

Ordinance No. 3424

(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes

Passed – 11/17/1998

1724 Regulations

Amends/Adds: Secs. 2.32;11.03;12.01;12.04;12.06;15.08;15.09

Amends Ords: 1827,1840,2233,2708,3123,3141,3340,3353

Amends Secs: 15.08.040 of Ord. **2424**; 15.09.050 & 15.09.055 of Ord. **2469**; 12.12A (now: 11.03) of Ord. **2494**; 2.54.140 (now: 2.32.130) of Ord. **2789**; 2.54.100 (now: 2.32.090), 2.54.110 (now: 2.32.100), 2.54.120 (now: 2.32.110), 2.54.130 (now: 2.32.120), 2.54.140 (now: 2.32.130), & 2.54.150 (now: 2.32.140) of Ord. **2802**; 15.09.030 of Ord. **2806**; 12.04.080 of Ord. **2849**; 15.09.030, 15.09.040 & 15.09.050 of Ord. **2863**; 15.09.010 (B) of Ord. **2942**; 2.54.100 (now: 2.32.090) & 2.54.140 (now: 2.32.130) of Ord. **3036**; 15.09.048 of Ord. **3050**; 12.12A.130 (B) (now:11.03.050) of Ord. **3070**; 2.32.090, 2.32.100, 2.32.110, 2.32.120, 2.32.130, 2.32.140 & 12.04.250 of Ord. **3169**; 15.09.042 of Ord. **3333**; 15.09.050 of Ord. **3345**;

Amended by Ord. **3457** (Sec. 15.09.048 now 15.09.046); Amended by Ord. **3470** (Sec. 15.09.050); Amended by Ord. **3511** (Sec. 2.32.090); Amended by Ord. **3525** (Sec. 15.09.046 {Formerly 15.09.048}); Amended by Ord. **3560** (Sec. 2.32.090(B)); Amended by Ord. **3574** (Sec. 11.03.520 and Chapter 12.01); Amended by Ord. **3575** (Sec. 15.08.040); Amended by Ord. **3600** (Secs. 12.01.190(H),15.08.035,15.09.030,15.09.040, 15.09.042); Amended by Ord. **3612** (Sec. 15.08.035); Amended by Ord. **3614** (Sec. 12.01.040); Amended by Ord. **3742** (Sec. 15.09.046); Amended by Ord. **3752** (Secs. 12.04.695;15.08.040;15.08.400;15.09.030;15.09.040); Amended by Ord. **3760** (Sec. 12.01.030); Amended by Ord. **3801** (Ch. 12.01); Amended by Ord. **3830** (Sec. 15.09.045); Amended by Ord. **3906** (Ch. 12.04); Amended by Ord. **3914** (Sec. 12.01.110); Amended by Ord. **3976** (Sec. 11.03.200); Amended by Ord. **3988** (Sec. 15.09.046); Amended by Ord. **4003** (Secs. 15.08.040;15.09.055); Amended by Ord. **4011** (Secs. 12.01.040(A);15.09.045); Amended by Ord. **4044** (Chp 12.01; Sec. 2.32.130)

ORDINANCE NO. 3424

AN ORDINANCE of the City Council of the City of Kent, Washington, relating to land use and zoning, adopting new administrative procedures for the processing of project permit applications as required by the Regulatory Reform Act, Chapter 347 1995 Laws of Washington, describing general requirements for a complete application; allowing for optional consolidated permit processing, describing the process for issuance of a notice of application, setting forth the initial steps to the determination of consistency with the development regulations in SEPA, setting a timeframe for the issuance of project permits; describing the required public notice procedures for a public hearing; establishing a process for the conduct of an open record hearing and closed record decisions and appeals, describing the process for issuance of a notice of decision, adding a new Chapter 12.01 to the Kent City Code, in order to implement the new project permit administrative procedures, and amending existing notice, process, and appeals provisions in Chapters 2.32, 11.03, 12.04, 12.07, 15.06, 15.08, and 15.09.

WHEREAS, the Regulatory Reform Act (Chapter 347 of the 1995 Laws of Washington) require that the City establish a permit review process which, among other things: (1) provides for the integrated and consolidated review and decision on two or more project permits relating to proposed actions; (2) combines the environmental review process, both procedural and substantive, with the procedure for review of project permits; (3) provides for no more than one open record hearing and one closed record appeal on such permits, except for the appeal of a determination of significance; and (4) provides for the issuance of the City's final decision within 120 calendar days after submission of a complete application; and

WHEREAS, the Land Use and Planning Board conducted a public hearing on May 26, 1998 to consider the proposed changes and voted unanimously to send the ordinance to the Kent City Council with their recommendation to adopt the proposed changes; and

WHEREAS, the City of Kent has a strong interest in efficient permitting and the purpose of these regulatory reform procedures is to enhance efficiency, consistency, and predictability; NOW THEREFORE,

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

SECTION 1. Section 2.32.090 of the Kent City Code is hereby amended as follows:

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. *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:

- a. ~~Conditional use permits;~~
- b. ~~Shoreline permits;~~
- e. ~~Sign variances;~~
- d. ~~Planned unit developments;~~
- e. ~~Multifamily design review; and~~
- 1. All Process III applications as follows:
 - a. Conditional use permits;
 - b. Sign variances;

- c. Planned unit developments not requiring a change of use;
- d. Preliminary plat;
- e. Shoreline variance;
- f. Shoreline conditional use permit;
- g. Special home occupation permit; and
- h. 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 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.

2.f. Business license denials, revocations.

3.g. Code violations pursuant to chapter 1.04.

B. The hearing examiner shall have the following duties with respect to appeals
submitted before him or her.

1. All process I appeals as follows:

a. Appeals from development plan and zoning permit review
decisions;

- b. Appeals from performance standards procedure decisions;
- c. Appeals from sign permit decisions; and
- d. Appeals from administrative interpretation decisions.

2. All Process II appeals as follows:

- a. Appeals from administrative design review decisions;
- b. Appeals from shoreline substantial development permits decisions;
- c. Appeals from accessory dwelling unit permit decisions;
- d. Appeals from administrative variance decisions;
- e. Appeals from downtown design review decisions;
- f. Appeals from multi-family design review decisions; and
- g. Appeals from short subdivision committee decisions.
- h. ~~Appeals of a decision of the short subdivision committee.~~

3.i. ~~Appeals from stop work orders; or notices of violation issued recommendations, permits, decisions or determinations made by a city official in the administration or enforcement of the provisions of the Kent City Code; 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 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.~~

4. Appeals of SEPA determinations; and

~~5.k.~~ Such other matters as may be designated by ordinance.

~~C.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:

~~1.a.~~ Rezones;

~~2.b.~~ ~~Preliminary plats~~ Planned unit developments with a change of use;

~~3.e.~~ 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;~~

~~4.e.~~ Such other matters as may be designated by ~~ordinance~~ the council.

~~D.3.~~ *Public hearings.* The hearing examiner shall conduct public hearings when required under the provisions of the ~~s~~State ~~e~~Environmental ~~p~~Policy ~~a~~Act; conduct open record public hearings or closed-record appeals in accordance with the provision of Ch. 12.01 KCC; ~~relative to possible revocation of any conditional use permit;~~ conduct such other hearings as the city council may ~~for~~ from time to time deem appropriate.

~~E.4.~~ *References.* All references in the city ~~C~~code and elsewhere to the board of adjustment shall be construed as referring to the hearing examiner.

~~F.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~~ planned unit development applications which require a change in use 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~~ an open record pre-decision hearing before the final decision is made by the city council.

SECTION 2. Section 2.32.100 of the Kent City Code is hereby amended as follows:

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, ~~# the application~~ 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~~ The date set for a public hearing shall not be more than one hundred (100) calendar days after the applicant has complied with all requirements and furnished all necessary data ~~for~~ to the planning department. Hearings on project permit applications are subject to the notice and hearing requirements set forth in Ch. 12.01 KCC.

SECTION 3. Section 2.32.110 of the Kent City Code is hereby amended as follows:

Sec. 2.32.110. Report by planning department. For Process III and IV project permit applications, ~~t~~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 that includes the information described in 12.01.160(B)(3). For all other matters, the appropriate City department 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.

SECTION 4. Section 2.32.120 of the Kent City Code is hereby amended as follows:

Sec. 2.32.120. Open record pPublic hearing.

- A. Before rendering a decision or recommendation on any application, the hearing examiner shall hold at least one (1) open record public hearing thereon.
- B. For project permit applications, ~~n~~Notice of the time and place of the public hearing shall be given as provided in subsection 12.01.140(H)(1). For all other applications, 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) working 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.

SECTION 5. Section 2.32.130 of the Kent City Code is hereby amended as follows:

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 on the record 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 Process IV 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 re-hearing reconsideration, or if reconsideration is accepted, if one is conducted or~~ within ten (10) working days following conclusion of all testimony and re-hearings on the matter after the decision on reconsideration.

SECTION 6. Section 2.32.140 of the Kent City Code is hereby amended as follows:

Sec. 2.32.140. Reconsideration. ~~Any aggrieved person feeling~~ A party of record believing that ~~the~~ a 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)~~ five (5) working 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 or she deems proper. If a request

for reconsideration is accepted, a decision is not final until after a decision on reconsideration is issued.

SECTION 7. Section 11.03.020 of the Kent City Code is hereby amended as follows:

Sec. 11.03.020. Purpose of this part and adoption by reference. This part contains the basic requirements that apply to the SEPA process. The city adopts the following sections and subsections of chapter 197-11 of the Washington Administrative Code (WAC) by reference:

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on action during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review – reliance on existing plans, laws, and regulations.
- 197-11-164 Planned actions – definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions – procedures for adoption.
- 197-11-172 Planned actions – project review.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integration procedure for preliminary planning, environmental analysis, and expanded scoping.

197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.

197-11-235 Documents.

197-11-238 Monitoring.

SECTION 8. Section 11.03.050 of the Kent City Code is hereby amended as follows:

Sec. 11.03.050. ~~Timing considerations categorical exemptions; ¶~~Threshold determinations. ~~The following time limits, expressed in calendar days, shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies:~~

~~1. *Categorical exemptions.* The city shall identify whether an action is categorically exempt within seven (7) days of receiving completed applications and site plans for any building or land use permits.~~

~~2. *Threshold determinations.*~~

~~a. The city shall issue threshold determinations on a completed application within ninety (90) days after the application and supporting documentation are complete.~~

A. If the City has made a determination of significance (DS) under Ch. 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the DS and scoping notice. Nothing in this section prevents a DS and scoping notice from being issued prior to a notice of application.

B.b. The responsible official shall, by administrative rule, adopt and make available to the public written standards for determining when an application and supporting documentation are complete. The standards adopted by the responsible official shall be consistent with any rules adopted by the state Department of Ecology pertaining to the issuance of a threshold determination.

~~e. When the responsible official requires consultation with other agencies with jurisdiction:~~

~~(1) The city should consult with all other agencies with jurisdiction within fifteen (15) days of receiving a completed application and supporting documents;~~

~~C.(2) Except for a DS, and except as expressly allowed by RCW 36.70B.110, Laws of 1997 Ch. 429, the city shall, in any event, not issue its threshold determination until the expiration of the public comment period on a notice of application subject to the requirements of Ch. 12.01 KCC, within ninety (90) days of receiving a completed application and supporting documents.~~

~~d. The applicant may request a thirty day extension of the time allowed for the consideration of the threshold determination, which request shall not be unreasonably refused.~~

~~e. The city shall complete threshold determinations on actions where the applicant recommends in writing that an environmental impact statement be prepared because of the probable significant adverse environmental impact described in the checklist within fifteen (15) days of receiving the completed checklist and site plans.~~

SECTION 9. Section 11.03.060 of the Kent City Code is hereby amended as follows:

Sec. 11.03.060. Same--Submission of determination of nonsignificance, draft environmental impact statement, final environmental impact statement.

A. For nonexempt proposals, the determination of nonsignificance or final environmental impact statement for the proposal shall normally accompany the city's staff recommendations to the planning commission or hearing examiner. The draft environmental impact statement for a proposal may accompany the city's staff recommendations when a hearing pursuant to WAC 197-11-535 is held.

B. For any nonexempt proposal, the applicant must submit a completed environmental checklist, site plans and a description of the proposal as a part of the development plan review process. This should occur prior to the development plan review

~~meeting and prior to the submittal of the~~ A checklist shall be submitted in conjunction with a permit application and detailed plans and specifications. ~~This provision supersedes WAC 173-806-058, and shall constitute early environmental review.~~

SECTION 10. Section 11.03.200 of the Kent City Code is hereby amended as follows:

Sec. 11.03.200. Purpose of this part and adoption by reference. This part contains the rules for deciding whether a proposal has a “probable significant, adverse environmental impact” requiring an environmental impact statement to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an environmental impact statement and rules applicable to categorical exemptions. The city adopts the following sections of the Washington Administrative Code by reference, as supplemented in this chapter:

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

SECTION 11. Section 11.03.230 of the Kent City Code is amended by adding a new subsection D as follows:

Sec. 11.03.230. Environmental checklist.

- A. A completed environmental checklist or a copy in the form provided in WAC 197-11-960 shall be filed ~~prior to~~ in conjunction with an application for a permit, license, certificate or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and the applicant agree that an environmental impact statement is required, SEPA compliance has been completed or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making the threshold determination.
- B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
- C. The city may assist the applicant in completing the environmental checklist for a private proposal, if either of the following occurs:
1. The city has technical information on a question or questions that is unavailable to the private applicant; or
 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- D. For projects submitted as planned actions under WAC 197-11-164, the City shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. If a modified form is prepared, it must be sent to the Department of Ecology to allow at least a thirty-day review prior to use and the City shall:
1. Develop a modified environmental checklist form and adopt it along with or as part of a planned action ordinance; or

2. Develop a modified environmental checklist form and send it to the Department of Ecology.

SECTION 12. Section 11.03.240 of the Kent City Code is hereby amended as follows:

Sec. 11.03.240. Mitigated determination of nonsignificance.

- A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance based on conditions attached to the proposal by the responsible official or on changes to or clarifications of the proposal made by the applicant.
- B. An applicant may request in writing early notice of whether a determination of significance is likely under WAC 197-11-350. The request must:
 1. Follow submission of a project permit application and an environmental checklist for a nonexempt proposal for which the department is the lead agency and include detailed site plans and a description of the proposal; or
 2. Follow a pre-application conference; Precede submission of a permit application and the development plan review meeting;
 3. Precede the city's actual threshold determination for the proposal; and
 4. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or project permit application as necessary to reflect the changes or clarifications.
 5. The responsible official should respond to the request for early notice within thirty (30) working days. The response shall:
 - a. Be written;
 - b. State whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the City to consider a DS; and
 - c. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist

and/or permit application as necessary to reflect the changes or clarifications.

- C. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- D. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination in accordance with the timing requirements of Ch. 12.01 KCC. ~~within fifteen (15) days of receiving the changed or clarified proposal:~~
1. If the city indicates in writing specific mitigation measures which will allow it to issue a determination of nonsignificance in its response to the request for early notice, and the applicant changes or clarifies the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2). This section shall not be construed so as to interfere with the city council's ability to impose conditions on a project or application for which it is the final decision maker.
 2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a determination of nonsignificance, the city shall make the threshold determination, issuing a determination of nonsignificance or determination of significance, as appropriate.
 3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct two hundred-foot storm water retention pond at Y location" are adequate.
 4. Mitigation measures which justify issuance of a mitigated determination of nonsignificance may be incorporated in the determination of

nonsignificance by reference to agency staff reports, studies or other documents.

- E. ~~Mitigated determination of nonsignificance issued under WAC 197-11-340(2), require a fifteen day comment period and public notice. A mitigated DNS is issued under either WAC 197-11-340(2), requiring a fourteen (14) calendar day comment period and public notice, or WAC 197-11-355(5), which may require no additional comment period beyond the comment period on the notice of application.~~
- F. Mitigation measures incorporated in the mitigated determination of nonsignificance shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any manner specifically prescribed by the city.
- G. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated determination of nonsignificance for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) regarding withdrawal of determination of nonsignificance.
- H. The city's written response under subsection (D)(2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

SECTION 13. Section 11.03.310 of the Kent City Code is hereby amended as follows:

Sec. 11.03.310. Preparation of environmental impact statements; additional considerations.

- A. Preparation of draft and final environmental impact statements (DEIS and FEIS) and draft and final supplemental environmental impact statements (SEIS) is the responsibility of the planning department under the direction of the responsible

official. Before the city issues an environmental impact statement, the responsible official shall be satisfied that it complies with this chapter and ~~WAC ch. 197-11~~ WAC.

