

# Ordinance No. 3169

(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes

458 – Subdivision Code

231 – Board of Adjustment

Passed 5/17/1994

Amending Ch. 2.32, Sec. 12.04.250; and Ch. 12.01

Amended by Ord. 3424 (Secs. 2.32.090, 2.32.100, 2.32.110, 2.32.120, 2.32.130, 2.32.140, & 12.04.250)

Amended by Ord. 3511 (Secs. 2.32.090 & 12.04.250)

Amended by Ord. 3560 (Sec. 2.32.090(B))

Amended by Ord. 3574 (Sec. 2.32.150 & Sec. 2.32.160)

Amended by Ord. 3906 (Ch. 12.04)

ORDINANCE NO. 3169

AN ORDINANCE of the City of Kent, Washington, amending Chapter 2.32 entitled "Office of the Hearing Examiner", amending KCC 12.04.250 relating to appeals of decisions of the short subdivision committee; and repealing Chapter 12.01 KCC relating to the Board of Adjustment.

*Amends Ords:*  
1840, 2233,  
2302, 2469,  
2789, 2802,  
3036

*Repeals Ord. 1949*

*Amended by  
Ord. 3320*

WHEREAS, it is in the City's best interest to establish a single, efficient, integrated system for interpreting, reviewing, and hearing and conducting appeals with regard to land use decisions, administrative decisions, and other matters; and

WHEREAS, in order to establish such a system, the City Council has determined it appropriate to consolidate functions by eliminating the Board of Adjustment and by providing that all matters previously heard by the Board of Adjustment be heard by the City's hearing examiner and by consolidating the hearing of other matters; NOW THEREFORE,

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

Section 1. Kent City Code (KCC) Chapter 2.32 is hereby amended as follows:

CHAPTER 2.32. OFFICE OF HEARING EXAMINER

**Sec. 2.32.010. Purpose.**

It is the purpose of this chapter ~~to~~:

A. With regard to land use matters to:

1. Provide a single, efficient, integrated land use regulatory hearing system;
2. Render land use regulatory decisions and recommendations to the city council;
3. Provide a greater degree of due process in land use regulatory hearings;
4. Separate the land use policy formulation and the land use policy administration processes.

B. With regard to other matters to:

1. Provide a single, efficient integrated system for hearing appeals of administrative decisions.
2. Provide a forum to hear other matters as established by City code.

**Sec. 2.32.020. Creation.**

The office of the hearing examiner is created. The hearing examiner shall interpret, review, and implement land use regulations; hear appeals from orders, recommendations, permits, decisions or determinations made by a city official as set forth in this chapter; and review and hear other matters as provided for in this Code and other ordinances. The term "hearing examiner" shall likewise include the examiner pro-tem.

**Sec. 2.32.030. Appointment and terms.**

The hearing examiner and examiner pro-tem shall be appointed by ~~the city administrator~~ and shall serve at the pleasure of the ~~city administrator~~ mayor.

**Sec. 2.32.040. Compensation.**

The hearing examiner and examiner pro-tem may, at the discretion of the city council, be classified as permanent part-time employees, or the city may contract with the hearing examiner and examiner pro-tem for the performance of duties described in the Code. The compensation paid the hearing examiner and examiner pro-tem shall be that established in the city annual budget.

**Sec. 2.32.050. Qualifications.**

The hearing examiner and examiner pro-tem shall be appointed solely with regard to their qualifications for the duties of the office which shall include, but not be limited to, persons with appropriate educational experience, such as an urban planner or public administrator, with at least five (5) years' experience, persons who have extensive experience in planning work in a responsible capacity, and persons with legal experience, particularly where the experience is in the area of land use management of administrative law.

**Sec. 2.32.060. Hearing examiner pro-tem; qualifications and duties.**

In the event of the absence or the inability of the hearing examiner to act, the examiner pro-tem shall have all the duties and powers of the hearing examiner.

