

ORDINANCE NO. 4131

AN ORDINANCE of the City Council of the city of Kent, Washington, amending Chapter 11.03 of the Kent City Code, pertaining to categorical exemptions for minor new construction under the State Environmental Policy Act and minor housekeeping updates consistent with Chapter 197-11 WAC.

RECITALS

A. In 2012 the State Legislature passed 2ESSB 6406, the Natural Resources Reform Bill, in order to streamline regulatory processes and achieve program efficiencies while at the same time maintaining current levels of natural resource protection.

B. The Washington State Department of Ecology, in response to 2ESSB 6406, completed administrative updates to the State Environmental Policy Act (SEPA) rules to improve both the quality and efficiency of the environmental review process. The new rules took effect on May 10, 2014.

C. The amendments to the SEPA rules set forth in WAC 197-11-800 included an increase in flexible thresholds for categorically exempt actions, which local governmental entities may adopt. The City desires to amend its code for consistency with the updated state regulations.

D. The requirements for environmental analysis, protection and mitigation for impacts to elements of the environment are adequately addressed for exempted development by existing codes and ordinances listed in Exhibit A, attached hereto.

E. Project-level public comment opportunities for development projects are described in Chapter 12.01 KCC, attached hereto as Exhibit B. Furthermore, projects subject to a Construction Storm Water General Permit must provide public notice under Chapter 173-226 WAC.

F. Adoption of these amendments is exempt from environmental review pursuant to WAC 197-11-800(19).

G. On July 14 and August 11, 2014, staff discussed the proposed amendments with the Economic and Community Development Committee (ECDC) of the City Council. The ECDC further considered the matter at its meeting on November 10, 2014, and opened a public hearing. At the conclusion of the public hearing, the ECDC voted to recommend passage of the proposed amendments by the full City Council.

H. Pursuant to WAC 197-11-800(1)(c)(iii), on August 22, 2014, the City provided a sixty (60) day comment period for the proposed amendments to the State Department of Ecology, affected tribes, agencies with expertise and the public. This sixty-day comment period has expired.

I. On December 9, 2014, the City Council considered the ECDC's recommendation and voted to adopt the proposed amendments.

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

ORDINANCE

SECTION 1. – *Amendment.* Chapter 11.03 of the Kent City Code is amended as follows:

PART 1. GENERAL REQUIREMENTS

Sec. 11.03.010 Purpose and authority. The city adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120(3) and the SEPA rules, WAC 197-11-904, as the same may be amended.

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

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 SEPA/GMA project review – Reliance on existing plans, laws, and regulations.
- 197-11-164 Planned actions – Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption.
- 197-11-172 Planned actions – Project review.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.

197-11-228 Overall SEPA/GMA integration procedures.

197-11-230 Timing of an ~~integration procedure for preliminary planning, environmental analysis, and expanded scoping~~integrated GMA/SEPA process.

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

197-11-235 SEPA/GMA integration Ddocuments.

197-11-238 SEPA/GMA integration Mmonitoring.

Sec. 11.03.030 Designation of responsible official.

A. For those proposals for which the city is the lead agency, the responsible official shall be the planning director or the director's designee.

~~B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.~~

~~B.~~ The city shall retain all documents required by the SEPA rules, Chapter 197-11 WAC and make them available in accordance with Chapter ~~42.17~~42.56 RCW.

Sec. 11.03.040 Lead agency determination and responsibilities.

A. The department within the city receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and WAC 197-11-922 through 197-11-944~~0~~, unless the lead agency has been previously

determined or the department is aware that another department or agency is in the process of determining the lead agency.

B. When the city is the lead agency for a proposal, the planning director shall determine the responsible official who shall supervise compliance with the threshold determination requirements and, if an environmental impact statement is necessary, shall supervise preparation of the environmental impact statement.

C. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the determination of nonsignificance or the final environmental impact statement of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a determination of nonsignificance or environmental impact statement in addition to that prepared by the lead agency, unless required under WAC 197-11-600. The city may conduct supplemental environmental review under WAC 197-11-6020.

D. If the city or any of its departments receive a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-944~~0~~, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen (15) days of receipt of the determination, or the city must petition the State Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen (15) day time period. Any such petition on behalf of the city may be initiated by the planning director.

E. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944. The responsible official and any

department that will incur responsibilities as the result of such agreement must approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is, which agencies require nonexempt licenses).

Sec. 11.03.050 Threshold determinations.

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

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

C. Except for a DS, and except as expressly allowed by RCW 36.70B.110, Laws of 1997 Ch. 429, the city shall not issue its threshold determination until the expiration of the ~~publie~~public comment period on a notice of application subject to the requirements of Ch. 12.01 KCC.

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

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

B. For any nonexempt proposal, the applicant must submit a completed environmental checklist. A checklist shall be submitted in conjunction with a permit application and detailed plans and specifications.

PART 2. CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

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

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.

- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

The city adopts the following section of the Revised Code of Washington by reference, as supplemented in this chapter:

43.21C.410 Battery charging and exchange station installation.

Sec. 11.03.210 Thresholds for categorical exemptions.

A. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(~~bc~~) based on local conditions, for development located outside of the residential mixed use and residential infill development boundaries depicted in KCC 11.03.215.A and the Downtown Planned Action Area adopted by Ordinance No. 4096:

1. For single family residential dwelling units in WAC 197-11-800(1)(~~b~~)(i)(c): ~~Twelve (12)~~Thirty (30) dwelling units or less.

2. For multifamily residential dwelling units in WAC 197-11-800(1)(~~b~~)(ii)(c): Sixty (60) dwelling units or less.

32. For agricultural structures in WAC 197-11-800(1)(~~b~~)(iii)(c): ~~Thirty thousand (30,000)~~Forty thousand (40,000) square feet or less.

34. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(~~b~~)(~~iiiv~~)(c): Buildings of ~~twelve~~

~~thousand (12,000)~~thirty thousand (30,000) square feet or less and ~~forty (40)~~ninety (90) or ~~less~~fewer parking spaces.

~~4. For parking lots in WAC 197-11-800(1)(b)(iv): Forty (40) or less parking spaces.~~

5. For fill ~~and~~or excavations in WAC 197-11-800(1)(b)(v)(c): ~~Five hundred (500)~~One thousand (1,000) cubic yards or less.

~~6. For all development: Less than ten (10) minimum peak hour traffic trips.~~

B. Whenever the city establishes new exempt levels under this section, it shall ~~send them to the Department of Ecology, Headquarters Office, Olympia, Washington~~provide the documentation and notification, under WAC 197-11-800(1)(c).

C. For exempt projects, the city shall follow the cultural resource protection procedures of KCC 11.03.215.F whether or not the proposal is considered an infill exemption.

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 sixty-five thousand (65,000) square feet in size, and mixed use developments under RCW 43.21C.229 in the following boundary.

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 three (3) percent of the job totals.

For the purposes of this section:

a. *Infill* means residential developments, non-retail commercial developments less than sixty-five thousand (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 three thousand seven hundred forty (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, Chapter 12.14 KCC, 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 ten thousand dollars (\$10,000) is shared proportionately between the Planned Action and Infill Exemption Areas according to the number of trips generated (thirty (30) percent by the Planned Action Area and seventy (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 section.

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 and Kent City Code amendments such standards shall supersede the measures below.

1. *Urban park space.* Each infill exemption proposal shall dedicate onsite two hundred 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 (1) 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: (a) accomplished offsite as approved by the parks and community services director; or (b) 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.

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-retail commercial space, and residential infill development for specifically designated portions of the Downtown Subarea Action Plan area pursuant to KCC 11.03.215.

Sec. 11.03.230 Environmental checklist.

