

ORDINANCE NO. 4878

AN ORDINANCE RELATING TO THE CITY OF ELLENSBURG LAND DEVELOPMENT CODE, TITLE 15; AMENDING CHAPTER 15.130 “DEFINITIONS”; AMENDING CHAPTER 15.210 “PERMIT REVIEW PROCESS “TYPES”; AMENDING CHAPTER 15.250.050 “VARIANCES – TYPE III REVIEW PROCESS”; AMENDING CHAPTER 15.600 “GENERAL PROVISIONS”; AMENDING CHAPTER 15.610 “EXEMPTIONS AND EXCEPTIONS”; AND AMENDING CHAPTER 15.630 “FREQUENTLY FLOODED AREAS” OF THE ELLENSBURG CITY CODE.

WHEREAS, The Legislature of the State of Washington has delegated the responsibility to local communities to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the State of Washington identified Kittitas County as a priority for the Federal Emergency Management Agency’s (FEMA) Risk MAP program, and following a February 24, 2010 Risk MAP Scoping Meeting attended by FEMA, State, and local stakeholders, a scope of work was developed to provide new multi-hazard risk assessment products and to update floodplain mapping based on community-identified needs; and

WHEREAS, following a February 4, 2018 Flood Risk Review, draft floodplain boundaries within Kittitas County were presented to FEMA, State, and Local stakeholders for review and comment; and

WHEREAS, FEMA representatives conducted three open house meetings in Kittitas County to share FEMA’s preliminary mapping results with property owners on August 6, 2018 in Thorp, August 7, 2018 in Ellensburg, and September 19, 2018 in Cle Elum; and

WHEREAS, an Appeal Period was provided from December 4, 2018 to March 3, 2019 for any affected landowner to provide comments and appeals; and

WHEREAS, following the appeal period, comments were provided that resulted in FEMA issuing a revised preliminary, which was released October 25, 2019; and

WHEREAS, following the resolution of comments, FEMA issued a Letter of Final Determination (LFD) to the City of Ellensburg on March 24, 2021, stating that a new or updated Flood Insurance Rate Map (FIRM) or Digital Flood Insurance Rate Map (DFIRM) will become effective in six months, and also notifying the City that each affected flood-prone community participating in the National Flood Insurance Program (NFIP) must adopt a compliant floodplain management ordinance by the maps’ effective date to retain status as participants in good standing; and

WHEREAS, the proposed amendments to Title 15 of the City of Ellensburg Code have been developed in accordance with FEMA LFD, and in compliance with the December 9, 2019

Washington State Model Flood Damage Prevention Ordinance, and with the requirements of Title 44 of the Code of Federal Regulations; and

WHEREAS, the proposed amendments to the Ellensburg City Code were issued a SEPA Determination of Non-Significance on September 3, 2021; and

WHEREAS, pursuant to RCW 36.70A.106, notice of the City's intent to amend the Land Development Code was sent to the Washington State Department of Commerce; and

WHEREAS, the required Washington State Department of Commerce 30-day expedited review notice was complete on August 12, 2021; and

WHEREAS, the proposed ordinance was reviewed by the Planning Commission in a public hearing on September 2, 2021, and based on public testimony and other evidence received at said hearing, the Planning Commission recommended City Council adoption of the ordinance; and

WHEREAS, the City Council conducted a public hearing on September 7, 2021, where it received and considered public comments on the proposed changes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are hereby adopted as the findings of the City Council and are by this reference incorporated herein as if set forth in their entirety.

Section 2. Section 15.130.010 A Definitions of the Ellensburg City Code as last amended by section 2 of Ordinance No. 4807, is hereby amended to add and revise the following definitions:

15.130.010 A definitions

"Alteration of watercourse" means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

"Area of shallow flooding" means 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. Also referred to as the sheet flow area.

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on Flood Insurance Rate Maps always includes the letters A, AO, AH, A1-30, AE, A99, AR or (V, VO, V1-30, VE). Definitions of each zone are established by the Federal Emergency Management Agency

(FEMA). “Special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard.”

“ASCE 24” means the most recently published version of ASCE 24, Flood Resistant Design and Construction, published by the American Society of Civil Engineers.

Section 3. Section 15.130.020 B Definitions of the Ellensburg City Code, as last amended by section 1 of Ordinance No. 4803, is hereby amended to add and revise the following definitions:

15.130.020 B definitions

“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). ~~Designated on Flood Insurance Rate Maps by the letters A or V.~~

“Base Flood Elevation (BFE)” means the elevation to which floodwater is anticipated to rise during the base flood.

“Building Code” means the currently effective versions the International Building Code and the International Residential Code adopted by the State of Washington Building Code Council.

Section 4. Section 15.130.050 E Definitions of the Ellensburg City Code, as last amended by section 1 of Ordinance No. 4803, is hereby amended to add the following definitions:

15.130.050 E definitions

“Elevated Building” means, for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

“Elevation Certificate” means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

“Existing 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 before the effective date of the floodplain management regulations adopted by the community.

“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).

Section 5. Section 15.130.060 F Definitions of the Ellensburg City Code, as last amended by section 1 of Ordinance No. 4803, is hereby amended to add and revise the following definitions:

15.130.020 F definitions

“Flood or Flooding” means: 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. See Division VI.

“Flood elevation study” means 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. Also known as a Flood Insurance Study (FIS).

“Flood insurance rate maps” means the official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM). ~~those maps which depict the various flood insurance rate zones of the 100-year floodplain which are determined by the Federal Emergency Management Agency. This term is interchangeable with “floodplain maps.”~~ See Division VI.

“Flood insurance study (FIS)” means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate maps, and the water surface elevation of the base flood. See “Flood Elevation Study.”

“Floodplain or flood-prone area” means that area of land shown on the city’s flood insurance rate maps as being inundated by the waters of the 100-year flood. any land area susceptible to being inundated by water from any source. See “Flood or flooding.” See Division VI.

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

Floodplain management regulations” means 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” means 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. Flood proofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.

“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 a designated height. Also referred to as “Regulatory Floodway.” See Division VI.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

Section 6. Section 15.130.080 H Definitions of the Ellensburg City Code, as last amended by section 7 Ordinance No. 4807, is hereby amended to add the following definitions:

15.130.080 H definitions

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic structure” for the purposes of administering floodplain regulations only means 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.

Section 7. Section 15.130.120 L Definitions of the Ellensburg City Code, as last amended by section 1 of Ordinance No. 4803, is hereby amended to revise the following definition:

15.130.120 L definitions

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Chapter 15.600 ECC (i.e. provided there are adequate flood ventilation openings).

