AN ORDINANCE of the City Council of the City of Kent, Washington, amending Section 14.09.010 and Section 14.09.220 of the Kent City Code pertaining to flood hazard regulations.

REcitals

A. On December 1st, 2015 a Community Assistance Visit (CAV) was made by the Federal Emergency Management Agency (FEMA) to ensure the enforcement of federal mandatory minimum flood hazard regulations required for participation as a community in the National Flood Insurance Program (NFIP).

B. Two changes to the city’s current flood hazard regulations (Ch. 14.09 KCC) are required to ensure compliance with FEMA’s mandatory minimums for participation in the NFIP. The changes apply to the city’s flood hazard definitions (KCC 14.09.010) and flood hazard variances (KCC 14.09.220) sections.

C. The required change to KCC 14.09.010 adds a definition for Substantial Damage and ties the new language to the current definition for Substantial Improvement. The definition for Substantial Improvement is also updated to reflect the added definition. The revised language presents a more comprehensive picture when assessing damages to existing structures.
D. The required change to KCC 14.09.220 replaces the current code language with a more detailed process for obtaining a variance from flood hazard regulations, and closes a potential loophole that may have allowed for development to extend into a regulatory floodway. This change has the ancillary benefit of detaching KCC 14.09.220 from KCC 11.06.100.

E. The State Environmental Policy Act (SEPA) responsible official has determined that the proposed Kent City Code amendments do not reflect significant changes to amendments to Chapter 14.09 KCC completed in 2015, where environmental review resulted in issuance on April 3, 2015, of an Addendum to the City’s Comprehensive Plan Environmental Impact Statement, and further SEPA analysis is not required for these local code amendments.

F. A draft version of this ordinance was submitted to the Washington State Department of Commerce for expedited review. On September 19, 2016, the City received notice that expedited review had been granted, and in accordance with RCW 36.70A.106(3)(b) the City may adopt the ordinance immediately upon receipt of the notice.

G. The ordinance was considered by the City Land Use and Planning Board after a duly noticed public hearing on September 26, 2016. This ordinance was presented at the Economic and Community Development Committee on October 10, 2016 as an information-only item, and was considered by the Public Works Committee on October 17, which recommended Council adopt this ordinance. Council has considered this ordinance, together with all public comment, and has determined that adoption is appropriate.

Amend KCC 14.09 -
Re: Flood Hazard Regulations
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment. Section 14.09.010 of the Kent City Code, entitled “Definitions,” is hereby amended as follows:

Sec. 14.09.010 Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. Appeal means a request for review of any final action pursuant to this chapter, or of the interpretation of any provision of this chapter by any city official.

B. Area of shallow flooding means the land within the floodplain where the base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.

C. 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.

D. Base flood elevation means the actual elevation (in mean sea level) of the water surface of the base flood determined by the Federal Emergency Management Agency (FEMA) or other qualified person or agency as described in this chapter.
E. *Basement* means any area of the building having its floor subgrade (below ground level) on all sides.

F. *Best available data* means: (1) the data provided by FEMA in a scientific and engineering report entitled Flood Insurance Study for King County, Washington and Incorporated Areas, dated May 16, 1995, along with the accompanying Flood Insurance Rate Map (FIRM), including any subsequent revisions thereto; or (2) hydrologic and hydraulic analyses performed in accordance with standard engineering practice and in accordance with FEMA standards contained in 44 C.F.R. Part 65.

G. *Compensatory flood storage* means any new, excavated flood storage volume equivalent to any flood storage capacity which has been or would be eliminated by filling or grading within the special flood hazard area. The compensatory flood storage must be provided within the special flood hazard area and be free draining.

H. *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; and public and private facilities which produce, use, or store hazardous materials or hazardous waste as defined by the State Department of Ecology.

I. *Development* means any proposed or actual manmade changes to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations located within the special flood hazard area and other site preparation activities, storage of materials or equipment, subdivision of land, removal of substantial amounts of vegetation, or alteration of natural site characteristics.
J. **Director** means the city of Kent economic and community development director or the director’s designee.

K. **Fill** means the addition of soil, sand, rock, gravel, sediment, walls, structures and their associated internal volume, or other material by artificial means.

L. **Flood or flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters;

2. The unusual and rapid accumulation of runoff of surface water from any source.

M. **Flood fringe** means the portion of the special flood hazard area outside of the floodway which is generally covered by floodwaters during the base flood.

N. **Flood Insurance Rate Map (FIRM)** means the official map on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

O. **Flood insurance study** means the official report provided by FEMA that includes flood profiles, the FIRM, and the water surface elevation of the base flood.