- B. The ~~draft DEIS and final environmental impact statement FEIS or supplemental environmental impact statement~~ draft and final SEIS shall be prepared by city staff, the applicant, a consultant selected by the city at the applicant's request, or a consultant selected by the applicant with confirmation of the planning department. The responsible official shall notify the applicant of the city's procedure for ~~environmental impact statement EIS~~ preparation, including approval of the ~~draft and final environmental impact statement~~ DEIS and FEIS prior to distribution.
- C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. This does not apply to information the city may request under another ordinance or statute.
- D. A DEIS and FEIS shall be completed within one (1) year of the scoping meeting or as otherwise agreed to by the applicant.

SECTION 14. Section 11.03.410 of the Kent City Code is hereby amended by adding new subsections 1, 2, and 3 as follows:

Sec. 11.03.410. Public notice.

- A. Whenever the city issues a determination of nonsignificance under WAC 197-11-340(2), a determination of significance under WAC 197-11-360(3), an addendum to any existing environmental document or any existing environmental document as defined in section 11.03.320, the city shall give public notice as follows:
 - 1. ~~If public notice is required for a nonexempt action, the notice shall state whether a determination of significance or determination of nonsignificance or a mitigated determination of nonsignificance has been issued and that comments are due within fifteen (15) days. Notice shall be given as follows:~~

If a SEPA document is issued concurrently with the notice of application, the public notice requirements for the notice of application will suffice to meet the SEPA public notice requirements.

2. If no public notice is otherwise required for the permit or approval, the City shall give notice of the DNS or DS by:

- a. Posting the property for site specific proposals;
- b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and
- c. Notifying all parties of record, any individual or group which has appeared at a City of Kent public hearing relating specifically to the issue of environmental review or submitted comments on a certain proposal.

~~2. If no public notice is required for the permit or approval, the city shall give notice of the determination of nonsignificance or determination of significance by as follows:~~

- ~~a. Posting the property for site specific proposals;~~
- ~~b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and~~
- ~~e. Notifying all parties of record, any individual or group which has appeared at a City of Kent public hearing relating specifically to the issue of environmental review or submitted comments on a certain proposal.~~

~~3. Whenever the city issues a determination of significance under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the determination of significance as required in WAC 197-11-408 and in the public notice.~~

3. Whenever the City issues a DS under WAC 197-11-360, the City shall state the scoping procedure of the proposal in the DS as required in WAC 197-11-408 and in the public notice.

- B. Whenever the city issues a DEIS ~~draft environmental impact statement~~ under WAC 197-11-455~~(5)~~ or a SEIS ~~supplemental environmental impact statement~~ under WAC 197-11-620, notice of the availability of those documents shall be given by ~~1.~~ indicating the availability of the DEIS ~~draft environmental impact statement~~ in any public notice required for a nonexempt license, and the following additional methods:
- ~~1.a.~~ Posting the property for site specific proposals;
 - ~~2.b.~~ Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and
 - ~~3.e.~~ Notifying ~~any party~~ all parties of record, any individual or group which has appeared at a City of Kent public hearing relating specifically to the issue of environmental review or ~~have~~ has expressed interest in a certain proposal.
- C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permits or approvals required for the proposal.
- D. If any costs are incurred beyond the initial notice of the department's action, as provided in subsection ~~A.2.(A)(2)~~ above, the city may require an applicant to complete the public notice requirements for the applicant's proposal at his expense.

SECTION 15. Section 11.03.520 of the Kent City Code is hereby amended as follows:

Sec. 11.03.520. Appeals.

A. *Administrative appeals.*

1. *Procedural appeals.* The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:
 - a. Any party of record ~~agency or person~~ may appeal the city's procedural compliance with ~~WAC ch.~~ Ch. 197-11 WAC for issuance of the following:

- (1) A final determination of nonsignificance: Appeal of the DNS must be made to the hearing examiner within ~~ten (10)~~ fourteen (14) calendar days of the date the determination of nonsignificance is final. Notice of the issuance of a final DNS shall be provided in accordance with section 11.03.410 ~~A.2.(A)(2)~~.
 - (2) A determination of significance: The appeal must be made to the hearing examiner within ~~ten (10)~~ fourteen (14) calendar days of the date the determination of significance is issued. Notice of the issuance of a determination of significance shall be provided ~~in accordance~~ in accordance with subsection 11.03.410(A)(2)A.2.
- b. The decision of the land use hearing examiner shall be final, pursuant to RCW ~~4543~~.21C.075(3)(a). No right to appeal the decision of the hearing examiner is granted by this section.
 - c. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.
2. *Substantive appeals.* Except for permits and variances issued pursuant to the city shoreline master program, resolution number 907, when any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of state environmental policy act by a nonelected official, the decision shall be appealable to the hearing examiner. Such appeal shall be pursuant to ~~chapter~~ Ch. 2.32 and Ch. 12.01. Appeals to the city council from the land use hearing examiner are governed by section 2.32.150.
 3. *No other appeal provided.* Except as provided in subsections ~~A.1. (A)(1)~~ and ~~2 (2)~~ above, or as otherwise provided by law, no right to appeal is created by this section.

B. *Judicial appeals.*

1. No right to judicial review or appeal, which does not now exist, is created by this chapter. The decision by the city to issue or deny nonexempt permits or licenses shall be final. A writ of review must be sought within fourteen (14) calendar days, if at all, by an aggrieved party or person by application to the superior court. Pursuant to RCW 43.21C.075(5) and (6), such a writ application shall include, or be amended within thirty (30) calendar days of the issuance or denial of the permit or license to include, issues relating to this chapter.
2. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial review.

SECTION 16. Section 11.03.600 of the Kent City Code is hereby amended as follows:

Sec. 11.03.600. Purpose of this part and adoption by reference. This part contains uniform usage and definitions of terms under state environmental protection act. The city adopts the following sections by reference, as supplemented by WAC 173-806-040.

- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.

197-11-720 Categorical exemption.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 Environmental impact statement (EIS).
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
~~197-11-748 Environmentally sensitive area.~~
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 National environmental protection act (NEPA).
197-11-774 Nonproject.

- 197-11-775 Open record hearing.
- 197-11-776 Phased review.
- 197-11-778 Preparation.
- 197-11-780 Private project.
- 197-11-782 Probable.
- 197-11-784 Proposal.
- 197-11-786 Reasonable alternative.
- 197-11-788 Responsible official.
- 197-11-790 State environmental protection act (SEPA).
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.

SECTION 17. Section 11.03.700 of the Kent City Code is hereby amended as follows:

Sec. 11.03.700. Purpose of this part and adoption by reference. This part contains rules for the city's compliance with the state environmental policy act, including rules for charging fees, categorical exemptions that do not apply within critical areas, ~~designating environmentally sensitive areas,~~ listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities. The city adopts the following sections of the Washington Administrative Code by reference:

- 197-11-900 Purpose of this part.
- 197-11-902 Agency state environmental policy act policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.

- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one (1) agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one (1) agency, when one (1) of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one (1) or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses for more than one (1) state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

SECTION 18. Section 11.03.720 of the Kent City Code is hereby amended as follows:

Sec. 11.03.720. ~~Environmentally sensitive~~ Critical areas. Water quality and hazard area development map and hazard area classifications:

A.1. WAC 197-11-908 is hereby adopted by reference.

B.2. Wetlands, as defined under section 11.05.020, the wetlands inventory, ~~The maps~~ filed under section 15.08.222, entitled water quality and hazard area development map, and hazard area classifications under section 15.08.224 designate the location of critical ~~environmentally sensitive~~ areas within the city and are adopted by

reference. Within those critical environmentally sensitive areas, the exemptions of WAC 197-11-800 which are inapplicable are (1), (2)(a) through (h), (3), (6)(a), (24)(a) through (g). Unidentified exemptions shall continue to apply within critical environmentally sensitive areas of the city.

- C. The scope of environmental review of actions within these areas shall be limited to
1. Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and
 2. Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.
 3. All other categorical exemptions apply whether or not the proposal will be located in a critical area.

SECTION 19. A new chapter, Chapter 12.01, is added to the Kent City Code as follows:

CHAPTER 12.01

ADMINISTRATION OF DEVELOPMENT REGULATIONS

Sec. 12.01.010. Purpose and applicability. The purpose of this chapter is to establish a set of processes to be used for land use and development proposals subject to review under the following portions of the Kent City Code (KCC).

- A. Chapter 2.32 Hearing Examiner.
- B. Chapter 11.03 Environmental Review;
- C. Chapter 12.04 Subdivisions; and
- D. Title 15 Zoning Code.

Sec. 12.01.020. Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- A. "Closed record appeals" are administrative appeals under Ch. 36.70B RCW which are heard by the city council or hearing examiner, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal arguments allowed.
- B. "Judicial appeals" are appeals filed by a party of record in King County Superior Court.
- C. "Open record hearing" means a hearing held under Ch. 36.70B RCW and conducted by the Kent Hearing Examiner who is authorized by the city to conduct such hearings, that creates the city's record through testimony and submission of evidence and information, under procedures prescribed by the city by ordinance or resolution. An open record hearing may be held prior to the city's decision on a project permit to be known as an "open record pre-decision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record pre-decision hearing has been held on the project permit.
- D. "Parties of record" means:
1. The applicant;
 2. The property tax payer as identified by the records available from the King County Assessor's Office;
 3. Any person who testified at the open record public hearing on the application and/or;
 4. Any person who submitted written comments during administrative review or has submitted written comments concerning the application at the open record public hearing (excluding persons who have only signed petitions or mechanically produced form letters).
- E. "Project permit" means any land use or environmental permit or license required from the City of Kent for a project action, including but not limited to building permits, site development permits, land use preparation permits, subdivisions,

binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, development plan review, site specific rezones authorized by the comprehensive plan; but excluding adoption or amendment of the comprehensive plan and development regulations, zoning of newly annexed land, area-wide rezones, and zoning map amendments except as otherwise specifically included in this subsection.

- F. "Planning director" means the director of the planning department of the city of Kent or his/her designee.
- G. "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of persons to obtain comments from the public or other agencies on a proposed project permit prior to the city's decision. A public meeting may include, but is not limited to, a design review meeting, a special committee meeting, such as the Short Subdivision Committee, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the city's project permit application file.

Sec. 12.01.030. Application processes and classification.

- A. *Application Processes.* Project permit applications for review pursuant to this chapter shall be classified as a Process I, Process II, Process III, Process IV, or Process V action. Process VI actions are legislative. Project permit applications and decisions are categorized by type as set forth in section 12.01.040.
- B. *Determination of Proper Process Type.* The planning director shall determine the proper procedure for all applications. If there is a question as to the appropriate type of procedure, the planning director shall resolve it in favor of the higher procedure type number. Process I is the lowest and Process VI is the highest.
- C. *Optional Consolidated Permit Processing.* An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the chapter. An applicant may ask that his or

her application be processed collectively or individually. If the application is processed under the individual procedure option, the highest numbered process procedure must be processed prior to the subsequent lower numbered procedure.

D. *Decision maker(s)*. Applications processed in accordance with subsection (C) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision maker(s). The city council is the highest, followed by the hearing examiner, and then the short subdivision committee and the downtown design review committee. Joint public hearings with other agencies shall be processed according to KCC 12.01.060, Joint Public Hearing.

E. *Environmental Review*. Process I, II, III, IV, and V permits which are subject to environmental review under SEPA (RCW 43.21C) are subject to the provisions of this chapter. An environmental checklist shall be submitted in conjunction with the submittal of a project permit application. One environmental threshold determination shall be made for all related project permit applications. The City will not issue a threshold determination, other than a DS, prior to the submittal of a complete project permit application and the expiration of the public comment period in the Notice of Application pursuant to section 12.01.140, but may utilize the public notice procedures as outlined in section 11.03.410(A)(1) to consolidate public notice.

Sec. 12.01.040. Project permit application framework.

A. Process Types.

	PROCESS I	PROCESS II	PROCESS III	PROCESS IV	PROCESS V	PROCESS VI
APPLICATIONS	Development plan and zoning permit review (1) (6)	Administrative design review (1) (6)	Conditional use permit (4) (7)	Planned unit development (5) (8) with change of use	Final plat (5) (8)	Zoning of newly annexed lands (5) (8)
	Performance standards procedures (1) (6)	Shoreline Substantial Development Permit (1) (7) (9)	Sign variance (4) (8)			Area-wide rezones to implement new city policies (5) (8)
	Sign permit (1) (6)	Accessory dwelling unit permit (1) (6)	Special home occupation permit (4) (8)	Rezone (5) (8)		Comprehensive plan amendments (5) (8)
	Lot Line Adjustment (1)(6)	Administrative variance (1) (6)	Variance (4) (8)			Development regulations (5) (8)
	Administrative Interpretation (1) (6)	Downtown design review, all except for minor remodels (2) (6)	Shoreline conditional use permit (4) (7) (9)			Zoning map amendments (5) (8)
		Downtown design review, only minor remodels (1) (6)	Shoreline variance (4) (8) (9)			Zoning text amendments (5) (8)
		Multi-family design review (1) (6)	Preliminary Plat (4) (7)			
	Admin Approval/WTF (1)(6)	Binding Site Plan (10)(7)				
		Short subdivision (3) (6)	Planned Unit Development (4) (7) without a change of use			
(1) Final decision made by Planning Director (2) Final decision made by Downtown Design Review Committee (3) Final decision made by Short Subdivision Committee (4) Final decision made by Hearing Examiner (5) Final decision made by City Council (6) Appeal to Hearing Examiner (7) Appeal to City Council (8) Appeal to Superior Court (9) Appeal to Shoreline Hearings Board (10) Final decision by Binding Site Plan Committee						

B. Process Decisions.

	PROJECT PERMIT APPLICATIONS (PROCESSES I - V)					LEGISLATIVE
	PROCESS I	PROCESS II	PROCESS III	PROCESS IV	PROCESS V	PROCESS VI
Requires Pre-Application Conference	Yes, for projects requiring SEPA review	Yes, for projects requiring SEPA review.	Yes, for projects requiring SEPA review	Yes	No	No
Notice of Application	Yes, for projects requiring SEPA review	Yes, for projects requiring SEPA review	Yes	Yes	No	No
Recommendation Made by	N/A	N/A	N/A	Hearing Examiner	N/A	Land Use and Planning Board
Final Decision Made by	Planning Director	Planning Director, Downtown Design Review Committee, Binding Site Plan Committee or Short Subdivision Committee, as noted in 12 01 140	Hearing Examiner	City Council	City Council	City Council
Open Record Hearing/Open Record Appeal Hearing	Only if appealed, then before Hearing Examiner ()	Only if appealed, then before Hearing Examiner	Yes, before Hearing Examiner to make final decision	Yes, before Hearing Examiner to make recommendation to City Council	No	Yes, before Land Use and Planning Board to make recommendation to City Council
Reconsideration	No	No	Yes, of Hearing Examiner's decision	Yes, of Hearing Examiner's recommendation	No	No
Final Decision/Closed Record Appeal	No	No	Only if appealed, then before City Council, except special home occupation permits and variances, where only appeal is to superior court	Yes, before City Council to render final decision	Yes, before City Council to render final decision	Yes, or City Council could hold its own hearing
Judicial Appeal	Yes	Yes	Yes	Yes	Yes	Yes

Sec. 12.01.050. Exemptions from project permit application processing.

A. *General Exemptions.* The following permits or approvals are specifically excluded from the procedures set forth in this chapter:

1. Landmark designations;
2. Street vacations; and
3. Street use permits.
4. Pursuant to RCW 36.70B.140(6), building permits which are categorically exempt from environmental review under SEPA or that do not require street improvements, boundary line adjustments, or other construction permits.
5. Administrative approvals which are categorically exempt from environmental review under SEPA (43.21C RCW) and the city's SEPA/Environmental Policy Ordinance, Ch. 11.03 KCC, or for which environmental review has been completed in connection with other project permits.

Sec. 12.01.060. Joint public hearings.

A. *Planning Director's Decision to Hold Joint Hearing.* The planning director may combine any public hearing on a project permit application with any hearing that may be held by another local, state, regional, federal, or other agency, on the proposed action, as long as:

1. The other agency consents to the joint hearing;
2. The other agency is not expressly prohibited by statute from doing so;
3. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;
4. The agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing; and
5. The hearing is held within the Kent city limits.

B. *Applicant's Request for a Joint Hearings.* The applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time periods set forth in this chapter. In the alternative, the applicant may agree to a particular schedule if additional time is needed in order to complete the hearings.

Sec. 12.01.070. Process VI legislative actions.

A. *Legislative Actions.* The following Process VI actions are legislative, and are not subject to the procedures in this chapter, unless otherwise specified:

1. Zoning newly annexed lands;
2. Area-wide rezones and zoning map amendments to implement city policies;
3. Comprehensive plan amendments;
4. Development regulations and zoning text amendments; and
5. Other similar actions that are non-project related.

