

ORDINANCE NO. 4097

AN ORDINANCE of the City Council of the City of Kent, Washington, establishing an infill exemption allowance for the Downtown Subarea Action Plan Area pursuant to the State Environmental Policy Act.

RECITALS

A. On May 14, 2012, the Economic & Community Development Committee recommended to the City Council passage of a resolution declaring an emergency under the Growth Management Act, RCW 36.70A.130(2)(b), and 12.02.010.A.1 Kent City Code, to pursue an amendment to the Kent Comprehensive Plan to revise the 2005 Downtown Strategic Action Plan. The City Council passed Resolution 1857 on June 5, 2012 declaring an emergency.

B. The City of Kent (City) has adopted a Comprehensive Plan complying with the GMA.

C. To guide Downtown's growth and redevelopment, the City has engaged in extensive planning for the Downtown Subarea and has adopted amendments to its Comprehensive Plan including the Downtown Subarea

Action Plan (DSAP) Update. The DSAP supports the City Council's vision statement and strategies for the creation of richly diverse neighborhood urban centers.

D. The State Environmental Policy Act (SEPA) and implementing rules provide for the integration of environmental review with land use planning and project review by jurisdictions planning under the Growth Management Act (GMA) through an exemption for infill development pursuant to RCW 43.21C.229, as amended by SB 6406, effective July 10, 2012.

E. On October 9, 2012, the City's SEPA responsible official issued a Determination of Significance (DS)/Scoping Notice for the City of Kent Downtown Subarea Action Plan Planned Action Supplemental Environmental Impact Statement, solicited public comment through a November 1, 2012, open house meeting, and invited comments during the scoping period, which closed November 2, 2012. A Draft Supplemental Environmental Impact Statement (SEIS) was issued on June 21, 2013. The Draft SEIS was considered during a public hearing on the DSAP, which was held on July 8, 2013 and July 22, 2013. A Final Supplemental Environmental Impact Statement was issued on October 4, 2013.

F. The DSAP SEIS supplements the City of Kent Comprehensive Plan Review and Midway Subarea Planned Action Environmental Impact Statement completed in 2011 (2011 EIS).

G. The City of Kent Downtown Subarea Action Plan Planned Action Supplemental EIS (referenced as the 2013 SEIS) and the 2011 EIS jointly identify impacts and mitigation measures associated with planned

development in the Downtown Subarea. Together these are referenced as the Combined DSAP Planned Action EIS.

H. The City as lead agency provided public comment opportunities through an SEIS scoping period in October 2012, and for the DSAP Update in 2012 and 2013 as part of a coordinated DSAP public participation program.

- Extensive community visioning was conducted through individual interviews, three neighborhood meetings, and two online surveys.
- A Downtown Steering Committee consisting of community business and property owners, local developers, citizens, and city leadership, convened seven (7) times between July 2012 and April 2013 for the purpose of advising the DSAP update.
- The Land Use and Planning Board held workshops on June 25, 2012, October 22, 2012, March 11, 2013, May 13, 2013, May 28, 2013, and June 24, 2013, to review the DSAP update and associated comprehensive plan and zoning text and map amendments. On July 8, 2013, and July 22, 2013, the Land Use and Planning Board held a public hearing to consider the draft DSAP update, land use plan map amendments, rezones, comprehensive plan and zoning text amendments and the Draft SEIS.
- The City conducted three briefings and meetings with the City Council's Economic & Community Development Committee on June 11, 2012, March 11, 2013, and October 14, 2013.
- The City Council was briefed on the DSAP Update and recommendations at a workshop held on September 17, 2013.

I. The City has adopted development regulations and ordinances that will help protect the environment, and is adopting regulations specific

to the Downtown Subarea that will guide the allocation, form and quality of desired development.

J. After providing appropriate public notice, the City Council of the City of Kent conducted a public hearing on November 12, 2013, to consider the Infill Exemption Ordinance.

