

ORDINANCE NO. 11044

AN ORDINANCE of the city council of the city of Kent, Washington, amending chapters 12.01, 12.04, and 2.32, of the Kent City Code, specifically sections 12.01.020, 12.01.030, 12.01.040, 12.01.050, 12.01.060, 12.01.070, 12.01.080, 12.01.100, 12.01.105, 12.01.110, 12.01.120, 12.01.125, 12.01.140, 12.01.145, 12.01.160, 12.01.180, 12.01.195, 12.04.195, and 2.32.130, repealing section 12.04.193, and adding new sections 12.01.115 and 12.01.185; related to administration of development regulations, including the general permit process, public notice requirements and expiration timelines [ZCA-2011-1(B)].

RECITALS

A. Local planning legislation arises from many sources, including, but not limited to, Federal, State or regional mandates; changes to local community vision; complaints; need for clarity; updated technologies, business operations or strategies that make existing codes outdated; and conflicts with updated regulations in other City departments.

B. The city has determined that amendments to Chapters 12.01, 12.04, and 2.32, Kent City Code (KCC), are necessary to reflect an improved permitting process, provide clarification, reflect updated state

regulations, and ensure development standards reflect the intent of the subject code provisions.

C. The Department of Economic and Community Development finds it impractical to require pre-application conferences for all projects with environmental review, but pre-application conferences should be encouraged for complex projects or for applicants who are unfamiliar with city processes.

D. The Department of Economic and Community Development is able to deem project permit applications complete at permit intake, allowing complete applications to vest to land use regulations in effect at that time.

E. Applications for known code deviations and variances assist in fully defining and evaluating a project, and must be submitted in conjunction with the associated project permit application.

F. Criteria should be established to allow an applicant to request additional time within which to resubmit corrected information for a project permit, after the city determines that some information is incorrect.

G. Procedures should be established to limit the time an applicant has to pick up a permit that is ready to issue, before the application lapses.

H. The continued validity of permit applications and issued permits or land use approvals should be more clearly defined, in order to prevent permits and land use approvals from remaining valid indefinitely,

when no work under the permit or land use approval is being actively undertaken for an extended period of time.

I. The Economic and Community Development Director should be authorized to allow additional time extensions for permit review and permit approvals, in rare and unique circumstances when the delay is beyond the control of the applicant.

J. The City's State Environmental Policy Act (SEPA) Responsible Official has determined that the proposed amendments are procedural in nature and thus categorically exempt from further SEPA review.

K. On August 2, 2011, notice was sent to the Washington State Department of Commerce and expedited review was requested as required under RCW 36.70A.106(3)(b). On August 4, 2011, the City was granted expedited review and was informed that it had met the Growth Management Act notice requirements under RCW 36.70A.106.

L. The Land Use and Planning Board held workshops on August 8, 2011, February 27, 2012, and March 12, 2012 regarding this issue.

M. The Land Use and Planning Board held public hearings on March 26, 2012 and June 25, 2012 regarding this issue. The Economic and Community Development Committee entertained a presentation by Planning staff concerning this matter at its July 9, 2012 meeting and considered this matter at its August 13, 2012 meeting, and the city council considered this matter at its August 21, 2012 meeting.

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 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 predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision 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 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, site plan review, 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 12.01.030 of the Kent City Code is amended as follows:

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 KCC 12.01.040.

B. *Determination of proper process type.* The planning ~~manager~~director shall determine the proper process types for all applications. If there is a question as to the appropriate process type, the planning ~~manager~~director shall resolve it in favor of the higher process type number. Process I is the lowest and Process VI is the highest.

C. *Optional consolidated permit processing.* An application that involves two (2) or more process types may be treated collectively under the highest numbered process type required for any part of the application or treated individually under each process type identified by the chapter. An applicant may ask that his or her application be treated collectively or

individually. If the application is administered under the individual process option, the highest numbered process procedure must be finalized prior to the subsequent lower numbered process being finalized. If the application is processed under the individual procedure option, there shall be no more than one (1) open record hearing and no more than one (1) closed record appeal for all application processes. Open record hearings and closed record appeals must be consolidated under the higher process type number. An application for rezone may be processed separately from an application for another project permit.

D. *Decision maker(s)*. Applications processed in accordance with subsection (C) of this section which have the same highest numbered process type 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 hearings.

