

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2015-10

**AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING CHAPTER 15.04 OF THE DILLINGHAM MUNICIPAL CODE TO ALLOW FOR REVIEW OF PERMIT APPLICATIONS BY A REGISTERED PROFESSIONAL ENGINEER AT THE COST OF THE APPLICANT, AND TO ESTABLISH CRITERIA FOR ISSUING FLOODPLAIN DEVELOPMENT PERMITS FOR FUNCTIONALLY DEPENDENT USES AND MODIFY VARIANCE STANDARDS**

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BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

**Section 1. Amendment of Section 15.04.020.** Section 15.04.020 of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

**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 flood plain within the community subject to a 1 percent or greater chance 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 1% chance of being equaled or exceeded in a given year.

~~A. C.~~ Federal Insurance Administration" (FIA) of the Federal Emergency Management Agency (FEMA) is responsible for administration of the National Flood Insurance Program.

B. 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.

~~G. "Flood hazard area" includes all area within the corporate limits subject to the one hundred-year flood as delineated on the flood insurance rate map for the city published by the Federal Insurance Administration.~~

D. 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. Flood plain 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 flood plain 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.

E. 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.

F. ~~“One-hundred-year flood” means a flood of a magnitude which can be expected to occur on the average of once every one hundred years. It is possible for this size flood to occur during any year. The odds are one to one hundred that this size flood will occur during a given year; there is a one percent chance that a flood of this magnitude will occur each year. Statistical analysis of available streamflow or coastal storm records, or analysis of rainfall and runoff characteristics of the watershed, or coastal topography and depth of the one-hundred-year flood. Also referred to as the base flood or regulatory flood.~~

L. “Special Flood Hazard Area (SFHA)” means areas subject to the Base Flood. The SFHA includes A and V zones.

G. 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.

H. 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.

K. O. “Variances” are grants of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

**Section 2. Amendment of Section 15.04.030.** Section 15.04.030 of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

**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.

**Section 3. Amendment of Section 15.04.031(B).** Section 15.04.031(B) of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

B. The areas of special flood hazard identified by the Federal Insurance Administration are 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 ordinance. The Flood Insurance Study is on file at City Hall.

**Section 4. Amendment of Section 15.04.040(B).** Section 15.04.040(B) of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and emboldened and deletions are shown as ~~strikethrough~~):

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 non-residential 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 flood proofing 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

**Section 5. Amendment of Section 15.04.040(C).** Section 15.04.040(C), of the Dillingham Municipal Code, is hereby amended to read as follows (additions are underlined and emboldened and deletions are shown as ~~strikethrough~~):

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

**Section 6. Amendment of Chapter 15.04.** Chapter 15.04 of the Dillingham Municipal Code is hereby amended by the addition of a new Section 15.04.055 to read as follows:

**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)(2-5) 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 ordinance.

**Section 7. Amendment of Section 15.04.061.** Section 15.04.061 of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are show as ~~strikethrough~~):

**15.04.061 Residential structures.**

The lowest floor of new construction or substantial improvement shall be located at or above the ~~one hundred year flood level~~ 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).

**Section 8. Amendment of Section 15.04.062(A).** Section 15.04.062(A) of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

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

**Section 9. Amendment of Section 15.04.064(A)(1).** Section 15.04.064(A)(1) of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

**15.04.64 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, ~~or that waterdependent structures that require an over-water location shall petition for a variance~~

**Section 10. Repeal of Section 15.04.064(B).** Section 15.04.064(B), of the Dillingham Municipal Code, is hereby repealed in its entirety.

~~B. Gravel or rock with armor rock or other substantial material such as sheet piling, or concrete bulkhead in front shall be considered suitable for structural support.~~

**Section 11. Amendment of Section 15.04.065 A.** Section 15.04.065 A, of the Dillingham Municipal Code, is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

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.

**Section 12. Amendment of Section 15.04.100.** Section 15.04.100 of the Dillingham Municipal Code is hereby amended to read as follows (additions are underlined and deletions are shown as ~~strikethrough~~):

#### **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. ~~Procedures for the granting of variances by the city are as follows:~~

B. Standards for the granting of variances by the city are as follows:

~~1. Variances shall not be issued by the city within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.~~

2.1. 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.

