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Third Reading:	07/16/2009
Vote:	6 Aye      0 Nay    0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA**  
**ORDINANCE NO. 09-12**

**AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING CHAPTER 15.12, FLOOD ZONE LAND USE TO ADDRESS THE DEFICIENCY DETERMINATION IN THE FLOODPLAIN MANAGEMENT REGULATIONS REVIEWED BY FEMA.**

**WHEREAS,** FEMA conducted an onsite visit and review of the Floodplain Management Regulations on July 12, 2008; and

**WHEREAS,** The Municipality has 60 days from March 27, 2009 to respond to the deficiencies addressed in the Floodplain Management Regulations Determination;

**BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:**

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

**Section 2. Purpose.** To address the deficiency determination in the Floodplain Management Regulations reviewed by FEMA.

**Section 3. Amendment.** Chapter 15.12, Flood Zone Land Use is hereby amended (~~strike through~~) indicates text to be deleted from, and (**bold underscore**) indicates text added to the current code.

Chapter 15.12  
**FLOOD ZONE LAND USE**

Sections:

- 15.12.010 Findings of fact and statement of purpose.
- 15.12.020 Land use permit/building permits.
- 15.12.030 Application.
- 15.12.040 Protection against flood damage.
- 15.12.050 Subdivision and utility regulations.
- 15.12.055 Utility regulations.**
- 15.12.060 Implementation.
- 15.12.070 Variances.
- 15.12.080 Definitions.
- 15.12.090 Disclaimer of liability.

- 15.12.010 Findings of fact and statement of purpose.
  - A. Areas within the Municipality of Skagway are periodically subject to inundation which ~~results~~ **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. Areas within the municipality have been designated as flood-prone, pursuant to Section 201 of the Flood Disaster Protection Act of 1973, by issuance of a Flood Hazard Boundary Map (FHBM), effective March 1, 1977 (see Section 15.12.080 for definitions), which was based on the Flood Insurance Study dated September 1976 completed by the US Army Corp of Engineers, Alaska District. ~~at which time~~ The City of Skagway was required to join the National Flood Insurance Program to make flood insurance and federal and federally regulated financial assistance available to the residents within the flood-hazard areas.
- C. The purpose of this chapter is to promote the public health, safety and general welfare, to minimize those losses described in subsection A of this section, and to meet the requirements for participation in the National Flood Insurance Program. To accomplish this purpose, it is the intent of this chapter to:
1. Establish a land use permit system;
  2. Require that land uses vulnerable to floods, including public facilities and utilities which serve such uses, be protected against flood damages at the time of initial construction or substantial improvement;
  3. Restrict or prohibit land uses which are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocity; and
  4. Insure that subdivision and development of land within the municipality is consistent with the need to minimize flood hazards.

15.12.020 Land use permit/building permits.

No person shall construct, substantially improve or relocate a structure within the municipality without first securing from the planning and zoning commission a land use permit/building permit for such structure. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source applications for building permits shall be reviewed to assess whether the proposed construction appears 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. By reviewing building permits, the municipality does not guarantee or insure that the proposed construction will prevent flooding or any other hazard.

15.12.030 Application.

- A. Application for a land use permit for such structure shall be filed with the borough clerk, and shall be accompanied by a fee as established by the borough assembly by resolution. The application for a permit shall be made on a form furnished by and returned to the clerk.
- B. The information furnished in the application shall include, but is not limited to:
1. The name and address of the owner of the structure(s) which is or will be located;
  2. A legal description of the tract;
  3. A statement of the following elevations with respect to mean sea level:
    - a. The ground elevation before and after site preparation,
    - b. Project first-floor elevation of all structures,
    - c. The basement floor elevation, if applicable,
    - d. Elevation of the regulatory flood, if applicable;

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4. A list of any additional permits required by state or federal law before construction may begin, indicating the responsible agency and for what the permit was issued. At a minimum, this includes the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and the U.S. Army Corps of Engineers, Alaska District;
5. If the structure is located in a flood-hazard area, 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.

15.12.040 Protection against flood damage.

A. Within Zone A (0-99) flood-hazard areas, as identified on the municipality's Flood Hazard Boundary Map, no land use permit shall be approved by the planning and zoning commission unless all of the following requirements are satisfied.

