

Ordinance No. 3801

(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes and Amendments

Passed 6/6/06

Chapter 12.01 – Administrative Development Regulations

(Amends Secs. 12.01.020;12.01.040;12.01.145;12.01.147;12.01.195)

Amends Ords. 3424;3574;3614

Amended by Ord. 4011 (Sec. 12.01.040(A))

Amended by Ord. 4044

ORDINANCE NO. 3801

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 12.01 of the Kent City Code to correct and clarify city code permit processing requirements and to add public notice requirements.

RECITALS

A. In an effort to reduce the cost and time needed to obtain land use permits, in 1995 the State of Washington Regulatory Reform Act created provisions for Local Project Review (Chapter 36.70B RCW). The City of Kent established permit processes in accordance with the Act in November 1998 via adoption of Ordinance No. 3424. At this time, several code amendments are needed to correct, clarify, and amend Kent City Code ("KCC") Chapter 12.01 entitled Administration of Development Regulations.

B. After a public hearing on March 27, 2006, the Land Use and Planning Board recommended code amendments for correction and clarification purposes. The Planning and Economic Development Committee considered the issue at its meeting on May 15, 2006.

C. On June 6, 2006, the city council of the city of Kent approved amendments to Chapter 12.01 KCC to correct, clarify, and add public notice requirements.

D. On February 21, 2006, the city provided the required sixty (60) day notification under RCW 36.70A.106 to the state of Washington regarding these amendments to Chapter 12.01 KCC.

E. The City's State Environmental Policy Act responsible official determined that SEPA review was not required because the amendments are procedural in nature and therefore categorically exempt.

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

ORDINANCE

SECTION 1. – *Amendment.* Section 12.01.020 of the Kent City Code is amended to read as follows:

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 Chapter 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 Chapter 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.

SECTION 2. – Amendment. Section 12.01.040 of the Kent City Code is amended to read as follows:

Sec. 12.01.040. Project permit application framework.

A. *Process types.* The following table lists the process types, the corresponding applications, and parenthetically, the corresponding final decision maker and appellate body.

	Process I	Process II	Process III	Process IV	Process V	Process VI
Applications:	Zoning permit review (1) (7)	Administrative design review (1) (7)	Conditional use permit (5) (10)	Planned unit development (6) (10) with change of use	Final plat (6) (10)	Zoning of newly annexed lands (6) (10)
	Performance standards procedures (1) (7)	Shoreline substantial development permit (1) (9)	Sign variance (5) (10)	<u>Special use combining district (6) (10)</u>		Area-wide rezones to implement new city policies (6) (10)
	Sign permit (1) (7)	Accessory dwelling unit permit (1) (7)	Special home occupation permit (5) (10)	Rezone (6) (10)		Comprehensive plan amendments (6) (10)
	Lot line adjustment (1) (7)	Administrative variance (1) (7)	Variance (5) (10)			Development regulations (6) (10)
	Administrative interpretation (1) (7)	Downtown design review, all except for minor remodels (3) (7)	Shoreline conditional use permit (5) (9)			Zoning map amendments (6) (10)

	Process I	Process II	Process III	Process IV	Process V	Process VI
Applications:	Application conditional certification multifamily tax exemption (1) (8), all other multifamily tax exemption (1) (7)	Downtown design review, only minor remodels (1) (7)	Shoreline variance (5) (9)			Zoning text amendments (6) (10)
	Development plan review (planning manager, building official, or public works director) (7)	Multifamily design review (1) (7)	Preliminary plat (5) (8)			
	Administrative approval/WTF (1) (7)	Binding site plan (2) (7)				
	Mobile home park closure (11) (7)	Short subdivision (4) (7)	Planned unit development (5) (10) without a change of use			

- | | |
|--|--|
| (1) Final decision made by planning manager | (7) Appeal to hearing examiner |
| (2) Final decision by binding site plan committee | (8) Appeal to city council |
| (3) Final decision made by downtown design review committee. | (9) Appeal to shoreline hearings board |
| (4) Final decision made by short subdivision committee | (10) No administrative appeals |
| (5) Final decision made by hearing examiner | (11) Final decision made by manager of housing and human services. |
| (6) Final decision made by city council | |

B. *Process procedures.* The following table lists the process types and the corresponding procedures.

	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, short plats, and shoreline substantial development permits	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 manager, building official, public works director, or manager of housing and human services as applicable	Planning manager, downtown design review committee, binding site plan committee, or short subdivision committee, as noted in KCC 12.01.140	Hearing examiner	City council, based upon record made before hearing examiner	City council	City council
Open record appeal:	Yes, if appealed, then before hearing examiner	Yes, if appealed, then before hearing examiner	No	No	No	No
Open record hearing	No	No	Yes, before hearing examiner to make final decision	Yes, before hearing examiner to make recommendation to council	No	Yes, before land use and planning board to make recommendation to city council, and/or before city council
Reconsideration	No	No	Yes, of hearing examiner's decision	Yes, of hearing examiner's recommendation	No	No
Closed record appeal:	Only if appeal of denial of multifamily conditional certificate, then before the city council	Only if appealed, then before the shoreline hearings board if applicable	Only if appealed, then before the shoreline hearings board if applicable	No	No	No
Judicial appeal:	Yes	Yes	Yes	Yes	Yes	Yes