P. **Flood protection elevation** means is a minimum of two feet above the base flood elevation.
Q.  *Flood season* means the period from October 1st to March 31st during which, historically, the frequency, distribution, and volume (inches of rainfall) of storms in the Green River Basin have been the largest and all known major floods have occurred.

R.  *Floodplain* means that portion of a river or stream channel and adjacent lands which are subject to the base flood flooding.

S.  *Floodway* means the channel of the stream and that portion of the adjoining special flood hazard area which is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot.

T.  *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 nonelevation design requirements of this chapter.

U.  *Manufactured home* means a structure, used for residential or commercial purposes, 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 floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term manufactured home does not include park trailers, travel trailers, and other similar vehicles.
V. *Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

W. *No net fill* means that if any fill is brought on to a site for the construction of a structure or access road then an equal amount of soil/material will be removed from the site. Earthen fill must be obtained from the same site, to the extent practicable. The soil removed must be from within the boundaries of the site, to the extent practicable, and from within the special flood hazard area. If not practical, soil could be removed from property in the immediate vicinity and within the special flood hazard area. The area from which the soil is removed must be able to drain completely into the adjoining watercourse following a flood.

X. *New construction* means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter.

Y. *Recreational vehicle* means a vehicle which is:

1. Built on a single chassis;

2. Four hundred 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.
Z. **Special flood hazard area** means the total area subject to inundation by the base flood identified by FEMA in a report entitled *The Flood Insurance Study for King County, Washington and Incorporated Areas*, dated May 16, 1995, with accompanying pages on file with King County or the city of Kent department of economic and community development.

AA. **Start of construction** includes substantial improvement, and means the date a building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days after the permit issuance 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 submission of an application for development or land preparation, such as clearing, grading, and filling; nor does it include the installation of streets 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.

BB. **Structure** means that which is built or constructed, or an edifice or building of any kind or any piece of work composed of parts joined together in some definite manner, and includes posts for fences and signs. It specifically includes buildings that are not fully enclosed on all sides where the orientation may affect the flow of floodwaters, but does not include mounds of earth or debris.
CC. **Substantial improvement** means any repair, remodeling, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the appraised fair market value of the structure either:

1. Before the improvement or repair is started; or

2. If the structure has been damaged, regardless of whether or not it is determined to be substantial damage, 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:

a. Any project for improvement of a structure to correct an existing violation of state or local health, sanitary, or safety code specifications, as identified by the local code enforcement official, and which is the minimum necessary to assure safe living conditions; or

b. Any alteration of a structure listed on the National Register of Historic Places or a recognized state or local inventory of historic places.

DD. **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.
SECTION 2. - Amendment. Section 14.09.220 of the Kent City
Code, entitled "Variances," is hereby amended as follows:

Sec. 14.09.220 Variances. Variances shall be completed in
accordance with those variance provisions identified in the city of Kent
critical areas code found in Chapter 11.06 KCC, as amended.
Applications for variances from the strict application of the terms of this
chapter to a specific property may be submitted to the city. All variances
shall be considered by the hearing examiner as a Process III application,
pursuant to Chapter 12.01 KCC. Approval of variances from the strict
application of flood hazard regulations shall be consistent with the
following criteria:

1. There are unique physical conditions peculiar and inherent to
the affected property that make it difficult or infeasible to strictly comply
with the provisions of this chapter.

2. The variance is the minimum necessary to accommodate the
building or structure footprint and access.

3. The proposed variance would preserve the functions and
values of the flood hazard area, and the proposal does not create or
increase a risk to the public health, safety, and general welfare, or to
public or private property.

4. The proposed variance would not adversely affect properties
surrounding the subject site.

5. Adverse impacts to flood hazard areas resulting from the
proposal are minimized.

6. The special circumstances of conditions affecting the property
are not a result of the actions of the applicant or previous owner.

7. The variance shall not constitute a grant of special privilege.
8. No variance shall be approved within a floodway that would cause an increase in the Base Flood Elevation.

**SECTION 3.** – **Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 4.** – **Corrections by City Clerk or Code Reviser.** Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 5.** – **Effective Date.** This ordinance shall take effect and be in force 30 days from and after its passage, as provided by law.

Suzette Cooke, Mayor

ATTEST:

Kimberley A. Komoto, City Clerk

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY
PASS: day of November, 2016.
APPROVED: 1 day of November, 2016.
PUBLISHED: 4 day of November, 2016.

I hereby certify that this is a true copy of Ordinance No. 4218 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Kimberley A. Komoto (SEAL)
KIMBERLEY A. KOMOTO, CITY CLERK

Amend KCC 14.09 -
Re: Flood Hazard Regulations