K. On June 19 and June 21, 2013, the City provided the State of Washington the required sixty (60) day notification under RCW 36.70A.106 for the DSAP Update, Land Use Plan and Zoning District Map Amendments, Draft Planned Action and Infill Exemption Ordinances. On July 23, 2013, the City provided the State of Washington the required sixty (60) day notification under RCW 36.70A.106 for the Mixed Use Overlay Code Amendments and code reference correction for downtown design guidelines. The sixty (60) day notice periods have lapsed.

L. On October 4, 2013, the City's SEPA responsible official issued the Final Planned Action SEIS for the DSAP Update.

NOW, THEREFORE, the City Council of the City of Kent, Washington ordains as follows:

SECTION 1. - Purpose. The City Council declares that the purpose of this Ordinance is to:

A. Exempt residential, mixed use, and selected commercial infill development that is consistent with the Comprehensive Plan, Kent development regulations, and the development studied in the City of Kent Downtown Subarea Action Plan Draft and Final SEIS (2013 SEIS) and the City of Kent Comprehensive Plan Review and Midway Subarea Planned

Action EIS completed in 2011, collectively referenced as the Combined DSAP Planned Action EIS; and,

B. Establish criteria and procedures, consistent with state law, that will determine whether proposed exempt projects within the designated Mixed Use and Infill Development Categorical Exemption Area qualify for exemption from SEPA review; and,

C. Provide the public with information about how the City will process infill exemptions; and,

D. Apply the City's development regulations together with the infill exemption thresholds defined in this ordinance to address the impacts of future development contemplated by this ordinance.

SECTION 2. - Findings. The City Council finds as follows:

A. The City is subject to the requirements of the GMA (RCW 36.70A); and

B. The City is adopting the Downtown Subarea Action Plan, a subarea plan under the GMA, and associated Comprehensive Plan Amendments as appropriate; and

C. The Mixed Use and Infill Development Categorical Exemption Area encompasses an area of approximately 408 gross acres; and

D. The Combined DSAP Planned Action EIS has been prepared for the Mixed Use and Infill Development Categorical Exemption Area; and

E. The thresholds incorporated in this ordinance, together with adopted City development regulations, will adequately mitigate significant impacts from development within the Mixed Use and Infill Development Categorical Exemption Area ; and

F. The Downtown Subarea Action Plan and associated development regulations identify the location, type and amount of development that is contemplated by the infill exemption; and

G. Future projects that are implemented consistent with the City's Comprehensive Plan, development regulations, and this ordinance will protect the environment, benefit the public and enhance economic development; and

