ORDINANCE NO. 4037

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Ordinance No. 3996 to extend the waiver 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, 2012, to July 1, 2013.

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. Ordinance No. 3996 was adopted April 19, 2011 extending the waiver provisions of the prior ordinances to July 1, 2012.

1 Amending Ordinance No. 3996 Re: Permitting of Temporary Flood Protection Structures
B. These ordinances 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, 2012. If the structures are not removed by that date, the ordinances provide that a permit for those structures would need to be obtained.

C. The U.S. Army Corps of Engineers has now satisfactorily made repairs to the Howard Hanson Dam, and the flood threat is no greater now than it was before problems were discovered with the dam. However, for the city of Kent and for some property owners, additional time is required to remove temporary flood protection structures during the drier summer and fall seasons in this calendar year. Accordingly, it is appropriate to extend the time for removal of temporary flood control structures for one additional year.

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

ORDINANCE

Ordinance No. 3996, 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, and 3996, 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, 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 posed 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.

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

A. This was an unanticipated emergency that posed an imminent threat to public health, safety, and the environment within the Green River Valley that required immediate action within a time too short to follow established permit application and approval procedures.

B. The purpose of these ordinances was 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 attempted 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 remain 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, 2012. 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.

4  **Amending Ordinance No. 3996**
Re: Permitting of Temporary Flood Protection Structures
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, 2012. Any Temporary Flood Protection Structure that remains on site beyond July 1, 2012, 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, 2012.

SECTION 4. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this
ordinance and that remaining portion shall maintain its full force and effect.

**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; ordinance section, or subsection numbering, or references to other local state or federal laws, codes, rules, or regulations.

**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.

Suzette Cooke, Mayor

ATTEST:

Brenda Jacober, City Clerk

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 5 day of June, 2012.

APPROVED: 5 day of June, 2012.

PUBLISHED: 8 day of June, 2012.
I hereby certify that this is a true copy of Ordinance No. 4037 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 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 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 June 8, 2012.

The full amount of the fee charged for said foregoing publication is the sum of $96.65.

Linda M. Mills  
Legal Advertising Representative, Kent Reporter  
Subscribed and sworn to me this 8th day of June, 2012.

Kathleen C. Sherman, Notary Public for the State of Washington,  
Residing in Buckley, Washington