ORDINANCE NO. 710

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOOKSACK, WASHINGTON, AMENDING CHAPTER 15.10 OF THE NOOKSACK MUNICIPAL CODE TO ENSURE CONSISTENCY WITH THE NATIONAL FLOOD INSURANCE PROGRAM.

WHEREAS, the City Council previously took action in 1982 through adoption of Ordinance No. 224 to establish regulations addressing development within the 100-year floodplain as required under the National Flood Insurance Program; and

WHEREAS, said ordinance was codified under Chapter 15.10 of the Nooksack Municipal Code (NMC); and

WHEREAS, subsequent to adoption of Ordinance No. 224, the City Council has taken action to amend Chapter 15.10 to ensure ongoing consistency with the National Flood Insurance Program; and

WHEREAS, in a letter dated July 18, 2018, the Federal Emergency Management Agency (FEMA) informed the City that a new Flood Insurance Study (FIS) and new Flood Insurance Rate Maps (FIRMs) that affect areas within the City would become effective on January 18, 2019; and

WHEREAS, subsequent to receipt of the letter from FEMA, the Washington Department of Ecology provided a detailed list of required amendments to Chapter 15.10 necessary to adopt the new FIS and FIRM and ensure continued consistency of City regulations with the National Flood Insurance Program; and

WHEREAS, the City Council finds that additional amendments to Chapter 15.10 are necessary to ensure continued consistency with the National Flood Insurance Program; and

WHEREAS, on November 13, 2018 the City provided notification to the Washington State Department of Commerce pursuant to RCW 36.70A3106 regarding proposed amendments to Chapter 15.10 NMC; and

WHEREAS, said notification to the State included a request for expedited review, which request was subsequently granted; and

WHEREAS, on November 13, 2018, the City provided a copy of proposed amendments to Chapter 15.10 NMC to the Federal Emergency Management Agency and the Washington Department of Ecology for review and comment; and
WHEREAS, public notice regarding the holding of a public hearing on the proposed amendments to Chapter 15.10 of the Nooksack Municipal Code was provided in the Lynden Tribune on November 14, 2018; and

WHEREAS, on November 15, 2018, the City received correspondence from the Federal Emergency Management Agency providing required and recommended revisions to Chapter 15.10 NMC to ensure consistency with the National Flood Insurance Program; and

WHEREAS, on November 20, 2018, the City of Nooksack, acting as lead agency under RCW 43.21C, the State Environmental Policy Act (SEPA), issued a SEPA Determination of Nonsignificance with respect to proposed amendments to Chapter 15.10 of the Nooksack Municipal Code; and

WHEREAS, a fourteen-day SEPA comment period was provided from November 20 through December 5, 2018; and

WHEREAS, on November 26, 2018 the City provided updated, proposed amendments to Chapter 15.10 NMC to the Federal Emergency Management Agency and the Washington Department of Ecology for further review and comment; and

WHEREAS, on December 17, 2018 the City received correspondence from the Federal Emergency Management Agency indicating that, with the amendments to Chapter 15.10 NMC proposed by the City, the City’s flood damage prevention ordinance would be compliant with FEMA requirements under the National Flood Insurance Program; and

WHEREAS, a duly advertised public hearing regarding proposed amendments to Chapter 15.10 of the Nooksack Municipal Code was held on December 17, 2018, where opportunity for public comment was provided and public testimony was received; and

WHEREAS, following the closing of the public hearing, the City Council has determined that it is in the public interest to amend Chapter 15.10 NMC to ensure that City floodplain regulations are consistent with the National Flood Insurance Program; and

WHEREAS, the City Council has further determined that it is appropriate that the effective date of the ordinance adopting amendments to Chapter 15.10 NMC match the effective date of the new FEMA Flood Insurance Study and Flood Insurance Rate Maps being adopted as part of said amendments to Chapter 15.10 NMC;

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

SECTION 1: Section 15.10.010 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.010 Definitions. Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

A. “APPEAL” means a request for a review of the Administrator’s interpretation of any provision of this Chapter.

B. “AREA OF SHALLOW FLOODING” means a designated AO or AH zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one (1') to three (3') feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

C. “AREA OF SPECIAL FLOOD HAZARD” means the land in the flood plain of a community subject to a one (1%) percent or greater chance of flooding in any given year. Designation on maps always includes the letter “A” or “V”.

D. “BASEMENT” means any area of the building having its floor subgrade (below ground) on all sides.

E. “BASE FLOOD” means the flood having a one (1%) percent chance of being equaled or exceeded in any given year. Also referred to as the “100 Flood”. Designation on maps always includes the letter “A” or “V”.