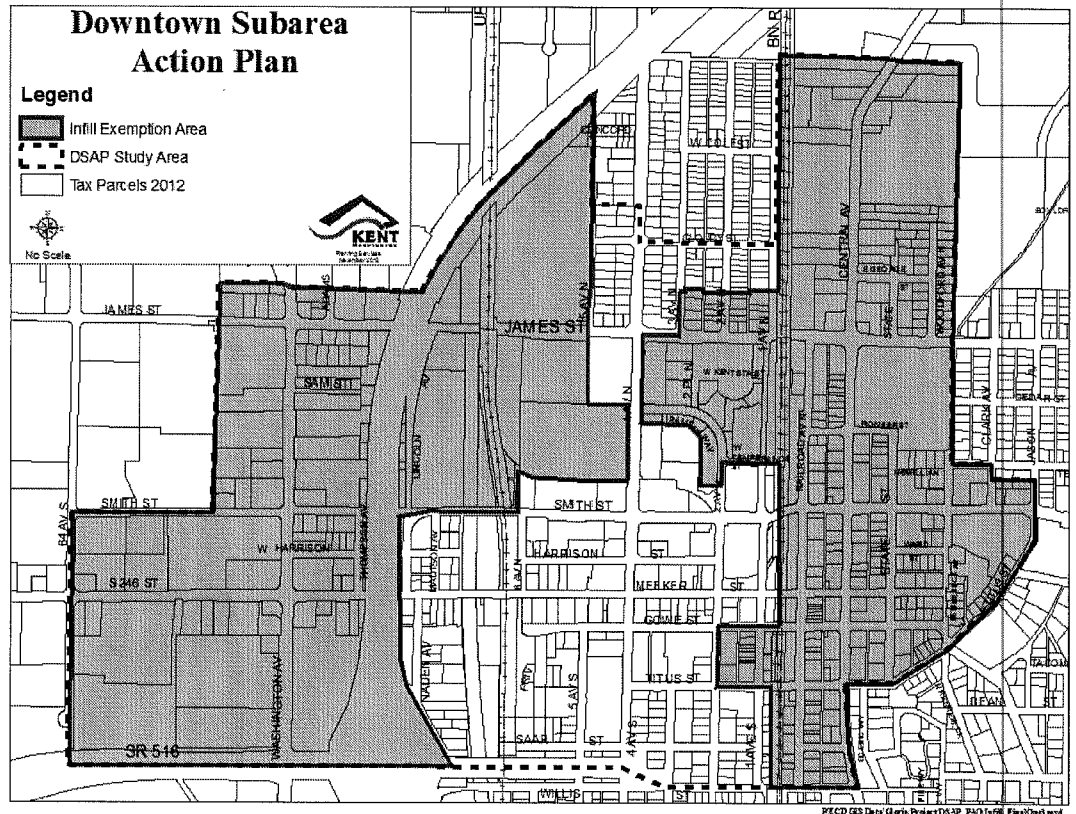
H. The City provided several opportunities for meaningful public involvement in the Downtown Subarea Action Plan and 2013 SEIS, has considered all comments received, and, as appropriate, has modified the proposal in response to comments.

SECTION 3. - *New Section.* Chapter 11.03 of the Kent City Code is amended by adding a new section 11.03.215, entitled, "Categorical exemptions for residential mixed use and residential infill development," and reads as follows:

Sec. 11.03.215. Categorical exemptions for residential mixed use and residential infill development.

A. Mixed Use and Infill Development Categorical Exemption Area Designated. The city designates a categorical exemption for construction of residential developments, non-retail commercial developments less than

65,000 square feet in size, and mixed use developments under RCW 43.21C.229 in the following boundary.



B. Exempt Levels of Construction and Trips. In order to accommodate residential mixed use and residential infill development in the Mixed Use and Infill Development Categorical Exemption Area Designated in subsection (A) of this section, the city establishes the following exempt levels for construction of residential developments and mixed use developments under RCW 43.21C.229, considered the Mixed Use and Infill Development and Trip Bank.

1. Exempt levels of infill residential and mixed use development through the year 2031 are shown in the table below. No individual stand-alone non-retail commercial development shall exceed 65,000 square feet in size.

Growth Type	Base Year (2006) DSAP Study Area	Alternative 2 Moderate Growth Total (2031)	Alternative 2 - Net Growth (2031)
Households	4,505	7,978	3,473
Jobs ¹	3,184	5,507	2,323
Total Activity Units (Jobs and Households)	7,689	13,485	5,796

¹ Includes hotel rooms and university students as part of "jobs" consistent with the presentation of growth figures in the prior 2011 EIS. However, these elements make up only 3% of the job totals.

For the purposes of this section:

a. Infill means: Residential developments, non-retail commercial developments less than 65,000 square feet in size, and mixed use developments on unused and underutilized lands within the designated Mixed Use and Infill Development Categorical Exemption Area.

b. Mixed use development means: Two (2) or more permitted uses or conditional uses developed in conjunction with one another on the same site. A mixed use development may include two (2) or more separate buildings if the requirements of this section are met, provided that at least twenty-five (25) percent of the gross floor area, as defined in KCC 15.02.170, be a permitted commercial use. For mixed use development in the General Commercial district, the percentage of gross floor area that must be a permitted commercial use may be reduced to five (5) percent. The residential component of any mixed use development cannot be permitted or occupied prior to the permitting and/or occupancy of the commercial component.