E. *Environmental review*. Process I, II, III, IV, and V permits which are subject to environmental review under SEPA (Chapter 43.21C RCW) 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 (1) 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 for the notice of application pursuant to KCC 12.01.140, but may utilize the public notice procedures as outlined in KCC 11.03.410(A)(1) to consolidate public notice.

SECTION 3. - Amendment. Section 12.01.040 of the Kent City

Code is amended 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)	Special use combining district (6) (10)		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)
	Application conditional certification multifamily tax exemption (12) (8), all other multifamily tax exemption (12) (7)	Downtown design review, only minor remodels (1) (7)	Shoreline variance (5) (9)			Zoning text amendments (6) (10)
	Development plan review (planning director, building official, or public works)	Midway design review (1) (7)	Preliminary plat (5) (8,10)			

	director) (7)					
	Site plan review (planning director, building official, or public works director) (7)	Midway design review (1)(7)				
	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			
<p>(1) Final decision made by planning director (2) Final decision by binding site plan committee (3) Final decision made by downtown design review committee (4) Final decision made by short subdivision committee (5) Final decision made by hearing examiner (6) Final decision made by city council</p> <p>(7) Appeal to hearing examiner (8) Appeal to city council (9) Appeal to shoreline hearings board (10) No administrative appeals (11) Final decision made by manager of housing and human services (12) Final decision made by economic & community development director.</p>						

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	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/director, building official, public works director, economic & community development	Planning manager/director, downtown design review committee, binding site	Hearing examiner	City council, based upon record made before hearing examiner	City council	City council

	director or manager of housing and human services as applicable	plan committee, or short subdivision committee, as noted in KCC 12.01.140				
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 4. - Amendment. Section 12.01.050 of the Kent City Code is amended as follows:

Sec. 12.01.050. Exemptions from project permit application processing.

A. *General exemptions.* The following permits or approvals are specifically excluded from the notification and procedures—procedural requirements set forth in this chapter:

1. Landmark designations;

2. Street vacations; and

3. Street use permits.

4. Pursuant to RCW 36.70B.140(2), boundary line adjustments, building permits, and other construction permits, which are categorically exempt from environmental review under SEPA or that do not require street improvements or for which environmental review under SEPA has been completed in connection with other project permits. For example, if public notice and environmental review for a project was completed with an initial application for a project permit, a subsequent application for a different permit for the same project is specifically excluded from the public notification and procedures set forth in this chapter and would be subject to the procedures and regulations related specifically to that subsequent permit, for example Ch. 14.01 KCC for an application for building permit.

5. Administrative approvals which are categorically exempt from environmental review under SEPA (Chapter 43.21C RCW) and the city's SEPA/environmental policy ordinance, Chapter 11.03 KCC, or for which environmental review has been completed in connection with other project permits.

SECTION 5. - Amendment. Section 12.01.060 of the Kent City Code is amended as follows:

Sec. 12.01.060. Joint public hearings.

A. Planning manager~~director~~'s decision to hold joint hearing. The planning ~~manager~~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 hearing.* 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.

SECTION 6. - Amendment. Section 12.01.070 of the Kent City Code is amended as follows:

Sec. 12.01.070. Process VI legislative actions.

A. *Legislative actions.* The following process VI actions are legislative, and are not subject to the notification and proceduresprocedural requirements 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 text amendments;

4. Comprehensive plan map amendments;

45. Development regulations and zoning text amendments; and

56. Other similar actions that are non-project related.

SECTION 7. - *Amendment.* Section 12.01.080 of the Kent City Code is amended as follows:

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 prior to submittal of a project permit application so that the city staff can acquaint the applicant with the requirements of the Kent City Code. Pre-application conferences are ~~required~~encouraged for Process I, II, III, and IV permits which require environmental review, and for projects that are complex or where applicants are unfamiliar with city codes, ordinances and procedures. ~~Only one (1) 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 manager 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 services office 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 at the time of submittal ~~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 the following information be provided:

1. A form which lists the requirements of a complete project permit 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 (D)(1) of this section shall not bind or prohibit the city's future application or enforcement of the applicable law.

SECTION 8. - Amendment. Section 12.01.100 of the Kent City Code is amended as follows:

Sec. 12.01.100. Submission and acceptance of application.

~~A. *Determination of completeness.* A project permit application consistent with instructions for a complete application is deemed complete upon acceptance by the permit center. 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 Acceptance of a project permit application shall be made when an means that the 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~~ Acceptance of a project permit application 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 of completeness as described in subsection (A) of this section, 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 manager shall accept it and note the date of acceptance.~~

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

SECTION 9. - *Amendment.* Section 12.01.105 of the Kent City Code is amended as follows:

Sec. 12.01.105. Application vesting.

