. The qualifications of the bidder may be determined by but are not limited to the following criteria:

1. Bidder is a manufacturer or regular dealer;
2. Bidder is a bona fide manufacturer's agent or regularly employed on a salary or commission basis by one or more manufacturers of supplies or services being procured;
3. Bidder is a producer of the items under consideration;
4. Bidder is considered responsible and qualified because of:
 - a. Demonstrated judgment and integrity;
 - b. Experience rating on the basis of prior work or activity of a similar nature.

B. **Public Improvement.** For the purpose of competitive bidding, means and includes the erection, building, construction, placement, creation and expansion of an improvement to land.

C. **Public Necessity.** An urgent public need that could not have been anticipated or foreseen; the term also includes emergency situations when work is necessary to protect life or property.

D. **Professional Services.** Professional technical or consultant's services that are predominantly intellectual in character and that includes:

1. Analysis, evaluation, prediction, planning or recommendations;
2. Results in the production of a report or the completion of a task.¹

E. **Services.** Means and includes labor, professional services and consulting services.

F. **Supplies.** Means and includes all supplies, materials and equipment.

G. **Used Equipment.** Machinery and vehicles which have been in the active service of the proposed seller for a period of not less than six months preceding its purchase by the city. (Ord. 86-10 § 1, 1986; Ord. 15-16 § 2 (part), 2015.)

4.30.040 Limitations on contractual power.

A. Any contract, other than a franchise, which will not be fully executed within a period of five years, shall first receive the approval of a majority of the qualified electors of the city who vote thereon. This restriction shall not apply to contracts involving real property, contracts for services with a public utility or with other governmental units, nor to contracts for debt secured by the bonds or notes of the city.

B. Where a contract may require payment of funds from appropriations of a later fiscal year, or more than one fiscal year not appropriated in an ordinance appropriating the proceeds of a bond sale, the contract must be approved by the city council, by ordinance; provided, however, that the city council may by majority vote, enter into contracts for professional services to assist it in the performance of its legislative duties, and provided further, that such contracts do not require the payment of funds from the appropriations of a later fiscal year.

C. Professional service contracts shall not have a term which is in excess of two years. (Ord. 86-10 § 1, 1986.)

4.30.050 Purchase orders.

A. The city manager is responsible for the establishment of a purchasing system under which all merchandise, supplies and services will be purchased for the city, except for the school district.

B. Purchase orders shall be issued upon requisitions signed by the head of the division requesting the purchase. All requisitions shall be filed with the purchasing agent and no purchase shall be made until an order has been obtained from him/her.

C. In the absence of the city manager, a person designated in writing by him/her, is hereby authorized to sign purchase orders for supplies which do not exceed five hundred dollars in value, in conformance with control procedures to be established by the city manager for that purpose. (Ord. 86-10 § 1, 1986.)

4.30.060 Contracts/purchases of under one thousand dollars.

Unless otherwise required by law, contracts and purchases estimated by the city manager to be not in excess of one thousand dollars may be made on the open market without competitive bidding or quotations. (Ord. 86-10 § 1, 1986.)

4.30.070 Contracts/purchases of one thousand dollars to five thousand dollars.

Unless otherwise required by law, contracts and purchases estimated by the city manager in writing to be between one thousand and five thousand dollars may be made in the open market without competitive sealed bid or public notice; however whenever possible the city manager shall obtain at least three price quotes and shall award the contract purchase to the lowest responsible bidder. The city manager shall maintain a written record of the price quotations requested and received. (Ord. 86-10 § 1, 1986.)

4.30.080 Contracts/purchases of five thousand dollars to twenty thousand dollars.

Unless otherwise required by law, contracts and purchases estimated by the city manager in writing to be between five thousand and twenty thousand dollars may be made in the open market without competitive sealed bid or public notice, subject to the following:

A. Quotations and Award. Such open market contracts and purchases, whenever possible and practicable, shall be based upon at least three competitive written quotations from interested bidders and shall be awarded to the lowest qualified and responsible bidder.

B. Interested Bidder's List. The city manager shall create and maintain a list of interested bidders, which list shall contain the names of suppliers who have declared their interest in being solicited for quotations on specific classes of supplies or services. Names of suppliers who have become inactive in submitting quotations may be removed from the list.