SECTION 3. – Amendment. Section 12.01.145 of the Kent City Code is amended to read as follows:

12.01.145. Notice of ~~public hearing~~ open record hearing.

A. *Notice of ~~public hearing~~ open record hearing for all types of applications.*
The notice given of an open record hearing required in this chapter shall contain:

1. The name of the applicant or the applicant's representative;
2. Description of the affected property, which may be in the form of either a vicinity location sketch or written description, other than a legal description;
3. The date, time, and place of the hearing;
4. The nature of the proposed use or development;
5. A statement that all interested persons may appear and provide testimony;
6. 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 submitted;
7. The name of a city representative to contact and the telephone number where additional information may be obtained;
8. 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
9. 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 provided for in the city's public record disclosure policy.

B. *Mailed notice of ~~public hearing~~ open record hearing.* Mailed notice of the ~~public hearing~~ open record hearing shall be provided by the city as follows:

1. *Process I, II and V actions.* No public notice is required because ~~an no public hearing~~ open record hearing is not held. Notice for short plat meetings is mailed to property owners within two hundred (200) feet. Shoreline permit notices shall be in accordance with the requirements of WAC 173-27-110.

2. *Process III and IV actions.* The notice of ~~public hearing~~ open record hearing shall be mailed to:

a. The applicant;

b. 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

c. Any person who submits written comments, delivered to the planning services offices, regarding the project permit.

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

a. 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.

b. Special notice of the hearing shall be given to adjacent land owners by any other reasonable method the city deems necessary. Adjacent land owners 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 58.17.090(1)(b) shall be given to owners of real property located within three hundred (300) feet of such adjacently owned parcels.

4. *Process VI actions.* For Process VI legislative actions, the city shall publish notice as described in subsection (C) and (D) of this section, and use all other methods of notice as required by RCW 35A.12.160. For privately-proposed amendments to the comprehensive plan land use map, notice of the open record hearing shall be mailed to: a) The applicant; b) All owners of real property as shown by the records of the county assessor's office within three hundred (300) feet of the affected property; and c) Any person who has requested notice. For revised geographic scope of the privately-proposed land use map amendments, notice of the open record hearing shall be given by notification of all property owners within the revised land use map amendment area.

C. *Procedure for posted or published notice of ~~public hearing~~ open record hearing.*

1. Posted notice of the ~~public hearing~~ open record 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 KCC 12.01.140(F).

2. Published notice of the ~~public hearing~~ open record 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:

- a. Project location;
- b. Project description;
- c. Type of permit(s) required;
- d. Comment period dates; and
- e. Location where the complete application may be reviewed.

3. Published notice of the open record hearing is required for all Process VI procedures. The notice shall be published in a newspaper of general circulation within the city and shall contain the project description and the location where the complete file may be reviewed.

D. *Time and cost of notice of ~~public hearing~~ open record hearing.*

1. 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~~ the open record hearing(s).

SECTION 4. – Amendment. Chapter 12.01 of the Kent City Code is amended to add a section entitled “Notice of city council meetings on project permit applications” as follows:

Sec 12.01.147. Notice of city council meetings on project permit applications. Mailed notice of city council meetings on Process IV and VI project permit applications shall be provided by the city to parties of record.

SECTION 5. – Amendment. Section 12.01.195 of the Kent City Code is amended to read as follows:

Sec. 12.01.195. Closed record appeal.

A. This section shall allow for closed record appeals as provided in the framework of KCC 12.01.040. A closed record appeal hearing shall be on the record before the hearing body and no new evidence may be presented, unless the new evidence is limited to information that could not have been placed on the record previously.

B. *Administrative appeals.* Only parties of record may initiate an administrative appeal on a project permit application.

C. *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 services office by mail, personal delivery, or received by fax before 4:30 p.m. on the last business day of the appeal period.

D. *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~~35A.21.080).

E. *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.

F. *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.


G. *Order of proceedings.* The closed record appeal shall only be open for oral argument by the parties to the appeal.

H. *Burden of proof.* The burden of proof is on the appellant.

SECTION 6. – *Savings.* The existing chapter 12.01 of the Kent City Code, which is repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 7. – *Severability.* If any one or more section, 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 8. – *Effective Date.* This ordinance shall take effect and be in force thirty (30) days from and after its passage provided by law.


SUZETTE COOKE, MAYOR

ATTEST:


BRENDA JACOB, CITY CLERK

APPROVED AS TO FORM:


TOM BRUBAKER, CITY ATTORNEY

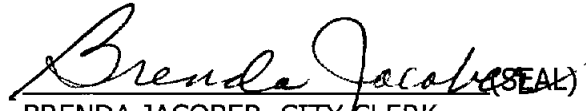


PASSED: 6 day of June, 2006.

APPROVED: 6 day of June, 2006.

PUBLISHED: 10 day of June, 2006.

I hereby certify that this is a true copy of Ordinance No. 3801
passed by the City Council of the City of Kent, Washington, and approved by the
Mayor of the City of Kent as hereon indicated.


BRENDA JACOBER, CITY CLERK

P:\Civil\ORDINANCE\12-01-AdminDevRegs.doc