2. To be considered for the infill exemption, where a proposal includes the construction of a new building, the minimum height shall be two stories. The maximum height shall be consistent with those studied in the Combined DSAP Planned Action EIS and applicable in the subject zoning district.

3. For infill residential and mixed use development in the area designated in subsection (A) of this section, the city may permit up to 3,740 new trips over the existing trips, consistent with Alternative 2, as established by the SEPA responsible official in the City of Kent Downtown Subarea Action Plan Planned Action Draft and Final SEIS issued June 21, 2013 and October 4, 2013, respectively.

C. Traffic Analysis, Concurrency, Impact Fees. In determining whether or not a proposal is exempt, the SEPA responsible official shall consider a traffic analysis based on the quantity of development units and the related applicable trip generation.

1. Concurrency. All exempt development applications shall meet the transportation concurrency requirements and the LOS thresholds established in Chapter 12.11 KCC, as amended by the 2008 Transportation Master Plan, and the multimodal levels of service established in the 2013 DSAP SEIS.

2. Traffic Impact Mitigation. Until the 2008 Transportation Master Plan and Impact Fee Ordinance are updated, infill exemption proposals shall pay their cost per trip for the street, pedestrian, and bicycle improvements identified below as part of the DSAP Study Area fee program in addition to the 2008 Transportation Master Plan and associated impact fee program, KCC 12.14 Transportation Impact Fees.

Alternative 2 - Mitigation Measure Cost Estimates per Trip

Mitigation Measure Type	Infill Exemption Area 3,740 Trip Growth over Existing	
	Cost	Cost per Trip
Street	\$7,000 ¹	\$1.87
Pedestrian	\$1,400,000	\$374.33
Bicycle	\$1,428,000	\$381.82
Total	\$2,835,000	\$758.02

Notes:

1. The total cost of \$10,000 is shared proportionately between the Planned Action and Infill Exemption Areas according to the number of trips generated (30 percent by the Planned Action Area and 70 percent by the Infill Exemption Area).

Source: Fehr & Peers, 2013

3. Impact Fees: Chapter 12.14 KCC requires development to pay its fair share for capital improvement projects in the city's Transportation Master Plan and provides guidance for how impact fees are to be assessed.

4. Discretion. The public works director or the director's designee shall have discretion to determine incremental and total trip generation, consistent with the Institute of Traffic Engineers (ITE) Trip Generation Manual (latest edition) or an alternative manual, accepted at the director's sole discretion, for each project permit application proposed under this Infill Exemption Ordinance.

D. Development will be allowed under this exemption up to the point that development levels of housing, jobs, and trips have been achieved, unless denied by concurrency.

E. Parks and Open Space. Until such time as the city adopts a new Parks and Open Space Plan, and adopts Kent City Code amendments addressing public and private open space and recreation standards and requirements applicable to the Mixed Use and Infill Development Categorical Exemption Area, the following mitigation measures shall apply.

Following adoption of a new Parks and Open Space Plan Kent City Code amendments such standards shall supersede the measures below.

1. Urban Park Space: Each infill exemption proposal shall dedicate onsite two hundred and fifty (250) square feet of public park area per dwelling unit or provide a fee in lieu of dedication consistent with subsection (E)(3) of this section.

2. Private Onsite Recreation and Open Space: Each infill exemption proposal shall provide private onsite recreation space for leisure, play, and sport activities at a ratio of two hundred (200) square feet per dwelling unit. Each residential or mixed-use development is required to provide the private space in one or more of the following arrangements.

- a. An individual balcony or screened patio for each unit
- b. Small, shared courtyards and a furnished children's play area
- c. Roof-top open space – roof garden or game court

The recreation space proposed by the applicant shall be approved by the parks and community services director. Alternatively up to fifty (50) percent of the private open space may be accomplished offsite or through a fee in lieu consistent with subsection (E)(3) of this section.

