ORDINANCE NO. 3932

AN ORDINANCE of the City Council of the City of Kent, Washington, temporarily waiving certain permitting requirements for temporary structures constructed for flood protection purposes due to the threat posed by the diminished flood control capabilities of the Howard Hanson Dam.

RECITALS

A. The United States Army Corps of Engineers has declared that the flood control capabilities of the Howard Hanson Dam have been diminished, and as a result, local communities downstream should prepare for potential flooding on the Green River during the 2009–2010 flood season. In response, the City of Kent, the King County Council, and several South King County cities have adopted proclamations, resolutions, and ordinances declaring a preemptive emergency. Consistent with the passage of its emergency resolution regarding potential flooding of the Green River, the Kent City Council adopts this ordinance intended to expedite property owners’ ability to erect temporary flood control structures in order to protect their lives and property.

B. Flood protection measures are often taken when the threat of flooding is imminent. Regulatory review and permit approval are typically
impractical to apply for if floodwaters rise. Staff recommends that council waive certain permitting requirements for temporary flood protection structures installed to protect critical facilities, as those facilities and structures are defined in this ordinance and if the structure is removed from the property by July 1, 2010. Any flood protection structure that remains beyond that date will automatically be deemed a permanent flood control structure, will automatically be deemed subject to all applicable regulatory and permitting requirements, and will automatically be deemed in violation of the Kent City Code, subject to civil and criminal penalties. While the procedural permitting requirements are waived, the temporary structure must still comply with the substantive requirements of all applicable federal, state, and local regulations, specifically including, without limitation, the State Environmental Policy Act, the Shoreline Master Program, the Kent Zoning Code, and the Kent Construction Standards.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Recitals Adopted as Findings. The City Council finds the recitals listed above to be true and correct in all respects and adopts them as its findings for the purposes of this ordinance.

SECTION 2. - Definitions. The following definitions apply to the words and phrases used in this ordinance:

A. Temporary Flood Protection Structure. “Temporary Flood Protection Structure” means any sandbag, water-filled sack, earthen berm, concrete block, or similar material, or any combination of these materials, placed or

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installed within ten feet (10’) of the outside perimeter of any critical facility for the sole purpose of keeping potential Green River floodwaters from invading the critical facility.

B. **Critical Facility.** "Critical Facility” means any permanent building primarily used as a business or residence that is regularly staffed or is lived in on a daily basis, and also includes any structure used to store bulk fuel or bulk hazardous or dangerous wastes, or any structure or building owned or operated by a public entity whose preservation is necessary for public safety purposes. Garages, sheds, or other outbuildings, parking areas, landscaping areas, and other similar areas or structures are specifically excluded from this definition.

**SECTION 3. - Scope, Purpose, & Applicability.**

A. The Kent City Council has declared a preemptive public emergency because of the potential for flooding in the Green River Valley caused by structural deficiencies in the Howard Hansen Dam that may result in decreased storage capacity in the dam and excess flows in the river that could overtop the river’s levees during unusually heavy rainfall events. This is an unanticipated emergency that poses an imminent threat to public health, safety, and the environment within the Green River Valley that requires immediate action within a time too short to follow established permit application and approval procedures.

B. The purpose of this ordinance is to provide property owners the ability to protect life and property in advance of any flood, should one occur, while making best efforts to control the placement of these structures in a manner that attempts to maintain adequate protection for flood storage, erosion and sedimentation control, and other environmental and regulatory controls.

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C. Temporary Flood Protection Structures placed or installed to protect critical facilities located within the Green River Valley are exempt from the City’s permitting application and approval process for those structures if the Temporary Flood Protection Structure is removed no later than July 1, 2010. While the permitting procedural requirements for Temporary Flood Protection Structures are waived, these structures must still comply with the substantive requirements of all applicable federal, state, and local regulations, specifically including, without limitation, the State Environmental Policy Act, the Shoreline Master Program, the International Building and Residential Codes, or other International and Uniform Codes, the Kent Zoning Code, and the Kent Design and Construction Standards.

D. Temporary Flood Protection Structures must be both maintainable and removable; structures subject to degradation, deterioration, abnormal wear and tear, or damage (for example and without limitation, from deficient design, inappropriate fabrics, ultraviolet light, or excessive erosion from flood waters or flood debris) are not Temporary Flood Protection Structures for the purposes of this ordinance.

E. All temporary flood protection structures must be removed and all materials used to place or install the structures must be properly and legally disposed of no later than July 1, 2010. Any Temporary Flood Protection Structure that remains on site beyond July 1, 2010, will automatically be deemed a permanent flood protection device, structure, or installation, will automatically be deemed subject to this ordinance and to all applicable regulatory and permitting requirements, and will automatically be deemed in violation of this ordinance and the Kent City Code for failure to obtain necessary permits and approvals, enforceable under chapter 1.04 of the Kent City Code and subject to civil and criminal penalties.

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SECTION 4. - Severability. If any one or more section, subsections, or sentences of this ordinance are 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 5. - Effective Date. This is an emergency ordinance enacted to preserve the public health, public safety, and public peace in the city of Kent, and will take effect immediately upon passage.

SUZETTE COOKE, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY
PASSED: 15th day of September, 2009.
APPROVED: 15th day of September, 2009.
PUBLISHED: 19th day of September, 2009.

I hereby certify that this is a true copy of Ordinance No. 3932 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
BRENDA JACOBER CITY CLERK

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