Sec. 12.01.080. Pre-application conference.

A. *Applicability.* The purpose of a pre-application conference is to provide City staff with a sufficient level of detail about a proposal so that the applicant can be acquainted with the requirements of the Kent City Code. Pre-application conferences are required for process I, II, III, and IV permits which require environmental review. Only one pre-application conference shall be required for all project permit applications related to the same project. Pre-application conferences shall precede the submittal of any project permit application, including an environmental checklist. The planning director may waive in writing the requirement for a pre-application conference for proposals that are determined not to be of a size and complexity to require the detailed analysis of a pre-application conference.

B. *Pre-Application Conference Initiation.* To initiate a pre-application conference, an applicant shall submit a completed form provided by the city and all information pertaining to the proposal as prescribed by administrative procedures of the

planning department. Failure to provide all pertinent information may prevent the city from identifying all applicable issues or providing the most effective pre-application conference.

C. *Scheduling.* A pre-application conference may be conducted at any point prior to application for a project permit. A pre-application conference shall be scheduled by the city within five (5) working days of a completed pre-application conference request. The pre-application conference shall be held within thirty (30) calendar days of the receipt of a completed request, unless the applicant agrees to an extension of this time period in writing.

D. At the conference the applicant may request that the following information be provided:

1. A form which lists the requirements of a complete application;
2. A general summary of the procedures to be used to process the application;
3. The references to the relevant code provisions on development; and
4. The City's design guidelines.

E. It is impossible for the conference to be an exhaustive review of all potential issues. The discussion at the conference or the form sent to the applicant under subsection 12.01.080(D)(1) shall not bind or prohibit the City's future application or enforcement of the applicable law.

Sec. 12.01.090. Project permit applications. Required Materials. Applications for all project permits shall be submitted upon forms provided by the city.

Sec. 12.01.100. Submission and acceptance of application.

A. *Determination of Completeness.* Within twenty-eight (28) calendar days after receiving a project permit application for review for completeness, the city shall mail or personally provide a written determination of completeness to the applicant which to the extent known by the City identifies other agencies with jurisdiction over the project permit application and states either:

1. That the application is complete; or

2. That the application is incomplete and what is necessary to make the application complete.

If the city does not provide a written determination to the applicant that the application is incomplete, the application shall be deemed complete. The time period guidelines for review of project permit applications begin following the determination of a complete application.

B. *Additional Information for "Complete Applications"*. A determination of completeness shall be made when an application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposal.

C. *Procedure for "Incomplete Applications"*.

1. Prior to a determination of a complete application, if the applicant receives a written determination from the city that an application is not complete, the applicant shall have up to ninety (90) calendar days to submit the necessary information to the city. Within fourteen (14) calendar days after an applicant has submitted the requested additional information, the city shall make the determination as described in section 12.01.100(A) above, and notify the applicant in the same manner.

2. If the applicant either refuses in writing to submit additional information or does not submit the required information within the ninety (90) calendar day period, the application shall lapse because of a lack of information necessary to complete the review.

D. *Date of Acceptance of Application*. When the project permit application is determined to be complete, the planning director shall accept it and note the date of acceptance.

- E. *Project Review.* Following a determination that an application is complete, the city shall begin project review.

Sec. 12.01.110. Procedure for “incorrect applications”.

- A. Following a determination of a complete application and the commencement of project review, the city may make a determination in writing that some information is incorrect, and that corrected information be submitted. The applicant shall have up to ninety (90) calendar days to submit corrected information.
- B. The city shall have fourteen (14) calendar days to review the submittal of corrected information. If the corrected information is still not sufficient, the city shall notify the applicant in writing that the submitted information is incorrect, and the time period set forth in subsection (A) shall be repeated. This process may continue until complete or corrected information is obtained.
- C. If the applicant either refuses in writing to submit corrected information or does not submit the corrected information within the ninety (90) calendar day period, the application shall lapse.
- D. If the requested corrected information is sufficient, the city shall continue with project review, in accordance with the time calculations exclusions set forth in section 12.01.100.

Sec. 12.01.120. Referral and review of project permit applications. Within ten (10) calendar days of accepting a complete application, the planning director shall do the following:

- A. Transmit a copy of the application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those responsible for determining compliance with state, federal and county requirements. The affected agencies and city departments shall have fifteen (15) calendar days to comment. The referral agency or city department is presumed to have no comments if comments are not received within the specified time period. The planning director shall grant an extension of time only if the application involves

unusual circumstances. Any extension shall only be for a maximum of three (3) additional calendar days.

Sec. 12.01.130. Public notice - generally. The available records of the King County Assessor's Office shall be used for determining the property taxpayer of record. Addresses for mailed notice shall be obtained from the county's real property tax records. All public notices shall be deemed to have been provided or received on the date the notice is deposited in the mail or personally delivered, whichever occurs first. Failure to provide the public notice as described in this chapter shall not be grounds for invalidation of any permit decision.

Sec. 12.01.140. Notice of application.

- A. *Notice of Application.* A notice of application shall be issued for Process I and Process II permits requiring SEPA review, short plats, shoreline substantial development permits, and all Process III and Process IV applications within fourteen (14) calendar days after the city has made a determination of completeness pursuant to subsection 12.01.100(A); provided, that if any open record hearing is required for the requested project permit(s), the notice of application shall be provided at least fifteen (15) calendar days prior to the open record hearing. One notice of application will be done for all permit applications related to the same project at the time of the earliest complete project permit application.
- B. *SEPA Exempt Projects* A notice of application shall not be required for project permits that are categorically exempt under SEPA, unless a public comment period or an open record pre-decision hearing is required.
- C. *Contents.* The notice of application shall include:
1. The case file number(s), the date of application, the date of the determination of completeness for the application and the date of the notice of application;

2. A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested by the review authority pursuant to RCW 36.70B.070;
3. The identification of other permits not included in the application, to the extent known by the city;
4. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
5. A statement of the limits of the public comment period, which shall be not less than fourteen (14) calendar days nor more than thirty (30) calendar days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;
6. The tentative date, time, place and type of hearing. The tentative hearing date is to be set at the time of the date of notice of the application;
7. A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in section 12.01.150;
8. The name of the applicant or applicant's representative and the name, address and telephone number of a contact person for the applicant, if any;
9. A description of the site, including current zoning and nearest road intersections, reasonably sufficient to inform the reader of its location; and
10. Any other information determined appropriate by the city, such as a DS, if complete at the time of issuance of the notice of application or the City's

statement of intent to issue a DNS pursuant to the optional DNS process set forth in WAC 197-11-355.

D. *Mailing of Notice of Application.* The City shall mail a copy of the notice of application to the following:

1. Agencies with jurisdiction; and
2. Any person who requests such notice in writing.

E. *Public Comment on the Notice of Application.* All public comments received on the notice of application must be received by the planning department by 4:30 p.m. on the last day of the comment period. Comments may be mailed, personally delivered or sent by facsimile. Comments should be as specific as possible.

F. *Posted Notice of Application.* In addition to the mailed notice of application, the City will provide notice of application at Kent City Hall, and in the register for public review at the planning department office. The applicant shall be responsible for posting the property for site-specific proposals with notice boards provided by the city. Public notice shall be accomplished through the use of a four (4) by four (4) foot plywood face generic notice board to be issued by the planning department as follows: the applicant shall apply to the City for issuance of the notice board, and shall deposit with the planning department the amount of one-hundred fifty dollars (\$150). Upon return of the notice board in good condition to the planning department by the applicant, seventy-five dollars (\$75) of the initial notice board deposit shall be refunded to the applicant.

1. *Posting.* Posting of the property for site specific proposals shall consist of one or more notice boards as follows:
 - a. A single notice board shall be placed by the applicant in a conspicuous location on a street frontage bordering the subject property.
 - b. Each notice board shall be visible and accessible for inspection by members of the public.

- c. Additional notice boards may be required when:
 - (1) The site does not abut a public road; or
 - (2) The planning director determines that additional notice boards are necessary to provide adequate public notice.
- d. Notice boards should be:
 - (1) Maintained in good condition by the applicant during the notice period;
 - (2) In place at least fifteen (15) calendar days prior to the end of any required comment period; and
 - (3) Removed by the applicant and returned to the City within seven (7) calendar days after the end of the notice period.
- e. Notice boards that are removed, stolen, or destroyed prior to the end of the notice period may be cause for discontinuance of the departmental review until the notice board is replaced and remains in place for the specified time period. The City shall notify the applicant when it comes to their attention that notice boards have been removed prematurely, stolen, or destroyed.
- f. An affidavit of posting shall be submitted by the planning director at least seven (7) calendar days prior to the hearing. If the affidavits are not filed as required, any scheduled hearing or date by which the public may comment on the application, may be postponed in order to allow compliance with this notice requirement.
- g. Notice boards shall be constructed and installed in accordance with specifications determined by the planning director.
- h. SEPA information shall be added by the City to the posted sign within applicable deadlines. An affidavit of posting shall be submitted by the planning director.

G. *Published Notice of Application.* Published notice of application in an official newspaper of general circulation in the area where the proposal is located is required for process I and II permits requiring SEPA review, short plats and all Process III, IV, and V applications. Published notice shall include at least the following information:

1. Project location;
2. Project description;
3. Type of permit(s) required;
4. Comment period dates; and
5. Location where the complete application may be reviewed.

H. *Notice of public hearing.*

1. *Notice of Public Hearing for All Types of Applications.* The notice given of a public hearing required in this chapter shall contain:

- a. The name of the applicant or the applicant's representative;
- b. Description of the affected property, which may be in the form of either a vicinity location or written description, other than a legal description;
- c. The date, time, and place of the hearing;
- d. The nature of the proposed use or development;
- e. A statement that all interested persons may appear and provide testimony;
- g. When and where information may be examined, and when and how written comments addressing findings required for a decision by the hearing body may be admitted;
- h. The name of a city representative to contact and the telephone number where additional information may be obtained;
- i. That a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for

inspection at no cost and will be provided at the cost of reproduction; and

- j. That a copy of the staff report will be available for inspection at no cost at least five (5) calendar days prior to the hearing and copies will be provided at the cost of reproduction.

2. *Mailed Notice of Public Hearing.* Mailed notice of the public hearing shall be provided by the City as follows:

- a. *Process I, II & V actions.* No public notice is required because no public hearing is held. Notice for short plat meetings is mailed to property owners within 200 feet. Shoreline permit notices shall be in accordance with the requirements of WAC 173-27-110.

- b. *Process III and Process IV actions.* The notice of public hearing shall be mailed to:

- (1) The applicant;
- (2) All owners of real property as shown by the records of the county assessor's office within three hundred (300) feet of the subject property; and
- (3) Any person who submits written comments on an application.

- c. *Process IV preliminary plat actions.* In addition to the general notice of public hearing requirements for Process IV actions above, additional notice shall be provided as follows:

- (1) Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two (2) miles of the boundary of a state or municipal airport shall be given to the secretary of transportation, who must respond within fifteen (15) calendar days of such notice.

(2) Special notice of the hearing shall be given to adjacent land owners by any other reasonable method the city deems necessary. Adjacent landowners are the owners of real property, as shown by the records of the King County Assessor, located within three hundred (300) feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under RCW 58.17.909(1)(b) shall be given to owners of real property located with three hundred (300) feet of such adjacently owned parcels.

d. *Process VI actions.* For Process VI legislative actions, the city shall publish notice as described in subsection 12.01.140(H)(3), and use all other methods of notice as required by RCW 35A.12.160.

3. *Procedure for Posted or Published Notice of Public Hearing.*

a. Posted notice of the public hearing is required for all Process III and IV actions. The posted notice of hearing shall be added to the sign already posted on the property pursuant to subsection 12.01.140(F).

b. Published notice of the public hearing is required for all Process III and IV procedures. The published notice shall be published in a newspaper of general circulation within the City and contain the following information:

- (1) Project location;
- (2) Project description;
- (3) Type of permit(s) required;
- (4) Comment period dates; and
- (5) Location where the complete application may be reviewed.

4. *Time and Cost of Notice of Public Hearing.*

- a. Notice shall be mailed, posted and first published not less than ten (10) calendar days prior to the hearing date. Any posted notice shall be removed by the applicant within seven (7) calendar days following the conclusion of public hearing(s).

I. *Shoreline Master Program Permits.* Notice of the application of a permit under the purview of the city's Shoreline Master Program shall be given in accordance with the requirements of Ch. 11.04 KCC of the Kent Shoreline Management Master Program.

Sec. 12.01.150. Consistency with development regulations and SEPA.

A. *Purpose.* When the city receives a project permit application, consistency between the proposed project and the applicable regulations and comprehensive plan should be determined through the process in this chapter and the city's adopted SEPA ordinance, Ch. 11.03 KCC

B. *Consistency* During project permit application review, the city shall determine whether the items listed in this section are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, the city shall determine whether the items listed in this section are defined in the city's adopted comprehensive plan. This determination of consistency shall include the following:

- 1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
- 2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density;
- 3. Availability and adequacy of infrastructure, including public facilities and services identified in the comprehensive plan, if the plan or development

regulations provide for funding of these facilities as required by Ch. 36.70A RCW; and

4. Characteristics of the development, such as development standards.
5. In deciding whether a project is consistent, the determinations made pursuant to subsection 12.01.150(B) shall be controlling.
6. Nothing in this section limits the city from asking more specific or related questions in subsections 1-5 of this section.

C. *Initial SEPA Analysis.* The city shall also review the project permit application under the requirements of the State Environmental Policy Act (“SEPA”), Ch. 43.21C RCW, the SEPA Rules, Ch. 197-11 WAC, and Ch. 11.03 KCC.

1. This SEPA analysis shall:
 - a. Determine whether the applicable federal, state and local regulations require studies that adequately analyze all of the project permit application’s specific probable adverse environmental impacts;
 - b. Determine if the applicable regulations require measures that adequately address such environmental impacts;
 - c. Determine whether additional studies are required and/or whether the project permit application should be conditioned with additional mitigation measures; and
 - d. Provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.
2. In its review of a project permit application, the city may determine that the requirements for environmental analysis, protection and mitigation measures in the applicable development regulations, comprehensive plan and/or in other applicable local, state or federal laws provide adequate

analysis of and mitigation for the specific adverse environmental impacts of the application.

3. A comprehensive plan, development regulation or other applicable local, state or federal law provides adequate analysis of and mitigation for the specific adverse environmental impacts of an application when:
 - a. The impacts have been avoided or otherwise mitigated; or
 - b. The city has designated as acceptable certain levels of service, land use designations, development standards or other land use planning required or allowed by Ch. 36.70A RCW.
4. The city's determination of consistency with the items identified in subsection 12.01.150(B) shall not prohibit the city from denying, conditioning, or mitigating impacts due to other aspects of the project.
5. In its decision whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the city shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the city shall base or condition its project approval on compliance with these other existing rules or laws.
6. Nothing in this section limits the authority of the city in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Ch. 43.21C RCW.
7. The city shall also review the application under Ch. 11.03 KCC, the city's environmental policy provisions.

D. *Categorically Exempt Actions.* Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the

rules adopted by the Department of Ecology (Ch. 197-11 WAC) may not be conditioned or denied under SEPA.

E. *Planned Actions.* A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA, but is subject to environmental review and mitigation under SEPA.

1. A “planned action” means one or more types of project action that:
 - a. Are designated planned actions by an ordinance or resolution adopted by the city;
 - b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:
 - (1) A comprehensive plan or subarea plan adopted under Ch. 36.70A RCW; or
 - (2) A fully contained community, a master planned resort, a master planned development or a phased project.
 - c. Are subsequent or implementing projects for the proposals listed in subsection 12.01.150.(E)(1)(b) above;
 - d. Are located within an urban growth area, as defined in RCW 36.70A.030;
 - e. Are not essential public facilities, as defined in RCW 36.70A.200;
 - f. Are consistent with the city’s comprehensive plan adopted under Ch. 36.70A RCW.
2. The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the city, and may limit a planned action to a time period identified in the environmental impact statement or in the ordinance or resolution designating the planned action under RCW 36.70A.040.
3. During project review, the city shall not reexamine alternatives or hear appeals on the items identified in subsection 12.01.150(B) except for issues

of code interpretation, the process for which is outlined in section 15.09.060.

4. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.

Sec. 12.01.160. Open record public hearings.