**Sec. 2.32.070. Conflict of interest.**

The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might exert such influence upon the examiner that might interfere with his decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. Participants in the land use regulatory process have the right, insofar as possible, to have a hearing examiner free from personal interest or prehearing contacts on land use regulatory matters considered by him. It is recognized that there is a countervailing public right to free access to public officials on any matter. If such personal or prehearing interest contact impairs the hearing examiner's ability to act on the matter, such person shall so state and shall abstain therefrom to the end that the proceeding is fair

and has the appearance of fairness, unless all parties agree in writing to have the matter heard by that hearing examiner.

**Sec. 2.32.080. Freedom from improper influence.**

No city council member, city official or any other person shall attempt to interfere with, or improperly influence the hearing examiner in the performance of his designated duties.

**Sec. 2.32.090. Duties.**

The hearing examiner shall have the following duties with respect to applications of matters submitted before him or her.

A. Types of applications.

1. Decisions of the Hearing Examiner. The hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon these facts, which conclusions shall represent the final action on the application, unless appealed, as specified in this section for the following ~~types of~~ applications:
  - a. Conditional use permits;
  - b. Shoreline permits;
  - c. Sign variances;
  - d. Planned unit developments;
  - e. Multifamily design review; and
  - f. Business license denials, revocations.
  - g. Code violations pursuant to Chapter 1.04.
  - h. Appeals of a decision of the short subdivision committee.

- i. Appeals from orders, recommendations, permits, decisions or determinations made by a city official in the administration or enforcement of the provisions of the zoning code or any ordinance adopted pursuant to it.
  
- j. Applications for variances from the terms of the zoning code, provided, however, that no application for a variance shall be granted unless the hearing examiner finds:
  - i. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;
  
  - ii. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and
  
  - iii. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.
  
- k. Such other matters as may be designated by ordinance.

- 2. Recommendations of the Hearing Examiner. The hearing examiner shall receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact and conclusions based upon

those facts, together with a recommendation to the city council, for the following applications:

- a. Rezones;
  - b. Preliminary plats;
  - c. Special use combining districts, including mobile home park combining districts;
  - d. Initial zoning designations for annexed areas or zoning designations for proposed annexations to become effective upon annexation.
  - e. Such other matters as may be designated by ordinance.
3. The hearing examiner shall conduct public hearings when required under the provisions of the state environmental policy act; conduct public hearings relative to possible revocation of any conditional use permit; conduct such other hearings as the city council may for time to time deem appropriate.
4. References. All references in the city code and elsewhere to the Board of Adjustment shall be construed as referring to the hearing examiner.

B. Recommendation or decision.

1. The hearing examiner's recommendation or decision may be to grant or deny the application, or the hearing examiner may recommend or require of the applicant such conditions, modifications and restrictions as the hearing examiner finds necessary to make the application compatible with its environment; with applicable state laws; and to carry out the objectives and goals of the comprehensive plan, the zoning code, the subdivision code, and other codes and

ordinances of the city. Conditions, modifications and restrictions which may be imposed are, but are not limited to, additional setbacks, screenings in the form of landscaping and fencing, covenants, easements and dedications of additional road rights-of-way. Performance bonds or other financial assurances may be required to insure compliance with conditions, modifications and restrictions.

2. In regard to applications for rezones, preliminary and final plat approval and special use combining districts, the hearing examiner's findings and conclusions shall be submitted to the city council, which shall have the final authority to act on such applications. The hearing by the hearing examiner shall constitute the hearing by the city council.

**Sec. 2.32.100. Applications.**

Applications for all matters to be heard by the hearing examiner shall be presented to the planning department. When it is found an application meets the filing requirements of the planning department, it shall be accepted. The planning department shall be responsible for assigning a date for the public hearing for each application. The date shall not be more than one hundred (100) days after the applicant has complied with all requirements and furnished all necessary data for the planning department.

**Sec. 2.32.110. Report by planning department.**

The planning department shall coordinate and assemble the comments and recommendations of other city departments and governmental agencies having an interest in the application and shall prepare a report summarizing the factors involved and the planning department findings and supportive recommendations. At least seven (7) calendar days prior to the scheduled hearing, the report shall be filed with the hearing examiner and copies shall be mailed to the applicant and shall be made available for use by any interested party for the cost of reproduction.