3. Through a negotiated voluntary agreement the City may allow up to fifty (50) percent of the private recreation space and up to one hundred (100) percent of the public recreation space in subsections (E)(1) and (E)(2) of this section to be: 1) accomplished offsite as approved by the parks and community services director; or 2) a fee-in-lieu of providing the space onsite following the procedures in KCC 12.04.065.

F. Cultural Resources: The following mitigation measures shall apply to infill exemption proposals:

1. In the event that a future development project in the study area is proposed on or immediately surrounding a site containing an archaeological resource, as defined in Chapter 27.53 RCW, the potential impacts on the archaeological resource shall be considered and, if needed, a study conducted by a professional archaeologist shall be required to be conducted at the applicant's expense to determine whether the proposed development project would materially impact the archaeological resource.

2. If the impacts on archaeological resources cannot be avoided, the city shall require that an applicant obtain all appropriate permits consistent with state and federal laws and that any required archaeological studies are completed before permitting any project that would disturb archaeological resource(s). Under Chapter 27.53 RCW, a permit must be obtained from the department of archaeology and historic preservation (DAHP) prior to disturbing a known archaeological resource or site. The avoidance of archaeological resources through selection of project alternatives and changes in design of project features in the specific area of the affected resource(s) would eliminate the need for measuring or mitigating impacts.

3. Developers and property owners shall immediately stop work and notify the city, DAHP and affected tribes if archaeological resources are uncovered during excavation. Following such notification, the city may require implementation of subsections (F)(1) and (F)(2) of this section.

4. If impacts cannot be avoided on a historic resource that is determined eligible for listing on either state or national historic registers, the applicant shall consult with DAHP regarding mitigation options and shall provide documentation of consultation to the city.

5. To include DAHP in the review of historic properties within the Infill Exemption area, the city will notify the state historic preservation officer (SHPO) regarding proposals involving eligible or

designated historic properties through the evaluation of proposals consistent with Chapter 12.01 KCC.

G. Water Quality: By December 31, 2016, regulations will be in place to address water quality treatment and promote low impact development measures that are equivalent to the 2012 Department of Ecology Western Washington Stormwater Management Manual. Prior to 2016, the city shall require that applicants identify any low impact development (LID) techniques described in the 2012 Ecology manual and demonstrate why unincorporated LID techniques are not feasible. As part of required land use, building, or construction permits, the city may condition applications to incorporate feasible and site-appropriate LID techniques.

H. Air Quality Control Plans: The City shall require all construction contractors to implement air quality control plans for construction activities. The air quality control plans will include best management practices (BMPs) to control fugitive dust and odors emitted by diesel construction equipment, including but not limited to the following measures.

1. Develop a fugitive dust control plan.
2. Use water sprays or other non-toxic dust control methods on unpaved roadways.
3. Minimize vehicle speed while traveling on unpaved surfaces.
4. Prevent track out of mud onto public streets.
5. Cover soil piles when practical.
6. Minimize work during periods of high winds when practical.

7. Maintain the engines of construction equipment according to manufacturers' specifications.

8. Minimize idling of equipment while the equipment is not in use.

9. Burning of slash or demolition debris will not be permitted without express approval from the Puget Sound Clean Air Agency (PSCAA). No slash burning is anticipated for any construction projects in the study area.

I. Greenhouse Gas Reduction: Infill exemption applicants shall identify the greenhouse gas reduction measures that are being implemented in their projects, and explain why other measures listed in the 2011 City of Kent Comprehensive Plan Review and Midway Subarea Planned Action EIS are not included or are not applicable. The city shall, as appropriate, condition infill exemption applications to incorporate reduction measures determined by the city to be feasible and appropriate for site conditions, based on the development application.