A. A completed environmental checklist or a copy in the form provided in WAC 197-11-960 shall be filed in conjunction with an application for a permit, license, certificate or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and the applicant agree that an environmental impact statement is

required, SEPA compliance has been completed or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making the threshold determination.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. The city may assist the applicant in completing the environmental checklist for a private proposal, if either of the following occurs:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or

2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

D. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. If a modified form is prepared, it must be sent to the Department of Ecology to allow at least a thirty (30) day review prior to use and the city shall:

1. Develop a modified environmental checklist form and adopt it along with or as part of a planned action ordinance; or

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

Sec. 11.03.240 Mitigated determination of nonsignificance.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance based on conditions attached to the proposal by the responsible official or on changes to or clarifications of the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a determination of significance is likely under WAC 197-11-350. The request must:

1. Follow submission of a project permit application and an environmental checklist for a nonexempt proposal for which the department is the lead agency and include detailed site plans and a description of the proposal; or

2. Follow a pre-application conference;

3. Precede the city's actual threshold determination for the proposal; and

4. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or project permit application as necessary to reflect the changes or clarifications.

5. The responsible official should respond to the request for early notice within thirty (30) working days. The response shall:

a. Be written;

b. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and

c. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

C. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

D. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination in accordance with the timing requirements of Ch. 12.01 KCC.

1. If the city indicates in writing specific mitigation measures which will allow it to issue a determination of nonsignificance in its response to the request for early notice, and the applicant changes or clarifies the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2). This section shall not be construed so as to interfere with the city council's ability to impose conditions on a project or application for which it is the final decision maker.

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a determination of nonsignificance, the city shall make the threshold

determination, issuing a determination of nonsignificance or determination of significance, as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water run-off" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct two hundred (200) foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated determination of nonsignificance may be incorporated in the determination of nonsignificance by reference to agency staff reports, studies or other documents.

E. A mitigated DNS is issued under either WAC 197-11-340(2), requiring a fourteen (14) calendar day comment period and public notice, or WAC 197-11-355(5), which may require no additional comment period beyond the comment period on the notice of application.

F. Mitigation measures incorporated in the mitigated determination of nonsignificance shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any manner specifically prescribed by the city.

G. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated determination of nonsignificance for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) regarding withdrawal of determination of nonsignificance.

H. The city's written response under subsection (D)(2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

PART 3. ENVIRONMENTAL IMPACT STATEMENT (EIS)

Sec. 11.03.300 Purpose of this part and adoption by reference. This part contains the rules for preparing environmental impact statements. The city adopts the following sections of the Washington Administrative Code by reference, as supplemented by this part:

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping.
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

Sec. 11.03.310 Preparation of environmental impact statements – Additional considerations.

A. Preparation of draft and final environmental impact statements (DEISs and FEISs) and draft and final supplemental environmental impact statements (SEISs) is the responsibility of the ~~planning~~economic and community development department under the direction of the responsible official. Before the city issues an environmental impact statement, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, a consultant selected by the city at the applicant's request, or a consultant selected by the applicant with confirmation of the ~~planning~~economic and community development department. The responsible official shall notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. This does not apply to information the city may request under another ordinance or statute.

D. A DEIS and FEIS shall be completed within one (1) year of the scoping meeting or as otherwise agreed to by the applicant.

Sec. 11.03.320 Using existing environmental documents. The rules for using and supplementing existing environmental documents prepared under the State Environmental Policy Act (SEPA) or the National

Environmental Policy Act (NEPA) for the city's own environmental compliance are contained in this section. The city adopts the following sections of the Washington Administrative Code by reference:

197-11-600 When to use existing environmental documents.

197-11-610 Use of NEPA documents.

197-11-620 Supplemental environmental impact statement – Procedures.

197-11-625 Addenda – Procedures.

197-11-630 Adoption – Procedures.

197-11-635 Incorporation by reference – Procedures.

197-11-640 Combining documents.