- A. *General.* Open record hearings shall be conducted in accordance with this section.
- B. *Responsibility of the Planning Director for Hearing.* The planning director shall:
 1. Schedule an application for review and public hearing;
 2. Give notice (*applicant responsible for some of the notice requirements*);
 3. Prepare the staff report on the application, which shall be a single report stating all of the decisions made as of the date of the report, including recommendations on project permits in the consolidated permit process that do not require an open record pre-decision hearing. The report shall state any mitigation required or proposed under the development regulations or the city's authority under SEPA. If the threshold determination other than a determination of significance has not been issued previously by the city, the report shall include or append this determination. In the case of a Process I or II project permit application, this report may be the permit; and
 4. Prepare the notice of decision, if required by the hearing body, and/or mail a copy of the notice of decision to those required by this code to receive such decision.
- C. *Conflict of Interest.* The hearing body shall be subject to the code of ethics and prohibitions on conflict of interest as set forth in RCW 35A.42.020 and Ch. 42.23 RCW, as the same now exists or may hereafter be amended.

D. *Ex Parte Communications.*

1. No member of the hearing body may communicate, directly or indirectly, regarding any issue in a proceeding before him or her, other than to participate in communications necessary to procedural aspects of maintaining an orderly process, unless he or she provides notice and opportunity for all parties to participate; except as provided in this section:
 - a. The hearing body may receive advise from legal counsel; or
 - b. The hearing body may communicate with staff members (except where the proceeding relates to a code enforcement investigation or prosecution).
2. If, before serving as the hearing body in a quasi-judicial proceeding, any member of the hearing body receives an ex parte communication of a type that could not properly be received while serving, the member of the hearing body, promptly after starting to serve, shall disclose the communication as described in subsection 12.01.180(D)(3) below.
3. If the hearing body receives an ex parte communication in violation of this section, he or she shall place on the record:
 - a. All written communications received;
 - b. All written responses to the communications;
 - c. The substance of all oral communications received and all responses made; and
 - d. The identity of each person from whom the hearing body received any ex parte communication.

The hearing body shall advise all parties that these matters have been placed on the record. Upon request made within ten (10) calendar days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a rebuttal statement on the record.

- E. *Disqualification.*
1. A member of the hearing body who is disqualified may be counted for purposes of forming a quorum. Any member who is disqualified may be counted only by making full disclosure to the audience, abstaining from voting on the disqualification, vacating the seat on the hearing body and physically leaving the hearing.
 2. If all members of the hearing body are disqualified, all members present after stating their reasons for disqualification shall be re-qualified and shall proceed to resolve the issues.
 3. Except for Process VI actions, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.
- F. *Burden and Nature of Proof.* Except for Process VI actions, the burden of proof is on the proponent. The project permit application must be supported by proof that it conforms to the applicable elements of the city's development regulations, comprehensive plan and that any significant adverse environmental impacts have been adequately addressed.
- G. *Order of Proceedings.* The order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.
1. Before receiving information on the issue, the following shall be determined:
 - a. Any objections on jurisdictional grounds shall be noted on the record and if there is objection, the hearing body has the discretion to proceed or terminate; and
 - b. Any abstentions or disqualifications shall be determined.
 2. The presiding officer may take official notice of known information related to the issue, such as:

- a. A provision of any ordinance, resolution, rule, officially adopted development standard or state law; and
 - b. Other public records and facts judicially noticeable by law.
3. Matters officially noticed need not be established by evidence and may be considered by the hearing body in its determination. Parties requesting notice shall do so on the record; however, the hearing body may take notice of matters listed in subsections 12.01.180(G)(1) and (2) if stated for the record. Any matter given official notice may be rebutted.
 4. The hearing body may view the area in dispute with or without notification to the parties, but shall place the time, manner, and circumstances of such view on the record.
 5. Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.
 6. When the presiding officer has closed the public hearing portion of the hearing, the hearing body shall openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided.
 7. When the hearing examiner is unable to formulate a recommendation on a project permit, the hearing examiner may decide to forward the project permit to the city council to render a decision without a recommendation.
- H. *Recommendation/Decision.* The hearing body shall issue a recommendation or decision, as applicable, within fourteen (14) calendar days of the record being closed.
- I. *Reconsideration by Hearing Examiner* Reconsideration is not authorized for Process I and Process II applications. A party of record may ask for a

reconsideration of a decision by the hearing examiner for a Process III action or a recommendation by the hearing examiner for a Process IV action. A reconsideration may be requested if either:

1. A specific error of fact or law can be identified; or
2. New evidence is available which was not available at the time of the hearing.

A request for reconsideration shall be filed by a party of record within five (5) working days of the date of the initial decision/recommendation. Any reconsideration request shall cite specific references to the findings and/or criteria contained in the ordinances governing the type of application being reviewed. A request for reconsideration temporarily suspends the appeal deadline. The hearing examiner shall promptly review the reconsideration request and within five (5) working days issue a written response, either approving or denying the request. If the reconsideration is denied, the appeal deadline of the hearing examiner's decision shall recommence for the remaining number of days. If a request for reconsideration is accepted, a decision is not final until after a decision on reconsideration is issued.

Sec. 12.01.170. Notice of decision.

- A. Following a decision on a project permit by the applicable decision-maker, the city shall provide a notice of decision that also includes a statement of any threshold determination made under SEPA (Ch. 43.21C RCW) and the procedures for appeal;
- B. The notice of decision shall be issued within one-hundred and twenty (120) calendar days after the City notifies the applicant that the application is complete. The timeframes set forth in this section shall apply to project permit applications filed on or after April 1, 1996.
- C. The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

- D. Notice of the decision shall be provided to the public as set forth in subsection 12.01.140(H)(2)(b)(1) and (3) KCC. Affected property owners may request a change in valuation for property tax purposes. The city shall provide notice of the decision to the County Assessor's Office in which the property is located.
- E. If the city is unable to issue its final decision on a project permit application within the time limits provided for in this chapter, it shall provide written notice of this fact to the parties of record. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.

Sec. 12.01.180. Time limitations.

- A. *Calculation of Time Periods for Issuance of Notice of Final Decision.* In determining the number of calendar days that have elapsed after the city has notified the applicant that the application is complete for purposes of calculating the time for issuance of the notice of decision, the following periods shall be excluded:
1. Any period during which the applicant has been requested by the city to correct plans, perform required studies, provide additional required information, or otherwise requires the applicant to act. The period shall be calculated from the date the city notifies the applicant of the need for additional information until the earlier of the date the local government determines whether the additional information satisfies the request for information or fourteen (14) calendar days after the date the information has been provided to the city;
 2. If the city determines that the information submitted by the applicant under sections 12.01.100 and 12.01.110 is insufficient or incorrect;
 3. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Ch. 43.21C RCW, if the city by ordinance has established time periods for completion of environmental impact statements, or if the city and the applicant in

writing agree to a time period for completion of an environmental impact statement;

4. Any period for administrative appeals of project permit applications, if an open record appeal hearing or a closed record appeal, or both, are allowed.

The time period for consideration and decision on appeals shall not exceed:

- a. Ninety (90) calendar days for an open record appeal hearing; or
- b. Sixty (60) calendar days for a closed record appeal.

The parties may agree to extend these time periods; and

5. Any extension of time mutually agreed upon by the applicant and the local government.

B. *Time Limit Exceptions.* The time limits established in this section do not apply if a project permit application:

1. Requires an amendment to the comprehensive plan or a development regulation;
2. Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200; or
3. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete pursuant to section 12.01.100.

C. *Failure to Meet Time Limit.* If the city is unable to issue its final decision within the time limits provided in this chapter, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of a final decision. The city is not liable for damages due to the city's failure to make a final decision within the time limits established in this chapter.

Sec. 12.01.190. Closed record hearings and administrative appeals.

- A. *Appeals of Decisions.* This section allows for administrative appeals as provided in the framework in section 12.01.040. Administrative appeals are heard by the hearing examiner or city council, as applicable.
- B. *Consolidated Appeals.*
1. All appeals of project permit application decisions, other than an appeal of Determination of Significance (“DS”), shall be considered together in a consolidated appeal.
 2. Appeals of environmental determinations under SEPA, Ch. 11.03 KCC, including administrative appeals of a threshold determination shall proceed as provided in that chapter.
- C. *Administrative Appeals.* Only parties of record may initiate an administrative appeal on a project permit application. If an applicant initiates an administrative appeal, the administrative appeal of the project decision and of any environmental determination issued at the same time as the project decision shall be filed within twenty-one (21) calendar days after the notice of decision has been made and is appealable.
- D. *Time to File.* An appeal must be filed within fourteen (14) calendar days following issuance of the notice of decision. Appeals must be delivered to the planning department by mail, personal delivery or by fax before 4:30 p.m. on the last business day of the appeal period.
- E. *Computation of Time.* For the purposes of computing the time for filing an appeal, the day the notice of decision is rendered shall not be included. The last day of the appeal period shall be included unless it is a Saturday, Sunday, a day designated by RCW 1.16.050 or by the city’s ordinances as a legal holiday, then it also is excluded and the filing must be completed on the next business day (RCW 35A.28.070)

- F. *Content of Appeal.* Appeals shall be in writing, be accompanied by an appeal fee as set by the city council, and contain the following information:
1. Appellant's name, address and phone number;
 2. Appellant's statement describing his or her standing to appeal;
 3. Identification of the application which is the subject of the appeal;
 4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
 5. The relief sought, including the specific nature and extent; and
 6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.
- G. *Effect.* The timely filing of an appeal shall stay the effective date of the decision until such time as the appeal is adjudicated by the hearing examiner or city council, as applicable, or is withdrawn.
- H. *Notice of Administrative Appeal.* Public notice of the appeal shall be given as provided in subsections 12.01.140(H)(2)(b)(1) and (3).
- I. *Procedure for Closed Record Decision/Appeal.* The closed record appeal/decision hearing shall be on the record before the hearing body and no new evidence may be presented. The following subsections of this chapter shall apply to a closed record decision/appeal hearing:
1. 12.01.160(C) Conflict of Interest;
 2. 12.01.160(D) Ex Parte Communications;
 3. 12.01.160(E) Disqualification;
 4. 12.01.160(F) Burden and Nature of Proof;
 5. 12.01.160(G)(1), (2), (3), (4), and (6) Order of Proceedings; and
 6. 12.01.190 Notice of Decision.

Sec. 12.01.200. Judicial appeals.

- A. *Appeal.* The city's final decision or appeal decision on a Process I, II, III, IV, or V application may be appealed by a party of record with standing to file a land use petition in King County Superior Court.
- B. *Petition Period.* A land use petition must be filed within twenty-one (21) calendar days of issuance of the notice of decision or appeal decision.
- C. *Filing and Content of a Land Use Petition.* A land use petition shall be filed according to the procedural standards outlined in Ch. 36.70C RCW, Judicial Review of Land Use Decisions, also known as the "Land Use Petition Act".

SECTION 20. Section 12.04.080 of the Kent City Code is hereby amended as follows:

Sec. 12.04.080. Hearing examiner. The hearing examiner is authorized to hold a public hearing and make a final decision on all preliminary plats, ~~and to make recommendations to the city council.~~

SECTION 21. Section 12.04.100 of the Kent City Code is hereby amended as follows:

Sec. 12.04.100. City council. The city council shall conduct any closed record appeal from a hearing examiner's final decision ~~hold a public meeting or hearing on a~~ all preliminary plats. The city council shall have sole authority to approve final plats. An appeal of a final plat decision shall be in Superior Court.

SECTION 22. Section 12.04.200 of the Kent City Code is hereby amended as follows:

Sec. 12.04.200. Applications for short subdivision. The application for a short subdivision is filed with the planning department. It is reviewed by the short subdivision committee. The committee may approve, modify or deny the short subdivision. An appeal

of the decision of the short subdivision committee shall be to the ~~city council~~ hearing examiner.

SECTION 23. Section 12.04.250 of the Kent City Code 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 hearing examiner within fourteen (14) calendar days after the short subdivision committee's decision. The appeal shall be in writing and shall be processed pursuant to ~~Chapter Ch. 2.32 KCC 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 twenty-one (2021) calendar days from the date the decision was issued.

SECTION 24. Section 12.04.310 of the Kent City Code is hereby amended as follows:

Section 12.04.310. Application for a subdivision. An application for a subdivision consists of ~~four (4)~~ five (5) separate steps as follows:

1. Preparation and submission to the planning department of a tentative map of the proposed subdivision;
2. Submission of a preliminary plat of the proposed subdivision to the land use hearing examiner ~~and city council~~ for public hearing;
3. Installation or bonding of improvements according to the approved preliminary plat;
4. Submission of the final plat to the city council for approval;
5. The approved final plat is recorded in the office of the King County department of records and elections.

SECTION 25. Section 12.04.360 of the Kent City Code is hereby amended as follows:

Sec. 12.04.360. Hearing examiner public hearing on subdivision preliminary plat.

A. The hearing examiner shall hold an open record a public hearing on any subdivision preliminary plat and render a decision based on written findings and conclusions. ~~and forward its recommendations to the city council.~~ The hearing examiner public hearing shall be held within one hundred (100) calendar days of the planning department's acceptance of the application.

B. Notice of the public hearing shall be given in accordance with subsection 12.01.140(H)(1). ~~the following manner:~~

~~1. A notice of the public hearing shall be posted on or adjacent to the land to be subdivided at least ten (10) days prior to the public hearing. The public notice shall be mounted on a four foot by four foot plywood face generic notice board to be issued by the planning department. The applicant shall apply to the city for issuance of the notice board, and shall deposit with the planning department the amount of sixty dollars (\$60.00). The applicant shall be responsible for placement of the notice board in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least fourteen (14) days prior to the date of the public hearing. The planning department staff shall post laminated notice sheets and vinyl information packets on the board no later than ten (10) days prior to the hearing. Upon return of the notice board, in good condition, to the planning department by the applicant, forty five dollars (\$45.00) of the initial notice board deposit shall be refunded to the applicant.~~

~~2. A notice of the public hearing shall be given in a newspaper of general circulation within the county, and a newspaper of general circulation within the area in which property is located, at least ten (10) days prior to the~~

~~public hearing.~~

3. ~~Notice shall be given to all property owners within a radius of three hundred (300) feet of the exterior boundaries of the property, subject of the application. If the owner of the subject property also owns property lying adjacent to the subject property, the three hundred foot radius must be taken from the exterior boundaries of this adjacent owned property. Such notice shall be sent ten (10) days prior to the public hearing. The failure of any property owner to receive such notice of hearing will not invalidate the proceedings.~~

SECTION 26. Section 12.04.380 of the Kent City Code is hereby repealed in its entirety and a new Section 12.04.380 is hereby adopted as follows:

~~**Sec. 12.04.380. City council action on the preliminary plat.** After receiving the hearing examiner's recommendation, the city council shall, at its next public meeting, set a date for a public meeting to consider the adoption or rejection of the recommendation. If at this meeting the city council deems that a change in the hearing examiner's recommendation is necessary, the change of the recommendation shall not be made until the city council has conducted a public hearing and thereupon adopted its own recommendations and approved or disapproved the preliminary plat.~~

Sec. 12.04.380. City council closed record appeal. Any person aggrieved by a hearing examiner's final decision on a preliminary plat must file an appeal within fourteen (14) calendar days following the issuance of the notice of decision and in accordance with the requirements of section 12.01.190.

SECTION 27. Section 12.04.390 of the Kent City Code is hereby amended as follows:

Sec. 12.04.390. Subdivision preliminary plat approval.

- A. Subdivision preliminary plat approval shall lapse ~~three (3)~~ five (5) years from the date of approval unless a final plat based on the preliminary plat, or any phase thereof, is submitted within ~~three (3)~~ five (5) years from the date of subdivision preliminary plat approval. One (1) one-year extension shall be granted to an applicant who files a written request with the city council and planning department at least thirty (30) calendar days before the expiration of the ~~three-~~ five (5) year period, if the applicant can show that he has attempted in good faith to submit the final plat within the ~~three-~~ five (5) year period.
- B. Additional time extensions beyond the one (1) year period may be granted by the planning director if the applicant can show unusual circumstances or situations which make it impossible to file the final plat within the ~~four-~~ six (6) year period. The applicant must file a written request with the city council and planning department for this additional time extension. The request must be filed at least thirty (30) calendar days prior to the subdivision preliminary plat expiration date. The request must include documentation as to the need for the additional time. Additional time extensions shall be granted in not greater than one-year increments.
- C. In the case of a phased subdivision, final plat approval by the city council of any phase of the subdivision preliminary plat will constitute an automatic one (1) year extension for the filing of the next phase of the subdivision.

SECTION 28. Section 12.04.530 of the Kent City Code is hereby amended as follows:

Sec. 12.04.530. Exceptions.

- A. The hearing examiner may grant ~~recommend to the city council~~ an exception from the requirements of this chapter when undue hardship may be created as a result of

strict compliance with the provisions of this chapter. In ~~granting recommending~~ any exception, the hearing examiner may prescribe conditions that it deems necessary to or desirable for the public interest. No exceptions shall be granted unless the hearing examiner finds that:

1. There are special physical circumstances or conditions affecting the property such that the strict application of the provisions of this code would deprive the applicant of the reasonable use of development of his land;
2. The exception is necessary to insure such property the rights and privileges enjoyed by other properties in the vicinity and under similar circumstances;
3. The granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity.

