

**NORTH SLOPE BOROUGH
ORDINANCE SERIAL NO. 2023-16**

**AN ORDINANCE AMENDING TITLE 19 OF THE
NORTH SLOPE BOROUGH MUNICIPAL CODE**

WHEREAS, certain areas of the North Slope Borough are subject to erosion and periodic flooding, causing serious damage to properties within these areas, health and safety hazards, disruption of communication and governmental services and extraordinary public expenditures; and

WHEREAS, relief is available in the form of federally subsidized flood insurance as authorized by the National Flood Insurance Act of 1968; and

WHEREAS, it is the intent of the North Slope Borough to require the recognition and evaluation of flood hazards in all official actions relating to land use in flood plain areas having special flood hazards by amendments to the text of Title 19; and

WHEREAS, Planning staff and the Law Department have worked with the Federal Emergency Management Agency and the State of Alaska to draft amendments to the text of Title 19 required for the entry of the North Slope Borough into the National Flood Insurance Program; and

WHEREAS, in accordance with North Slope Borough Municipal Code (NSBMC) §19.30.060(D), the Utqiagvik Zoning Commission must review and make recommendations to the Assembly on amendments to the text of Title 19 which govern development within Utqiagvik; and

WHEREAS, the Utqiagvik Zoning Commission adopted Resolution 2023-01 on June 28, 2023, recommending the Assembly approve of the amendments, a copy of which is attached as Exhibit B; and

WHEREAS, in accordance with NSBMC § 19.30.050(A), the Planning Commission must review and make recommendations to the Assembly on amendments to the text of Title 19; and

WHEREAS, the Planning Commission adopted Resolution 2023-13 on June 29, 2023, recommending the Assembly approve of the amendments, a copy of which is attached as Exhibit C; and

WHEREAS, NSBMC § 19.30.010(A), requires the Assembly to review and act upon all applications for rezoning and amendments to Title 19; and

WHEREAS, in accordance with NSBMC § 19.60.090, amendments to the text of Title 19 shall be enacted by ordinance by the Assembly.

NOW, THEREFORE, BE IT ENACTED:

SECTION 1. Classification. This ordinance is of a general and permanent nature and shall become part of the Borough Code.

SECTION 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons and circumstances shall not be affected thereby.

SECTION 3. Effectiveness. This ordinance shall become effective immediately upon adoption.

SECTION 4. Amendment of Sections. Title 19 is hereby amended with new language indicated by underling and **bolding**, and deleted language by brackets and strike through [~~brackets~~] as annexed in Exhibit A hereto.

INTRODUCED: 07/11/23

ADOPTED: 08/01/23



Vernon A. Edwardsen, President

Date: 08/01/23

ATTEST:



Sheila Burke, Borough Clerk

Date: 08/01/23



Harry K. Brower, Jr., Mayor

Date: 08/01/23

Exhibit A

§ 19.10.010 - INTRODUCTION.

This title creates a unique set of land management principles and procedures for development in the Borough. The ideas contained in this title were developed by officials and residents of the Borough in many public meetings held to develop the Borough's Comprehensive Plan, Coastal Management Program and other planning studies. This title was revised after approval of the Borough's Coastal Management Program, **and revised to join the National Flood Insurance Program**. Procedural and administrative matters are designed to be as efficient and fair as possible to all concerned, and to comply with legal requirements.

§ 19.10.020 - PURPOSES.

This title is adopted:

- (A) To achieve the goals and objectives, and implement the policies, of the North Slope Borough Comprehensive Plan, including its Coastal Management Program;
- (B) To ensure that the future growth and development of the Borough is in accord with the values of its residents;
- (C) To identify and secure, for present and future residents, the beneficial impacts of development;
- (D) To identify and avoid, mitigate or prohibit the negative impacts of development; and
- (E) To ensure that future development is of the proper type, design and location, and is served by a proper range of public services and facilities.
- (F) **To promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:**
 - (1) **To protect human life and health;**
 - (2) **To minimize expenditure of public money and costly flood control projects;**
 - (3) **To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;**
 - (4) **To minimize prolonged business interruptions;**
 - (5) **To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;**
 - (6) **To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;**
 - (7) **To ensure that potential buyers are notified that property is in an area of special flood hazard; and,**
 - (8) **To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.**

§ 19.20.020 - DEFINITIONS.

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPEAL. A request for a review of the Administrator’s interpretation of any provision of this ordinance or a request for a variance.

AREA OF SPECIAL FLOOD HAZARD. The land designated by the North Slope Borough as the area of special flood hazard using the “October 7, 2022 Flood Extent Map” and best available data from other Federal, State or other sources that delineate flood risk as no study has been conducted by the Federal Emergency Management Agency to identify a special flood hazard area.

BASE FLOOD. The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood.” Designation on maps always includes the letters A or V.