PART 4. COMMENTING

Sec. 11.03.400 Adoption by reference. This part contains rules for consulting, commenting, and responding on all environmental documents under the State Environmental Policy Act, including rules for public notice and hearings. The city adopts the following sections of the Washington Administrative Code by reference, as supplemented in this part:

197-11-500 Purpose of this part.

197-11-502 Inviting comment.

197-11-504 Availability and cost of environmental documents.

197-11-535 Public hearings and meetings.

197-11-545 Effect of no comment.

197-11-550 Specificity of comments.

197-11-560 FEIS response to comments.

197-11-570 Consulted agency costs to assist lead agency.

Sec. 11.03.410 Public notice.

A. Whenever the city issues a determination of nonsignificance under WAC 197-11-340(2), a determination of significance under WAC 197-11-360, an addendum to any existing environmental document or any existing environmental document as defined in KCC 11.03.320, the city shall give public notice as follows:

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

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

a. Posting the property for site specific proposals;

b. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located; and

c. Notifying all parties of record, any individual or group which has appeared at a city of Kent public hearing relating specifically to the issue of environmental review or submitted comments on a certain proposal.

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

B. Whenever the city issues a DEIS under WAC 197-11-455 or a SEIS under WAC 197-11-620, notice of the availability of those documents

shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license, and the following additional methods:

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

C. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permits or approvals required for the proposal.

D. If any costs are incurred beyond the initial notice of the department's action, as provided in subsection (A)(2) above, the city may require an applicant to complete the public notice requirements for the applicant's proposal at his expense.

Sec. 11.03.420 Designation of official to perform consulted agency responsibilities for the city.

A. The planning director shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping or reviewing a draft environmental impact statement.

B. The planning director shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency

and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

**PART 5. STATE ENVIRONMENTAL POLICY ACT AND AGENCY
DECISIONS**

Sec. 11.03.500 Purpose of this part and adoption by reference. This part contains the rules and policies for the State Environmental Policy Act substantive authority, such as decisions to mitigate or reject proposals as a result of State Environmental Policy Act. This part also contains procedures for appealing State Environmental Policy Act determinations to agencies or the courts. The city adopts the following sections of the Washington Administrative Code by reference:

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

Sec. 11.03.510 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city.

B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable significant adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;

2. Such conditions are in writing;

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;

4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one (1) or more laws or regulations as provided in this chapter and subsection (D) of this section and identified in writing in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of the State Environmental Policy Act so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final environmental impact statement or final supplementary environmental impact statement prepared pursuant to this chapter;

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one (1) or more policies identified in subsection (D) of this section and identified in writing in the license or other decision document.

D. The city designates and adopts by reference the following additional policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of the state safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has

a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following city codes, ordinances, and resolutions:

a. The citywide comprehensive plan as prepared and adopted pursuant to the State Growth Management Act and adopted on April 18, 1995, by the Kent city council by Ordinance 3222 and its specific components and elements, and including all amendments thereto.

b. Shoreline master program as adopted by the Washington State Department of Ecology on June 16, 1992, and as adopted by the Kent city council on July 21, 1992, by Ordinance 3056 and including all amendments thereto.

c. The surface water and drainage code, Ch. 7.07 KCC and including all amendments thereto.

d. Underground installation of electrical or communications facilities, Ch. 7.10 KCC and including all amendments thereto.

e. Transportation master plan (Resolution 1014 and amended by Resolution 1032) and Green River Valley transportation action plan (Resolution 1127) as may hereafter be amended and including all amendments thereto.

f. Wastewater facilities master plan, Ch. 7.09 KCC and including all amendments thereto.

g. Comprehensive water plan (Ordinances 2829 and 2960) and conservation element (Resolution 1361) and including all amendments thereto.

h. Construction standards for public works, KCC 6.02.010 and 6.02.020 (Ordinance 3117) and including all amendments thereto.