J. Solar access for public pedestrian spaces, pedestrian/bicycle pathways, parks, schools and other areas sensitive to shading shall be preserved by requiring upper-story or ground-level setbacks for adjacent development. To the greatest extent possible, new development shall minimize casting shadows on public spaces during their primary hours of daytime use.

K. The city may condition infill exemption proposals to incorporate site design measures that preserve significant public views from public areas.

L. Infill exemptions shall comply with the following noise mitigation measures:

1. To reduce construction noise at nearby receptors, the following mitigation measures shall be incorporated into construction plans and contractor specifications:

a. Locating stationary equipment away from receiving properties to decrease noise from that equipment.

b. Erecting portable noise barriers around loud stationary equipment located near sensitive receivers to reduce noise.

c. Limiting construction activities between 10:00 p.m. and 7:00 a.m. to avoid sensitive nighttime hours.

d. Turning off idling construction equipment to eliminate unnecessary noise.

e. Requiring contractors to rigorously maintain all equipment to potentially reduce noise effects.

f. Training construction crews to avoid unnecessarily loud actions (e.g., dropping bundles of rebar onto the ground or dragging steel plates across pavement) near noise-sensitive areas to reduce noise effects.

2. At its discretion, the city may require all prospective infill exemption developers to use low-noise mechanical equipment adequate to ensure compliance with the city's daytime and nighttime noise ordinance limits. Depending on the nature of the proposed development, the city may require the developer to conduct a noise impact study to forecast future noise levels and to specify appropriate noise control measures.

3. To address traffic and transit noise, the city may, at its discretion, require new residential development to install triple-pane glass windows or other building insulation measures using its authority under the Washington State Energy Code (KCC 14.01.010).

M. Exemption Procedure. Upon approval of the proposal according to the provisions of Chapter 12.01 KCC, the SEPA responsible official shall remove dwellings, jobs, and trips from the levels specified in subsections (B)(1) and (B)(3) of this section. These exempt levels are not applicable once the total available units, jobs, or trips have been utilized.

N. General Monitoring. The SEPA responsible official will monitor the total development approved as part of the development approval process for any development in the area designated in subsection (A) of this section, whether considered exempt or not, in order to ensure that the available units, square feet, and trips cumulatively address growth planned for the designated Mixed Use and Infill Development Categorical Exemption Area.

SECTION 4. – New Subsection. Section 11.03.220, entitled, “Use of exemptions,” is amended by adding a new subsection (D) to read as follows:

Sec. 11.03.220. Use of exemptions.

A. Each department within the city that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department’s determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of reasonable alternatives.

2. A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt actions were not approved; and

3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt actions were not approved.

D. The city may authorize a categorical exemption for residential mixed use, non-retain commercial space, and residential infill development

for specifically designated portions of the Downtown Subarea Action Plan area pursuant to KCC section 11.03.215.

SECTION 5. - *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 6. - *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 that remaining portion shall maintain its full force and effect.

SECTION 7. - *Effective Date.* This Ordinance shall be in force five (5) days after its passage and publication, as provided by law.


SUZETTE COOKE, MAYOR

ATTEST:


RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:



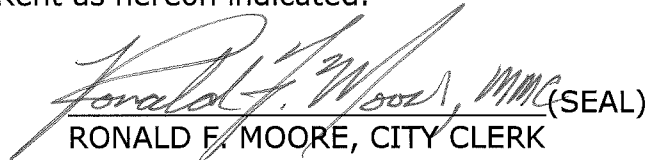
ARTHUR "PAT" FITZPATRICK, ACTING CITY ATTORNEY

PASSED: 10th day of December, 2013.

APPROVED: 10th day of December, 2013.

PUBLISHED: 13th day of December, 2013.

I hereby certify that this is a true copy of Ordinance No. 4097
passed by the City Council of the City of Kent, Washington, and approved
by the Mayor of the City of Kent as hereon indicated.



RONALD F. MOORE, CITY CLERK

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