

ORDINANCE NO. 89-054

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF JUL 18 1989

AN ORDINANCE ADDING ARTICLE XXVII TO CHAPTER 9 OF THE SACRAMENTO CITY CODE RELATING TO NOTICE AND ASSUMPTION OF RISK FOR DEVELOPMENT IN POTENTIAL FLOOD AREAS

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

ARTICLE XXVII. Notice and Assumption of Risk for Development in
Potential Flood Areas.

§ 91100 Purpose.

This Article establishes mechanisms whereby persons seeking to build, purchase or otherwise obtain an interest in new construction or substantial improvements of existing structures located in the 100-year floodplain shall be notified of the risk of flooding encountered by such structures and shall expressly assume that risk.

§ 91101 Findings of Fact.

- (a) Prior to the Spring of 1988, the Sacramento area was deemed to have a flood control system capable of protecting against floods with recurrence intervals of up to 125 years.
- (b) New studies conducted by the U.S. Army Corps of Engineers indicate that the flood control system protecting the Sacramento area may afford less than 70 years of flood protection.
- (c) The City, County and special flood districts are presently developing a flood control project aimed at attaining for the City and County the 100-year level of flood protection required under the National Flood Insurance Program.
- (d) Pending the attainment of this objective, the City and County, in cooperation with the Federal Emergency Management Agency ("FEMA") and the United States Congress, are developing land use policies designed to complement the flood control effort. In this regard, Congress has determined that, despite the risk of flooding, some development in areas lying within the newly identified 100-year floodplain may be necessary to preserve the political, institutional and economic

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 89-054
DATE ADOPTED: JUL 18 1989

relationships required for the City and County to sustain the overall flood control effort.

(e) Establishing the notice procedures required by this Article will promote public health, safety and the general welfare by permitting persons seeking to build, purchase or otherwise obtain an interest in new construction or substantial improvements located in the 100-year floodplain to become aware of the risk of flooding, to inquire about that risk and to make an informed decision as to whether or not to proceed. Requiring those who decide to proceed, and are permitted to do so, to assume the risk of flood-related property damage will fairly apportion this risk to the direct beneficiaries of any new development allowed in the floodplain and will thereby minimize public exposure to losses due to flooding.

§ 91102 Definitions.

Solely for purposes of this Article, the following definitions shall apply:

(a) **Flood-related property damage** means property damage resulting from flooding due to an overtopping out of the channels of the American River, Sacramento River, Dry Creek, Arcade Creek or Morrison Creek levee systems or a break in those levee systems.

(b) **New construction** means any walled and roofed building for which a single building permit or the first in a series of construction permits was issued after August 25, 1989.

(c) **100-year floodplain** means the area subject to inundation in the event of a 100-year flood as described in the Preliminary Flood Insurance Rate Map dated May 1, 1989 prepared by the Federal Emergency Management Agency ("FEMA") or in any superceding flood insurance rate map adopted by FEMA.

(d) **Primary escrow agent** means the person or entity providing primary escrow services in connection with the sale of new construction.

(e) **Substantial improvements** means any repair, reconstruction, or improvement of a walled and roofed building, the cost of which equals or exceeds fifty thousand dollars (\$50,000).

§ 91103 Notice to Purchasers of New Construction.

(a) In connection with the sale of any new construction located in the 100-year floodplain, the seller, any real estate agent or broker representing the seller, and the primary escrow agent involved in the transaction shall:

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 89-054
DATE ADOPTED: JUL 18 1989

- (1) Provide the prospective purchaser with written notice of the flood danger in a form acceptable to the City Attorney; and
- (2) Obtain the prospective purchaser's signed acknowledgement of receipt of the notice.

(b) The written notice required by this section shall be provided as follows:

- (1) In the case of sales which must be preceded by the furnishing to prospective purchasers of a public report pursuant to Section 11018.1 of the California Business and Professions Code or a disclosure statement pursuant to Section 1102.2 of the California Civil Code, seller and any real estate agent or broker representing seller shall insure that the notice of the flood danger either accompanies or is included in the public report or the disclosure statement;
- (2) In the case of sales to which paragraph (b)(1) does not apply, seller and any real estate agent or broker representing seller shall provide the notice of the flood danger to the prospective purchaser as soon as practicable before transfer of title; and
- (3) In the event that escrow services are utilized in connection with any sales subject to this section, the primary escrow agent shall verify that the notice of the flood danger has been delivered as required under paragraphs (b)(1) and (b)(2). If for any reason the prospective purchaser has not received the notice, then the primary escrow agent shall provide the notice to the prospective purchaser through the escrow process prior to transfer of title.

(c) This section shall apply to all sales of new construction which occur on or after August 25, 1989, provided that at the time of the sale the affected structure is located within the 100-year floodplain.

§ 91104 Contractual Assumption of the Risk of Flooding.

(a) As of August 25, 1989, no building permit shall be issued for any new construction or substantial improvements located in the 100-year floodplain unless the owners of the new construction or the persons contracting for the substantial improvements execute an agreement with the City, in a form acceptable to the City Attorney, whereby such persons:

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 89-054
DATE ADOPTED: JUL 18 1989

- (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 any transfer of an ownership interest, or a possessory interest of more than three years duration, in the new construction or the 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 assume the defense of and indemnify the City and its officers, employees and agents from and against all claims for any flood-related property damage premised on the issuance of a permit for the new construction or substantial improvements, provided:
 - (i) In the case of new construction, the indemnification obligation shall become effective only in the event that the persons executing the agreement sell the new construction within three years after the execution date; and
 - (ii) In the case of substantial improvements, the indemnification obligation shall not apply if the substantial improvements add to or modify a residential structure occupied by the persons executing the agreement as of the execution date and for at least three years thereafter; and
 - (iii) 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

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 89-054

DATE ADOPTED: JUL 18 1989

an interest in the new construction or substantial improvements.

§91105 Exemptions.

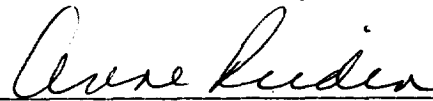
(a) The provisions of this Article shall not be applicable to the following lots in the Riverlake development subject to that certain Development Agreement for LPPT (P85-165) approved by Ordinance No. 85-085 adopted by the City Council on August 27, 1985: Southshore: 31, 32, 38, 41, 46, 50, 54, 97, 111, 115 and 124; Stillwater: 9, 10, 16, 21, 26, 31, 38, 40, 50, 62, 68, 69, 77, 93, 94, 99 and 101; Bridgeview: 6, 15, 53, 85 and 91.

(b) The City Council finds that purchasers and prospective purchasers of the lots exempted by this section have been adequately notified by the seller of the risks of flooding, and that good cause exists for exempting those lots from the provisions of this Article.

Published in Full: July 21, 1989

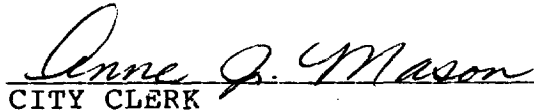
DATE ENACTED: JUL 18 1989

DATE EFFECTIVE: AUG 17 1989



MAYOR

ATTEST:



ACTING CITY CLERK

FOR CITY CLERK USE ONLY

ORDINANCE NO.: 89-054

DATE ADOPTED: JUL 18 1989