

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

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES**
 - a. Minutes of February 13, 2020 page 3
- 4. APPROVAL OF AGENDA**
- 5. UNFINISHED BUSINESS**
 - a. Draft Ordinance Plastic Bag Ban page 5
 - b. Remote Online Sales Tax Sample Ordinance page 9
- 6. NEW BUSINESS**
 - a. DMC 15.04 Floodplain Regulations page 23
 - b. Review Procurement Policy page 57
- 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, February 13, 2020, in the City Council Chambers, Dillingham, AK. Council Member Chris Napoli chaired the meeting and called the meeting to order at 5:30 p.m.

2. ROLL CALL

Committee Members present:

Mayor Alice Ruby
Lori Goodell

Chris Napoli
Tod Larson

Gregg Marxmiller (*via phone*)
Bill Rodawalt (*via phone*)

3. APPROVAL OF MINUTES

- a. Minutes of December 12, 2019

MOTION: Alice Ruby moved and Lori Goodell seconded the motion to approve the minutes of December 12, 2019.

VOTE: The motion passed unanimously by roll call vote.

4. APPROVAL OF AGENDA

MOTION: Gregg Marxmiller moved and Alice Ruby 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

No changes were made to the list.

- b. Plastic Bag Use in Dillingham

- Issue to consider going forward; mil rate of bags, restrictions and allowable uses.
- Two approaches – banning vs. charging. If charging how would revenue be managed?
- A practical approach with a purpose was recommended.
- It was noted single use plastic bags are a problem at the landfill.
- An ordinance will be drafted for review at the next meeting.

6. NEW BUSINESS

- a. Remote Online Sales Tax Sample Ordinance

- Collection of taxes on remote sales other than the internet was discussed.
- The proposed code ordinance was reviewed. Questions regarding the proposed language will be discussed with the City Attorney.
- Existing sales tax code and the remote sales tax code will be reviewed for consistency.

- b. DMC 15.04 Floodplain Regulations

- Committee requested a presentation regarding the proposed code changes; impacts, benefits, advantages, timing, and potential consequences for no action.

This item will be postponed to the next regular meeting.

No objections.

c. Review Procurement Policy

This item will be postponed to the next regular meeting.

No objections.

7. PUBLIC COMMENT/COMMITTEE COMMENTS

Bill Rodawalt: Thanked staff for the meeting packet.

Chris Napoli: Thanked staff for meeting information. Thanks committee members for attending, noting it was nice to have a full committee.

Lori Goodell: Informed the committee the regular March meeting date will need to be rescheduled.

The committee will poll for a date when remote sales tax information from the City Attorney has been received.

8. ADJOURNMENT

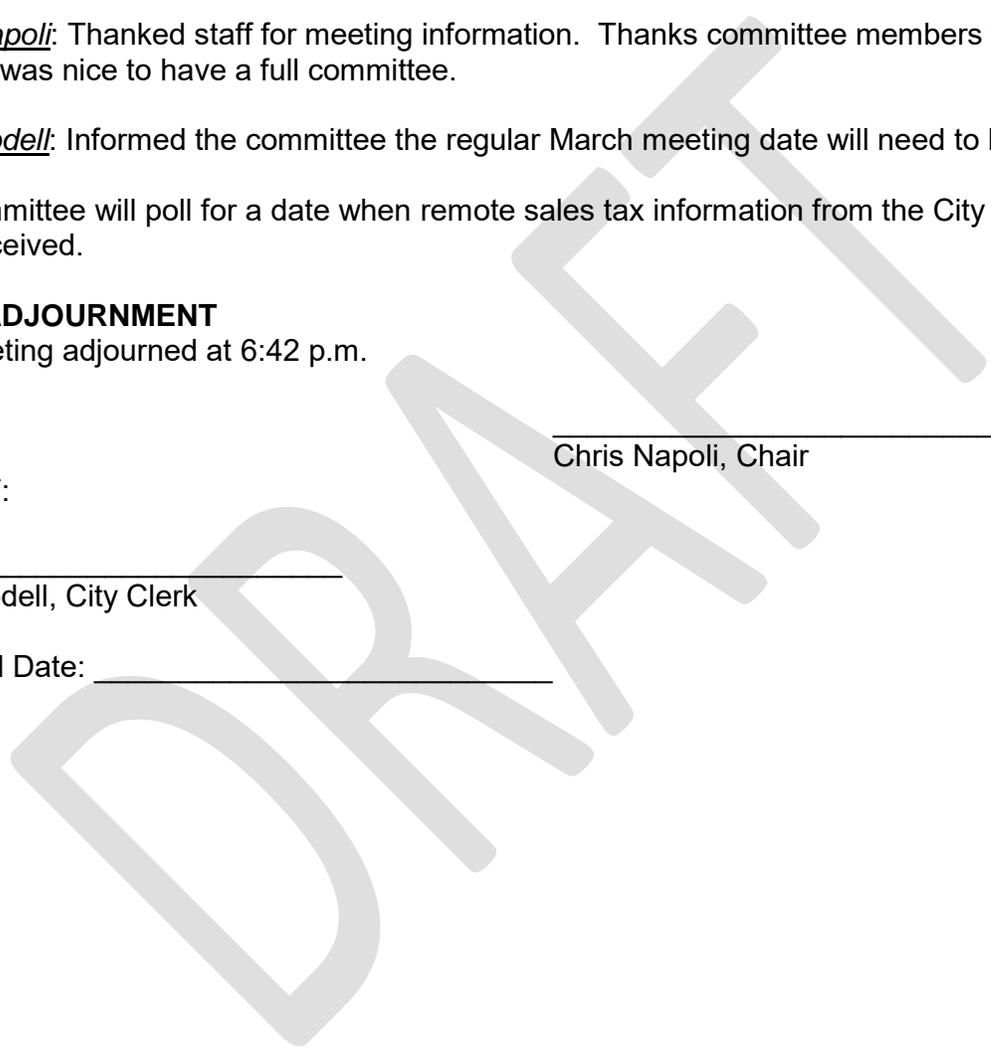
The meeting adjourned at 6:42 p.m.