C. Written Quotations. Written quotations may be solicited by telephone, in person or in writing from bidders in the interested bidders list and from others known to be interested in submitting quotations. All quotations shall be submitted in writing and a detailed record shall be made of the quotations received. The city manager may consider the prices in published mail order catalogs as written quotations.

D. City Council Approval. The city manager shall review all quotations and award the contract or purchase in writing. The city manager shall notify the city council of the award of such contract or purchase at the next regular city council meeting.

E. Records. The city manager shall keep a written record of all such open market contracts and purchases and the quotations submitted in competition thereon. Such records shall be open to public inspection during regular business hours. Records of such open market purchases may be disposed of two years following the action. (Ord. 86-10 § 1, 1986; Ord. 96-20 § 1, 1997; Ord. 15-16 § 2 (part), 2015.)

4.30.090 Contracts/purchases of twenty thousand dollars or more.

A. Unless exempt under the provisions of Section 4.30.130, contracts for and purchases of supplies estimated by the city manager in writing to exceed twenty thousand dollars shall be made by competitive sealed bid.

B. Unless exempt under the provisions of Section 4.30.130, contracts for professional services estimated by the city manager in writing to exceed twenty thousand dollars shall be made by competitive sealed proposal.

C. The city manager may provide for a process whereby interested bidders/proposers submit statements of qualifications. From these statements, the manager shall determine those who appear to satisfy the “responsible bidder” criteria as set forth at Section 4.30.030(A) and may limit the submittal of bids and proposals pursuant to Section 4.30.100 to only those parties. (Ord. 86-10 § 1, 1986.)

4.30.100 Competitive sealed bid or proposal procedure.

A. Publication. Sealed bids or proposals shall be solicited by publication in a newspaper or newspapers reasonably calculated to reach prospective bidders. Such publication shall contain at least a general description of the supplies or services required and shall designate the place where detailed information may be obtained, the time and place for submittal of the bids and the time and place for opening said bids. The bids shall be opened publicly. Such publication shall be made twice, with at least one week, but not more than two weeks, intervening between publications, and there shall be sufficient time between the date of last publication and the bid opening for preparation of bids, which time shall not be less than two weeks, unless the city manager finds that an emergency exists. The manager may also solicit bids by sending notice by mail to any active prospective bidders known to him.

B. Bid Security.²

1. All bids shall be accompanied by cash, a certificate of deposit, certified check or draft, or a cashier’s check or a draft on some responsible bank of the U.S. in favor of and payable on demand to the city, in an amount not less than five percent of the aggregate amount of the bid, or a surety bond in said amount satisfactory to the city attorney and furnished by a corporate surety authorized to do business in the State of Alaska, guaranteeing that the bidder will enter into the contract and file the required bonds, insurance policies and other required documents within the terms required by the bid and contract documents.

2. The city shall determine whether the contractor shall file performance and payment bonds pursuant to AS 36.25.010 or whether it is in the public interest for the city to exercise the waiver provisions as set forth at AS 36.25.025.

If the bidder to whom the contract is awarded shall for fifteen days after such award, fail or neglect to enter into a contract, the city clerk shall draw the money due on the certificate of deposit, check or draft, and pay the same, or any cash deposit, into the city treasury and under no circumstances shall it be returned to the defaulting bidder. Without limiting the foregoing, no plea or defense or error by a bidder shall be available in any action by the city for the recovery of any deposit, or in any action or any surety bond or as a defense to any action based upon any refusal to execute a contract.

Notwithstanding the requirements set forth above, the city manager, with the consent of council, may waive the bid security requirements in situations in which the city manager deems the interests of the city and the public to be adequately protected without enforcing the bid security requirements.

C. Bid Opening. All bids shall be sealed, identified as bids on the envelope and must be submitted to the city manager or his/her designee at the place and time specified in the public notice inviting bids. Upon receipt, the city manager or his/her designee shall note the date and time of receipt on the envelope. In the event that there are identical low bids, and other factors being equal, the bid bearing the earliest date of receipt shall be awarded the contract.