B. Application for any exception shall be submitted in writing by the subdivider at the time the preliminary plat is submitted to the planning department. The application shall state fully all substantiating facts and evidence pertinent to the request.

SECTION 29. Section 15.06.080 of the Kent City Code is hereby amended as follows:

Sec. 15.06.080. Administrative procedures.

A. *Permits.*

1. To ensure compliance with the regulations of this chapter, a permit shall be required for all signs hereafter installed or altered within the corporate boundaries of the city, except those signs enumerated in subsection ~~A.2.~~ (A)(2) of this section. No sign shall be erected, installed, applied, affixed, altered or relocated without a permit from the building department and the planning department. The sign permit shall certify that the sign, as represented by plans, drawings or statements, is in conformance with the regulations of this chapter.

2. The following signs must conform with the regulations of this chapter but may be erected, installed, affixed, altered or relocated without a sign permit:
 - a. For sale, lease or rent signs.
 - b. Farm signs.
 - c. Residential signs for single-family dwellings.
3. The following information must be provided as part of the application for a sign permit:
 - a. Name, address and phone number of the applicant.
 - b. Name and address of the activity for which the sign is intended and parcel number of land on which it is to be placed.
 - c. Three (3) copies of a dimensional drawing showing the type of sign as designated in this chapter, and, if lighted, the method of illumination, and the height of the sign.
 - d. Four (4) copies of a dimensional plot plan, accurate as to scale, showing all structures, the abutting right-of-way line of each street, and location of proposed sign and each existing sign on the property.
 - e. If the sign is a wall sign, four (4) copies of an elevation of the building facade. This elevation shall be fully dimensional and accurate as to scale. It shall show the proposed sign and each existing sign.
 - f. One (1) or more photographs (snapshots are adequate) showing the location of the proposed sign and its relationship to the remainder of the property.
 - g. A minimum of two (2) copies of a plot plan showing the location of the proposed sign with computations, diagrams and other data sufficient to show proper structural stability of the installation.

B. *Fees and deposits.* Fees shall be governed by the fee schedule contained in the

building code adopted by the city.

~~C. *Appeals.* In order to provide for a system of appeals from administrative decisions in the interpretation of this section, the hearing examiner shall, upon proper application, render a decision as to whether the administrative decision was a reasonable interpretation and application of the provisions of this chapter.~~

C. The planning director shall make the final decision on a sign permit application submitted pursuant to Ch. 15.06 KCC. Any appeal from the final decision of the planning director shall be to the hearing examiner pursuant to the requirements of Ch. 2.32 KCC and the appeal provisions of Ch. 12.01 KCC.

D. *Abatement of illegal signs.* Any sign that violates the provisions of this chapter shall be deemed a public nuisance and shall be in lien against the property on which the sign was maintained and a personal obligation against the property owner. The property owner shall first be served with a notice to abate the nuisance, except in the case of portable signs. Illegal portable signs may be immediately removed by the city, and the owner shall be given notice that the sign will be destroyed if not claimed within ten (10) days. Appeal of the abatement notice may be made to the hearing examiner. If, after such a hearing, the hearing examiner orders agents of the city to remove the nuisance, they shall have authority to enter upon private property to remove the nuisance.

E. *Variances.*

1. A sign variance is categorized as a Process III application and shall be subject to the requirements of Ch. 12.01 KCC. Variances from the terms of this chapter may be granted by the hearing examiner upon proper application. Variances may be granted when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict interpretation of the regulations of this chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

2. The variance shall not constitute a grant of special privilege inconsistent with a limitation upon uses of other properties in the vicinity and zone in which such property is situated.

SECTION 30. Section 15.08.035 of the Kent City Code is hereby amended by amending subsections 15.08.035 (B), (H) and (I) as follows:

Sec. 15.08.035. Wireless telecommunications facilities.

A. *Purpose and goals.* The purpose of this section 15.08.035 is to establish general guidelines for the siting of wireless telecommunications facilities ("WTFs"), specifically including, without limitation, towers and antennas, in light of the following goals:

1. Protecting residential areas from potential adverse impacts;
2. Enhancing the ability of the providers of wireless telecommunications services to provide those services quickly, effectively, and efficiently;
3. Encouraging location in non-residential areas;
4. Minimizing the total height of towers within the community;
5. Encouraging the joint use of new and existing sites;
6. Encouraging service providers to locate and configure facilities to minimize adverse impacts through careful design, siting, landscaping, screening, and innovative camouflaging techniques; and
7. Considering potential adverse impacts to the public health and safety from these facilities except where preempted by other laws, rules, and regulations.

In furtherance of these goals, the city shall give due consideration to the city's comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of WTFs, including towers and antennas.

B. *Definitions.* As used in this section 15.08.035 only, the following terms shall have the meanings set forth below:

Abandon or abandonment means:

- (a) To cease operation for a period of one hundred eighty (180) or more consecutive calendar days; or
- (b) To reduce the effective radiated power of an antenna by seventy-five (75) percent for one hundred eighty (180) or more consecutive calendar days unless new technology or the construction of additional cells in the same locality allows reduction of effective radiated power by more than seventy-five (75) percent, so long as the operator still serves essentially the same customer base.

Antenna means any exterior transmitting or receiving device used in communications that radiates or captures electromagnetic waves.

Backhaul network means the lines that connect a provider's WTFs/towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

Camouflage means to disguise, hide, or integrate with an existing or proposed structure or with the natural environment so as to be significantly screened from view.

Co-locate means use of a WTF by more than one service provider.

COW means *cell on wheels* or *Cellular on Wheels*.

EIA means Electronic Industries Association.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Guyed tower means a wireless communication support structure which is typically over one hundred (100) feet tall and is steadied by wire guys in a radial pattern around the tower.

Height means, when referring to a tower or other WTF, the distance measured from the finished grade of the parcel at the base of the WTF to the highest point on the tower or other WTF, including the-base pad and any antennas.

Lattice tower means a support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.

Monopole tower means a support structure which consists of a single pole sunk into the ground and/or attached to a foundation.

Non-whip antenna" means an antenna that is not a whip antenna, such as dish antennas, panel antennas, etc.

Preexisting WTF means any WTF for which a building permit has been properly issued prior to July 7, 1997, including permitted WTFs that have not yet been constructed, so long as that permit or approval has not expired.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received.

Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telecommunications, telephone, radio and similar communication purposes. The term includes the structure, all structural supports, and all related buildings and appurtenances.

Whip antenna means an omnidirectional dipole antenna of cylindrical shape that is no more than six (60) inches in average diameter.

Wireless telecommunications facility or *WTF* includes "personal wireless service," "personal wireless service facilities," and "facilities" as defined in Title 47, United States Code, Section 332(c)(7)(C), including all future amendments, and also includes facilities for the transmission and reception of radio or microwave signals

used for communication, telecommunication, cellular phone personal communications services, enhanced specialized mobile radio, and any other services licensed by the FCC, and also includes any other unlicensed wireless services.

C. *Applicability*

1. *New uses.* All WTF proposals made in the city, whether for new construction or for modification of existing facilities, shall be subject to the regulations set forth in this code, except as provided in subsection D.

D. *Exemptions.* The following are exempt from the provisions of this section 15.08.035 and are allowed in all zoning districts.

1. *Existing Uses.* WTFs that currently exist on July 7, 1997, or for which a valid building permit has been obtained and remains in effect on July 7, 1997, except this exemption does not apply to modifications of existing facilities.

2. *Industrial/scientific equipment* Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

3. *Amateur radio station operators or receive-only antennas.* Any tower or antenna that is under seventy (70) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

4. *Home satellite services.* Satellite dish antennas less than two (2) meters in diameter, including direct-to-home satellite services, when used as a secondary use of the property.

5. *COW.* A COW or other temporary WTF, but its use anywhere in the city cannot exceed thirty (30) days, unless extended by permit issued by the planning director or unless the city has declared an area-wide emergency.

6. *Public safety WTFs and equipment.* Public safety WTFs and equipment, including, but not limited to, the regional 911 system.

E. *General.*

1. *Principal or accessory use.* WTFs may be considered either principal or accessory uses. A different use of an existing structure on the same lot shall not preclude the installation of WTFs on that lot.
2. *Not essential services.* WTFs shall be regulated and permitted pursuant to this section 15.08.035 and shall not be regulated or permitted as essential public services.

F. *General requirements.*

1. *Siting.* Anyone who applies to construct a WTF or to modify or add to an existing WTF shall demonstrate to the city's satisfaction that the proposed facility is located at the least obtrusive and the most appropriate available site to function in the applicant's grid system.
2. *FCC licensing.* The city will only process WTF permit applications upon a satisfactory showing of proof that the applicant is an FCC licensed telecommunications provider or that the applicant has agreements with an FCC licensed telecommunications provider for use or lease of the facility.
3. *Compliance with other laws.* Applicants must show, to the satisfaction of the planning director, compliance with current FCC and FAA rules and regulations and all other applicable federal, state, and local laws, rules and regulations.
4. *Lot size.* For purposes of determining whether the installation of WTFs complies with district development regulations including, but not limited to, setback requirements, lot-coverage requirements, and other requirements, the dimensions of the entire lot shall control, even though the WTFs may be located on leased parcels within that lot.
5. *Height.* Unless further restricted or expanded elsewhere in this section 15.08.035, no WTFs may exceed the following height and usage criteria:
 - (a) For a single user, up to ninety (90) feet in height; and

- (b) For two (2) or more users, up to one hundred twenty (120) feet in height.
6. *Security fencing.* WTFs shall be enclosed, where appropriate, by security fencing not less than six (6) feet in height; provided however, that the planning director or, where applicable, the hearing examiner may waive these requirements, as appropriate.
7. *Landscaping* WTFs shall be landscaped with a buffer of plant materials that effectively screens the view of the WTF compound; provided, however, that the planning director or, where applicable, the hearing examiner may waive these requirements if the goals of this section 15.08.035 would be better served.
8. *WTFs mounted on structures or rooftops.* WTFs mounted on existing structures or rooftops shall be designed and located so as to minimize visual and aesthetic impacts to the adjoining land uses and structures and shall, to the greatest extent practical, blend into the existing environment.
9. *Aesthetics.* WTFs shall meet the following requirements:
- (a) WTFs shall be painted a neutral color so as to reduce visual obtrusiveness.
- (b) At a WTF site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend into the existing natural and constructed environment.
10. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required for any WTF, the lighting must cause the least disturbance to the surrounding area.
11. *Measurement.* For purposes of measurement, WTF setbacks and separation distances shall be calculated and applied irrespective of municipal and county jurisdictional boundaries.

12. *Franchises, licenses, and permits.* Owners and/or operators of WTFs shall certify that they have obtained all franchises, licenses, or permits required by law for the construction and/or operation of a wireless telecommunication system in the city and shall file a copy of all required franchises, licenses, and permits with the planning director.
13. *Signs.* No signs shall be allowed on an antenna or tower.
14. *Backhaul providers.* Backhaul providers shall be identified and they shall have and maintain all necessary approvals to operate as such, including holding necessary franchises, permits, and certificates. The method of providing backhaul, wired or wireless, shall be identified.

G. *Tower requirements.*

1. *Tower setbacks.* All towers, support structures and accessory buildings must satisfy the minimum setback requirements for that zoning district.
2. *Support systems setbacks.* All guywires, anchors, and other support structures must be located within the buildable area of the lot and not within the front, rear, or side yard setbacks and no closer than five (5) feet to any property line.
3. *Monopole construction required.* All towers will be of a tapering monopole construction; however, the planning director or, where applicable, the hearing examiner, may allow another type tower upon a showing that it would cause less impact to the surrounding property than a similar monopole structure or would further the purposes and goals in this section 15.08.035.
4. *Inventory of existing sites* Each applicant for a tower shall provide an inventory of its existing WTF sites that are either within the jurisdiction of the city or within one (1) mile of its borders, including specific information about the location, height, and design of each facility.

5. *EIA standards.* Towers shall be constructed so as to meet or exceed the most recent EIA standards. Prior to issuance of a building permit, the building official shall be provided with an engineer's certification that the tower's design meets or exceeds those standards.
6. *Site selection and height.* Towers shall be located to minimize their number and height and to minimize their visual impacts on the surrounding area in accordance with the following policies:
 - (a) Ensure that the height of towers has the least visual impact and that the height is no greater than necessary to achieve service area requirements and to provide for potential co-location; and
 - (b) Demonstrate that the owner or operator has, to the greatest extent practical, selected a new tower site that provides the least visual impact on residential areas. This shall include an analysis of the potential impacts from other vantage points in the area to illustrate that the selected site and design provides the best opportunity to minimize the visual impact of the proposed facility.
 - (c) Site so as to minimize being visually solitary or prominent when viewed from surrounding areas, especially residential areas. The facility should be camouflaged to the maximum extent feasible.
7. *Co-location priority* Co-location of antennas by more than one (1) carrier on existing towers is preferred to construction of new towers, provided that the co-location is consistent with the following:
 - (a) *Redesign restrictions.* A tower that is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower, or of a less obtrusive design (such as a monopole), if practical.
 - (b) *Height.* Except as may be modified in subsection I(1)(a), an existing tower may be modified or rebuilt to a taller height, not to exceed

thirty (30) feet over the tower's existing height or one hundred twenty (120) feet, whichever is lower, to accommodate the co-location by another provider or operator of an additional antenna system in any district except DC, DCE, NCC and all SR districts. This additional height shall not require an additional distance separation.

(c) *Onsite relocation.* A tower that is being rebuilt to accommodate the co-location of an additional antenna may be relocated on its existing site within fifty (50) feet of its existing location. If consistent with the purposes and goals in subsection ~~A(A)~~, the planning director or, where applicable, the hearing examiner, may permit the onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands.

8. *Separation distances between towers.* Separation distances between towers shall be measured between the proposed tower and preexisting towers. Measurement shall be from base of tower to base of tower, excluding pad, footing or foundation. The separation distances shall be measured by drawing or following a straight line between the nearest point on the base of the existing tower and the proposed tower base, pursuant to a site plan of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 1, unless the distance is reduced by the planning director when administratively approving a WTF or by the hearing examiner through issuance of a conditional use permit.

Table 1:

	Lattice	Guyed	Monopole 75 feet in height or greater	Monopole less than 75 feet in height
Lattice	5000	5000	1500	750
Guyed	5000	5000	1500	750
Monopole 75 feet in height or greater	1500	1500	1500	750
Monopole less than 75 feet in height	750	750	750	750

H. *Administratively approved WTFs.* The planning director may administratively approve the uses listed in this subsection, once each applicant has applied for and provided all necessary information required in this Code and in the city's application form. This administrative approval is classified as a Process I application and is subject to the requirements of Ch. 12.01 KCC.

1. *Time for approval.* Within sixty (60) calendar days from the date the city receives a complete, valid, and properly executed application, the planning director shall either approve, approve with conditions, or deny the application. If the planning director fails to approve or deny the application within this sixty-calendar-day period, then the application shall be deemed approved unless the time for determination is extended by agreement of the city and the applicant.
2. *Administratively approved uses.* The following uses may be approved by the planning director after conducting an administrative review:
 - (a) *Industrial/commercial zones.* Locating WTFs, including the placement of additional buildings or other supporting equipment used in connection with WTFs, that do not exceed ninety (90) feet in height for a single user and one hundred twenty (120) feet in

eight for two (2) or more users in the following districts: MA; M1; M1-C; M2; M3; CM-1; CM-2; GC; and GWC.

- (b) *Antennas on existing structures.* Locating a WTF other than a tower as an accessory use by attachment to any building or structure other than a single-family dwelling or multifamily structure of fewer than eight dwelling units in any zoning district provided:
 - (i) The antenna does not extend more than twenty (20) feet above the highest point of the structure if a whip antenna, or ten (10) feet above the highest point of the structure if a non-whip antenna; and
 - (ii) The antenna complies with all applicable building codes; and
 - (iii) All associated equipment is placed either within the same building or in a separate structure that matches the existing building or structure in character and materials.
- (c) *WTFs on existing towers.* Locating a WTF through co-location by attaching the antenna to an existing tower.
- (d) *WTFs within allowable building height.* Locating WTFs, including placement of additional buildings or other supporting equipment used in connection with the WTF in O, CC, MRG, MRM, MRH, AG, and A-I districts, so long as the WTF does not exceed the allowable building height for that district.
- (e) *COWS for greater than thirty-day periods.* Upon a proper showing of extreme necessity (for example, if repair or modification of an existing WTF clearly and legitimately cannot be completed within thirty (30) days), locating a COW at a single location for more than thirty (30) calendar days; however, purely economic convenience shall not be considered a viable factor in making this determination.