A project permit application shall vest upon the ~~submission of a fully completed~~ acceptance of a complete project permit application, as defined in KCC 12.01.100, provided that the applicant also includes a concurrent submittal of a fully completed application for any known code deviations or variances required for the proposed project. A project permit application that contains a knowing misrepresentation or an omission of material fact shall not vest any development rights. Vesting shall apply to land use regulations in effect on the land at the time a fully completed project permit application has been accepted as complete pursuant to KCC 12.01.100(~~DA~~).

SECTION 10. - *Amendment.* Section 12.01.110 of the Kent City Code is amended as follows:

Sec. 12.01.110. Procedure for complete, but "incorrect applications."

A. Following ~~submittal~~~~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)~~one hundred eighty (180) calendar days to submit corrected information (deemed the "resubmittal period"). The applicant shall submit concurrently all of the corrected information that was requested. The planning director may, in writing, extend the resubmittal period for up to an additional one hundred eighty (180) days if the applicant can demonstrate a good faith effort to comply with the resubmittal request. Evidence of an applicant's good faith efforts shall include the following:

1. Length of time since the initial permit application;
2. Time period the applicant had to submit corrected information;
3. Availability of necessary information;
4. Potential to provide necessary information within the extended resubmittal period;
4. Reason for the applicant's delay; and
6. Applicant's reasonable reliance on an expectation that the application would not expire.

The Economic & Community Development Director may authorize additional time extensions of the resubmittal period in rare or unique circumstances when the inability of the applicant to comply within the resubmittal period is due solely to factors outside of the applicant's control, including but not limited to unusual delay in obtaining permits or approvals from other agencies or jurisdictions.

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 resubmittal period set forth in subsection (A) of this section shall be repeated. This process may continue until complete or corrected information is obtained.

C. If the applicant within the resubmittal period either refuses in writing to submit corrected information, ~~or~~ does not submit the corrected information within the resubmittal period, or submits only a portion of the corrected information that was requested, the application shall lapse. This does not preclude the applicant from working with individual divisions of the city for informal review of a portion of the requested corrected information within the resubmittal period.

~~D. Provided, however, that applications that are within the resubmittal period as of May 21, 2009, or which become subject to the resubmittal period after May 21, 2009, and before December 31, 2009, shall have until December 31, 2009, or the end of the resubmittal period, whichever is later, to submit the required information.~~

ED. If the requested corrected information is sufficient, the city shall continue with project review, in accordance with the time calculation exclusions set forth in KCC 12.01.180.

SECTION 11. – *Amendment.* A new section 12.01.115 is added to the Kent City Code as follows:

Sec. 12.01.115. Procedure for ready to issue permits.

A. Following the end of project review, the city will notify the applicant that the permit is ready to issue. The applicant shall have up to one hundred eighty (180) calendar days to obtain the permit after notification that it is ready to issue (deemed the “period for permit pick-up”). The planning director may, in writing, extend the period for permit pick-up for up to an additional one hundred eighty (180) days if the applicant can demonstrate a good faith effort to pick up the permit. Evidence of an applicant’s good faith efforts shall include the following:

1. Length of time since the initial permit application;
2. Reason for the applicant’s delay; and
3. Applicant’s reasonable reliance on an expectation that the application would not expire.

The Economic & Community Development Director may authorize additional time extensions of the period for permit pick-up in rare or unique circumstances when the inability of the applicant to comply within the period for permit pick-up is due solely to factors outside of the applicant’s control, including but not limited to unusual delay in obtaining permits or approvals from other agencies or jurisdictions.

B. If the applicant within the period for permit pick-up either refuses in writing to pick up the permit or does not pick up the permit after notification by the city that the permit was ready to issue, the application shall lapse.

SECTION 12. - *Amendment.* Section 12.01.120 of the Kent City Code is amended as follows:

Sec. 12.01.120. Referral and review of project permit applications.

Within ten (10) calendar days of accepting a complete application, the planning ~~manager~~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 ~~manager~~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.

SECTION 13. - *Amendment.* Section 12.01.125 of the Kent City Code is amended as follows:

Sec. 12.01.125. Notification of proximity to agricultural resource lands.