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

G. “DEVELOPMENT” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

H. “FLOOD” or “FLOODING” means a general and temporary condition of partial or complete inundation or normally dry land areas from:
   1. The overflow of inland or tidal waters;
   2. The unusual and rapid accumulation or runoff of surface water from any source; and/or
   3. Mudslides (i.e., mudflows) which are proximately caused by flooding.

I. “FLOOD INSURANCE RATE MAP” (FIRM) means the official map on which the Federal Insurance Administrator has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

J. “FLOOD INSURANCE STUDY” means the official report provided by the Federal Insurance Administrator that includes flood profiles, the Flood Insurance Rate Maps, and the water surface elevation of the base flood.

K. “FLOODWAY” means the designated area shown on the FIRM that includes 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 the designated height of one (1') foot.

L. "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 found in Section 15.10.050.

M. "MANUFACTURED HOME" means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

N. "MANUFACTURED HOME, PARK, OR SUBDIVISION" means a parcel (contiguous parcels) of land divided into two (or more) manufactured mobile home lots for rent or sale.

O. "RECREATIONAL VEHICLE" means 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.

P. "START OF CONSTRUCTION" includes substantial improvement, and means the date the building permit is issued, PROVIDED the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, replacement or other improvement was within one hundred eighty (180) days of the permit date. The actual start of construction means the first placement of permanent construction of a structure on a site, such as the pouring of slab or of 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 foundation 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.

Q. "STRUCTURE means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground as well as a manufactured home.

R. "SUBSTANTIAL DAMAGE" means 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.

S. “SUBSTANTIAL IMPROVEMENT” means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure before the “start of construction” of the improvement.

The term includes structures which have incurred "substantial damage" regardless of the actual repair work performed.

The term does not, however, include:

1. 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 solely 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, provided that the alteration will not preclude the structure's continued designation as a "historic structure”.

T. “VARIANCE” means a grant of relief from the provisions of this Chapter which permits construction in a manner that would otherwise be prohibited by this Chapter.

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

SECTION 2: Section 15.10.021 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.021 Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Insurance Administrator in a scientific and engineering report entitled “The Flood Insurance Study for Whatcom County, Washington and Incorporated Areas” dated January 18, 2019, and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRMs) dated January 18, 2019, and any revisions thereto, is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study (FIS) and FIRMs are on file at City of Nooksack, City Hall, 103 W. Madison Street, Nooksack, Washington, and are incorporated by this reference as if fully set forth herein.

SECTION 3: Section 15.10.033 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.033 Duties and Responsibilities of Administrator. Duties of the Administrator shall include, but not be limited to:

   A. Permit Review

      1. Review all development permits to determine that the permit requirements of this Chapter have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required.

3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of 15.0.060(A) are met.

B. Use of Other Base Flood Data.
When base flood elevation data has not been provided in accordance with Section 15.10.021, Bases for Establishing the Areas of Special Flood Hazard, the Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Sections 15.10.050, Specific Standards, and 15.10.060, Floodways.

C. Information to be Obtained and Maintained.
1. Where base flood elevation data is provided through the Flood Insurance Study or as required in the preceding subsection, obtain and record 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 flood-proofed nonresidential structures where base flood elevation data are provided through the FIS, FIRM, or as required in the preceding subsection:
   a. verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed, and
   b. maintain the floodproofing certifications required in Section 15.10.30(3).

3. Maintain for public inspection all records pertaining to the provisions of this Chapter.

D. Alteration of Watercourses.
1. Notify adjacent communities and the State of Washington Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

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

3. Base Flood Elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

4. Notify the Federal Insurance Administrator in writing of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

E. Interpretation of FIRM Boundaries. Make interpretations where needed, based on documented sources of information, as to exact location of the boundaries of the
areas of special flood hazards (for example, where there appears to be a conflict between mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.10.034-035.

SECTION 4: Section 15.10.035 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.035 Conditions for Variances.

A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1-11) in Section 15.10.034(D) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

B. Variances may be issued for their reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section, provided 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. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

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

E. 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; and
   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 15.10.034(D), or conflict with existing local laws or this Code.

F. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principal 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 the flood elevations should be quite rare.

G. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than water tight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Part “A” of this Section, and otherwise complies with 15.10.040 and 15.10.041.

H. 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

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flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 5: Section 15.10.042 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.042 Utilities. In all areas of special flood hazards:
A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
C. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
D. Water wells shall be located on high ground that is not in the floodway.