3. *Authority to waive certain requirements.* In connection with this administrative approval, the planning director may, in order to encourage camouflaging and co-location of WTFs, administratively waive separation distance requirements between WTFs by up to fifty (50) percent in non-residential zones. Additionally, the planning director may, in order to encourage the use of the least obtrusive type of WTF, administratively allow the reconstruction of an existing WTF to that less obstructive use.

4. *Appeal.* ~~If an administrative approval is denied, the applicant may appeal the decision to the hearing examiner within twenty (20) calendar days of the date of the planning director's decision.~~ An appeal from a final decision of the planning director shall be applicable to the hearing examiner in accordance with the requirements of Ch. 2.32 KCC and section 12.01.190.

I. *Conditional use permits* Applications for conditional use permits under this subsection shall be subject to the procedures and requirements of section 15.09.030 of the Zoning Code and Ch. 12.01 KCC, except as modified by this subsection. If the WTF is not subject to administrative approval pursuant to subsection ~~H.(H)~~, then a conditional use permit shall be required.

1. *Conditional WTF uses.* Specifically, conditional use permits shall be required for the following WTFs:

(a) *Industrial/commercial zones.* Locating WTFs that exceed ninety (90) feet in height for a single user or one hundred twenty (120) feet for two (2) or more users or locating antennas on existing structures that exceed the height limitations in subsection ~~H.(H)~~(2)(b) in the following districts: MA; MI; M1-C; M2; M3; CM-1; CM-2; GC; and GWC.

(b) *Government property.* Locating WTFs (1) separate from existing structures on property owned, leased, or otherwise controlled by the city or other governmental entity or (2) attached to existing

structures on property owned, leased or otherwise controlled by the city or other governmental entity exceeding the height limitations in subsection ~~H.~~(H)(2)(b), but only on the condition that the total height, of the attached WTF, including the structure, does not exceed one hundred twenty (120) feet, unless permitted under subsection ~~H.~~(I)(1)(a); however, this subsection shall not apply in DC, DCE, and NCC districts.

- (c) *WTFs exceeding allowable building height.* Locating WTFs that exceed the allowable building height in the following districts: O; CC; MRG; MRM; MRH; AG; and A1.
- (d) *Tower construction under allowed separation distances.* Locating towers that do not meet the separation distance requirements in subsection ~~G.8.~~ (G)(8) or that do not meet administratively approved separation distance limits.

2. *Factors considered in granting conditional use permits for towers.* In addition to subsection 15.09.030(D), the hearing examiner shall also consider the following factors when considering a CUP application for WTF towers:

- (a) Height of the proposed tower;
- (b) Proximity of the tower to residential structures and residential district boundaries;
- (c) Nature of uses on adjacent and nearby properties;
- (d) Surrounding topography;
- (e) Surrounding tree coverage and foliage;
- (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

- (g) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures.
- (h) Obstruction of or interference with views.
- (i) Consistency with purpose and goals set forth in subsection ~~A.~~ (A) of this section 15.08.035.

3. *Availability of suitable existing towers, other structures, or alternative technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the hearing examiner that no existing tower, structure, or alternative technology that does not require the use of towers can accommodate the applicant's proposed WTF. An applicant shall submit information requested by the hearing examiner related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted To demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed WTF may consist of any of the following:

- (a) No existing WTF is located within the geographic area that meets applicant's engineering requirements.
- (b) Existing WTFs are not of sufficient height to meet applicant's engineering requirements.
- (c) Existing WTFs cannot practically be reconstructed to provide sufficient structural strength to support applicant's proposed antenna and related equipment.
- (d) Electromagnetic interference would occur between two (2) or more WTF systems.
- (e) The fees, costs, or contractual provisions required by the owner in order to share an existing WTF or to adapt an existing WTF for co-location are unreasonable. Fees or costs that exceed new WTF

development shall not be presumed to render sharing facilities unsuitable.

- (f) Other limiting factors render existing WTFs unsuitable.
- (g) An alternative technology that does not require the use of towers or structures would be unsuitable. Costs of alternative technology that exceed new WTF development shall not be presumed to render the technology unsuitable.

4. *Separation requirements.* The hearing examiner may reduce tower separation distance requirements, including administratively approved separation distance reductions, if the purposes and goals of this section 15.08.035 would be better served; however, development of multiple tower locations on a single site (often referred to as "antenna farms") are specifically discouraged wherever possible.

J. *Removal of abandoned towers.*

- 1. *Abandonment and removal.* The owner or operator of any abandoned tower shall notify the city's planning director, in writing, of that abandonment and shall remove the same within ninety (90) calendar days. Failure to remove an abandoned tower within ninety (90) calendar days shall be grounds to remove the tower at the owner's expense. If there are two (2) or more users of a single tower, then the city's right to remove the tower shall not become effective until all users abandon the tower.
- 2. *Partial abandonment and removal.* If the antennas on any tower are removed or relocated to a point where the top twenty (20) percent or more of the height of the tower is no longer in use, the tower shall be deemed partially abandoned. The owner or operator of any partially abandoned tower shall notify the city's planning director, in writing, of that partial abandonment and shall remove the partially abandoned portion within ninety (90) calendar days. Failure to remove a partially abandoned tower

within ninety (90) calendar days shall be grounds to remove the abandoned portion of the tower at the owner's expense.

3. *Security and lien.* Each applicant, prior to commencement of construction, shall post sufficient security in the form of a bond, assignment of funds, cashier's check, or cash, in a form acceptable to the city, to cover the estimated cost of demolition or removal of the tower and support structures, including complete site restoration. If for any reason the posted funds are not adequate to cover the cost of removal, then the city may charge the facility owner or operator with the city's total cost incurred in removing the abandoned structures. If the owner or operator fails to make full payment within thirty (30) calendar days, then the amount remaining unpaid shall become a lien on the facility property.

K. *Nonconforming uses.*

1. *Preexisting towers.* Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted. Any construction other than routine maintenance on a preexisting tower shall comply with the requirements of this section 15.08.035.
2. *Damage or destruction not the fault of owner/occupant.* Bona fide nonconforming WTFs that are damaged or destroyed without fault attributable to the owner or entity in control may be rebuilt without first having to obtain administrative approval or a conditional use permit and without having to meet separation requirements. The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility. Building permits to rebuild the facility shall comply with applicable building codes and shall be obtained within one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the tower or antenna shall be deemed abandoned as specified in subsection ¶ (J).

SECTION 31. Section 15.08.040 of the Kent City Code is hereby amended by amending subsection 15.08.040(F) as follows:

Sec. 15.08.040. Home occupations.

- A. *Purpose.* It is the purpose of this section to outline general conditions in which home occupations may be permitted in all zoning districts. These conditions have been designed to help preserve the residential character of the city's neighborhoods from commercial encroachment while recognizing that certain selected business activities are compatible with residential uses.
- B. *Home occupations permitted* Home occupations which meet the requirements of this section are permitted in every zone where a dwelling unit was lawfully established. The requirements of this section shall not apply to the following home occupations:
1. Home child care.
 2. The sale of agricultural products produced on the premises.
- C. *Development standards.* All dwelling units in which a home occupation is located must meet the following minimum development standards:
1. The residential character of the exterior of the building shall be maintained.
 2. The outdoor storage or display of materials, goods, products or equipment is prohibited.
 3. A home occupation shall not occupy more than three hundred (300) square feet.
 4. The sign regulations of ~~chapter~~ Ch. 15.06 KCC shall apply.
- D. *Performance standards.* All home occupations must meet the following minimum performance standards:
1. *Employees.* A home occupation may not employ on the premises more than one (1) person who is not a resident of the dwelling unit.

2. *Traffic.* The traffic generated by a home occupation shall be limited to four (4) two-way client-related trips per day and shall not create a need for additional onsite or offsite parking spaces.
 3. *Sale of goods and services.* The sale of goods and services from a home occupation shall be to one (1) customer at a time, by appointment only, between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday only.
 4. *Electrical or mechanical equipment usage.* The use of electrical or mechanical equipment that would change the fire rating of the structure or create visual or audible interference in radio or television receivers or electronic equipment or cause fluctuations in line voltage outside the dwelling unit is prohibited.
 5. *Utility demand.* Utility demand for sewer, water, electricity, garbage or natural gas shall not exceed normal residential levels.
 6. *Other criteria.* There shall be no noise, vibration, smoke, dust, odors, heat, glare or other conditions produced as a result of the home occupation which would exceed that normally produced by a single residence, or which would create a disturbing or objectionable condition in the neighborhood.
- E. *Permit required.* A zoning permit is required as provided in section 15.09.020.
- F. *Special home occupation permits.* A special home occupation permit shall be required for the following home occupations when conducted in sessions of more than one individual:
1. Music lessons.
 2. Dance lessons.
 3. Art lessons.
 4. Academic tutoring.

A special home occupation permit may only be issued as follows:

1. *Application.* Applications for An applicant for a special home occupation permit under this subsection shall be subject to the procedures and requirements of Ch. 2.32 and Ch. 12.01 KCC. file an application with the city's planning department. Upon receipt of a complete application, the planning department shall schedule a public hearing on the application before the hearing examiner pursuant to chapter 2.32 of the Kent City Code. The application fee for a special home occupation permit shall be the same as for administrative variances unless otherwise established by city council resolution.
2. *Criteria for approval.* In conducting a hearing on an application for a special home occupation permit, the hearing examiner shall consider the nature and conditions of all adjacent uses and structures. A special home occupation permit may only be approved by the hearing examiner if the hearing examiner finds that such permit will not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located, and that the issuance of such special home occupation permit will be consistent with the spirit and purpose of this section and subject to the applicable provisions of Ch. 12.01 KCC.
3. *Conditions of approval.* In approving a special home occupation permit, the hearing examiner may impose such requirements and conditions with respect to location, installation, construction, maintenance and operation and extent of open spaces in addition to those expressly set forth in this section, as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest.
4. *Issuance.* Any special home occupation permit application approved by the hearing examiner shall be forwarded to the planning department for issuance.

5. *Appeal of decision.* The decision of the hearing examiner on a special home occupation permit application may be appealed to the city council pursuant to ~~chapter Ch. 2.32 and of the Kent City Code Ch. 12.01 KCC.~~

SECTION 32. Section 15.09.010 of the Kent City Code is hereby amended as follows:

Sec. 15.09.010. Development plan review.

- A. Review of development plans shall be carried out by the planning department for all buildings and structures hereafter erected, constructed, structurally altered, repaired or moved within or into any district requiring development plan review and whenever a city permit is required, and for the use of vacant land or for a change in the character of the use of land or buildings, within any district requiring development plan approval.
- B. The development plan review is an administrative review, the primary purpose of which is to define and describe the needs of the particular site covered by a development plan in reference to the requirements of this title. The planning director shall make the final decision on development plan review. Development Plan Review is categorized as a Process I application and shall be subject to the applicable requirements of Ch. 12.01 KCC. Any appeal from the final decision of the planning director shall be to the hearing examiner in accordance with the requirements of Ch. 2.32 and Ch. 12.01 KCC. In addition to the other requirements of this title, the planning department shall approve a development plan only after the following standards, as a minimum, when applicable, have been incorporated into the development plan:
1. Storm drainage must be handled by each proposed development in conformance with existing storm drainage plans and in conformance with city policies for storm drainage.

2. A planned street system is a primary element of any development plan proposed within the city and must be compatible with the city's circulation plans. Development which is proposed in areas of the city which have a planned street system which is a part of the comprehensive plan or the city's six-year plan, and any other street plan, shall make provisions for such streets and must not cause implementation of such street plans to become unattainable because the street plan is considered secondary to the development plan.
3. A pedestrian circulation system must become a part of any development plan when the proposed development will generate or attract pedestrians. The planning department shall conduct site plan review to ensure that adequate parking is provided within close proximity to each unit entrance.
4. The proposed development shall be compatible with existing development adjacent to or within five hundred (500) feet of the property line of the proposed development. Compatibility shall not refer to architectural design features, but to siting of building and location of off-street parking.
5. Efforts shall be made to preserve trees, natural vegetation, creeks or other environmental amenities.

SECTION 33. Section 15.09.020 of the Kent City Code is hereby amended by adding a new subsection 15.09.020(C).

Sec. 15.09.020. Zoning permit.

- A. Zoning permits shall be required for all grading permits, buildings and structures hereafter erected, constructed, altered, repaired or moved within or into any district established by this title, and for the use of vacant land or for a change in the character of use of land or buildings within any district established by this title.

B. The zoning permit shall certify that the proposed use is in accordance with the requirements and standards of this title. A zoning permit shall not be issued until the development plan has been approved.

C. Zoning permits are categorized as Process I applications and shall be subject to the applicable requirements of Ch. 12.01 KCC. Any appeal of the final decision of the planning director shall be to the hearing examiner pursuant to the requirements of Ch. 2.32 and Ch. 12.01 KCC.

SECTION 34. Section 15.09.030 of the Kent City Code is hereby amended as follows:

Sec. 15.09.030. Conditional use permit.

A. *Purpose.*

1. Conditional use permits, revocable, conditional or valid for a time period may be issued by the hearing examiner for any of the uses or purposes for which such permits are required or permitted by the terms of this title. The purpose of the conditional use permit is to allow the proper integration into the community of uses which may be suitable only on certain conditions in specific locations in a zoning district, or if the site is regulated in a particular manner. A conditional use permit is categorized as a Process III application and shall be subject to the requirements of Ch. 2.32 and Ch. 12.01 KCC.
2. Any use existing at the time of adoption of this title which is within the scope of uses permitted by a conditional use permit in the district in which the property is situated shall be deemed a conforming use without necessity of a conditional use permit.
3. Any expansion of an existing conditional use may be required to apply for a new conditional use permit if the planning director finds that there is a change in the nature of the use by such expansion.

B. *Application.*

1. The owner or his agent may make application for a conditional use permit, which shall be on a form prescribed by the planning department and filed with the planning department. Applications for conditional use permits shall be filed in accordance with the requirements of Ch. 12.01 KCC. ~~The application shall be submitted at least forty five (45) days prior to the next regularly scheduled public hearing date, and shall be heard by the hearing examiner within one hundred (100) days of the date of the application; provided, however, that this period may be extended in any case for which an environmental impact statement is required.~~
2. Development plans shall be submitted, drawn to scale, showing the actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of buildings already existing, if any, and the location on the lot of the proposed building or alteration. The plans shall show proposed landscaping, off-street parking, signs, ingress and egress and adjacent land uses. The plan shall include other information as may be required by the planning department.

C. *Public hearing.* The hearing examiner shall hold a an open record public hearing on any proposed conditional use, and shall give notice thereof in ~~at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing.~~ accordance with the procedures established pursuant to Ch. 2.32 KCC and sections 12.01.130 and 12.01.140.

1. ~~Notice shall be given to all property owners within a radius of at least two hundred (200) feet and, when determined by the planning director, a greater distance from the exterior boundaries of the property which is the subject of the application. Such notice is to be sent ten (10) days prior to the public hearing. The failure of any property owner to receive the notice of hearing will not invalidate the proceedings.~~

~~2. Public notices shall be posted in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least ten (10) days prior to the date of the public hearing. Public notice shall be accomplished through use of a four (4) foot by four (4) foot plywood face generic notice board, to be issued by the city planning department, and as follows: The applicant shall apply to the city for issuance of the notice board, and shall deposit with the city planning department the amount of sixty dollars (\$60.00). The applicant shall be responsible for placement of the notice boards in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least fourteen (14) days prior to the date of the public hearing. Planning department staff shall post laminated notice sheets and vinyl information packets on the board no later than ten (10) days prior to the hearing. Upon return of the notice board in good condition to the planning department by the applicant, forty five dollars (\$45.00) of the initial notice board deposit shall be refunded to the applicant.~~

D. *Standards and criteria for granting.* A conditional use permit shall only be granted after the hearing examiner has reviewed the proposed use to determine if it complies with the standards and criteria ~~listed in this subsection.~~ set forth below and in accordance with the requirements for Process III applications under Ch. 12.01 KCC. A conditional use permit shall only be granted if such finding is made.

1. The proposed use in the proposed location will not be detrimental to other uses legally existing or permitted outright in the zoning district.
2. The size of the site is adequate for the proposed use.
3. The traffic generated by the proposed use will not unduly burden the traffic circulation system in the vicinity.
4. The other performance characteristics of the proposed use are compatible with those of other uses in the neighborhood or vicinity.

5. Adequate buffering devices such as fencing, landscaping or topographic characteristics protect adjacent properties from adverse effects of the proposed use, including adverse visual or auditory effects.
6. The other uses in the vicinity of the proposed site are such as to permit the proposed use to function effectively.
7. The proposed use complies with the performance standards, parking requirements and other applicable provisions of this title.
8. Any other similar considerations may be applied that may be appropriate to a particular case.