BASEMENT. An area of any building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FACILITY. A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

DEVELOPMENT.

1. *Inclusions.* Except where excluded, includes the following:

- a. Construction, reconstruction, relocation, placement or alteration of a structure;
- b. Change in the use or material increase in use of site, including any structure thereon;
- c. Disturbance of the surface of the ground (including submerged ground) or sea ice. Disturbance includes dredge or fill activities; creation of an equipment or material storage site, or tailing pile; creation of a refuse pile, dump or landfill; creation of a reservoir, settling or evaporation pond, reserve pit or leach fields or placer mining; or seismic exploration;
- d. Activities directly related to resource extractions; and
- e. Tundra travel.
- f. **Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.**

ELEVATED BUILDING. A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

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

1. **The overflow of inland or tidal waters and/or**
2. **The unusual and rapid accumulation of runoff of surface waters from any source.**

FLOODPLAIN. Any land area susceptible to being inundated by water from any source (see definition of FLOOD).

FLOODPLAIN ADMINISTRATOR. The Borough Land Management Administrator, or designee.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 19.80.050.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION. A structure for which the "start of construction" commenced on or after the effective date of adopted floodplain management regulations by Ordinance 2023-16.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations by Ordinance 2023-16.

RECREATIONAL VEHICLE. A vehicle which is:

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

START OF CONSTRUCTION. includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

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 does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE. A grant or relief from the development requirements of this title which would permit construction in a manner that would be otherwise prohibited by this title. Variances are approved under the provisions of § 18.16.50 and § 19.80.050-.055 where applicable.

WATER DEPENDENT. A structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

§ 19.40.010 - MAPS.

The map entitled "Zoning District Map of the North Slope Borough, Alaska" and, the map entitled "Utqiagvik Zoning Districts", and the map entitled "October 7, 2023 flood map" are hereby adopted and made a part of this title. These maps graphically depict the geographic location of the zoning districts set forth in this title. The maps may be amended only by the process set forth in Chapter 19.40. The maps may require interpretation with respect to specific properties and the following apply

§ 19.50.010 - APPROVALS.

All uses and development as defined in § 19.20.020 must receive approval prior to commencement. All uses and development within the Special Flood Hazard Area must also be approved by the Floodplain Administrator under the provisions of § 19.80.035 or § 19.80.040, as appropriate.

§ 19.50.040 - EMERGENCY ACTIONS.

Notwithstanding any regulation to the contrary, emergency actions may be conducted without any approval or permit, subject to the following criteria: Notwithstanding any regulation to the contrary, emergency actions may be conducted without any approval or permit, subject to the following criteria:

(A) The developer shall make reasonable efforts to conduct emergency operations in a manner that avoids or minimizes significant harm to the environment, consistent with the need to protect human life.

(B) In the event of a blowout or other continuing and uncontrolled release of oil or gas, a developer may undertake emergency construction and other activities reasonably necessary to control and contain the flow of oil and gas, consistent with an approved oil spill or blowout contingency plan.

(C) A developer shall inform the Administrator of any action taken pursuant to this section as soon as possible. No emergency work will receive waiver of floodplain permitting. If emergency work must be completed before a full floodplain review can be completed, then

it must be done after the fact to confirm that any development that occurred in the special flood hazard area complies with these regulations.

§ 19.60.010 - APPROVAL REQUIRED.

All conditional development or uses and master plans must receive approval prior to commencement. 20.020 must receive approval prior to commencement. **All conditional development or uses and master plans within the Special Flood Hazard Area must also be approved by the Floodplain Administrator under the provisions of § 19.80.040**

CHAPTER 19.80: - FLOODPLAIN MANAGEMENT POLICIES

§ 19.80.010 - INTRODUCTION.

The policies contained in this chapter are applicable to all areas of flood hazards within the jurisdiction the North Slope Borough. The flood hazard areas of the North Slope Borough are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

§ 19.80.015 - METHODS OF REDUCING FLOOD LOSSES.

The purposes of this section are to be accomplished by methods and provisions for:

- (A) Restricting or prohibiting uses which are 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;**
- (B) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;**
- (C) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;**
- (D) Controlling filling, grading, dredging, and other development which may increase flood damage; and**
- (E) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.**

§ 19.80.020 – SPECIAL FLOOD HAZARD AREA.

The areas of flood hazard are identified on the "October 7, 2023 flood map" and any revisions thereto. The areas of flood hazard were delineated by the North Slope Borough because no special flood hazard area has been identified by the Federal Emergency Management Agency. Any other flood hazard data available from other Federal, state, or other sources will be obtained, reviewed, and reasonably utilized.

§ 19.80.025 – WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required in the Special Flood Hazard Area is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from

flooding or flood damages. The North Slope Borough, any officer or employee thereof, or the Federal Insurance Administration, shall not be liable for any flood damages that result from reliance on these policies or any administrative decision lawfully made hereunder.