Chris Napoli, Chair

ATTEST:

Lori Goodell, City Clerk

Approval Date: _____



CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING DILLINGHAM MUNICIPAL CODE CHAPTER 8.04 TO PROHIBIT THE DISTRIBUTION OF SINGLE-USE DISPOSABLE PLASTIC SHOPPING BAGS

WHEREAS, the use of single-use carry-out disposable plastic shopping bags in the City of Dillingham ("City") creates a burden on the environment, endangers wildlife, and has been shown to be harmful to bodies of water and problematic for solid waste management; and

WHEREAS, to decrease the number of littered disposable plastic shopping bags in the City, it is necessary to restrict general use; and

WHEREAS, it is in the best interest of the health, safety, and welfare of all residents to restrict the use of single-use disposable plastic shopping bags; and

WHEREAS, plastic carryout bags do not biodegrade, create problematic environmental issues, and frequently escape from trash containers and landfills creating a burden on residents and the City for clean-up;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Section 8.04.020. Section 8.04.020 of the Dillingham Municipal Code is hereby amended to read as follows [added language is underlined]:

8.04.020 Definitions.

The following definitions apply throughout this chapter:

"Affected Establishment" means any retail or commercial business that sells goods or prepared food, including but not limited to grocery stores, pharmacies, retail stores, and restaurants.

"Fish waste" means the leftover parts of dead fish, including carcasses, heads, tails, and internal organs.

"Garbage" means all putrescible solid wastes, including vegetable matter, animal feces, and carcasses of small animals.

“Hazardous waste” means any substances or materials that, by reason of their toxic, caustic, corrosive, abrasive, or otherwise injurious properties, may be detrimental or deleterious to the health of any person handling or otherwise coming into contact with such substances or materials. This includes those materials or substances which have been so designated by the State Department of Environmental Conservation and/or the Environmental Protection Agency.

“Person” means any individual, firm, governmental unit, organization, partnership, corporation, company or other entity.

“Putrescible waste” means material that can decompose and cause obnoxious odors.

“Refuse” means any putrescible or nonputrescible solid waste, except human excreta.

“Rubbish” means nonputrescible solid wastes.

“Secured load” means a load of refuse which has been secured and covered in the vehicle in a manner that will prevent any part of the refuse from leaving the vehicle while the vehicle is moving.

“Single-Use Plastic Disposable Shopping Bag” means a bag less than 2.25 mils thick made from plastic, or any material not marked or labeled “compostable”, that is neither intended nor suitable for continuous reuse and that is, designed to carry purchases from the seller’s premises, except for: bags used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; bags used to contain dampness or leaks from items such as frozen foods, meat, or fish, flowers or potted plants; bags used to protect prepared foods or bakery goods; bags provided by pharmacists to contain prescription drugs; newspaper bags, laundry, or dry cleaning bags; or bags sold for consumer use off the seller’s premises for such purposes as the collection and disposal of garbage, pet waste, or yard waste.

Section 3. Adoption of Section 8.04.120. Section 8.04.120 of the Dillingham Municipal Code is hereby adopted as follows:

8.04.120 Single-Use Plastic Disposable Shopping Bag Prohibited

- A. No affected retail establishment may provide to any customer a single-use plastic disposable shopping bag for the purpose of carrying away goods from the point of sale.
- B. No person may distribute single-use plastic disposable shopping bags at any city facility or any event held on city property.

Section 4. Amendment of Section 1.20.040. Section 1.20.040 of the Dillingham Municipal Code is hereby amended by the addition of new language to read as follows:

Code Section	Offense	Penalty/Fine
DMC 8.04.120	Distribution of single-use plastic disposable shopping bag.	\$300

Section 4. Effective Date. This ordinance is effective July 1, 2020.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on **Date**, 2020.

Alice Ruby, Mayor

[SEAL]

ATTEST:

Lori Goodell, City Clerk

DRAFT

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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:

February 24, 2020

Here are the questions that came up during the review of the draft ordinance to update sales tax and add remote sales tax to code from the Code Review Committee meeting on 2/13.