Section 8. Section 15.130.130 M Definitions of the Ellensburg City Code, as last amended by section 9 Ordinance No. 4807, is hereby amended to add and revise the following definitions:

15.130.130 M definitions

“Manufactured home park or subdivision” means a lot, parcel (or contiguous parcels), or tract of land divided into two or more manufactured home lots for rent or sale, having as its principal use the rental of space for occupancy by two or more manufactured homes, including any accessory buildings, structures or uses customarily incidental thereto. See ECC 15.340.040 for manufactured home park provisions.

“Manufactured Home Park or Subdivision, New” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the new manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

“Mean Sea Level” means, for purposes of the National Flood Insurance Program, the vertical datum to which Base Flood Elevations shown on a community’s Flood Insurance Rate Map are referenced.

Section 9. Section 15.130.140 N Definitions of the Ellensburg City Code, as last amended by section 1 of Ordinance No. 4656, is hereby amended to add the following definition:

15.130.140 N definitions

“New construction” means, for the purposes of determining flood 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.

Section 10. Section 15.130.180 R Definitions of the Ellensburg City Code, as last amended by section 1 of Ordinance No. 4803, is hereby amended to add and revise the following definitions:

15.130.180 R definitions

“Reasonably Safe from Flooding” means development that is designed and built to be safe from flooding based on consideration of current flood elevation studies, historical data, high water marks and other reliable data known to the community. In unnumbered A zones where flood elevation information is not available and cannot be obtained by practicable means, reasonably safe from flooding means that the lowest floor is at least two feet above the Highest Adjacent Grade.

“Recreational vehicle” is a vehicle built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed primarily for recreational camping, travel or seasonal use which has its own motive power or is mounted on or towed by another vehicle, including but not limited to:

1. Travel trailer;
2. Folding camping trailer;
3. Park trailer;
4. Truck camper;
5. Motor home; and
6. Multi-use vehicle.

Section 11. Section 15.130.190 S Definitions of the Ellensburg City Code, as last amended by section 11 of Ordinance No. 4807, is hereby amended to add and revise the following definitions:

15.130.190 S definitions

“Structure” means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. It shall also include but not be limited to buildings, manufactured homes, walls, fences, billboards and poster panels. For the purposes of the floodplain district provisions only, as set forth in Division VI, the term “structure” shall be limited to mean a walled and roofed building including a gas or liquid storage tank that is principally aboveground, as well as a manufactured home. For the purposes of airport overlay zone regulations set forth in Chapter 15.350 ECC, “structure” means an object, including a mobile object, constructed or installed by man, including, but without limitation, buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

“Substantial improvement” means any ~~repair~~, reconstruction, rehabilitation, addition, alteration or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure ~~either: before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed.~~

1. ~~Before the improvement or repair is started; or~~

2. ~~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 can exclude; does not, however, include either:~~

a. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

b. Any alteration of a “historic structure,” listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Section 12. Section 15.130.220 V Definitions of the Ellensburg City Code, as last amended by section 13 of Ordinance No. 4807, is hereby amended to revise the following definition:

15.130.220 V definitions.

“Variance” means an authorized relaxation of the terms of this title where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the title would result in unnecessary and undue hardship. As used in this title, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use

otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning division or district or adjoining zoning divisions or districts. See ECC 15.250.050. A variance also means a grant of relief by a community from the terms of a floodplain management regulation. See ECC 15.610.215.

Section 13. Section 15.130.230 W Definitions of the Ellensburg City Code, as last amended by section 14 of Ordinance No. 4807, is hereby amended to revise the following definitions:

15.130.230 W definitions.

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

“Water surface elevation” means the height, in relation to the vertical datum utilized in the applicable flood insurance study, of floods of various magnitudes and frequencies in the floodplains or coastal or riverine areas.

Section 14. Section 15.210.050(C) Review Process Type III of the Ellensburg City Code, as last amended by section 17 of Ordinance No. 4807, is hereby amended to read as follows:

C. Review Process Type III. Table 15.210.050(C) identifies the types of projects and permits that require a Type III review process. Any decision-making, procedural, or noticing variations from the Type III review process are described in the middle column. The right column identifies code sections applicable to the project/permit.

Table 15.210.050(C). Projects under Type III review process.

Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type III Project	Decision-making, procedures or noticing variation from ECC 15.210.040	Relevant ECC chapter or section(s)
Binding site plan	City council decision	ECC 15.260.180
Conditional use permit	Planning commission decision after open record hearing; appeal closed record to city council	ECC 15.250.040

Table 15.210.050(C). Projects under Type III review process.

Where superscript numbers are included in a cell, please reference the applicable number under “Notes/conditions” below the table.

Type III Project	Decision-making, procedures or noticing variation from ECC 15.210.040	Relevant ECC chapter or section(s)
Extension requests for regional retail commercial master site plan projects	City council decision after open record public hearing	ECC 15.390.040(C)(3)
Variance (includes variance for critical areas regulations)	Hearing examiner decision after open record hearing; appeal closed record to city council	ECC 15.250.050
<u>Variance for critical area regulations</u>	<u>Hearing examiner decision after open record hearing; appeal closed record to city council</u>	<u>ECC 15.610.210 and ECC 15.610.215 (frequently flooded areas)</u>

Section 15. Section 15.250.050 Variances – Type III review process of the Ellensburg City Code, as last amended by section 28 of Ordinance No. 4807, is hereby amended to read as follows

A. Purpose. A variance is a mechanism by which the city may grant relief from the zoning provisions and standards of the LDC, where practical difficulty renders compliance with the LDC an unnecessary hardship.

B. Procedures. Variance permits are subject to the Type III review process as set forth in Chapter 15.210 ECC.

1. Administrative variances may be allowed for proposals that are within 10 percent of compliance of applicable dimensional standards, subject to the Type II review procedures set forth in Chapter 15.210 ECC.

2. Variance procedures and decision criteria for development within critical areas are set forth in ECC 15.610.210 and ECC 15.610.215.