~~Project permit applicants f~~For all plats, short plats, development permits, and substantial building permits for residential development activities on or within five hundred (500) hundred feet of land designated as agricultural resource lands within the city of Kent, or the comparable land use designation within unincorporated King County, the city shall be informed ~~inform the by the city~~ project permit applicant of the proximity to agricultural resource lands on which commercial agricultural activities may occur that are not compatible with residential development for certain periods of limited duration.

SECTION 14. - *Amendment.* Section 12.01.140 of the Kent City Code is amended as follows:

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 following submittal of a complete application after the city has made a determination of completeness pursuant to KCC 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 (1) notice of application will be done for all permit applications related to the same project at the time of the earliest complete 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 and WAC 173-27-180;

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) 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 KCC 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 by hard copy or e-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 delivered to the planning services office; and

3. Applicant.

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

F. *Posted notice of application.* In addition to the mailed notice of application, the city will post notice of application at Kent City Hall, and in the register for public review at the planning services 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 Public Works Operations following payment of the public notice board fee at the time of application submittal. ~~by the planning services office as follows: the applicant shall apply to the city for issuance of the notice board, and shall pay to the planning services office the amount of money on the fee schedule currently approved by the city council and available at the planning services office.~~

1. *Posting.* Posting of the property for site-specific proposals shall consist of one (1) 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) Additional public notice boards are required under other provisions of the Kent City Code; or
- (3) The planning ~~manager~~director determines that additional notice boards are necessary to provide adequate public notice.

d. Notice boards ~~should~~shall be:

- (1) Maintained in good condition by the applicant during the notice period;
- (2) In place prior to the start of the public comment period ~~at least fifteen (15) calendar days prior to the end of any required comment period~~; and
- (3) Removed by the applicant after expiration of the applicable notice period or the last public meeting or last public hearing on the application, whichever is later.

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~~manager 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~~manager.

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~~manager.

G. *Published notice of application.* Published notice of application in ~~an~~the City's official newspaper or appropriate substitute as provided for in Resolution No. 1747 or as subsequently amended~~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 Process III, IV, and V permits, except subdivision final plat 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 and notice of the application may be reviewed.

H. *Shoreline master program permits.*

1. Notice of the application ~~effor~~ for 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, the Kent shoreline ~~management~~-master program.

SECTION 15. - *Amendment.* Section 12.01.145 of the Kent City Code is amended as follows:

Sec. 12.01.145. Notice of open record hearing.

A. *Notice of 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 open record hearing.* Mailed notice of the open record hearing shall be provided by the city in hard copy or e-mail as follows:

1. *Process I, II and V actions.* No public notice is required because an 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 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 ~~office~~ offices, regarding the project permit.

3. *Process IV preliminary plat actions.* In addition to the general notice of 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 subsections (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

b. Any person who has requested notice.

For revised geographic scope of the privately proposed land use plan map amendments, notice of the open record hearing shall be given by notification of all property owners within the revised land use plan map amendment area.

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

1. Posted notice of the 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 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~~ in the city's official newspaper or appropriate substitute as provided for in Resolution No. 1747 or as subsequently amended and contain the following information:

- a. Project location;
- b. Project description;
- c. Type of permit(s) required;
- d. ~~Comment period dates~~ Date, time and location of the hearing; 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~~ the city's official newspaper or appropriate substitute as provided for in Resolution No. 1747 or as subsequently amended and, in addition to the information required in C.2 of this section, shall contain the project description and the location where the complete file may be reviewed.

D. ~~Time and cost of notice of 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 and notice boards shall be removed by the applicant within seven (7) calendar days following the conclusion of the open record hearing(s).

SECTION 16. - *Amendment.* Section 12.01.147 of the Kent City Code is amended as follows:

Sec. 12.01.147. Notice of city council meetings on project permit applications.

~~The city shall mail~~ Mailed notice by hard copy or e-mail of city council meetings on Process IV and VI project permit applications ~~shall be provided by the city to parties of record.~~

SECTION 17. - *Amendment.* Section 12.01.160 of the Kent City Code is amended as follows:

Sec. 12.01.160. Open record hearings.

A. *General.* Open record hearings shall be conducted in accordance with this section.

B. *Responsibility of the planning ~~manager~~director for hearing.* The planning ~~manager~~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 by hard copy or e-mail a copy of the notice of decision to those required by this code to receive such decision.