1. Any new or substantially improved structure shall be designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure.
2. Construction materials and utility equipment that are resistant to flood damage and construction practices and methods that will minimize flood damages shall be utilized.
  - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - c. 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.
3. Utilities.
  - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  - b. New and replacement sanitary sewage systems shall be designed to discharge from the systems into flood waters; and,
  - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
34. 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. All systems shall be flood proofed at least to the regulatory-flood-water-surface **base flood** elevation (**BFE**).
45. The lowest floor, including basement, of any new residential construction, and substantial improvements to residential structures shall be elevated to a minimum of one (1) foot above the ~~regulatory-flood-water-surface~~

base flood elevation, provided that the required regulatory-flood water surface elevation data is available from any appropriate source and can reasonably be used.

56. The lowest floor of new construction and substantial improvements of nonresidential structures shall be elevated at a minimum of one (1) foot above the ~~regulatory-flood water surface~~ base flood elevation or, together with attendant utility and sanitary facilities, shall be flood proofed to one (1) foot above the ~~regulatory-flood water surface~~ base flood elevation, provided that the required ~~regulatory-flood water surface~~ base flood elevation data is available from any appropriate source and can reasonably be used.

67. Mobile homes **shall be elevated to a minimum of one (1) foot above the base flood elevation and** shall have ground anchors for tie-downs required in accordance with standards determined by the Federal Insurance Administration. Specific requirements shall be that:

- a. Over-the-top ties be provided at each of the four (4) corners of the mobile home, with two (2) additional ties per side at intermediate locations and mobile homes less than fifty feet (50') long requiring one (1) additional tie per side;
- b. Frame ties be provided at each corner of the home, with five (5) additional ties per side at intermediate points, and mobile homes less than fifty feet (50') long requiring four (4) additional ties per side;
- c. All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds; and
- d. Any additions to the mobile home be similarly anchored.
  - (i) The fact that the mobile home is being located in a floodplain area having special flood hazards shall be disclosed to the mobile home and/or lot purchaser or lessee in the purchase contract, deed or lease; and an evacuation plan indicating alternate vehicular access and escape routes shall be filed with the Division of Emergency Services and the Department of Military Affairs.

**8. AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.**

B. Pursuant to subsection A of this section, the ~~council~~ assembly may require, as appropriate, flood damage control measures such as the following:

1. Installation of watertight doors, bulkheads and shutters, or similar methods of closure;
2. Reinforcement of walls to resist water pressures;
3. Use of paints, membranes or mortars to reduce seepage of water through walls;
4. Addition of mass or weight to structures to resist flotation;
5. Installation of pumps to reduce water levels in structures;
6. Installation of pumps or comparable facilities for subsurface drainage systems to relieve external foundation wall and basement flood pressures;
7. Building design and construction to resist rupture or collapse caused by water pressure or floating debris;

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8. Location and installation of all electrical equipment, circuits, appliances and heating systems so that they are protected from inundation by the regulatory flood;
  9. 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 of such facilities to prevent flotation of storage containers which could result in the escape of toxic materials into floodwaters;
  10. Use of materials such as sheathing, siding, subflooring and underlayment that are not subject to water damage due to prolonged submersion below regulatory flood level;
  11. Use of closed-cell insulation to prevent waterlogging and consequent loss of insulation ability below the regulatory flood level;
  12. Oil storage tanks located outside the structure and anchored to prevent disturbance by floodwater. Tanks should be placed upon and secured to a concrete slab of sufficient mass to prevent flotation. In the calculation of required anchorage, little recognition should be given to shear or friction value of the soils, as they will be substantially reduced due to saturation. Both fill and vent pipes should extend above the expected high water level;
  13. Installation of a backwater valve in sewer lines in an accessible location immediately adjacent to the exterior foundation wall.
- C. When the Federal Insurance Administration (FIA) has provided a notice of final base flood elevations on the Flood Insurance Rate Map (FIRM) for the municipality, but has not identified a regulatory floodway or coastal high-hazard area, where applicable, the municipality shall, in addition to the requirements of subsections A and B of this section, and Section 15.12.050 and 15.12.055 of this chapter:
1. Require that 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 specific elevation (in relation to mean sea level) 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 FIA for approval;
  2. Require within Zones A1 - 30 as designated on the FIRM for the city municipality for new mobile home parks and mobile home subdivisions; for expansions to existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for all mobile homes to be placed within Zones A1 - 30 on the FIRM but not into a mobile home park or mobile home subdivision, that:

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- a. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
    - b. Adequate surface drainage and access for a hauler are provided; and
    - c. In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soils no more than ten feet (10') apart, and reinforcement is provided for pilings more than six feet (6') above the ground level;
  3. Require with any A0 zone on the FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the FIRM;
  4. Require within any A0 zone on the FIRM that all new construction and substantial improvements of nonresidential structures:
    - a. Have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on the FIRM, or
    - b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  5. Require within any A99 zones on the FIRM the standards of subsections A, B4 and B5 of Section 15.12.040, and the procedures of Section 15.12.060 of this chapter be met;
  6. Require, until a regulatory floodway is designated, that no new construction, substantial improvements or other development, including fill, be permitted within Zones A1 - 30 on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the community. It shall be the responsibility of the applicant to demonstrate that this requirement will be fulfilled.
- D. When the FIA has provided data from which the municipality shall designate its regulatory floodway, the municipality shall:
1. Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot (1') at any point;
  2. Prohibit encroachments, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge;
  3. Prohibit the placement of any mobile homes, except in an existing mobile home park or mobile home subdivision, within the adopted regulatory floodway.
- E. When FIA has also identified on the community's FIRM Zones V1 - 30 (coastal high-hazard area) the municipality shall:

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1. Require that all new construction within Zones V1 - 30 on the FIRM be located landward of the reach of mean high tide;
  2. Provide:
    - a. That all new construction and substantial improvements within Zones V1 - 30 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,
    - b. That a registered professional engineer or architect certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and storm wave-wash,
  3. Provide that all new construction and substantial improvements within Zones V1 - 30 on the FIRM have the space below the lowest floor free of obstructions, or be constructed with "breakaway walls" intended to collapse under stress due to abnormally high tides or wind-driven water without jeopardizing the structural support of the structure. Such temporarily enclosed space shall not be used for human habitation;
  4. Prohibit the use of fill for structural support of buildings within Zones V1 - 30 on the FIRM;
  5. Prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1 - 30 on the FIRM.
- F. When the FIA has delineated Zone E (flood-related erosion hazard area) on the FIRM, the municipality shall:
1. Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;
  2. Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazard;
  3. If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measure to be taken which will not aggravate the existing erosion hazard;
  4. Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer. This buffer will be designated by the FIA according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land.
- 15.12.050 Subdivision and utility regulations.
- A. The platting board shall deny permission to subdivide land within flood-hazard areas unless the following requirements have been fulfilled:
1. The land subdivision and associated 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;

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3. Adequate drainage shall be provided to reduce the exposure of structures, utilities and facilities to flood hazards;
  4. Evidence has been submitted that all necessary permits required by state or federal law have been applied for and granted. At a minimum, this includes the Alaska Department of Fish and Game, the Alaska Department of Natural Resources and the U.S. Army Corps of Engineers, Alaska District;
  5. The preliminary and final plat shall include the ground elevation and the regulatory flood elevation, if available, at convenient reference points;
  6. The flood-hazard area, if identified, shall be labeled "Flood Hazard Area" on preliminary and final plats. The fact that a lot is in the flood-hazard area shall be disclosed in any contract to purchase, rent or lease the lot.
- B. All new or replacement water supply systems and sanitary sewage systems, including on-site systems, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- C. All new or replacement public utilities such as gas, electric and telephone systems shall be designed or constructed to eliminate disruptions due to flooding and associated hazards.
- D. In determining if the requirements of this section are fulfilled, the platting board 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, structures and intended uses;
  2. The danger that structures may be swept into other lands or downstream to the injury of others;
  3. The adequacy of proposed water supply and sanitation 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 requirements of the subdivision for a waterfront location;
  6. The availability of alternative locations not subject to flooding for the proposed subdivision and land uses;
  7. The compatibility of the proposed uses with existing development and development anticipated in the foreseeable future;
  8. The relationship of the proposed subdivision to the comprehensive plan and floodplain management program for the area;
  9. The safety of access to the property for emergency vehicles in times of flood;
  10. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site;
  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 and water systems and streets and bridges;
  12. 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.