C. Decision Criteria. The city may approve, approve with conditions, or deny variances. Granting of variances requires compliance with all of the following:

1. The variance is necessary because of the unique size, shape, topography, or location of the subject property;
2. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone, however, the existence of similar nonconforming uses of neighboring lands, structures, or buildings in the same zone shall not be considered grounds for the issuance of a variance;
4. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;
5. The variance is compatible with the comprehensive plan;
6. The variance does not create a health or safety hazard;
7. The granting of the variance will not be materially detrimental to the public welfare or injurious to:
 - a. The property or improvements in the vicinity, or
 - b. The zone in which the subject property is located;
8. The variance does not relieve an applicant from:
 - a. Any of the procedural or administrative provisions of this title, or
 - b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
 - c. Use or building restrictions, or
 - d. Any provisions of the critical areas development standards except as provided in Division VI;
9. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; and

11. The variance is the minimum necessary to grant relief to the applicant. [Ord. 4807 § 28, 2018; Ord. 4656 § 1 (Exh. O2), 2013.]

Section 16. Section 15.600.010 of the Ellensburg City Code, as last amended by section 1 of Ordinance 4656, is hereby amended to read as follows:

15.600.010 Purpose

A. The purpose of this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.

B. This chapter is to implement the goals, policies, guidelines, and requirements of the Ellensburg comprehensive plan and the Growth Management Act.

C. The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of floodwaters, ground water recharge and discharge, erosion control, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

D. Goals. By limiting development and alteration of critical areas, this chapter seeks to:

1. Protect human life and health;

~~1.2.~~ Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding;

~~2.3.~~ Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;

~~3.4.~~ Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;

4-5. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas;

6. Minimize expenditure of public money for costly flood control projects;

7. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

8. Minimize prolonged business interruptions;

9. 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;

10. 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;

11. Notify potential buyers that the property is in a Special Flood Hazard Area;

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

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

E. The regulations of this chapter are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.

F. In order to accomplish its purposes of reducing flood losses, this chapter includes methods and provisions for:

1. Restricting or prohibiting development that is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

2. Requiring that development vulnerable to floods be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

4. Controlling filling, grading, dredging, and other development, which may increase flood damage; and

5. Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

FG. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

GH. The city's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public. [Ord. 4656 § 1 (Exh. O2), 2013.]

Section 17. Chapter 15.610 of the Ellensburg City Code, is hereby amended to include a new section 15.610.215 specific to variances within frequently flooded areas, to read as follows:

**Chapter 15.610
APPLICABILITY, EXEMPTIONS AND EXCEPTIONS**

Sections:

- 15.610.010 Applicability.**
- 15.610.020 Exemptions.**
- 15.610.030 Allowed activities.**
- 15.610.040 Exception – Public agency and utility.**
- 15.610.050 Exception – Reasonable use.**
- 15.610.060 Critical area review requirements.**
- 15.610.070 Preapplication meeting.**
- 15.610.080 Public notice of initial determination.**
- 15.610.090 Critical area report – Requirements.**
- 15.610.100 Critical area report – Modifications to requirements.**
- 15.610.110 Mitigation requirements.**
- 15.610.120 Mitigation sequencing.**
- 15.610.130 Mitigation plan requirements.**
- 15.610.140 Innovative mitigation.**
- 15.610.150 Determination.**
- 15.610.160 Review criteria.**
- 15.610.170 Report acceptance.**
- 15.610.180 Report rejection.**
- 15.610.190 Completion of the critical area review.**
- 15.610.200 Appeals.**
- 15.610.210 Variances.**
- 15.610.215 Variances within frequently flooded areas.**
- 15.610.220 Unauthorized critical area alterations and enforcement.**
- 15.610.230 Critical area markers and signs.**
- 15.610.240 Notice on title.**
- 15.610.250 Critical area tracts.**

- 15.610.260 Bonds to ensure mitigation, maintenance, and monitoring.**
15.610.270 Critical area inspections.
15.610.280 Enforcement and penalties.

Section 18. Section 15.610.020 of the Ellensburg City Code, as last amended by section 5 of Ordinance 4803, is hereby amended to read as follows:

15.610.020 Exemptions

A. Critical area review application required. Certain development activities within critical areas may be exempt from critical area permitting. However, a critical area review application shall be submitted for all development in any identified critical area to determine exemption applicability. Pursuant to FEMA regulations, exemption for the activities described in (D)(2), (D)(3) and (D)(4) of this section is not applicable to development located within the floodplain.

AB. Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the director that describes the activity and states the exemption listed in this section that applies. The director shall review the exemption request as a Type I permit review process as set forth in Chapters 15.210 and 15.220 ECC. If the exemption is approved, it shall be placed on file with the community development department and the proponent may continue through the review process for any underlying permit. If the exemption is denied, the proponent may continue in the critical area review process and shall be subject to the requirements of this chapter.

BC. Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's sole expense.

CD. Exempt Activities. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

1. Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or which pose an immediate risk of damage to private property and which require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. Emergency actions which create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one business day following commencement of the emergency activity. Within 30 days, the director shall determine if the action taken was within the scope of the emergency actions

allowed in this subsection. If the director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of ECC 15.610.220, Unauthorized critical area alterations and enforcement, shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner; provided, however, the restoration, mitigation, planning and financial requirements set forth in this subsection shall not apply to public safety or volunteer emergency services providers who, in good faith, render emergency response services, and while in the course and scope of such services determine it necessary to damage, destroy or alter property falling under the jurisdiction of this chapter; provided further, this exception from responsibility shall not extend to the landowner or to any persons other than such public safety or volunteer emergency services providers;

2. Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure, utilities, public or private roads, dikes, ditches, reservoirs, or other structures or facilities for irrigation purposes. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species. To qualify as an exemption, operation, maintenance, or repair activities must meet the following criteria:

- a. The activity does not require construction permits;
- b. The activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer; and
- c. There is no increased risk to life or property as a result of the proposed operation, maintenance, or repair;

3. Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to ECC 15.610.030(C)(5), Public and Private Pedestrian Trails;

4. Flood Control. Operation, maintenance, and repair of ditches, ditches, reservoirs, and other structures or facilities which were created or developed as part of normal flood

control activities, except that this exemption does not extend to the permanent draining or permanent alteration of any regulated wetland; and

5. Other Similar Activity. Such activity that the director may determine is closely allied or similar to any activity on the exemption list. If such an activity does not impact the functions and values of any critical area or its buffers, it may also be determined to be exempt. [Ord. 4803 § 5, 2018; Ord. 4656 § 1 (Exh. O2), 2013.]

Section 19. Section 15.610.030 of the Ellensburg City Code, as last amended by section 5 of Ordinance 4803, is hereby amended to read as follows:

15.610.030 Allowed Activities

A. Certain activities as set forth below are allowed activities. The proponent of the allowed activity must submit a critical area review form as required by ECC 15.610.060. In making the decision whether a proposed activity is an allowed activity for purposes of this chapter, the director shall follow the permit review process set forth for Type I permit in Chapters 15.210 and 15.220 ECC.

