ORDINANCE NO. 3933

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Ordinance No. 3932, 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. On September 15, 2009, the Kent City Council adopted Ordinance No. 3932 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. Ordinance No. 3932 was adopted in order to expedite property owners’ ability to erect Temporary Flood Protection Structures to protect their lives and property.

B. Ordinance No. 3932 provided that a qualifying Temporary Flood Protection Structure must be located within 10 feet of the outside perimeter of any critical facility in order to qualify for the permitting waiver provided by that ordinance. Staff recommends revising Ordinance No. 3932 to provide that Temporary Flood Protection Structures will qualify

1. Amending Ordinance No. 3932 Permitting Requirements for Temporary Flood Protection Structures
under the permitting waiver if they are located within 10 feet of the outside perimeter of any critical structure, or as close as is reasonably practicable.

C. Staff additionally recommends clarifying that the permitting waiver applies only to Temporary Flood Protection Structures that qualify under Ordinance No. 3932 and this amended ordinance. Those structures that do not qualify must be permitted. While permits must be obtained for non-qualifying structures, this amended ordinance provides that property owners may commence work immediately, but must subsequently obtain all required permits no later than July 1, 2010.

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

ORDINANCE

Ordinance No. 3932, adopted by the Kent City Council on September 15, 2009, is amended as follows:

SECTION 1. – Recitals Adopted as Findings. In addition to the findings adopted by the Kent City Council in Ordinance No. 3932, the City Council finds the additional recitals listed above to be true and correct in all respects and adopts and incorporates them as its findings for the purposes of this ordinance and Ordinance No. 3932. The City Council further finds that the threat of flooding caused by the structural weaknesses in the Howard Hanson Dam constitutes a real and imminent emergency that poses a threat to the health, safety, and welfare of the persons and property in and near the Green River Valley. Even though the actual occurrence of flooding is subject to weather-related events and is accordingly not capable of being predicted with any accuracy at this time, and may in fact not occur at all, the threat nevertheless remains real and
imminent, and it is appropriate and advisable to take appropriate steps to protect persons and property now when time allows to provide protection in advance of any potential flood.

**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 installed within ten feet (10') of, or as close as is reasonably practicable to, 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 the following:

1. 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

2. Any structure used to store bulk fuel or bulk hazardous or dangerous wastes;

3. Any structure or building owned or operated by a public entity whose preservation is necessary for public safety purposes; and

4. Any building or other structure necessary for the ongoing operation of any public or government franchised sewer, water, stormwater, power, gas, or telecommunications utility.

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.

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.

F. All flood protection structures that do not meet these requirements for Temporary Flood Protection Structures must be properly permitted under city, state, and federal regulatory requirements. However, because this is an emergency and because the threat of flooding is imminent, property owners who wish to construct flood protection structures other than Temporary Flood Protection Structures may commence work immediately, but the property owner must subsequently obtain all required permits for that non-temporary structure no later than July 1, 2010.
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.

[Signature]
SUZETTE COOKE, MAYOR

ATTEST:

[Signature]
BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

[Signature]
TOM BRUBAKER, CITY ATTORNEY
I hereby certify that this is a true copy of Ordinance No. 3933 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK
STATE OF WASHINGTON, COUNTY OF KING
AFFIDAVIT OF PUBLICATION

PUBLIC NOTICE
Linda M Mills, being first duly sworn on oath that she is the Legal Advertising Representative of the

Kent Reporter

a bi-weekly newspaper, which newspaper is a legal newspaper of general circulation and is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a bi-weekly newspaper in King County, Washington. The Kent Reporter has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington for King County.
The notice in the exact form annexed was published in regular issues of the Kent Reporter (and not in supplement form) which was regularly distributed to its subscribers during the below stated period. The annexed notice, a:

Public Notice

was published on October 10, 2009.

The full amount of the fee charged for said foregoing publication is the sum of $77.00.

Linda M. Mills
Legal Advertising Representative, Kent Reporter
Subscribed and sworn to me this 10th day of October 2009.

Kathy Dalseg
Kathy Dalseg, Notary Public for the State of Washington, Residing in Covington, Washington
P. O. Number:

CITY OF KENT
NOTICE OF ORDINANCES
PASSED BY THE
CITY COUNCIL
The following is a summary of ordinances passed by the Kent City Council on October 6, 2009:
ORDINANCE NO. 3933
AN ORDINANCE of the City Council of the City of Kent, Washington, amending Ordinance No. 3932, 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.
Effective Date: October 6, 2009
Each ordinance will take effect 30 days from the date of passage, unless subjected to referendum or vetoed by the Mayor, or unless otherwise noted. A copy of the complete text of any ordinance will be mailed upon request to the City Clerk.
Brenda Jacober, CMC.
City Clerk
Published in the Kent Reporter on October 10, 2009. #280769.