**Sec. 2.32.120. Public hearing.**

A. Before rendering a decision or recommendation on any application, the hearing examiner shall hold at least one (1) public hearing thereon.

B. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given at least ten (10) days prior to such hearing.

C. The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths, and preserve order.

**Sec. 2.32.130. Decision and recommendation.**

A. When the hearing examiner renders a decision or recommendation, the hearing examiner shall make and enter written findings from the record and conclusions therefrom which support such decision. The decision shall be rendered within ten (10) working days following conclusion of all testimony and hearings, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner. The copy of such decision, including findings and conclusions, shall be transmitted by first class mail, to the applicant and other parties of record in the case requesting the same. There shall be kept in the planning department a signed affidavit which shall attest that each mailing was sent in compliance with this provision.

B. In the case of applications requiring city council approval, the hearing examiner shall file a decision with the city council at the expiration of the period provided for a rehearing, if one is conducted or within ten (10) working days following conclusion of all testimony and rehearings on the matter.

**Sec. 2.32.140. Reconsideration.**

Any aggrieved person feeling that the decision or recommendation of the hearing examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within fourteen (14) days of the date the decision or recommendation is rendered. This request shall set forth the specific errors or new information

relied upon by such appellant, and the hearing examiner may, after review of the record, take further action as he deems proper.

**Sec. 2.32.150. Appeal of decision.**

A. Any party who feels aggrieved by the hearing examiner's decision may submit an appeal in writing to the city council within fourteen (14) calendar days from the date the final decision of the hearing examiner is rendered, requesting a review of such decision unless such appeal to the city council is precluded by ordinance and/or unless an ordinance provides that appeals be made directly to the Superior Court or to another forum.

B. The appeal shall be upon the record established and made at the hearing held by the hearing examiner, provided that new evidence which was not available at the time of the hearing held by the hearing examiner may be included in such appeal. The term "new evidence" shall mean only evidence discovered after the hearing held by the hearing examiner and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.

C. The written appeal shall allege specific errors of fact, specific procedural errors, omissions from the record, errors in the interpretation of the comprehensive plan or new evidence which was not available at the time of the hearing held by the hearing examiner.

D. Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a hearing shall be held by the city council. Such hearing shall be held in accordance with appeal procedures adopted by city council by resolution. ~~If the hearing examiner has recommended approval of the proposal, such recommendation shall be considered by the city council at the same time as the consideration of the appeal. No appeal may be made from a recommendation of the hearing examiner.~~

**Sec. 2.32.160. City council action.**

A. Any application requiring action by the city council shall be taken by the adoption of a motion, resolution or ordinance by the city council. When taking any such final action, the city council shall make and enter findings of fact from the record and conclusions therefrom which support its action. The

city council may adopt all or portions of the hearing examiner's findings and conclusions.

B. In the case of an ordinance for rezone of property, the ordinance shall not be placed on the city council's agenda until all conditions, restrictions or modifications which may have been stipulated by the city council have been accomplished or provisions for compliance made to the satisfaction of the legal department.

C. The action of the city council approving, modifying, or rejecting a recommendation or decision of the hearing examiner, shall be final and conclusive, unless within twenty (20) calendar days from the date of the city council action, an aggrieved party or person applies for a writ of certiorari to the superior court for the purpose of review of the action taken.

**Sec. 2.32.170. City administrative staff to be considered a person or party.**

For the purpose of sections 2.32.140 and 2.32.150, the city's administrative staff shall be considered a "person" and/or "party" and shall have the same rights as any other person or party to make requests for reconsideration by the hearing examiner or to appeal decisions of the hearing examiner to the city council.