AB. Activities allowed under this chapter shall have been reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate critical area report, unless such submittal was previously required for the underlying permit. The director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this chapter to protect critical areas.

BC. Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices pursuant to the city's public works development standards, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

CD. Allowed Activities. The following activities are allowed:

1. Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

- a. The provisions of this chapter have been previously addressed as part of another approval;
 - b. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
 - c. There is no new information available that is applicable to any critical area review of the site or particular critical area;
 - d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
 - e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.
2. **Modification to Existing Structures.** Structural modification of, addition to, demolition of or replacement of, an existing legally constructed structure (undertaken pursuant to an issued permit, if required) that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement; provided, that restoration of structures or demolition pursuant to an approved demolition permit must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion. This subsection does not apply to modifications to existing structures located within a special flood hazard area. In such cases, the proposed modifications are subject to all requirements of Chapter 15.630 ECC, including but not limited to the requirements for substantial improvements;
3. **Activities within the Improved Right-of-Way.** Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater; subject to the following:
- a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
 - b. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.
4. **Minor Utility Projects.** Utility projects which have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below:

- a. There is no practical alternative to the proposed activity with less impact on critical areas;
 - b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility;
 - c. The activity does not significantly impact the function or values of a critical area(s);
 - d. The activity or project is constructed with best management practices and additional restoration measures are provided; and
 - e. The activity shall not result in the transport of sediment or increased stormwater.
5. Public and Private Pedestrian Trails. Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:
- a. The trail surface shall meet all other requirements including applicable standards set forth in the city's public works development standards;
 - b. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
 - c. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.
6. Select Vegetation Removal Activities. The following vegetation removal activities; provided, that except for these activities no vegetation shall be removed from a critical area or its buffer without approval from the director:
- a. The removal of invasive and noxious weeds and vegetation with hand labor and light equipment;
 - b. The removal of trees that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:
 - i. The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
 - ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not

sufficient to address the hazard, trees should be removed or converted to wildlife snags;

iii. All vegetation cut (tree stems, branches, etc.) may be left within the critical area or buffer unless removal is warranted due to the potential for disease, or pest transmittal to other healthy vegetation, or safety and health hazards;

iv. The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different, nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter-at-breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;

v. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation, may be removed or pruned by the landowner prior to receiving written approval from the city; provided, that within 14 days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter;

c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the state Forest Practices Act, Chapter 76.09 RCW; provided, that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan; and

d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited.

7. Vegetation Enhancement. Voluntary enhancement of a critical area or buffer by planting vegetation that will improve the health and function of the critical area;

8. Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city; provided, that their use shall be restricted in accordance with Washington State Department of Fish and Wildlife Management Recommendations and the regulations of the Washington State Department of Agriculture, Washington State Department of Ecology, and the U.S. Environmental Protection Agency;

9. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, archaeological shovel tests, and other related activities,

where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and

10. Navigational Aids and Boundary Markers. Construction or modification of navigational aids and boundary markers. [Ord. 4803 § 5, 2018.]

Section 20. Section 15.610.050 of the Ellensburg City Code, as last amended by section 5 of Ordinance 4803, is hereby amended to read as follows:

15.610.050 Exception- Reasonable Use.

A. If the application of this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section. However, this section is not applicable to development in the floodplain. See ECC 15.610.215 for requirements and criteria for variances within frequently flooded areas.

B. Exception Request and Review Process (a Type II Permit Review Process). An application for a reasonable use exception shall be made to the city and shall include a critical area review form; and if necessary a critical area report (ECC 15.610.090 and 15.610.100), including mitigation plan (ECC 15.610.130); and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW and WAC 197-11-158). The director shall process the exception request as a Type II permit review process as set forth in Chapters 15.210 and 15.220 ECC. As part of that review process the director shall prepare a decision based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (C) of this section.

C. Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow; one or more may apply:

1. The application of this chapter would deny all reasonable economic use of the property;
2. No other reasonable economic use of the property has less impact on the critical area;
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter, or its predecessor;

5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
6. The proposal will result in no net loss of critical area functions and values consistent with the best available science; and
7. The proposal is consistent with other applicable regulations and standards.

D. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made. [Ord. 4803 § 5, 2018; Ord. 4656 § 1 (Exh. O2), 2013. Formerly 15.610.040.]

Section 21. Section 15.610.210 of the Ellensburg City Code, as last amended by section 5 of Ordinance 4803, is hereby amended to read as follows:

15.610.210 Variances

A. The variance criteria set forth in this section 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 chapter 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.

Variances from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in ECC 15.610.050 and Chapters 15.210 and 15.220 ECC. The hearing examiner shall review the request and make a written finding that the request meets or fails to meet the variance criteria. See ECC 15.610.215 for variance requirements specific to development within frequently flooded areas.

B. Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
2. The special conditions and circumstances do not result from the actions of the applicant;

3. A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;

4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances;

5. The granting of the variance is consistent with the general purpose and intent of this chapter, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;

6. The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat; and

7. The granting of the variance is consistent with the general purpose and intent of the city's comprehensive plan and adopted development regulations.

C. Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

D. Time Limit. The city shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. [Ord. 4803 § 5, 2018; Ord. 4656 § 1 (Exh. O2), 2013. Formerly 15.610.220.]

Section 22. Chapter 15.610 of the Ellensburg City Code, is hereby amended to include a new Chapter 15.610.215 to read as follows:

15.610.215 Variances within frequently flooded areas.

A. It is the duty of the city 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 this chapter 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 chapter 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.

Variances from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in Chapters 15.210 and 15.220 ECC. The hearing examiner shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

B. Requirements for Variances

1. Variances shall only be issued:

- a. 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;
- b. 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;
- c. Upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- d. Upon a showing of good and sufficient cause;
- e. Upon a determination that failure to grant the variance would result in exceptional hardship to the applicant;
- f. 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 ECC 15.130.060 in the definition of "Functionally Dependent Use."

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

3. 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 (BFE), provided the procedures set forth in ECC 15.630 have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

C. Variance Criteria

In considering variance applications, the city shall consider all technical evaluations, all relevant factors, all standards specified in this chapter, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and 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. Additional Requirements for the Issuance of a Variance

1. Any applicant to whom a variance is granted shall be given written notice over the signature of the director that:
 - a. The issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
 - b. Such construction below the BFE increases risks to life and property.
2. The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

3. The Floodplain Administrator shall condition the variance as needed to ensure that the requirements and criteria of this chapter are met.
4. Variances as interpreted in the NFIP are based on the general zoning law principle that they pertain to a physical piece of 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 flood elevations should be quite rare.