**15.12.055 Utility Regulations.**

- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;**



- B. New and replacement sanitary sewage systems shall be designed to discharge from the systems into flood waters; and,**
- C. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**
- D. 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.**

15.12.060 Implementation.

- A. Permits issued pursuant to this chapter shall conform to all other applicable codes 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 provision is more restrictive.
- B. The borough clerk shall be responsible for maintaining for public use and inspection appropriate records and information relevant to implementation of this chapter. Such records and information shall include, **to the extent available to the Municipality,** but not be limited to:
  - 1. Floor elevations of all new or substantially improved structures located in the flood-hazard area, and whether or not such structures have basements;
  - 2. Elevations to which structures are floodproofed;
  - 3. Flood-hazard boundary maps;
  - 4. Flood insurance rate maps;
  - 5. Any reports or studies on flood hazards in the community, such as written by the Corps of Engineers, United States Geological Survey or private firms;
  - 6. A copy of the annual report;
  - 7. A file of all land use permit applications, supporting documentation, and the council's action.
- C. The municipality shall file with the Federal Insurance Administration an annual report on forms provided by the Federal Insurance Administration. This annual report shall be verified and signed by the mayor. A copy of the annual report shall be retained by the municipality and one (1) copy shall be sent to the State Coordinating Agency.
- D. In case any structure is constructed or substantially improved in violation of this chapter, the municipality, in addition to other remedies, shall institute any proper actions or proceedings necessary, including ~~enjoining of~~ **prohibiting** connections to public utilities, **and** to restrain, correct or abate such violations.
- E. The municipality is hereby authorized to enter into contracts and agreements with other government entities for the purpose of implementing the provisions of this chapter.
- F. The municipality must notify adjacent communities, the State Coordinating Agency and the Federal Insurance Administration prior to altering or relocating any watercourse.
- G. Prior to enactment of any changes in this chapter due to changes in the flood-hazard area as a result of natural or man-made causes, such changes shall be reviewed by the State Coordinating Agency and approved by the Federal Insurance Administration.
- H. The municipality must notify the Federal Insurance Administration of any changes in the municipality's boundaries or authority to regulate land uses.

- I. 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 after such effective date.

15.12.070 Variances.

- ~~A. Variances from the requirements of this chapter may be granted by the borough assembly, but only if the following conditions are met:
  1. A showing of good and sufficient cause;
  2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
  3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense; create nuisances; cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
  4. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.~~
- ~~B. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level.~~
- ~~C. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.~~
- ~~D. The planning and zoning commission shall notify the applicant in writing that:
  1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage;
  2. Such construction below the base flood level increases risk to life and property. Such notification shall be maintained with a record of all variance actions as required in this section.~~
- ~~E. The borough clerk shall:
  1. Maintain a record of all variance actions, including justification for their issuance;
  2. Report such variances issued in its annual report submitted to the FIA.~~
- ~~F. Variances may be issued by the municipality for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.~~

A. Variance Procedure.

1. The variance procedure shall follow, to the extent applicable, as determined by the Planning & Zoning Commission, the procedure as set forth in SMC 19.04.060(A)(1 through 7). In passing upon such applications, the Planning & Zoning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;

- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location, where applicable;
  - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - k. 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.
2. Upon consideration of the factors listed above and the purposes of this chapter, the Planning & Zoning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
  3. The clerk shall maintain the records of all actions and report any variances to the Federal Insurance Administration upon request.

**B. Conditions for Variances**

1. The only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided items (a-k) in Section 15.12.070(A) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 15.12.070(A), or conflict with existing local laws or ordinances.

6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

7. Variances may be issued for nonresidential buildings in vary limited circumstances to allow a lesser degree of flood proofing than watertight or dry-flood proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 15.12.070(B)(1) above, and otherwise complies with Section 15.12.040(A), Protection against flood damage.

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

C. Board of Appeals. The Borough Assembly shall serve as the Appeal Board and shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building official or Planning & Zoning Commission in the enforcement or administration of this chapter. All appeals to the Assembly serving as the Board of Appeal shall follow, to the extent applicable and as determined by the Assembly, the procedure as set forth in SMC 19.04.070.

D. Appeals. Any interested party, including but not limited to a city official, may file with the board of appeals an appeal specifying in detail his objections to a decision made by the building official or Planning & Zoning Commission with regard to this chapter. All such appeal shall be filed within ten (10) business days excluding City or Federal holidays of the date of the letter issued within 14 calendar days notifying the applicant of the decision in writing to the borough clerk.

E. Judicial Review. A party to an appeal under 15.12.045(D) may appeal to the Superior Court in the First Judicial District at Juneau, Alaska. Any such appeal must be filed in the Superior Court no later than 30 calendar days from the date of the decision of the Assembly specified in 15.12.045(C) and (D).