E. *Action of hearing examiner.*

1. Special conditions may be imposed on the proposed development to ensure that the proposed use will meet the standards and criteria of subsection ~~D~~(D). of this section in granting a conditional use permit. Guarantees and evidence that such conditions are being complied with may be required.
2. If the proposal also involves the requirement to obtain exceptions to development standards, the hearing examiner may approve, modify or deny conditional exceptions to those development standards, including height, unique structures, signage and setbacks, when considering a conditional use permit application for that same proposal.

F. *Appeals.* The decision of the hearing examiner shall be final, unless an appeal is made to the city council within ~~ten (10)~~ fourteen (14) calendar days after the hearing examiner's ~~decision~~ notice of decision. The appeal shall be in writing to the city council and filed with the city clerk; in accordance with the procedures established in section 12.01.190.

G. *Period of validity.* Any conditional use permit granted by the hearing examiner shall remain effective only for one (1) year unless the use is begun within that time or construction has commenced. If not in use or construction has not commenced within one (1) year, the conditional use permit shall become invalid.

SECTION 35. Section 15.09.040 of the Kent City Code is hereby amended as follows:

Sec. 15.09.040. Variances. The hearing examiner shall have the authority to grant a variance where practical difficulties, unnecessary hardships and results inconsistent with the general purposes of this title might result from the strict application of certain provisions. A variance may not be granted to allow a use that is not in conformity with the uses specified by this title for the district in which the land is located. (Note: Sign variances are heard by the city hearing examiner.)

A. *Application.* The owner or his agent may make application for a variance, which shall be on a form prescribed by the planning department and filed with the planning department. An application for a variance shall be filed in accordance with the requirements of Ch. 12.01 KCC. ~~The application shall be submitted at least forty five (45) days prior to the next regularly scheduled public hearing date, and shall be heard by the hearing examiner within one hundred (100) days of the date of the application; provided, however, that this period may be extended in any case for which an environmental impact statement is required.~~

1. A variance is categorized as a Process III application and shall be subject to the requirements of Ch. 12.01 KCC.

B. *Public hearing.* The hearing examiner shall hold a an open record public hearing on any proposed variance, ~~and shall give notice thereof in at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing in accordance with the requirements of Ch. 2.32 and Ch. 12.01 KCC.~~

~~1. Notice shall be given to all property owners within a radius of at least two hundred (200) feet and, when determined by the planning director, a greater distance from the exterior boundaries of the property which is the subject of the application. Such notice is to be sent ten (10) days prior to the public hearing. The failure of any property owner to receive the notice of hearing will not invalidate the proceedings.~~

~~2. Public notices shall be posted in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least ten (10) days prior to the date of the public hearing. Public notice shall be accomplished through use of a four (4) foot by four (4) foot plywood face generic notice board, to be issued by the city planning department, and as follows: The applicant shall apply to the city for issuance of the notice board, and shall deposit with the city planning department the amount of sixty dollars (\$60.00). The applicant shall be responsible for placement of the notice board in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least fourteen (14) days prior to the date of the public hearing. Planning department staff shall post laminated notice sheets and vinyl information packets on the board no later than ten (10) days prior to the hearing. Upon return of the notice board in good condition to the planning department by the applicant, forty five dollars (\$45.00) of the initial notice board deposit shall be refunded to the applicant.~~

C. *Conditions for granting.* Before any variance may be granted, it shall be shown and the hearing examiner shall find that:

1. The variance shall not constitute a grant of special privileges inconsistent with a 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;
2. 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
3. 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.

- D. *Hearing examiner action.* The decision of the hearing examiner shall be final and conclusive, unless within ~~ten (10)~~ twenty-one (21) calendar days from the date of the notice of decision ~~action~~ the original applicant or an adverse party ~~makes application the county superior court for a writ of certiorari, writ of prohibition or writ of mandamus.~~ files a petition in the superior court pursuant to Ch. 36.70C RCW.
- E. *Period of validity.* Any variance authorized by the hearing examiner shall remain effective only for one (1) year, unless the use is begun within that time or construction has commenced. If not in use or construction has not commenced within one (1) year, the variance shall become invalid.

SECTION 36. Section 15.09.042 of the Kent City Code is hereby amended as follows:

Sec. 15.09.042. Administrative variances.

- A. *Scope.* The planning director shall have the authority to grant an administrative variance for up to twenty-five (25) percent of the numerical zoning code standard for setbacks, lot coverage, and building height as provided in this title.
- B. *Application.* The owner or his/her agent may make application for an administrative variance, which shall be on a form prescribed by the planning director and filed with the planning department. An administrative variance is classified as a Process II application and shall be subject to the applicable requirements of Ch. 12.01 KCC.
The planning director shall review applications for completeness, and a notice of completeness will be issued within ~~ten (10)~~ twenty-eight (28) calendar days ~~of~~ after submittal. Those applications deemed incomplete shall be returned to the applicant for further action in accordance with the provisions of section 12.01.100.
- C. *Public notice.* Public notice of the application pending review shall be mailed to the applicant and to property owners within three hundred (300) feet of the subject property, and other agencies with jurisdiction, within ten (10) calendar days of the

date of completeness. Comments from concerned parties will be accepted for an additional ten (10) calendar days. Following the end of the comment period, the planning director shall have ten (10) calendar days to approve, approve with conditions, or deny the application.

D. *Conditions for granting an administrative variance.* The planning director may grant an administrative variance if it is shown that:

1. The administrative variance does not detract from the desired character and nature of the vicinity in which it is proposed;
2. The administrative variance enhances or protects the character of the neighborhood or vicinity by protecting natural features, historic sites, open space, or other resources;
3. The administrative variance does not interfere with or negatively impact the operations of existing land uses and all legally permitted uses within the zoning district it occupies; and
4. Granting the administrative variance does not constitute a threat to the public health, safety and welfare within the city.

E. *Appeals.* Appeals of the planning director's ~~decision may~~ shall be submitted within ~~ten (10)~~ fourteen (14) calendar days of the date of the director's decision by the applicant or any party of record. The city hearing examiner shall hold a ~~public~~ an open record appeal hearing to consider the appeal in accordance with the requirements of Ch. 2.32 and Ch. 12.01 KCC. ~~The planning director may, under his own authority or at the request of the applicant, refer any application for an administrative variance to the hearing examiner for a public hearing.~~

F. *Fee.* The fee for an administrative variance shall be one hundred dollars (\$100.00).

SECTION 37. Section 15.09.045 of the Kent City Code is hereby amended by amending subsection 15.09.045(B) and (F) as follows:

Sec. 15.09.045. Administrative design review.

- A. *Purpose and scope.* Administrative design review is an administrative process, the purpose of which is to implement and give effect to the comprehensive plan, its policies or parts thereof through the adoption of design criteria for development relative to site layout, landscape architecture and exterior structure design. It is the intent of the city that this process will serve to aid applicants in understanding the principal expectations of the city concerning design, and encourage a diversity of imaginative solutions to development through the planning department review and application of certain criteria. These criteria have been formulated to improve the design, siting and construction of development projects so as to be compatible, both visually and otherwise, with the topographic, open space, urban or suburban characteristics of the land or adjacent properties, while still maintaining allowable densities to be applied in a manner consistent with established land use policies, the comprehensive plan, this title, and community development goals of the city. The adoption of design criteria is an element of the city's regulation of land use, which is statutorily authorized. Application of the multifamily design process to the design criteria adopted in this section is established as an administrative function delegated to the planning department pursuant to RCW Title 35A, therefore, in implementing the administrative design review process, the planning director may adopt such rules and procedures as are necessary to provide for expeditious review of proposed projects. Further rules may be promulgated for additional administrative review.
- B. *Application and review process.* ~~The a~~Administrative design review process is ~~is~~ conducted as part of the permit review process classified as a Process II application and shall be subject to the applicable requirements of Ch. 12.01 KCC. The applicant must make application for the design review process on forms provided

by the planning department. Upon receipt of an application for design review, the planning director shall circulate the application to the public works director, building official and the city administrator for review. Prior to making a final decision, the planning director shall review any comments submitted for consideration. In the administration of this process, the planning director may develop supplementary handbooks for the public, which shall pictorially illustrate and provide additional guidance on the interpretation of the criteria set forth in subsection ~~C~~(C) of this section, as well as a detailed explanation of the design review process.

C. ~~Multiple Family~~ Multifamily Design Review. The planning department shall use the following criteria in the evaluation and/or conditioning of applications under the multifamily design review process:

1. *Site design.*

- a. The site plan for the development should be integrated with the surrounding neighborhood.
- b. The site plan should take into consideration significant environmental considerations and the lay of the land.
- c. The site plan should provide an open space network which will accommodate a wide variety of activities, both semipublic and private.
- d. The site plan should accommodate vehicular access and parking in a manner which is convenient, yet does not allow the automobile to dominate the site.
- e. The site plan should provide safe and convenient pedestrian circulation.

2. *Landscape design.*

- a. The landscape plan should integrate with and enhance the surrounding neighborhood landscape.

- b. The landscape plan should incorporate existing natural features of significance.
- c. The landscape plan should enhance the planned open space network..
- d. The landscape plan should enhance the parking and utility areas on the site.
- e. The landscape plan should enhance building forms and orientation.
- f. The landscape plan should indicate the use of plant species suited to the microclimate of the site and should provide for maintenance of these plants.

3. *Building design.*

- a. The buildings in the development should, where appropriate, maintain neighborhood scale and density.
- b. The buildings in the development should be oriented to provide for privacy of residents.
- c. The exterior design of all buildings in the development should provide for individual unit identity.

D. *Multifamily Transition Areas.* Through the administrative design review process, specific multifamily transition area requirements may be waived or modified where the applicant demonstrates an alternative site plan which fulfills an equivalent function to the multifamily transition area requirements. Elements which may be evaluated under this process include general site layout, building placement and orientation, parking and maneuvering arrangements, landscaping and other screening and buffering provisions.

- 1. *Required findings.* In order to modify or waive any multifamily transition area requirement, the planning director must find that all of the following criteria have been met:

- a. The proposal will accomplish the same or better protection of an abutting single-family district from impacts of noise, traffic, light and other environmental intrusions caused by the multifamily development.
 - b. The proposal will accomplish the same or better transition between the multifamily development and abutting streets, including adequate buffering of the multifamily development from the street, and vice versa.
 - c. The proposal is compatible with surrounding uses. Compatibility includes but is not limited to site layout, size, scale, mass and provisions for screening and buffering. The planning director shall issue a report of his findings, conclusions and determination for each proposal under this section.
- E. *Mixed Use Design Review.* The planning department shall use the following criteria in the evaluation and/or conditioning of applications under the mixed use design review process when a project includes residential use:
1. The following criteria should apply to all mixed use with a residential component development:
 - a. Some common recreation space roofs, terraces, indoor rooms, courtyards.
 - b. Lighting features that are shielded, directing light downwards.
 - c. The residential portion of the building should incorporate residential details, such as widow trim, trellises, balconies, and bay windows.
 - d. The residential component should have an obvious generous entrance, within features suggesting a “front door” for example, a lobby, trellis, gate, archway or courtyard.

2. The following criteria shall apply to mixed use development:
 - a. If the residential component is located away from the main street, a landscaped pedestrian path should be provided between the entrance and public sidewalk.
 - b. Although the commercial and residential components may have different architectural expressions, they should exhibit a number of elements that produce the effect of an integrated development.
 - c. Surface parking should be generously landscaped to serve as an amenity. Lighting fixtures should not exceed the height of the first floor.
3. The following criteria shall apply to mixed use buildings with a residential component:
 - a. Parking lots, if used, should be divided into small increments, separated by landscaping and structures, so that parking does not dominate the site.
 - b. Articulated by use of different materials, generous windows with low sill heights, “store” doors, canopies, and planters.
 - c. Residential floors should be expressed in an obvious manner, with stepbacks, change in materials or color, and overhangs.
 - d. Commercial signs should be contained within the first floor commercial base and not extend up into the residential floor facades.

F. *Appeals.* The decision of the planning director to condition or reject any application under the administrative design review process is final unless an appeal is made by the applicant or any party of record to the hearing examiner within ~~ten (10)~~ fourteen (14) calendar days of either the issuance of the director’s conditional approval under this section of any application, or the director’s written decision rejecting any application under this section. ~~Appeals to the hearing examiner shall be as set forth~~

~~in chapter 2.32. The appeal shall be conducted by the hearing examiner as an open record appeal hearing in accordance with the requirements of Ch. 2.32 and Ch. 12.01 KCC. The decision of the hearing examiner shall be final unless an appeal is made to the city council superior court within ten (10) twenty-one (21) calendar days after the hearing examiner's notice of decision. The appeal shall be in writing to the city council and filed with the clerk.~~

SECTION 38. Section 15.09.⁰⁴⁶~~048~~ of the Kent City Code is hereby amended to read as follows:

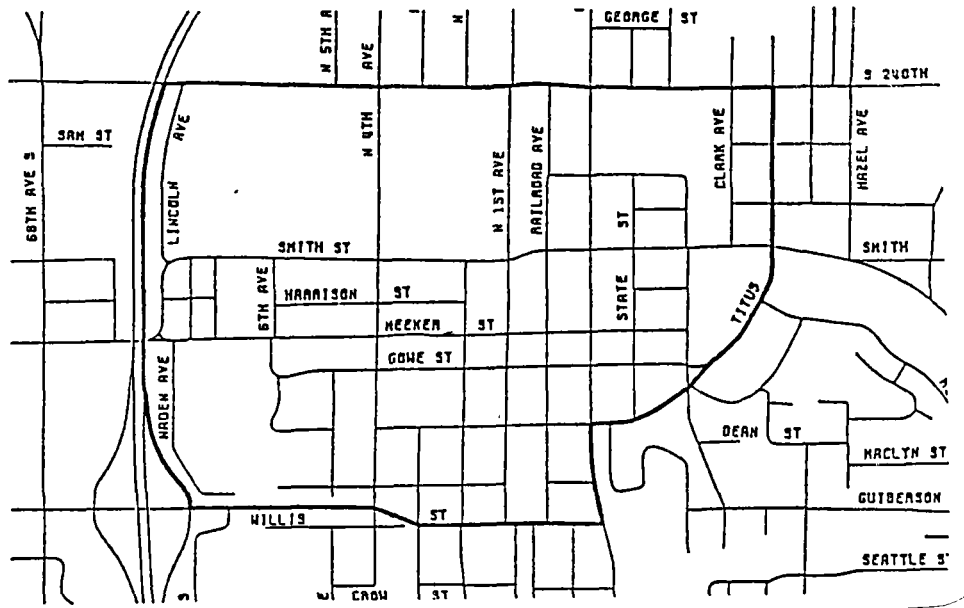
⁰⁴⁶
Sec. 15.09.048: Downtown design review.

A. *Purpose and scope.*

1. Downtown design review is an administrative process, is categorized as a Process II application, and shall be subject to the requirements of Ch. 12.01 KCC. ~~The purpose of downtown design review which~~ is to implement and give effect to the downtown plan, its policies or parts thereof, through the adoption of design criteria for development within the downtown planning area, which is bounded by state route 167 to the west, James Street to the north, Jason/Titus/Central Avenue to the east, and Willis Street to the south.

The area is shown on the map below:

Downtown Planning Area



It is the intent of the city that this process will serve to aid applicants in understanding the principal expectations of the city concerning development in the downtown planning area and encourage a diversity of imaginative solutions to development through the review and application of the design criteria described in this section. These criteria have been formulated to ensure that the design, siting and construction of development will provide a quality pedestrian oriented urban environment in a manner consistent with established land use policies, the comprehensive plan, and zoning code of the city.

2. The adoption of design criteria is an element of the city's regulation of land use, which is statutorily authorized. The downtown design review process adopted herein is established as an administrative function delegated to the planning department pursuant to RCW Title 35A. Therefore, in implementing the downtown design review process, the planning director may adopt such rules and procedures as are necessary to provide for review of proposed projects.
3. Development in the downtown commercial (DC), downtown commercial enterprise (DCE) and downtown limited manufacturing (DLM) zoning districts within the downtown planning area shall be subject to the provisions of this section.
4. Applications for multifamily development in the DC, DCE and DLM zoning districts shall not be subject to the provisions of section 15.09.045, administrative design review.
5. The downtown design review process is distinct from the administrative multifamily design review process set forth in section 15.09.045047. Applications for multifamily development within the DC, DCE and DLM zoning districts shall be subject to the provisions of section 15.09.045047 in addition to the provisions of this section, ~~except as provided in section~~

~~15.09.0473~~. However, the provisions of this section shall prevail in cases where a conflict may arise between the requirements of the two (2) sections.