C. *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.

D. *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 that a matter be officially noticed shall do so on the record; however, the hearing body, on its own accord, may take notice of matters listed in subsections (D)(1) and (D)(2) of this section 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 body is unable to formulate a recommendation on a project permit, the hearing body may decide to forward the project permit to the city council to render a decision without a recommendation.

E. *Recommendation/decision.* The hearing body shall issue a recommendation or decision, as applicable, within fourteen (14) calendar days of the record being closed.

F. *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-For purposes of rights to appeal pursuant to Chapter 36.70C RCW only, if a request for reconsideration is timely filed by a party of record, the decision of the hearing examiner is not final until after a decision on reconsideration is issued.

SECTION 18. - Amendment. Section 12.01.180 of the Kent City Code is amended as follows:

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 one hundred twenty (120) day time limit in KCC 12.01.070 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. Any period during which the city determines that the information submitted by the applicant under KCC 12.01.100 and 12.01.110 is insufficient or incorrect and has requested the applicant to provide sufficient or correct information;

3. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 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~~ city.

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 KCC 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.

SECTION 19. – Amendment. A new section 12.01.185 is added to the Kent City Code as follows:

Sec. 12.01.185. Expiration of permits.

A. Absent statute or ordinance provisions to the contrary, Process I and II project permit applications listed in 12.01.050 that are not subject to the notification and procedural requirements of this chapter and for which no substantial steps have been taken to meet approval requirements including permit issuance or final decision for a period of three hundred sixty-five (365) days after submittal of the initial application will expire and

become null and void. The application and instruction forms will reference the expiration standards of this section, where applicable. Substantial steps include, but are not limited to due diligence in submitting complete and correct resubmittals or due diligence in satisfying the requirements for recordation of lot line adjustments. The planning director may grant a one hundred eighty (180) day extension in writing on a one-time basis if the failure to take a substantial step was due to circumstances beyond the control of the applicant. Provisions of this section do not exempt the city from the time periods for actions under RCW 36.70B.080 and 12.01.180 KCC.

B. Absent statute or ordinance provisions to the contrary, permits or land use approvals listed in 12.01.040 of this chapter for which the use is not begun or the work is not completed within three hundred sixty-five (365) days after permit issuance or final decision will expire and become null and void. The issued permit or land use approvals will clearly state this requirement for expiration, where applicable. The planning director may grant a one hundred eighty (180) day extension in writing on a one-time basis if the failure to begin the use or complete the work was due to circumstances beyond the control of the applicant.

C. Site plan review approvals will expire and become null and void one hundred eighty (180) days after approval unless:

1. Project permit applications for development of a substantial portion of the site plan remain valid; or

2. Project permits for development of a substantial portion of the site plan remain valid.

D. The Economic & Community Development Director may authorize additional time extensions in rare or unique circumstances when the delay is outside of the applicant's control, including but not limited to unusual delay in obtaining permits or approvals from other agencies or jurisdictions.

SECTION 20. - Amendment. Section 12.01.195 of the Kent City Code is amended 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~~ electronically 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.21.080).

E. *Content of appeal.* Appeals shall be in writing on forms provided by the city, 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 21. - *Amendment.* Section 12.04.193 of the Kent City Code, entitled "City council closed record appeal" is repealed in its entirety.

SECTION 22. - *Amendment.* Section 12.04.195 of the Kent City Code is amended as follows:

Sec. 12.04.195. Appeal to superior court.

The decision of the hearing examiner is final for short subdivisions and ~~the decision of the city council is final for subdivisions~~ unless it is appealed to the superior court. Such appeal must be filed with the superior court within twenty-one (21) calendar days from the date the decision was issued.

SECTION 23. - *Amendment.* Section 2.32.130 of the Kent City Code is 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 by the applicant and the hearing examiner. The copy of such decision, including findings and conclusions, shall be

transmitted electronically or 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 reconsideration, or if reconsideration is accepted, within ten (10) working days after the decision on reconsideration.

SECTION 24. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this ordinance and the same shall maintain its full force and effect.

SECTION 25. - Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

SECTION 26. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage and publication as provided by law.


SUZETTE COOKE, MAYOR

ATTEST:

Brenda Jacober
BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

Tom Brubaker
TOM BRUBAKER, CITY ATTORNEY

PASSED: 21 day of August, 2012

APPROVED: 21 day of August, 2012

PUBLISHED: 24 day of August, 2012

I hereby certify that this is a true copy of Ordinance No. 4044
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 (SEAL)
BRENDA JACOBER, CITY CLERK

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