The committee requested interpretation from the City Attorney.

- Pg 3 of 13. ATV, it was questioned if the City of Dillingham needs the reference to husbandry.

The reference is not needed for Dillingham but the Alaska Intergovernmental Remote Seller Sales Tax Agreement requires all members of the Commission use the exact same definitions IF those definitions are part of the Uniform Code. This ATV definition is part of the Uniform Code so the wording of the definition must be implemented as written.

- Pg 3 of 13. Child care. It was requested to clarify this paragraph. Specifically the wording beginning with “less than 24 hours” to the end of the paragraph. The committee was confused by this sentence.

I believe the intent of the wording is to exclude live in nanny services from the definition of “Child care”. I will bring this up to the other lawyers involved in writing the definitions in the Uniform Code for more input. The attorneys are collaborating to assemble questions and issues with the current wording of definitions and other portions of the Uniform Code. It is anticipated that like uniform building codes there will be changes either annually or every two years.

- Pg 3 of 13. Fuel, it was asked what other fuel sources include.

Coal is the only other fossil fuel that comes to mind. Geothermal fluid would be considered a renewable fuel source when used for hot water or heat.

- Pg 3 of 13. Hotel, the committee wondered where Airbnb’s would fall.

A decision was made early on to leave collecting tax on Air B’nB lodging to existing local governments. This is Dillingham’s current definition and IMO includes Air B’nB’s. The “seller” in the Air BNB is the owner of the property in Dillingham. Those owners should be collecting and remitting sales tax.

- Pg 4 of 13. Medical, it was stated this is virtually the same as the language under drugs. Do we need it twice? Also, how does this impact COD current exemption of prescription drugs?

This is duplicative. It is not needed twice. I anticipate this duplication will be corrected with the first revision of the Uniform Code. The definition could theoretically impact the current exemption because the Dillingham code did not contain a definition of “drug”. This definition excludes dietary supplements. So prescription dietary supplements if there is such a thing and if the medical profession has been considering these to be exempt from sales tax in Dillingham as a “prescription drug” would now be taxable.

This question has revealed a weakness in the Uniform Code definitions. “Dietary supplements” is not defined. I will bring this to the attention of the Commission.

- Pg 4 of 13. Newspaper, the committee questioned why monthly and quarterly newspapers that cost big dollars are not included.

That type of publication is considered a “Periodical” (which has a separate definition as part of the Supplemental Definitions). Dillingham does not exempt Periodicals only Newspapers so the definition of Periodical is not set out in the draft ordinance. But even after the Uniform Code is adopted Dillingham has the flexibility to exempt sales of Periodicals from sales tax. This would be a policy issue for the city council.

- Pg 8 of 13. F. The committee requested clarification, wondering how this is applied to all sales tax not just remote sellers.

The waiver of penalty will be applicable to both local and remote sellers however the remote sellers have to apply with the Commission not the City. It will be the Commission that decides whether to grant the waiver for remote sellers. I would hope that before making such a decision they would check with the City but that is an operational detail not addressed in the Uniform Code.

- Pg 12 of 13. 4.23.050 Delegation of Authority. The committee wondered if this could be updated to show internet sales as the commission as has stated they will only be handling tax collection from that remote source.

I don't think any change is needed. 4.23.050 is in a separate Chapter of the Dillingham code and section 4.23.010 specifies that the Chapter only applies to sales made by remote sellers. And the current language of this section in the draft ordinance says the delegation of authority is “to administer and collect tax on sales made by remote sellers”.

So I think it is clear the delegation is limited to internet (or mail order or telephone) sales by remote sellers.

These were good questions. Let me know of any others that come up.

Brooks Chandler
Boyd, Chandler, Falconer & Munson LLP
911 W. 8th Ave.
Suite 302
Anchorage, AK
907-272-8401

[Update](#)

[Evaluate](#)

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Chapter 15.04 FLOODPLAIN REGULATIONS

Sections:

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[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.](#)

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[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. [SHARE](#)

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):

Deleted: Floodplain permit—Application

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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.

Deleted: planning director

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:

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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.

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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.

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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 {for 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 {for 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. [SHARE](#)

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. [SHARE](#)

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. [SHARE](#)

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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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.

Kaleb Westfall, Chair 	Cynthia Rogers, Planning Director 
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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".

Anita Fuller

Feb 7, 2020, 11:03 AM (3 days ago)

to me

Lori,

I am going to take the procurement policy information with me and work on it over the weekend and come up with suggestions. I have other things I have to get done today.

The biggest request I want to make is increasing the \$ amounts for each of the levels.

	Current	Suggested
Department Head approval	Up to \$1,000	Up to \$2,000
CM Approval 3 quotes (if possible)	\$1,000 to \$4,999	\$2,000 to \$7,999
CM Approval 3 quotes (required)	\$5,000 to \$19,999	\$8,000 to \$29,999
RFP and Council Approval	\$20,000 and above	\$30,000 and above

I have read several policies this morning and I want to really look it over close and make a comparison. There are several ethical policy items that I feel should be added.

Anita Fuller

Finance Director
907-842-1450 Direct