E. Time Limit. The city shall prescribe a time limit within which the action for which the variance is required shall be commenced, completed, or both. Failure to begin and/or complete such action within the established time limit shall terminate the variance.

F. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the variance application and upon which any decision has to be made on the application. [Ord. 4803 § 5, 2018; Ord. 4656 § 1 (Exh. O2), 2013. Formerly 15.610.220.]

Section 23. Chapter 15.630 of the Ellensburg City Code, is hereby amended to include a new section 15.630.015, specific to the designation and role of the Floodplain Administrator, to read as follows:

CHAPTER 15.630

FREQUENTLY FLOODED AREAS

Sections:

- 15.630.010 Designation of frequently flooded areas.**
- 15.630.015 Designation of the Floodplain Administrator**
- 15.630.020 Critical area report requirements – Frequently flooded areas.**
- 15.630.030 Warning and disclaimer of liability.**
- 15.630.040 Performance standards – General requirements.**
- 15.630.050 Performance standards – Specific uses.**
- 15.630.060 Performance standards – Areas of shallow flooding.**
- 15.630.070 Prohibited uses and activities.**

Section 24. Section 15.630.010 of the Ellensburg City Code, as last amended by section 1 of Ordinance 4656, is hereby amended to read as follows:

15.630.010 Designation of frequently flooded areas.

A. Frequently Flooded Areas. Frequently flooded areas shall include:

1. Areas Identified on the Flood Insurance Map(s). Those areas of special flood hazard within the incorporated city limits of Ellensburg identified as being within the 100-year floodplain by the Federal Insurance ~~Administration~~ Administrator in a scientific and engineering report entitled “The Flood Insurance Study (FIS) for Kittitas County, Washington and Incorporated Areas”, dated ~~November 5, 1980~~ September 24, 2021, and any revisions thereto, with accompanying ~~Flood Insurance Rate~~ Maps (FIRMs), and any revisions thereto, and floodway maps (FIRM Community Panel Number 530234 0001C; Community Panel Number 530234 0002C; Floodway Community Panel Number 530095 0552C; all maps effective May 5, 1981). The above study and maps are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study FIS and maps FIRMs are on file with the Ellensburg community development department, located at 501 N. Anderson Street in Ellensburg, Washington. The best available information for flood hazard area identification as outlined in Section 15.630.010(D) shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section 15.630.010(D).

B. Use of Additional Information. The director may use additional flood information that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency (FEMA) to designate frequently flooded areas, including data on channel migration, historical data, high water marks, photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show riparian habitat areas, or similar information.

C. Compliance. All development within special flood hazard areas is subject to terms of this chapter and other applicable regulations.

~~CD.~~ Flood Elevation Data. When base flood elevation data is not available (A and V zones designated under subsection (A) of this section), the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, county or other source, in order to administer this section.

~~DE.~~ Designation Made by Director. The flood insurance maps are to be used as a guide for the city, project applicants and/or property owners and the public, and should be considered a minimum designation of frequently flooded areas. Because flood insurance maps may be continuously updated as areas are reexamined or new areas are identified, the best available information for flood hazard area identification shall be the basis for regulation.

~~EF.~~ Supplemental Documentation. Any areas identified by the director in this section shall be supported by professional scientific information.

~~FG.~~ Maintenance of Records. The director shall maintain for public inspection all records of floodplain hazards, certificates of floodproofing, and flood elevation data.

~~GH.~~ Mapping. The location and extent of frequently flooded areas are shown on the critical area maps adopted with the ordinance codified in this chapter by the city. The following maps

and data are hereby adopted and are available from the city and/or the listed governmental agency: Federal Emergency Management Administration Flood Insurance Rate Maps; Community Panels: 530234 0001C; 530234 0002C; 530095 0439B; 530095 0552C; 530095 0443B; 530095 0556B; 530095 0554C. [Ord. 4656 § 1 (Exh. O2), 2013.]

I. Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than ninety (90) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

J. Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another section of the city code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

K. Interpretation. In the interpretation and application of this chapter, 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.

Section 25. Chapter 15.630 of Ellensburg City Code, is hereby amended to include a new section 15.630.015 to read as follows:

15.630.015 Designation of the Floodplain Administrator; permit review.

A. The director is hereby appointed as the Floodplain Administrator to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions. The duties of the Floodplain Administrator shall include, but not be limited to:

B. Permit Review. Review all development permits to determine that:

1. The permit requirements of this chapter have been satisfied;

2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding;
4. The proposed development is not located in the floodway. If located in the floodway, assure the encroachment provisions of Section 15.630.070(B)(1) are met;
5. Notify FEMA when annexations occur in the Special Flood Hazard Area; and
6. Notify FEMA of changes to the base flood elevation within six months of when technical information of such changes becomes available. Such notification shall include technical or scientific information.

C. Information to be Obtained and Maintained

1. Where base flood elevation data is provided through the FIS, FIRM, or required as in Section 15.630.040(D), obtain and maintain a record of the actual (as-built) elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. For all new or substantially improved floodproofed nonresidential structures where base flood elevation data is provided through the FIS, FIRM, or as required in Section 15.630.040(D):
 - a. Obtain and maintain a record of the elevation (in relation to mean sea level) to which the structure was floodproofed.
 - b. Maintain the floodproofing certifications required in Section 15.630.020(C)(2).
3. Certification required by Section 15.630.070(B)(1)(floodway encroachments).
4. Records of all variance actions, including justification for their issuance.
5. Improvement and damage calculations.
6. Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Whenever a watercourse is to be altered or relocated:

1. Notify adjacent communities and the Department of Ecology 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

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

E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g. 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. Such appeals shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the NFIP (44 CFR 59-76).

Section 26. Section 15.630.020 of the Ellensburg City Code, as last amended by section 1 of Ordinance 4656, is hereby amended to read as follows:

15.630.020 Critical area report requirements – Frequently flooded areas.

A. Prepared by a Qualified Professional. A frequently flooded areas report shall be prepared for development within floodplains. Such report shall be required to be prepared by a qualified professional who is a hydrologist or engineer, and who is licensed in the state of Washington with experience in preparing flood hazard assessments.

B. Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for frequently flooded areas:

1. The location of the proposed activity;
2. All areas of a special flood hazard, as indicated on the flood insurance map(s) within 200 feet of the project area; and
3. All other flood areas indicated on the flood insurance map(s) within 200 feet of the project area.

C. Flood Hazard Assessment Required. A critical area report for a proposed activity within a frequently flooded area shall contain a flood hazard assessment including the following site- and proposal-related information at a minimum:

1. Site and Construction Plans. A copy of the site and construction plans for the development proposal showing:
 - a. Floodplain (100-year flood elevation); 10-year and 50-year flood elevations and floodway, if required by the director and, in addition, other critical areas, buffers, and shoreline areas;

- b. Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain;
 - c. Extent and location of proposed clearing and grading activity; and
 - d. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
 - e. Elevation in relation to mean sea, ~~and the level to which any structure has been floodproofed~~;
2. Floodproofing Certificate. When floodproofing is proposed, a certification by a registered professional engineer or architect that the floodproofing methods meet the requirements of ECC 15.630.040(G), Floodproofing;
3. Watercourse Alteration. When watercourse alteration is proposed, the critical area report shall include:
- a. Extent of Watercourse Alteration. A description of and plan showing the extent to which a watercourse will be altered or relocated as a result of the proposal; and
 - b. Maintenance Program Required for Watercourse Alterations. A maintenance program that provides maintenance practices for the altered or relocated portion of the watercourse to ensure that the flood-carrying capacity is not diminished;
4. Information Regarding Other Critical Areas. Potential impacts to wetlands, fish and wildlife habitat and other critical areas shall be addressed in accordance with the applicable sections of this chapter. [Ord. 4656 § 1 (Exh. O2), 2013.]

Section 27. Section 15.630.030 of the Ellensburg City Code, as last amended by section 1 of Ordinance 4656, is hereby amended to read as follows:

15.630.030 Warning and disclaimer of liability

The degree of flood protection required by this chapter poses and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside frequently flooded areas 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 Administrator~~, for any flood damage that results from reliance on this chapter or any administrative decision lawfully made hereunder. [Ord. 4656 § 1 (Exh. O2), 2013.]

Section 28. Section 15.630.040 of the Ellensburg City Code, as last amended by section 7 of Ordinance 4803, is hereby amended to read as follows:

15.630.040 Performance standards – General requirements

A. Permit(s) Required. The permit required by this section shall be incorporated into the basic underlying permits necessary for the project or activity to proceed within a frequently flooded area, e.g., building permit, short plat, public works permits, State Environmental Policy Act and city critical areas reviews, and similar permits and development reviews. Completion of and compliance with the necessary review processes and permits listed above shall satisfy the requirement of issuance of a development permit for any activity that would alter land or commence a new use within a frequently flooded area. The permit shall be for all structures including manufactured homes, as set forth in the “Definitions,” and for all development including fill and other activities, also set forth in Chapter 15.130 ECC, the “Definitions.”

B. All necessary permits shall be obtained. The director shall verify that all necessary permits have been obtained from those governmental agencies from which prior approval is required by federal, state, or local law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendment of 1972 and the Endangered Species Act of 1973.

C. Development proposals must not reduce the effective base flood storage volume of a floodplain. Grading or other activity that would reduce the effective storage volume must be mitigated by creating compensatory storage on the site. The compensatory storage must provide equivalent volume at equivalent elevations to that being displaced, be hydraulically connected to the source of the flooding, be provided in the same construction season, and occur on-site or off-site, if legal arrangements can be made to assure that the effective compensatory storage will be preserved over time.

D. Areas without Base Flood Elevation Data. Where base flood elevation data is not available (A and V zones designated under ECC 15.630.010(A)), and there is insufficient data available from federal, state, county, or other sources, the director shall determine the base flood elevation using historical data, high water marks, photographs of past flooding, and other available information. If there is insufficient data available for the director to make a determination of the base flood elevation, and standards requiring a base flood elevation cannot be implemented, the director shall require measures that assure the proposed structures will be reasonably safe from flooding. At a minimum, the base flood elevation shall be set at least two feet above the highest adjacent grade. The director shall have the authority to set an average base flood elevation if there are sufficient grade deficiencies in elevation around the development area.

E. AE Zones with Base Flood Elevations but No Floodways. In areas with BFEs (when a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zones AE on the city’s 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 at any point within the city.

EF. Construction Materials and Methods.

1. **Methods That Minimize Flood Damage.** All new construction and substantial improvements shall be constructed using flood-resistant materials and utility equipment, and with methods and practices that minimize flood damage.
2. **Structures Shall Be Located Outside the Floodplain.** All structures shall be located on the buildable portion of the site out of the floodplain unless there is no buildable site area out of the floodplain. For sites with no buildable area out of the floodplain, structures shall be placed on the highest land on the site, oriented parallel to the anticipated flow of water rather than perpendicular, and sited as far from the watercourse and other critical areas as possible. If the director finds any evidence of active hyporheic exchange on a site, the development shall be located to minimize disruption of such exchange.
3. **Utilities Shall Be Protected.** All utilities shall be located on the buildable portion of the site out of the floodplain unless there is no buildable site area out of the floodplain. 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 their components during conditions of flooding. Water wells shall be located on high ground that is not in the floodway per WAC 173-10-171. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

FG. Elevation Certificate Required Following Construction. Following construction or substantial improvement of a structure within the floodplain where the base flood elevation is provided, the applicant shall be required to submit to the director an as-built elevation certificate from a licensed professional land surveyor that records the elevation of the lowest floor (including basement), and whether or not the structure contains a basement. The director shall obtain said as-built elevation certificate and maintain for public inspection said certificates in its official records.

GH. Floodproofing.

1. When a nonresidential structure is to be floodproofed, it shall be designed and constructed using methods that meet the following requirements:
 - a. **Watertight Structure.** The structure shall be watertight with walls substantially impermeable to the passage of water below one foot above the base flood level;

- b. Hydrostatic Resistance. Structural components shall be capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. Certified by a Registered Professional Engineer or Architect. The structure shall be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans.
2. Floodproofing Certificate Required Following Construction. Following construction of the structure, the applicant shall obtain and provide to the director a floodproofing certificate from a registered professional engineer or architect that records the actual (as-built) elevation to which the structure was floodproofed.
3. Floodproofing Nonresidential Buildings. Applicants floodproofing nonresidential buildings shall be notified by the director that flood insurance premiums will be based on rates that are one foot below the floodproofed level (for example, a building floodproofed to the base flood level will be rated as one foot below).