- B. *Application and review process.* The downtown design review process is administrative and is conducted as part of the project permit review process. The applicant must make application for the design review process on forms provided by the planning department. Upon receipt of an application for design review, the planning director shall circulate the application to the public works director, building official, and the Mayor city administrator for review. Prior to issuing a final decision, the planning director shall review any comments submitted for consideration. In the administration of this process, the planning department may develop supplementary handbooks for the public, which shall pictorially illustrate and provide additional guidance on the interpretation of the criteria set forth in subsection (C)€. of this section.
- C. *Downtown Design ~~Review~~ €Committee.* There is hereby established the Downtown administrative Design Review Committee, which shall make all final decisions on applications for downtown design review, provided that the planning director shall make the final decision on downtown design review applications for minor remodels. The committee shall be comprised of three (3) members, who shall be appointed by the planning director under the authority delegated to him under RCW Title 35A. The members shall serve at the pleasure of the planning director. The planning director shall, by administrative rule, establish the rules of procedure for the committee, which shall be made available to the public upon publication.
- D. *Design review criteria.* The downtown administrative design review committee shall use the following criteria in the evaluation and/or conditioning of applications under the downtown design review process:
1. *Site design*
 - a. The site plan conforms with the pedestrian plan overlay frontage

requirements for class A and class B streets as included in the administrative guidelines of the planning department.

- b. The site plan conforms with the maximum setback requirements as specified by the pedestrian plan overlay.
- c. The site plan provides for a zero setback for properties abutting Meeker Street and First Avenue within the downtown commercial district.
- d. The site plan restricts the number of curb cuts necessary to meet automobile circulation requirements.
- e. Off-street parking areas are located to the rear or side of buildings and are well lighted.
- f. The site plan provides for sidewalks and pedestrian corridors in both public right-of-ways and privately owned areas.
- g. Pedestrian corridors outside of buildings are clearly marked and well lighted.
- h. Pedestrian throughways are provided in long buildings.
- i. The site plan provides for semiprivate and/or private useable open space for any development with a residential component.

2. *Landscape design.*

- a. The landscape plan provides for extensive landscaping of large parking areas or other open areas which can be seen from the street or other pedestrian oriented area.
- b. The landscape plan enhances pedestrian activities for any setback or other open space areas which are being provided on the site.
- c. The landscape plan enhances any private and/or semiprivate open spaces which are being provided for multifamily residential units.

3. *Building design.*

- a. Building floor area above four (4) stories in height is setback as appropriate to maintain human scale.
- b. Buildings in the downtown commercial zoning district are designed to be compatible with the existing historic buildings in terms of bulk, scale, and cornice line.
- c. Buildings in the downtown commercial zoning district provide cover for pedestrians such as awnings along the length of any facade abutting a sidewalk.
- d. Building facades facing a public right-of-way or other pedestrian oriented space minimize blank walls by providing windows and/or providing an interesting design features.
- e. Windows make up the greatest percentage of the street level facade area to minimize blank walls in the downtown commercial zoning district.

E. *Appeals.* The decision of the ~~D~~downtown ~~administrative~~ ~~D~~design ~~R~~review ~~C~~committee or, for minor remodels, the planning director, to approve, condition or reject any application under the downtown design review process is a final decision unless an appeal is made to the hearing examiner within ~~ten (10)~~ fourteen (14) calendar days of either the issuance of the committee's conditional approval or rejection of any application under this section. Appeals to the hearing examiner shall be as set forth in ~~chapter~~ Ch. 2.32 and Ch. 12.01 KCC. ~~The decision of the hearing examiner shall be final, unless an appeal is made to the city council within ten (10) days after the hearing examiner's decision. The appeal shall be in writing to the city council and filed with the city clerk.~~

SECTION 39. Section 15.09.050 of the Kent City Code is hereby amended as follows:

Sec. 15.09.050. Amendments. This title may be amended by the city council by changing the boundaries of zoning districts (rezones which change the official zoning map) or by changing any other provisions thereof (text amendments which add, delete or otherwise modify the text of this title) whenever the public necessity and convenience and the general welfare require such amendment, by following the procedures of this section.

A. *Initiation.* An amendment may be initiated as follows:

1. Amendments to the text of this title and official zoning map amendments may be initiated by resolution of intention by the city council. Text amendments are heard by the Land Use and Planning Board ~~planning commission~~ and city council; zoning map amendments are heard by the hearing examiner. In the case of area-wide zoning or rezoning, both text amendments and zoning map amendments may be heard by the Land Use and Planning Board ~~planning commission~~ and city council in accordance with Ch. 12.01 KCC.
2. Amendments to the text of this title may be initiated by resolution of intention by the Land Use and Planning Board ~~planning commission~~.
3. Official zoning map amendments (rezones), including the application of the "C" suffix, may be initiated by application of one (1) or more owners, or their agents, of the property affected by the proposed amendment, which shall be made on a form prescribed by the planning department and filed with the planning department. The application shall be submitted ~~at least forty five (45) days prior to the next regularly scheduled public hearing date, and shall be heard by~~ in the manner required for Process IV applications. ~~The hearing examiner within one hundred (100) days of the date of the application; provided, however, that this period may be extended in any case for which an environmental impact statement is required.~~ shall

consider the application in an open record pre-decision hearing in accordance with Ch. 2.32 and Ch. 12.01 KCC.

B. *Public hearing.* The hearing examiner shall hold ~~at least one (1) public hearing an open record pre-decision hearing~~ on any proposed amendment, and shall give notice thereof in ~~at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing.~~ accordance with the requirements of Ch. 12.01 KCC.

1. ~~Notice shall be given to all property owners within at least two hundred (200) feet and, when determined by the planning director, a greater distance from the exterior boundaries of the property which is the subject of the application. Such notice is to be sent ten (10) days prior to the public hearing. The failure of any property owner to receive the notice of hearing will not invalidate the proceedings.~~

2. ~~Public notices shall be posted in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least ten (10) days prior to the date of the public hearing. Public notice shall be accomplished through use of a four (4) foot by four (4) foot plywood face generic notice board, to be issued by the city planning department, and as follows: The applicant shall apply to the city for issuance of the notice board, and shall deposit with the city planning department the amount of sixty dollars (\$60.00). The applicant shall be responsible for placement of the notice boards in one (1) conspicuous place on or adjacent to the property which is the subject of the application at least fourteen (14) days prior to the date of the public hearing. Planning department staff shall post laminated notice sheets and vinyl information packets on the board no later than ten (10) days prior to the hearing. Upon return of the notice board in good condition to the planning department by the~~

~~applicant, forty five dollars (\$45.00) of the initial notice board deposit shall be refunded to the applicant.~~

C. *Standards and criteria for granting a request for rezone.* The following standards and criteria shall be used by the hearing examiner and city council to evaluate a request for rezone. Such an amendment shall only be granted if the city council determines that the request is consistent with these standards and criteria- and subject to the requirements of Ch. 12.01 KCC.

1. The proposed rezone is consistent with the comprehensive plan.
2. The proposed rezone and subsequent development of the site would be compatible with development in the vicinity.
3. The proposed rezone will not unduly burden the transportation system in the vicinity of the property with significant adverse impacts which cannot be mitigated.
4. Circumstances have changed substantially since the establishment of the current zoning district to warrant the proposed rezone.
5. The proposed rezone will not adversely affect the health, safety and general welfare of the citizens of the city.

D. *Rezoning to M1-C.* The hearing examiner and the city council shall use the standards and criteria provided in subsection (C)€ of this section to evaluate a request for rezone to M1-C. In addition, the hearing examiner and city council shall evaluate a request for M1-C on the basis of the following standards and criteria. Such an amendment shall only be granted if the city council determines the request is consistent with these standards and criteria and subject to the requirements of Ch. 12.01 KCC.

1. The proposed rezone is in close proximity or contiguous to major arterial intersections identified on the comprehensive plan map as being appropriate locations for commercial type land uses.
2. Rezoning to M1-C shall not be speculative in nature, but shall be based on

generalized development plans and uses.

E. *Rezone to mixed use overlay.* The hearing examiner and the city council shall use the standards and criteria provided in subsection ~~(C)E.~~ of this section to evaluate a request for expanding the boundaries of the mixed use overlay boundary which is located in the GC, CC, and O zoning districts. In addition, the hearing examiner and city council shall evaluate a request for expanding the mixed use overlay on the basis of the following standards and criteria. Such an amendment shall only be granted if the city council determines the request is consistent with these standards and criteria and subject to the requirements of Ch. 12.01 KCC.

1. The proposed rezone is contiguous to an existing mixed use overlay area, or is at least one (1) acre in size.
2. The proposed area is located within close proximity to existing residential uses and existing commercial uses which would support residential use.
3. The proposed area is located in close proximity to transit stops, parks, and community facilities.

F. *Recommendation of hearing examiner.* Following the public hearing provided for in this section, the hearing examiner shall make a report of findings and recommendations with respect to the proposed amendment and shall forward such to the city council, which shall have the final authority to act on the amendment.

G. *City council action/appeal.*

1. ~~Within thirty (30) days of receipt of the hearing examiner's recommendation,~~ The city council shall, at a regular public meeting, consider the recommendation, and issue a final decision. The decision of the city council is appealable to the King County Superior Court within twenty-one (21) calendar days from the issuance of a notice of decision and in accordance with the requirements of Ch. 12.01 KCC and Ch. 36.70C RCW.

2. If the application for an amendment is denied by the city council, the application shall not be eligible for resubmittal for one (1) year from date of the denial, unless specifically stated to be without prejudice. A new application affecting the same property may be submitted if, in the opinion of the hearing examiner, circumstances affecting the application have changed substantially.

SECTION 40. Section 15.09.055 of the Kent City Code is hereby amended as follows:

Sec. 15.09.055. Zoning of annexed lands.

- A. *Purpose.* It is the purpose of this section to provide a procedure to ensure that the initial zoning of annexed territories is in conformance with city goals, policies and plans.
- B. *Determination of planning director.* Whenever the council shall determine that the best interest and general welfare of the city would be served by annexing territory, the planning director will cause an examination to be made of the comprehensive plan of the city. If the city council determines that the comprehensive plan is not current for the area of the proposed annexation, the planning director will cause an application to be made to the land use and planning board for an update of the comprehensive plan. In addition, the planning director will cause an application to be filed with the land use and planning board for an initial zoning recommendation.
- C. *Recommendation of the land use and planning board.*
 1. Comprehensive plan. Upon application by the planning director, the land use and planning board shall hold at least one (1) open record public hearing to consider the comprehensive plan for the area of the proposed annexation. Notice of the time, place and purpose of such hearing shall be mailed to all property owners in the area to be annexed and given by publication in a newspaper of general circulation in the city and in the area

to be annexed at least ten (10) calendar days prior to the hearing. Upon completion of the hearing, the land use and planning board shall transmit a copy of its recommendations for the comprehensive plan to the council for its consideration.

~~D.~~ *Recommendation of the hearing examiner.*

2. *Initial zoning.* In addition, the land use and planning board shall hold at least one (1) open record public hearing to consider the initial zoning for the area of the proposed annexation. Notice of the time, place and purpose of such hearing shall be mailed to all property owners in the area to be annexed and given by publication in a newspaper of general circulation in the city and in the area to be annexed at least ten (10) calendar days prior to the hearing.

~~E.D.~~ *City council action.*

1. *Comprehensive plan.* Within sixty (60) calendar days of the receipt of the recommendation from the land use and planning board for the comprehensive plan for the area of the proposed annexation, the city council shall consider the comprehensive plan at a public meeting. The council may approve or disapprove the comprehensive plan as submitted, modify and approve as modified, or refer the comprehensive plan back to the land use and planning board for further proceedings. If the matter is referred to the land use and planning board, the council shall specify the time within which the land use and planning board shall report back to the council with findings and recommendations on the matters referred to it. An affirmative vote of not less than a majority of the total members of the council shall be required for approval. Administrative Interpretations are subject to the requirements of Process I applications.
2. *Initial zoning.* Upon receipt of the recommendations of the land use and planning board for the initial zoning of the area of the proposed annexation,

the council shall hold two (2) or more public hearings at least thirty (30) calendar days apart. Notice of the time and place and purpose of such hearing shall be given by publication in a newspaper of general circulation in the city and in the area to be annexed at least ten (10) calendar days prior to the hearing. The ordinance adopting the initial zoning may provide that it will become effective upon the annexation of the area into the city. The city clerk shall file a certified copy of the ordinance and any accompanying maps or plats with the county auditor.

SECTION 41. Section 15.09.060 of the Kent City Code is hereby amended as follows:

Sec. 15.09.060. Administrative interpretation generally. The planning director may make interpretations of the provisions of this title. Such administrative interpretations shall include determinations of uses permitted in the various districts, and approval or disapproval of development plans and zoning permits. Other interpretations may be made as specific circumstances arise which require such interpretations. The purpose of such administrative interpretations is to provide a degree of flexibility in the administration of this title while following the intent of the city council. Administrative interpretations are subject to applicable requirements of Process I applications per Ch. 12.01 KCC.

SECTION 42. Section 15.09.065 of the Kent City Code is hereby amended as follows:

Sec. 15.09.065. Interpretation of uses.

- A. Land uses which are listed as principally permitted uses in the Land Use Tables shall be permitted subject to the review processes, standards, and regulations specified in Title 15. If a use is not listed in the Land Use tables, it shall be considered to be a prohibited use unless the Planning Director determines it to be a permitted use following the process outlined below. If a proposed use is not

specifically listed in the Land Use Tables, an applicant may request from the Planning Director an interpretation as to whether or not such use is a permitted use. In determining whether a proposed use closely resembles a use expressly authorized in the applicable zoning district(s), the Planning Director shall utilize the following criteria:

- A. 1. The use resembles or is of the same basic nature as a use expressly authorized in the applicable zoning district or districts in terms of the following:
 - ~~1.~~ a. the activities involved in or equipment or materials employed in the use;
 - ~~2.~~ b. the effects of the use on the surrounding area, such as traffic impacts, noise, dust, odors, vibrations, lighting and glare, and aesthetic appearance.
- ~~B.~~ 2. The use is consistent with the stated purpose of the applicable district or districts; and
- ~~C.~~ 3. The use is compatible with the applicable goals and policies of the Comprehensive Plan.

B. A record shall be kept of all interpretations and rulings made by the planning ~~D~~director ~~or by the Hearing Examiner~~. Such decisions shall be used for future administration. The planning ~~D~~director ~~and Hearing Examiner~~ shall report decisions to the Land Use and Planning Board when it appears desirable and necessary to amend this Code. The Planning Director's determination is classified as a Process I application and shall be processed and subject to the applicable requirements of Ch. 12.01 KCC and may be appealed as provided in Section 15.09.070 Ch. 12.01 KCC.

C. Appeals. Any appeal from the planning director's determination shall be an open record appeal hearing and shall be filed in accordance with the procedures established for Process I applications under Ch. 12.01 KCC.

SECTION 43. Section 15.09.070 of the Kent City Code is hereby amended as follows:

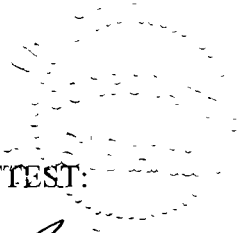
Sec. 15.09.070. Appeal of administrative interpretations.

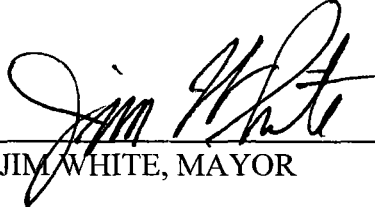
- A. Any appeal of administrative decisions relating to the enforcement or interpretation of this title, unless otherwise specifically provided for in this chapter, shall be in writing, and shall be filed with ~~the city clerk and the planning department~~ within ~~ten (10)~~ fourteen (14) calendar days after such decision, ~~stating the reasons for such appeal~~ and in the manner set forth in Ch. 12.01 KCC.
- B. The appeal shall be heard by the hearing examiner, and the hearing examiner shall render his or her ~~its~~ decision ~~within sixty (60) days after the filing of such appeal with the city clerk and planning department~~ in accordance with the requirements of Ch. 2.32 and Ch. 12.01 KCC.

SECTION 44. - Severability. If any one or more sections, 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.

SECTION 45. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication as provided by law.

ATTEST:


Brenda Jacober
BRENDA JACOB, CITY CLERK



JIM WHITE, MAYOR

APPROVED AS TO FORM:

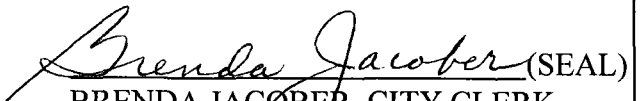

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED: 17th day of November, 1998.

APPROVED: 24th day of November, 1998.

PUBLISHED: 20th day of November, 1998.

I hereby certify that this is a true copy of Ordinance No. 3424, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

 (SEAL)
BRENDA JACOBBER, CITY CLERK

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