§ 19.80.030 – FLOODPLAIN ADMINISTRATOR.

A Floodplain Administrator shall be appointed by the North Slope Borough Mayor. The Floodplain Administrator is authorized and empowered to carry out all of the duties set forth in this chapter (§ 19.80).

§ 19.30.035 – FLOODPLAIN ADMINISTRATOR; POWERS AND DUTIES.

The Floodplain Administrator powers and duties include but are not limited to the following:

(A) *Permit Review.* The Floodplain Administrator shall review applications to determine that the permit requirements of this chapter have been met. The application, acceptance and notice procedures for permits shall follow the procedures set forth in Chapter 19.50.

(B) *Administrative Approval.* The Floodplain Administrator may issue a permit for an administratively approved use or development in the special flood hazard area under the conditions set forth in § 19.80.050 and this chapter for an administratively approved use or development using the procedure set forth in 19.50.010(B).

(C) *Approval of conditional use, conditional development or master plans.* Applications submitted to the Floodplain Administrator in conformity with § 19.50.010(A) and this chapter that are for a conditional use, conditional development or master plan shall be placed by Floodplain Administrator on the agenda the appropriate Commission for consideration using the procedure set forth in 19.60.030.

(D) *Alteration of Watercourses.*

(1) Notify adjacent communities and the State of Alaska, Department of Community and Regional Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(E) *Appeals and Variances.* The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the State of Alaska DCRA. These are public records and must be made available for inspection and for copies upon reasonable request.

(F) *Elevation.* The Floodplain Administrator may elevate a permit decision to the Planning or Zoning Commission based on a written finding that the permit decision satisfied one or more of criteria found in § 19.50.20.

§ 19.80.040 – APPROVALS WITHIN SPECIAL FLOOD HAZARD AREA.

A conditional use or development will be granted if all of the standards set forth below are met. The approval shall include a written finding that the proposal can occur consistent with the Borough Comprehensive Plan, can occur harmoniously with other

activities allowed in the district and will not disrupt the character of the neighborhood. Such findings and conditions of approval shall become part of the record and the case file.

All uses and development as defined in § 19.20.020 within the Special Flood Hazard Area identified in § 19.80.020 shall be made on permit forms furnished by the North Slope Borough Planning and Community Services Department and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; all existing or proposed structures including manufactured homes, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (A) Elevation in relation to mean sea level, of the lowest floor (including basement) of all residential structures. Where the flood elevation data is not available either through a Flood Insurance Study or from another authoritative source, applications for building permits will be reviewed to assure proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates;
- (B) Elevation in relation to mean sea level to which any structure has been floodproofed; and;
- (C) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

§ 19.80.045 - APPEALS TO COMMISSIONS.

Any aggrieved person, including the developer, may appeal the decision of the Floodplain Administrator by serving written notice to the secretary of the appropriate Commission and the developer within 30 days of receipt of the decision, in accordance with the provisions of § 19.30.130.

§ 19.80.050 PROVISIONS FOR FLOOD HAZARD REDUCTION

In the Special Flood Hazard Areas, the following standards are required:

- (A) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (B) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (C) All new construction and substantial improvements shall be constructed with materials resistant to flood damage;
- (D) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other services facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and,

- (G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
- (H) Applications for subdivision proposals all have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage; and
- (I) Applications for subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (J) Any recreational vehicles placed shall be site for fewer than 180 consecutive days, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, have has no permanently attached additions; or shall meet the applicable elevation and anchoring requirements for manufactured homes in this section.

§ 19.80.055 – VARIANCES WITHIN SPECIAL FLOOD HAZARD AREA.

When clearly demonstrated conditions of the land or proposed activity make a literal enforcement of the regulations in this title likely to result in extraordinary hardship, and/or the purposes of this title may be served to a greater extent by an alternative proposal, the Planning Commission may grant reasonable variances within the general purpose and intent this chapter, in accordance with the provisions of § 18.16.050. The Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. The Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:

- (A) The danger that materials may be swept onto other lands to the injury of others;
- (B) The danger to life and property due to flooding or erosion damage;
- (C) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (D) The importance of the services provided by the proposed facility to the community;
- (E) The necessity to the facility of a waterfront location, where applicable;
- (F) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (G) The compatibility of the proposed use with existing and anticipated development;
- (H) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (I) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (J) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (K) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

§ 19.80.060 – CONDITIONS FOR VARIANCES WITHIN THE SPECIAL FLOOD HAZARD AREA.

(A) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items A-K in §

19.80.055 have been fully considered. As the lot size increases the technical justification required for issuing the variance increases

(B) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section

(C) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(D) Variances shall only be issued upon:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 19.80.050, or conflict with existing local laws or ordinances.

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

(A) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except those found in § 19.80.055, and otherwise complies with § 19.80.050.

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