SECTION 6: Section 15.10.043 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.043 Subdivision Proposals. In all areas of special flood hazards:
A. All subdivision proposals shall be consistent with the need to minimize flood damage;
B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
D. Where 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 fifty (50) lots or five (5) acres (whichever is less).
E. Recreational Vehicles.
Recreational vehicles placed on sites are required to either:
1. Be on the site for fewer the 180 consecutive days
2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
3. Meet the requirements of 15.10.050(D).

SECTION 7: Section 15.10.044 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.044 Review of Building Permits. When elevation data is not available, either through the flood insurance study or FIRM or through another authoritative source,
applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

SECTION 8: Section 15.10.050 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

15.10.050 Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.10.021, Basis for establishing the areas of Special Flood Hazard or Section 15.10.033(B), Use of other Base Flood Data, the following provisions are required:

A. Residential Construction

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1') foot or more above base flood elevation.

2. Crawl Spaces.
   a. The interior grade of a crawlspace below the base flood elevation must not be more than 2 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 4 feet at any point;
   c. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas (refer to FEMA Technical Bulletin 11-01 page 7, Guidance for Pre-Engineered Crawlspaces). This limitation is intended to prevent these crawlspaces from being converted into habitable spaces;
   d. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainages tiles, or gravel or crushed stone drainage by gravity or mechanical means;
   e. The velocity of floodwaters at the site should not exceed 5 feet per second for any crawlspace. For velocities in excess of 5 feet per second, other foundation types should be used.

3. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be usable solely for parking of vehicles, building access or storage and be designed to automatically equalize hydrostatic flood forces on exterior walls allowing for the entry and exit of flood waters. 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:

a. A minimum of two (2) openings having a total net area of not less than one square inch for each square foot of enclosed area subject to flooding shall be provided;

b. The bottom of all openings shall be no higher than one (1') foot above grade;

c. Openings may be equipped with screen, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

B. **Nonresidential Construction.** New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated on (1') foot or more above the base flood elevation level; or, together with attendant utility and sanitary facilities, shall:

1. be flood proofed so that below one (1') foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

2. have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

3. 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 plan. Such certifications shall be provided to the official as set forth in Section 15.10.033(C)(2)(ii);

4. non-residential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in the proceeding subsection;

5. applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one (1') foot below the floodproof level (e.g., a building constructed to one (1') foot above the base flood level will be rated as at the base flood level).

C. **Critical Facility.** Construction of new critical facilities shall be, to the extent possible, located outside the limits of the area of special flood hazard. Construction of new critical facilities shall be permissible within the area of special flood hazard if no feasible alternative site is available. Critical facilities constructed within the area of special flood hazard shall have the lowest floor elevated to three (3') feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood plain shall be provided to all critical facilities to the extent possible.
D. **Manufactured Homes.** All manufactured homes to be placed or substantially improved on sites shall be elevated on a permanent foundation, such that the lowest floor of the manufactured home is one (1') foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.10.040(B).

**SECTION 9:** Section 15.10.060 of the Nooksack Municipal Code is hereby amended in its entirety to read as follows:

**15.10.060 Floodways.** Located within areas of special flood hazard established in Section 15.10.020-021 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

B. Section 15.10.060(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 15.10.040-044,050.

C. Construction or reconstruction of residential structures is prohibited within designated floodways, EXCEPT for (i) repairs, re-construction or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty (50%) percent of the market value of the structure either, (a) before the repair or reconstruction is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct violations of existing 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 to structures identified as historic places, may be excluded in the 50% requirement.

**SECTION 10:** Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clauses or phrase thereof separately and independently and, in the event that any one or more sections, subsections, sentences, clauses or phrases may later be declared invalid or unconstitutional, then any ordinance or ordinances, or parts thereof, amended or repealed by such portion of this Ordinance shall remain in full force and effect.

**SECTION 11:** Effective date. This Ordinance shall take effect and be in full force and effect from after its passage by the City Council and approval by the Mayor, if approved, and thereafter on January 18, 2019.
PASSED by the City Council of the City of Nooksack, Washington, on the 7th day of January, 2019, and approved by its Mayor on the same date.

CITY OF NOOKSACK, WASHINGTON

[Signature]
JAMES ACKERMAN, Mayor

ATTESTED/AUTHENTICATED;

By:

[VIRGINIA ARNASON, City Clerk]

APPROVED AS TO FORM:

[Signature]
THOMAS FRYER, City Attorney