HI. Anchoring.

1. Anchoring Required. All new construction and substantial improvements within the floodplain, including those related to manufactured homes, shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
2. Manufactured Homes Shall Be Anchored. All manufactured homes to be placed or substantially improved within the floodplain shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and must be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

IJ. Fill and Grading. Fill and grading within the floodplain shall only occur after the review and approval by the city of the clearing, grading, and fill proposal. Such proposal shall require a determination from a licensed professional engineer that the fill or grading will not block side channels, inhibit channel migration, increase flood hazards to others, or be placed within a channel migration zone, whether or not the city delineated such zones as of the time of the application. [Ord. 4803 § 7, 2018; Ord. 4656 § 1 (Exh. O2), 2013.]

K. Storage of Materials and Equipment.

1. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas.

2. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

Section 29. Section 15.630.050 of the Ellensburg City Code, as last amended by section 1 of Ordinance 4656, is hereby amended to read as follows

15.630.050 Performance standards – Specific uses.

In all frequently flooded areas where base flood elevation data has been provided as set forth in Section 15.630.010(A) or Section 15.630.040(D), the following standards are required:

A. Residential Construction.

1. ~~Must be no lower than one foot above the base flood elevation. In AE or other A zoned areas where the BFE has been determined or can be reasonably obtained, Nnew~~ construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated ~~to one foot or more~~ above the base flood elevation for the area; ~~and Mechanical equipment and utilities shall be waterproofed or elevated at least one foot above the BFE.~~

2. ~~Areas below the lowest floor must meet requirements for crawlspaces as set forth hereinabove in this chapter.~~

2. New construction and substantial improvement of any residential structure in an AO zone shall meet the requirements in Section 15.630.060.

3. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs must meet or exceed the following minimum criteria:

a. Have a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of floodwater.

d. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

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

B. Manufactured Homes Must Be Elevated. 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 elevated one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

C. Recreational Vehicles. Recreational vehicles are required to either:

1. Be on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
3. Must obtain a development permit and meet the requirements of this section, including elevation and anchoring, for manufactured homes.

D. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of subsection 1 or 2, below.

~~1. Must be no lower than one foot above the base flood elevation. Construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to one foot above the base flood elevation for the area or, together with attendant utility and sanitary facilities, shall be floodproofed in accordance with ECC 15.630.040(G), Floodproofing. Unavoidable impacts to flooded areas (from fill) need to be mitigated; and~~

~~2. Areas below the lowest floor must meet the requirements for crawlspaces set forth hereinabove in this chapter.~~

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

a. In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained, new construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor,

including basement, elevated one foot or more above the BFE, or elevated as required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or elevated least one foot above the BFE, or as required by ASCE 24, whichever is greater.

b. If located in an AO zone, the structure shall meet the requirements in Section 15.630.060.

c. If located in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the structure shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.

d. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(i) 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.

(ii) The bottom of all openings shall be no higher than one foot above grade.

(iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(iv) A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

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

2. If the requirements of subsection 1 are not met, then new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

a. Be dry flood proofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water or dry flood proofed to the elevation required by ASCE 24, whichever is greater;

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

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 15.630.015(B)(2);

d. Nonresidential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as described in Section 15.630.050(A)(2);

(Applicants who are flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level (e.g. a building flood proofed to the base flood level will be rated as one foot below). Flood proofing the building an additional foot will reduce insurance premiums.)

E. Utilities.

1. Shall be designed to minimize infiltration of floodwaters. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
2. Sanitary sewage systems. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

F. Subdivision Proposals.

1. All subdivisions and short subdivisions shall:
 - a. Minimize flood damage. Subdivisions and short subdivisions shall be designed to minimize or eliminate flood damage to proposed structures; and public utilities and facilities that are installed as part of such subdivisions, such as sewer, gas, electrical, and water systems, shall be located and constructed to minimize flood damage. Subdivisions should be designed using natural features of the landscape, and should not incorporate flood protection changes;
 - b. Have adequate drainage. Subdivisions and short subdivisions shall have adequate natural surface water drainage in accordance with city's public works development standards to reduce exposure to flood hazards; and
 - c. Show flood areas on plat maps. Subdivisions and short subdivisions shall show the 100-year floodplain, floodway, and channel migration zone where designated by the city on the preliminary and final plat and short plat maps.

2. Detailed base flood elevation data shall be generated for subdivisions of at least 50 lots or five acres. Where detailed base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres, whichever is the lesser.

G. Alteration of Watercourses.

1. Shall require the submission of a critical area report by the applicant and be in accordance with the habitat regulations set forth in ECC 15.650.020 and 15.650.030 et seq. Watercourse alterations shall only be allowed when no negative impacts occur to critical areas.

2. Shall not result in blockage. Watercourse alteration projects shall not result in blockage of side channels.

3. Notification Required. The city shall notify adjacent communities, the Washington State Department of Ecology, the Washington Department of Fish and Wildlife, and the Federal Insurance Administration of the proposed watercourse alteration at least 30 days prior to permit issuance.

4. Maintenance of Alterations. The applicant shall maintain the altered or relocated portion of the watercourse to ensure that the flood carrying capacity is not diminished. The applicant shall furnish the city with a surety bond for maintenance, which bond shall remain in effect for a period of five years after completion of the alterations and be in accordance with a maintenance program approved by the director for the alteration project. The bond shall be in an amount to be determined by the director as sufficient to ensure that the flood carrying capacity of the watercourse is not diminished and complies with the terms of the maintenance program. The surety and the form of the bond shall be subject to the approval of the city attorney.

H. Crawlspace. Crawlspace are commonly used as a method of elevating buildings to or above the base flood elevation or providing area for easier access to utilities and other building facilities. The following requirements apply to all crawlspaces that have enclosed areas or floors below the base flood elevation:

1. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effect of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required opening standards set forth below in this section. If crawlspace construction is proposed for areas in which the flood velocities exceed five feet per second, the design must be reviewed and approved by a registered architect or engineer.

2. The 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. Openings or vents must meet the following criteria:

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

3. All portions of the building below the base flood elevation must be constructed with materials resistant to flood damage. The recommended construction practice is to elevate the bottom of the joists and all insulation above the base flood elevation.

4. Any building utility systems within the crawlspace must be elevated above the base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components. Duct work must either be placed above the base flood elevation or sealed from floodwaters.