Bids shall be opened by the city manager, or his/her designee in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened.

D. Disposition of Bid Bond or Deposit. At the time bids have been duly received and opened, the city manager shall return to all bidders, except the low three bidders, the submitted bid bonds or deposits. All bid deposits and bonds shall be returned to the unsuccessful bidders after execution of the contract and the deposit of the required bonds by the successful bidder.

E. Award/Protest.

1. The city manager or city representative (e.g., engineer or consultant to the city) shall provide a written evaluation of the bids received to the city council. Such evaluation shall take into consideration conformity with the specifications, terms of delivery, and direct response to other factors addressed and conditions imposed on the call for bids. The bid of a bidder who has failed to satisfactorily perform on a previous contract may be rejected. If the city manager reports to the city council that the lowest bidder was not responsible, notice shall be sent to the three apparent low bidders and the report shall be placed on the agenda of the next regularly scheduled council meeting; provided, however, that the bidders shall be allowed at least two weeks' notice of the meeting date.
2. Notice of intent to award does not constitute a formal award of a contract. The notice of intent to award must include:
 - a. A statement of a bidder's right to protest award, including the time within which the protest must be received, which is five days from the date of the notice; and
 - b. The name of the successful bidder.
3. Unless only one responsive bid is received the notice of intent to award shall be issued to each bidder at least five days before formal award of the contract. If only one responsive bid is received, the contract may proceed as soon as practical after the notice of intent to award is issued.
4. Any unsuccessful bidder may appear at the council meeting at which a motion for award of contract is to be considered and present testimony to council regarding his/her bid and the city manager's recommendation of award.
5. The city council shall then determine whether it is in the best interest of the public to affirm, reject or modify the city manager's evaluation and recommendation and in so doing, make written findings to support its determination. The written findings shall be based on, but not limited to the definition of "lowest responsible bidder" at Section 4.30.030.
6. Notwithstanding other provisions of this chapter, the city may reject defective or nonresponsive bids; waive any irregularities in any and all bids; reject all bids; negotiate with two or more of lowest bidders, if bid prices are in excess of the money available or authorized, for a reduction in the scope, quality or quantity of the supplies or services; or readvertise for bids with or without making changes in the plans or specifications.
7. The city council shall award a contract under this chapter in the form of a resolution authorizing the city manager to enter into the contract under the terms and conditions as set forth in the bid documents, as established in this chapter and any other conditions as may be deemed necessary to protect the public interest. (Ord. 86-10 § 1, 1986; Ord. 15-16 § 3, 2015.)

4.30.110 Contract clauses.

- A. All contracts for supplies and services having a value in excess of twenty thousand dollars shall contain, but not be limited to, protective clauses providing for:
1. Adjustments in process and time of performance;
 2. Submittal of change orders;
 3. Liquidated damages;
 4. Specified excuses for delay or non-performance;
 5. Termination of the contract for default;
 6. Termination of the contract in whole or in part for the convenience of the city;

7. Control and performance of subcontractors if any;
8. Inspection of contractor's and/or records by city personnel;
9. Audit of the contractors and/or subcontractors. All contracts and faithful performance bonds or labor and material bonds required therein shall be approved as to form by the city attorney.

B. The city shall determine whether the contractor shall file performance and payment bonds pursuant to AS 36.25.010 or whether it is in the public interest for the city to exercise the waiver provisions as set forth at AS 36.25.025. (Ord. 86-10 § 1, 1986.)³

4.30.120 Negotiation for professional services.

If the city council finds, as provided under Section 4.30.130 that it is not in the public interest to follow the procurement procedures as established herein for the contracting of professional services, the city council may, following approval of a resolution stating such, proceed to negotiate with a selected supplier or suppliers for subject services.

Nothing in this chapter shall prohibit the city council from determining, after initiating the competitive proposal process, that it is in the best interest of the public to waive the procedure and negotiate a contract/purchase. (Ord. 86-10 § 1, 1986.)