15.12.080 Definitions.

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

1. "Accessory Structures" means low cost buildings such as detached garages, boathouses, small pole barns and storage sheds, not to be used for human habitation, shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters; shall be anchored to prevent floatation which may

- result in damage to other structures; service utilities such as electrical and heating equipment shall be elevated or flood-proofed.
2. "Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.
  3. "Area of Shallow Flooding" means a designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
  4. "Area of Special Flood Hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters "A" or "V".
  5. "Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters "A" or "V".
  6. "Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.
  - A7. "Coastal high-hazard area" means the area subject to high-velocity waters due to wind, tidal action, storm, tsunami, or any similar force, acting singly or in any combination, resulting in a wave or series of waves of sufficient magnitude, velocity or frequency to endanger property and lives.
  8. "Crawlspace" is an enclosed area below the base flood elevation and as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters.
  9. "Critical Facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.
  10. "Development" means 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 located within the area of special flood hazards.
  11. "Elevated Building" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.
  12. "Existing Manufactured Home Park or Subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

- 13. "Expansion to an existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).**
- B14.** "Federal Insurance Administration (FIA)" means the division of the Federal Emergency Management Agency which is responsible for administration of the National Flood Insurance Program.
- 15. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:**
- a. The overflow of inland or tidal waters and/or**
- b. The unusual and rapid accumulation of runoff of surface waters from any source.**
- C16.** "Flood-hazard area" includes all the area within the corporate limits subject to the one-hundred (100) year flood, as delineated on the Flood Hazard Boundary Map or the Flood Insurance Rate Map for the city published by the Federal Insurance Administration; "Flood-hazard area" includes the coastal high-hazard area where applicable.
- D17.** "Flood Hazard Boundary Map (FHBM)" means a map of the municipality issued by the Federal Insurance Administration which delineates the area subject to the one-hundred (100) year flood. This area is identified as the "Special Flood Hazard Area" on the map.
- E18.** "Flood Insurance Rate Map (FIRM)" means the map of the municipality issued by the Federal Insurance Administration which delineates the area subject to the one-hundred (100) year flood, the water surface elevation of the one-hundred (100) year flood, and the flood insurance rate zones.
- 19. "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.**
- F20.** "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash-flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.
- 21. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.**
- 22. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or 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 chapter found at Section 15.12.050(B)(1)(b).**

23. "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
24. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
25. "New Construction" means structures for which the "start of construction" commenced on or after the effective date of this chapter.
26. "New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.
- G27. "One-hundred (100) year flood" means a flood of a magnitude which can be expected to occur on the average of once every one hundred (100) years.  
NOTE: It is possible for this size flood to occur during any year. The odds are one (1) to one hundred (100) that this size flood will occur during a given year; there is a one percent (1%) chance that a flood will occur each year. Statistical analysis of available streamflow or coastal storm records, or analysis of rainfall and runoff characteristics of the watershed, or coastal topography and storm characteristics are used to determine the extent and depth of the one-hundred (100) year flood.
28. "Recreational Vehicle" means a vehicle, which is:
- a. Built on a single chassis;
  - b. 400 square feet or less when measured at the largest horizontal projection;
  - c. Designed to be self-propelled or permanently towable by a light duty truck; and
  - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- H29. "Regulatory flood" is the one-hundred (100) year flood. The water surface elevations of the Regulatory Flood are calculated for use in producing the Flood Insurance Rate Map.
30. "Repetitive Loss" means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before damage occurred.
31. "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. 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.

132. "Structure" means a walled and roofed building constructed for the support, shelter or enclosure of persons, animals, goods or property of any kind. The term also includes liquid or gas storage containers, and mobile homes and modular units.

33. "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

34. "Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:  
a. Before the improvement or repair is started; or  
b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

(i) 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

(ii) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

J. ~~"Substantially improved" means any remodeling, repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the fair market value of the property either:~~  
1. ~~As such value exists before the improvement is started; or~~  
2. ~~If the property has been damaged and is being restored, as such value existed before the damage occurred.~~

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



36. “Water Dependent” means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

15.12.090 Disclaimer of liability.

The grant of a land use permit or approval of a subdivision plan in the flood-hazard area shall not constitute a representation, guarantee or warranty of any kind by the municipality or any official or employee thereof of the municipality of the practicability or safety of the proposed use or construction, and shall create no liability upon the municipality, its officials, officers, or employees.


**Section 4. Severability.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

**Section 5. Effective Date.** This ordinance shall become effective immediately upon adoption.

**PASSED AND APPROVED** by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 16<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Thomas D. Cochran, Mayor

ATTEST:

  
\_\_\_\_\_  
Marjorie D. Harris, Borough Clerk

(SEAL)

