ORDINANCE NO. 3996

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Ordinance Nos. 3932, 3933, and 3959 to extend the waiver provided by those ordinances of 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 from July 1, 2011, to July 1, 2012.

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. 3933 was adopted shortly thereafter to further clarify when the permitting requirements for temporary flood protection structures would be waived under Ordinance No. 3932. Ordinance No. 3959 was adopted June 1, 2010 extending the waiver provisions of the prior ordinances to July 1, 2011.

1. Amending Ordinance No. 3932, Ordinance No. 3933, and Ordinance No. 3959 Re: Permitting of Temporary Flood Protection Structures
B. Near the end of 2009, the U.S. Army Corps of Engineers completed temporary repairs at the Howard Hanson Dam, which included constructing a grout curtain along a damaged abutment. This temporary fix has reduced the flood risk posed to property owners and citizens located down-river of the dam.

C. The U.S. Army Corps of Engineers has obtained an independent review of its plans for temporary and permanent repairs needed at the Howard Hanson Dam, and the reviewing engineers have concluded that the U.S. Army Corps of Engineers is taking the appropriate steps to temporarily and permanently repair the dam in order to stop water seepage through a damaged abutment. Most recently, the federal government has designated $44 million in emergency funding for further repairs at the Howard Hanson Dam that may include an extended grout curtain or a concrete cutoff wall. The final plans are still in process.

D. Given the temporary repairs that have already been constructed, and the additional repairs that will be constructed with the designated funds, the flooding risk has continued to decrease. Once the additional repairs are made to the Howard Hanson Dam with the use of the designated funds, the risk of flood will be no greater than the risk of flood that existed prior to the time the abutment problems were discovered. At the current time, it appears that the next stage of repairs will be completed by the Fall of 2011 and testing will be completed in the late Spring of 2012.

E. Ordinance No. 3932, as amended by Ordinance Nos. 3933 and 3959, provided that property owners and tenants within the City of Kent could install temporary flood protection structures without a permit, if those structures were removed by July 1, 2011. If the structures are not

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removed by that date, the ordinances provide that a permit for those structures would need to be obtained.

F. Because the U.S. Army Corps of Engineers is constructing and testing more permanent repairs to the Howard Hanson Dam and in order to address the needs of the community in light of the continually changing flood threat as construction and testing at the Howard Hanson Dam continues, the City Council has elected to extend the permitting exemption by one additional year, to July 1, 2012.

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

ORDINANCE

Ordinance No. 3932, as amended by Ordinance No. 3933, as amended by Ordinance No. 3959 is amended as follows:

SECTION 1. Recitals Adopted as Findings. In addition to the findings adopted by the Kent City Council in Ordinance Nos. 3932, 3933, and 3959, 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, Ordinance No. 3933, and Ordinance No. 3932, and Ordinance No. 3959. The City Council further finds that the threat of flooding caused by the structural weaknesses in the Howard Hanson Dam abutment 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” includes 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;
   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.

Amending Ordinance No. 3932, Ordinance No. 3933, and Ordinance No. 3959 Re: Permitting of Temporary Flood Protection Structures
SECTION 3. – Scope, Purpose, & Applicability.

A. 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, 201±2. 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

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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, 2011. Any Temporary Flood Protection Structure that remains on site beyond July 1, 2011, 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, 2011.

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.

Amending Ordinance No. 3932, Ordinance No. 3933, and Ordinance No. 3959 Re: Permitting of Temporary Flood Protection Structures
SECTION 5. - 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; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 6. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

ATTEST:

BRENDA JACOBER, CITY CLERK

SUZETTE COOKE, MAYOR
I hereby certify that this is a true copy of Ordinance No. 3996 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