4.30.130 Exemptions.

A. Restrictions and provisions of this chapter shall not apply:

1. To the purchase of a patented article;
2. To the placement of insurance coverage;
3. To supplies, materials, equipment or contractual services which can only be furnished by a single dealer, or which have a uniform published price;
4. To supplies, materials, equipment or contractual services purchased from another governmental unit at a price determined to be below that obtainable from private dealers, including war surplus;
5. To contractual services purchased from a public utility corporation at a price or rate fixed by state or other government authority;
6. To professional services retained on a continuing as opposed to a project basis, i.e., accounting, appraisal, legal and civil engineering services.

B. Restrictions and provision of this chapter may be waived where the city council determines that the public interest would best be served by waiving the procedures herein established. Such determination must be made in the form of a resolution adopted prior to the proposed action. The waiver may be based upon, but is not limited to, the following findings of public interest:

1. An emergency exists where the delays required for compliance with this section would jeopardize the public health, safety or welfare;
2. The services or articles can be procured at a lower cost without competitive bidding;
3. The services or articles are budget items which were approved by the city council when the budget was adopted;
4. The services are of a professional nature requiring specialized knowledge and judgment;
5. The purchase involves used heavy equipment. (Ord. 86-10 § 1, 1986.)

¹ For statutory authority, see AS 36.98.080.

² For statutory requirements requiring contractor bonds on public buildings and public works projects in excess of \$100,000, see AS 36.25.010, 36.25.025, and 29.25.010(a)(10).

³ Editor's note: Amendment to Section 4.30.030 at draft stage caused Section 4.30.110 re: local hire to be inapplicable; 8. deleted by codifiers and 8. and 9. renumbered.

**CITY OF DILLINGHAM
Procurement Policy**

Subject: Purchasing, Procurement and Travel Authorization	
Number: FIN 01	Reference(s): DMC# 4.30
Effective Date: October 15, 2019	Review Date: Annually

PURPOSE: To provide procedures for procurement methods and completion of related Documents. The use of purchase orders allows encumbrances to be recorded prior to actual expenditures. Signatures for the approval of purchases and travel requests commit the resources of the City by its authorized Management.

SCOPE: This procedure applies to the purchase of all inventory items, supplies, and capital equipment for all departments within the City including authorization for travel.

Procedures:

1) Local purchases under \$1,000.00

- a) Charge to local vendors that provide charge accounts.
 - i) L&M, N&N, NAPA, AC, Bigfoot, etc.
 - ii) Department head provides updated list of employees who can charge at stores to Finance.
- b) When charging:
 - i) Sign the charge slip
 - ii) Notate the department paying the charge
 - iii) Notate what the item is for
 - iv) Code
 - v) Send to Finance
- c) Vendor sends a monthly statement
 - i) Finance pays invoices or statements that are itemized
 - ii) Finance matches invoices (charge slips) to statements
 - iii) Departments who cause a delay for not providing backup will pay finance charges that are assessed

2) Local purchases of goods, equipment, and services (including shipping) is over \$1,000 but less than \$5,000 and all out of town purchases

- a) Create a requisition
 - i) If possible provide three price quotes and keep with requisition
 - ii) Follow Purchase Order process
- b) Make purchase with the Purchase Order

3) Purchase price, including shipping, is over \$5,000 but less than \$20,000.00

- a) Create a requisition
 - i) Three written quotes must be obtained whenever possible
 - ii) Follow Purchase Order process

b) Make purchase with the Purchase Order

4) Purchase price, including shipping, is \$20,000.00 or greater

- a) City Manager, or designee will arrange competitive sealed bidding procedures for the purchase.
- b) The City Council will evaluate and award
 - i) the most responsive bid
 - ii) the most responsive bid will not necessarily be the bid offering the lowest price

5) For purchases of services the following are used:

- a) Contracts for construction work
- b) Memorandum of agreement is used for other types of work.