**Section 2.** Kent City Code Section 12.04.250 is hereby amended as follows:

**Sec. 12.04.250. Appeal of short subdivision committee decision.**

The decision of the short subdivision committee shall be final, unless an appeal by any aggrieved party is made to the ~~city council~~ hearing examiner within fourteen (14) days after the short subdivision committee's decision. The appeal shall be in writing ~~to the city council and filed with the city clerk and planning department.~~ The city council shall act on the appeal within twenty one (21) days unless an extension is agreed to, in writing, by the applicant and shall be processed pursuant to Chapter 2.32 of the Kent City Code. The decision of the hearing examiner shall represent final action of the City and is appealable only to the Superior Court. Such appeal must be filed with the Superior Court within thirty (30) calendar days from the date the decision was issued.

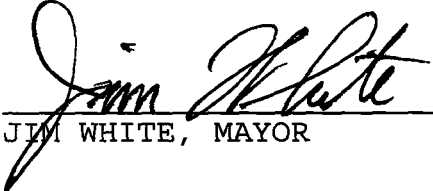
**Section 3. Repeal.** Chapter 12.01 of the Kent City Code entitled "Board of Adjustment" is hereby repealed in its entirety effective ninety (90) days after the effective date of this ordinance to allow for the processing of matters pending before the Board of Adjustment, as set forth in Section 4 below.

**Section 4. Matters Pending Before the Board of Adjustment and the Filing of New Applications.** All matters filed and pending before the Board of Adjustment, prior to the effective date of this ordinance, shall be heard by the Board of Adjustment unless the applicant agrees to transfer the matter to the hearing examiner. All applications filed beginning on the effective date of this ordinance shall be heard by the hearing examiner.

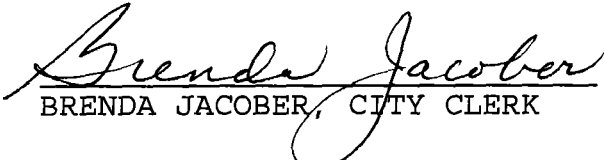
**Section 5. References to Board of Adjustment.** Notwithstanding Kent City Code provision 2.32.090(A)(4), as set forth in Section 1 above, all references in the city code and elsewhere to the Board of Adjustment shall be construed as referring to the hearing examiner except when applied to those matters filed and pending before the Board of Adjustment prior to the effective date of this ordinance and subsequently heard by the Board of Adjustment.

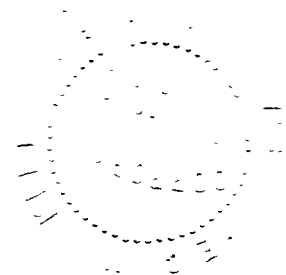
**Section 6. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of its application to other persons or circumstances.

Section 7. Effective Date. This ordinance shall take effect and be in force (30) days from the time of its final passage as provided by law.

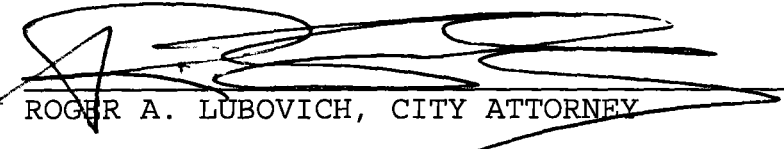
  
\_\_\_\_\_  
JIM WHITE, MAYOR

ATTEST:

  
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BRENDA JACOBER, CITY CLERK

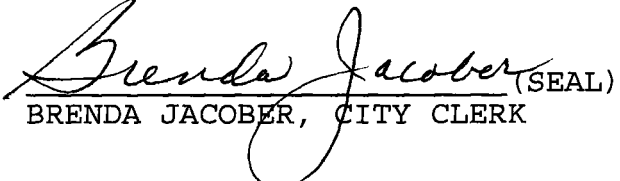


APPROVED AS TO FORM:

  
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ROGER A. LUBOVICH, CITY ATTORNEY

PASSED the 17 day of May, 1994.  
APPROVED the 18 day of May, 1994.  
PUBLISHED the 20 day of May, 1994.

I hereby certify that this is a true copy of Ordinance No. 3169, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

  
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BRENDA JACOBER, CITY CLERK (SEAL)