5. In addition to the above requirements, the following specific provisions also apply to below grade crawlspaces:

- a. The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade;
- b. The height of the below grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point;
- c. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. Possible options include natural drainage through porous, well-drained soils or drainage systems such as perforated pipes, tiles, gravel or other means; and
- d. Below grade crawlspace construction in accordance with the requirements listed above will not be considered basements. [Ord. 4656 § 1 (Exh. O2), 2013.]

I. Enclosed Area Below the Lowest Floor. If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the lowest floor, the areas shall be used solely for parking of vehicles, building access, or storage.

J. Appurtenant Structures (Detached Garages & Small Storage Structures) in A Zones (A, AE, AH, AO):

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

- a. Use of the appurtenant structure must be limited to parking of vehicles or limited storage;
- b. The portions of the appurtenant structure located below the BFE must be built using flood resistant materials;
- c. The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement;
- d. Any machinery or equipment servicing the appurtenant structure must be elevated or flood proofed to or above the BFE;
- e. The appurtenant structure must comply with floodway encroachment provisions in Section 15.630.070(B)(1);
- f. The appurtenant structure must be designed to allow for the automatic entry and exit of floodwaters in accordance with Section 15.630.050(A)(3);
- g. The structure shall have low damage potential;
- h. If the structure is converted to another use, it must be brought into full compliance with the standards governing such use; and
- i. The structure shall not be used for human habitation.

2. Detached garages, storage structures, and other appurtenant structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 15.630.050(A).

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

Section 30. Section 15.630.070 of the Ellensburg City Code, as last amended by section 1 of Ordinance 4656, is hereby amended to read as follows

15.630.070 Prohibited uses and activities.

A. Critical Facilities. Construction of new critical facilities shall be permissible within frequently flooded areas if no feasible alternative site is available. Critical facilities constructed within frequently flooded areas shall have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year flood) or to the height of the 500-year flood, whichever is higher. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

If not otherwise required by the city, locating of critical facilities within a frequently flooded area shall be subject to SEPA review and action.

B. Construction in Floodways. Located within areas of special flood hazard established in Section 15.630.010(A) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:

1. New construction requires certification by a licensed professional engineer. Encroachments, including new construction, substantial improvements, fill, and other development, are prohibited within designated floodways unless certified by a registered professional engineer. Such certification shall demonstrate through hydrologic and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge. Small projects that are solely to protect or create fish habitat and designed by a qualified professional may be allowed without certification if the director determines that the project will not obstruct flood flows. Fish protection projects shall be reviewed on behalf of the city by a qualified professional in the field of hydraulics.
2. Residential Construction and Reconstruction Prohibited. Construction and reconstruction of residential structures is prohibited within designated floodways, except for:
 - a. Repairs, reconstruction, or improvements to a structure that do not increase the ground floor area; and
 - b. Repairs, reconstruction or improvements to a structure, for which the cost does not exceed 50 percent of the market value of the structure either:
 - i. Before the repair or reconstruction is started; or
 - ii. If the structure has been damaged, and is being restored, before the damage occurred.

Improvement to a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official

and that are the minimum necessary to assure safe living conditions or to structures identified as historic places may be excluded from the calculation of the 50 percent.

3. Substantially Damaged Residences in Floodway

a. For all substantially damaged residential structures, other than farmhouses, located in a designated floodway, the Floodplain Administrator may make a written request that the Department of Ecology assess the risk of harm to life and property posed by the specific conditions of the floodway. Based on analysis of depth, velocity, flood-related erosion, channel migration, debris load potential, and flood warning capability, the Department of Ecology may exercise best professional judgment in recommending to the local permitting authority repair, replacement, or relocation of a substantially damaged structure consistent with WAC 173-158-076. The property owner shall be responsible for submitting to the local government and the Department of Ecology any information necessary to complete the assessment. Without a favorable recommendation from the department for the repair or replacement of a substantially damaged residential structure located in the regulatory floodway, no repair or replacement is allowed per WAC 173-158-070(1); and

b. Before the repair, replacement, or reconstruction is started, all requirements of the NFIP, the state requirements adopted pursuant to 86.16 RCW, and all applicable local regulations must be satisfied. In addition, the following conditions must be met:

- i) There is no potential safe building location for the replacement residential structure on the same property outside the regulatory floodway.
- ii) A replacement residential structure is a residential structure built as a substitute for a legally existing residential structure of equivalent use and size.
- iii) Repairs, reconstruction, or replacement of a residential structure shall not increase the total square footage of floodway encroachment.
- iv) The elevation of the lowest floor of the substantially damaged or replacement residential structure is a minimum of one foot higher than the BFE.
- v) New and replacement water supply systems are designed to eliminate or minimize infiltration of floodwater into the system.
- vi) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of floodwater into the system and discharge from the system into the floodwaters.
- vii) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

34. If the provisions of subsection (B)(1) of this section are satisfied, or construction is allowed pursuant to subsection (B)(2) or subsection (B)(3) of this section, all new construction and substantial improvements shall comply with all applicable requirements of ECC 15.630.040 and 15.630.050. [Ord. 4656 § 1 (Exh. O2), 2013.]

C. Livestock Sanctuary Areas. Elevated areas for the for the purpose of creating a flood sanctuary for livestock are allowed on farm units where livestock is allowed. Livestock flood sanctuaries shall be sized appropriately for the expected number of livestock and be elevated sufficiently to protect livestock. Proposals for livestock flood sanctuaries shall meet all procedural and substantive requirements of this chapter.


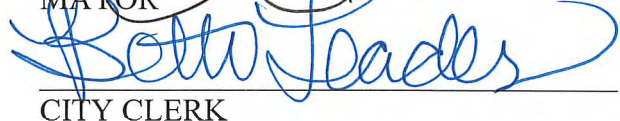
Section 31. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

Section 32. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 33. Emergency and Effective Date. For the reasons set forth above, the City Council hereby finds and declares that an emergency exists necessitating that this Ordinance take effect on September 24, 2021 for the protection of the public health, public safety, public property, or public peace. Failure of the City implement the changes included in this ordinance by September 24, 2021 could also jeopardize the insurance rates paid by Ellensburg residents under the Federal National Flood Insurance Program.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 20th day of September, 2021.

ATTEST:

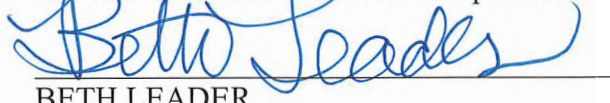

MAYOR

CITY CLERK

Approved as to form:


CITY ATTORNEY

Publish: 9-23-21

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4878 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4878 was published as required by law.


BETH LEADER