6) Purchase order process

- a) Department head determines purchase is necessary
 - i) Purchase falls within the budget.
 - ii) Include the purchase, freight, handling fees, etc.
 - iii) Line item overages are acceptable if department is balanced
 - iv) If an overage is foreseen bring to the attention of City Manager
 - v) One department cannot cover a shortage for another department
- b) Department creates a requisition
 - i) Printed on blue paper
 - ii) Coding is clearly understandable
 - iii) Provides vendor detail
 - iv) Finance provides numbering series for requisitions
 - v) Approved by:
 - (1) If less than \$1,000 - Department head
 - (2) If over \$1,000 - Department head and City Manager
- c) Purchase Order creation
 - i) Finance department will review the requisition for completion
 - ii) Finance will create a purchase order creating an encumbrance
- d) Purchase order distribution
 - i) Once completed a copy will be e-mailed to the requestor to be printed and/or forwarded to the vendor.
 - ii) Yellow copy for finance files.

7) Receiving

- a) Merchandise is received
 - i) Department compares the items to the purchase order and vendor's packing slip.
 - ii) Document the order's receipt by indicating
 - (1) The items received on the purchase order
 - (2) Date received
 - (3) Signature of person verifying items received
- b) The department provides for payment
 - i) Purchase order with notations concerning receipt of merchandise
 - ii) Vendor's invoice or register receipt (if received)
 - iii) Packing slip or bill of lading (can be kept with dept. records)

- iv) Initial Signature stating "OK to Pay"
- c) For partial shipments
 - i) photocopy the purchase order
 - ii) Send the receiving paperwork
 - iii) Keep the original purchase order until all items are received
- d) Departments must review open purchase orders monthly
- e) Departments must notify the finance department of any voided purchase orders.
- f) The finance department will reconcile invoices to open purchase orders, then send the vendor a check.

8) Check Requests

- a) To be used sparingly, Purchase orders provide the greatest cost control by accounting for encumbrances
- b) Used for:
 - i) When an invoice is received for goods or services before a purchase order can be issued.
 - ii) Payment for training
 - iii) Account reimbursements
 - iv) internal and payroll related payments
 - v) pay a vendor who will not accept a purchase order and requires prepayment.
 - vi) Must be accompanied by:
 - (1) an invoice, or
 - (2) Quote from vendor of list of merchandise and cost
 - vii) Approved by:
 - (1) If less than \$1,000 - Department head
 - (2) If over \$1,000 - Department head and City Manager

9) Travel Authorization

- a) All travel requires department head and city manager approval "this establishes liability".
- b) Indicate
 - i) employee's name
 - ii) destination
 - iii) dates of travel, airline, car rental,
 - iv) per diem
 - v) registration fees
 - vi) budget expenditure account coding.
- c) Include
 - i) Contact information to each vendor involved.
 - (1) The department head provides any vendor with a purchase order number (the requisition process is still in place), which must be referenced on all invoices
 - (2) For employee safety all approved car rentals with insurance riders are to be discussed with your department head and/or Finance Director.
- d) The travel authorization and related purchase orders must be sent to the finance department as soon as accommodations are on hold.
- e) Once purchase orders are distributed reservations can be made.

10)Fuel purchases

- a) Price is set by an annual bid process
- b) Contracts are signed on all fuel types and becomes the provider for the period of the contract
- c) Employees witness and verify all fuel fill-ups to tanks and equipment
- d) Employees use the tanks for vehicle and equipment refill
 - i) Unleaded at Public Safety
 - ii) Diesel at Public Works
- e) Contact Public Safety Dispatch to turn the tank on and off for a refill
 - i) Vehicle (give vehicle number)
 - ii) Mileage reading
- f) Monthly, Dispatch will provide the fuel log to finance who will allocate usage based on the report.
- g) Heating fuel purchases are paid from fuel invoices supplied by the vendor when fuel is delivered.

11)Credit Card Purchases

- a) If a credit card purchase is necessary, the requisition process must be followed for all purchases.
- b) Once the purchase order is received the credit card held at the finance department can be used. A computer and/or phone will be made available in the finance department and the purchase will be recorded as having been made.
- c) If a credit card is used while traveling, the employee responsible for the credit card will ensure that the finance department has all the credit card slips, properly coded along with the appropriate purchase order or travel authorization.
- d) Credit Cards are to be used primarily for travel. When it is necessary for other items to be purchased with the City credit card purchase orders are required with all of the purchase order procedures being followed when it is known that the credit card will pay for various travel reservations make note on purchase order "Wells Fargo".