ORDINANCE NO. 2008-034

Adopted by the Sacramento City Council

June 10, 2008

AN INTERIM ORDINANCE RELATING TO ASSUMPTION OF THE RISK OF FLOOD-RELATED PROPERTY DAMAGE FOR NEW CONSTRUCTION OR SUBSTANTIAL IMPROVEMENTS IN THE NATOMAS AREA, AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

BACKGROUND

SECTION 1.

The City Council of the City of Sacramento finds and declares as follows:

A. City Code Section 15.108.040 provides that no building permit shall be issued for any new construction or substantial improvements located in areas of the one hundred year floodplain designated on the City flood insurance rate maps ("FIRMS") as Zone A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, or AR/AH, unless the owners of the new construction or the persons contracting for the substantial improvements execute an agreement with the City that provides notification that the new construction or substantial improvements may be subject to flood-related property damage and requires such persons to expressly assume the risk of such damage.

B. City Code Section 15.108.040 presently does not apply to the Natomas area, because the Natomas area presently is not designated on the City FIRMS as one of the one hundred year floodplain zones to which City Code Section 15.108.040 applies.

C. However, the City has been notified by the Federal Emergency Management Agency ("FEMA") that in June 2008, FEMA will issue written notification to the City that the Natomas area will be redesignated as Zone AE on the revised City FIRMS effective in December 2008. Upon the December 2008 effective date, City Code Section 15.108.040 will apply to the issuance of building permits for new construction or substantial improvements in the Natomas area.

D. The purpose of this ordinance is to require that an agreement as described in City Code Section 15.108.040 be executed prior to the issuance of a building permit for any new construction or substantial improvements located in the Natomas area from the effective date of this ordinance until the revised City FIRMS become effective.

SECTION 2.

A. As of the effective date of this ordinance, no building permit shall be issued for any new construction or substantial improvements located in the Natomas area, unless the owners of the new construction or substantial improvements execute an agreement with the City, in a form acceptable to the City Attorney, whereby such person(s):

1. Are notified of and expressly assume the risk that the new construction or substantial improvements may be subject to flood-related property damage;

2. Unconditionally waive any claim of liability on the part of the City, or its officers, agents or employees for any flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements;

3. Expressly agree, in connection with the transfer of an ownership interest in the new construction or substantial improvements, to notify the transferee of the flood danger and obtain on behalf of the City the transferee's waiver of any claim for flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements; and

4. Agree to defend and indemnify the City and its officers, employees and agents against all claims for any flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements, provided:

   a. The indemnifiers shall be released from this indemnification pledge if, at such time as the City seeks to enforce this pledge, the indemnifiers demonstrate that they have fully complied with the provisions of the agreement requiring that they give notice of the flood danger to third parties obtaining an interest in the new construction or substantial improvements.

B. As used herein, the "Natomas area" means the area within the Sacramento City limits bounded on the south by the north levee of the American River, on the west by the east levee of the Sacramento River, on the north by the south levee of the Natomas Cross Canal and on the east by the west levee of Steelhead Creek (Natomas East Main Drainage Canal).

C. As used herein, "substantial improvements" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

1. Before the improvement or repair is started; or

2. If the structure has been damaged, and is being restored, before the damage occurred.

For the purpose of this definition "substantial improvements" are 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 include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

2. Any alteration of a structure listed on the national register of historic places or a state inventory of historic places.

SECTION 3

This ordinance is enacted as an interim ordinance, and shall automatically expire and cease to be effective on the date that the revised City FIRMS for the Natomas area become effective.

SECTION 4.

This ordinance is declared to be an emergency measure, to become effective immediately upon its adoption by the City Council pursuant to Sacramento City Charter section 32(g)(2). The facts constituting the emergency are as follows:

FEMA has indicated that it will issue written notification to the City in June 2008, that the Natomas area will be redesignated from Zone X to Zone AE on the revised City FIRMS scheduled to become effective in December 2008. Redesignation of the Natomas area from Zone X to Zone AE indicates that the Natomas area faces greater flood risk than is indicated on the current City FIRMS, and applies the more restrictive Zone AE building restrictions to the Natomas area. Once the Zone AE designation becomes effective, in addition to the building restrictions specified for Zone AE, City Code Section 15.108.040 will prohibit the issuance of building permits for any new construction or substantial improvements in the Natomas area, unless the owners of the new construction or the persons contracting for the substantial improvements execute an agreement with the City that provides notification that the new construction or substantial improvements may be subject to flood-related property damage and requires such persons to expressly assume the risk of such damage.

It is important to also require that such agreements be executed for building permits issued during the interim period before the revised City FIRMS become effective: (1) to ensure that property owners obtaining building permits during the interim period are

made aware of the risk of flood-related property damage in the Natomas area reflected in FEMA's intention to redesignate the Natomas area from Zone X to Zone AE; and, (2) to protect the City and City residents from claims arising from flood-related damage to the construction or improvements for which such building permits are issued, by requiring the property owners to assume the risk of flood-related property damage, waive any claims for such damage premised on the City's issuance of the permits, and agree to defend and indemnify the City against any claims for such damage. In order to require that such agreements be executed for building permits issued during this interim period, as specified in this ordinance, it is necessary for this ordinance to take effect immediately.

Adopted by the City of Sacramento City Council on June 10, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

Heather Fargo
Mayor Heather Fargo

Attest:

Shirley Concolino
Shirley Concolino, City Clerk

Effective: June 10, 2008