3.2. 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
4. ~~d. Variances shall only be issued upon~~ 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 ordinance, and:

- ~~a.~~ 1. the danger that materials may be swept onto other lands to the injury of others;
- ~~b.~~ 2. the danger to life and property due to flooding or erosion damage;
- ~~c.~~ 3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- ~~d.~~ 4. the importance of the services provided by the proposed facility to the community;
- ~~e.~~ 5. the necessity to the facility of a waterfront location, where applicable;
- ~~f.~~ 6. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- ~~g.~~ 7. the compatibility of the proposed use with existing and anticipated development;
- ~~h.~~ 8. the relationship of the proposed use to the Comprehensive Plan and Flood Plain Management Program for that area;
- ~~i.~~ 9. the safety of access to the property in times of flood for ordinary and emergency vehicles;
- ~~j.~~ 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
- ~~k.~~ 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.

5 D. Upon consideration of the factors of subsection ~~(A)(4)~~ C of this section and the purposes of this ordinance, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

~~6. Variances may be issued to accommodate the needs of functionally dependent uses. A "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 only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long term storage or related manufacturing facilities.~~

7 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.

~~8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.~~

~~9. Variances may be issued for nonresidential new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria for variance are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.~~

E. -10. The city shall notify the applicant in writing over the signature of the planning director that:

a. 1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage, and

b. 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 paragraph G A6 of this section, and

G. 14. The planning department shall:

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

b. 2. Report such variances issued in its annual report submitted to the Federal Insurance Administrator.

**Section 13. Effective Date.** This ordinance is effective upon adoption.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

June 18, 2015

  
Alice Ruby, Mayor

[SEAL]

ATTEST:

  
Janice Williams, City Clerk



**City of Dillingham Information Memorandum**

Agenda of: June 4, 2015

Attachment to: 2015-10  
Ordinance No. \_\_\_\_\_ / Resolution No. \_\_\_\_\_

**Subject:**

Title 15 Floodplain Management Changes to remove requirement for Variance for shoreline dependent structures

City Manager: Recommend Approval

Signature: Rose Lopera

Route to	Department Head	Signature	Date
	Finance Director		
X	Public Works	<i>[Signature]</i>	5/28/15
	Port Director		
X	Planning Director	<i>[Signature]</i>	
X	City Clerk	<i>[Signature]</i>	5/22/15

Fiscal Note:  Yes  No

Funds Available:  Yes  No

**Other Attachments:**

- PC Resolution No. 2015-06

**Summary Statement:**

These changes to the floodplain ordinance were required by FEMA as part of the Community Assistance Visit of 2011.

The changes allow normal shoreline dependent structures to proceed in accordance with FEMA floodplain regulations, but without putting them through the requirement for a Variance.

Ordinance No. 2015-10 / Resolution No. \_\_\_\_\_

**Summary Statement continued:**

**RESOLUTION 2015-06**  
**A RESOLUTION OF THE DILLINGHAM PLANNING COMMISSION**

Recommending changes to Title 15 Floodplain Management to the City Council

WHEREAS, the City of Dillingham participates in the National Flood Insurance Program;  
and,

WHEREAS, the State of Alaska Floodplain Coordinator conducted a Community Assistance Visit and recommended revising Title 15 of the Dillingham Municipal Code to remove the requirement for a variance to build shoreline dependent uses in the V zone of the floodplain; and

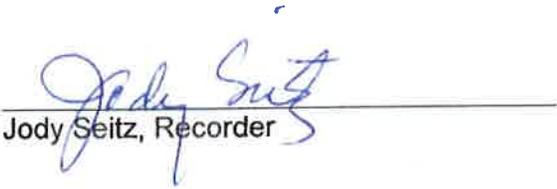
WHEREAS, via Resolutions 2014-12 and 2014-21 the Dillingham Planning Commission made recommendations for changes to the ordinance; and

WHEREAS, FEMA also reviewed the existing Title 15 in full and made additional suggested changes which are required by the Federal Code of Regulations;

THEREFORE, BE IT RESOLVED that the Planning Commission recommends the attached revised ordinance to the Dillingham City Council for its approval.

ADOPTED by the Dillingham Planning Commission May 13, 2015.

  
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Julianne E. Baltar, Chair

  
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Jody Seitz, Recorder