i. Street use permit requirements, Ch. 6.07 KCC and including all amendments thereto.

j. Flood hazard protection, Ch. 14.09 KCC and including all amendments thereto.

k. Subdivisions, Ch. 12.04 KCC and including all amendments thereto.

l. Mobile home parks, Ch. 12.05 KCC and including all amendments thereto.

m. Valley studies (as adopted in Resolutions 920, 921, 922, 923, and 924).

n. Noise control, Ch. 8.05 KCC and including all amendments thereto.

o. State building code, together with the local implementing ordinances, KCC Title 14 and including all amendments thereto.

p. State fire code, together with the local implementing ordinances, KCC Title 13 and including all amendments thereto.

q. Zoning, KCC Title 15 and including all amendments thereto.

r. Recreational vehicle park, Ch. 12.06 KCC and including all amendments thereto.

s. Water shortage emergency regulations, Ch. 7.13 KCC and Water Conservation Ordinance 2227 and including all amendments thereto.

t. Required public improvements, Chs. 6.02 and 6.03 KCC and including all amendments thereto.

u. Storm and surface water drainage utility, Ch. 7.05 KCC and including all amendments thereto.

v. Storm drainage policies (Ordinance 2547) and including all amendments thereto.

w. Six (6) year transportation improvement plan (Resolution 1444) and including all amendments thereto.

x. Comprehensive sewerage plan (Resolution 915) and including all amendments thereto.

y. Fire master plan (Ordinance 2511) and including all amendments thereto.

z. Critical areas, Ch. 11.06 KCC and including all amendments thereto.

Sec. 11.03.520 Appeals.

A. *Administrative appeals.* The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

1. *Procedural appeals.*

a. Any party of record may appeal the city's procedural compliance with Chapter 197-11 WAC for issuance of the following:

(1) A final determination of nonsignificance: Appeal of the DNS must be made to the hearing examiner within fourteen (14) calendar days of the date the determination of nonsignificance is final. Notice of the issuance of a final DNS shall be provided in accordance with KCC 11.03.410(A)(2). Except as provided in subsection (A)(1)(a)(3) of this section, the appeal shall be consolidated with any hearing or appeal of the underlying permit.

(2) A determination of significance: Appeal of the DS must be made to the hearing examiner within fourteen (14) calendar days of the date the determination of significance is issued. Notice of the issuance of a determination of significance shall be provided in accordance with KCC 11.03.410(A)(2). An appeal is not required to be consolidated with a hearing or appeal on the underlying permit.

(3) Agency action: An appeal is not required to be consolidated with a hearing or appeal on the underlying permit if it is an appeal (i) of a procedural determination made by the city when the city is the project proponent, or is funding a project, and chooses to conduct its

review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit; (ii) of a procedural determination made by an agency on a nonproject action; and (iii) to the city council under RCW 43.21C.060 or other applicable state statute.

b. The decision of the land use hearing examiner shall be final, pursuant to RCW 43.21C.075(3)(a). No right to appeal the decision of the hearing examiner is granted by this section.

c. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.

2. *Substantive appeals.* There shall be no administrative appeal when any proposal or action is conditioned or denied on the basis of State Environmental Policy Act by a nonelected official.

3. *No other appeal provided.* Except as provided in subsection (A)(1) of this section, or as otherwise provided by law, no right to appeal is created by this section.

B. *Judicial appeals.*

1. No right to judicial review or appeal, which does not now exist, is created by this chapter. The decision by the city to issue or deny nonexempt permits or licenses shall be final. As authorized in RCW 43.21C.075(5), judicial review with superior court must be sought within twenty-one (21) calendar days of the issuance or denial of the permit or license, if at all, by an aggrieved party or person. RCW 43.21C.075(5).

2. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial review.

Sec. 11.03.530 Record on appeal. Any judicial appeal under this chapter shall be on the record. The city shall provide for a record consisting of the following:

1. Findings and conclusions;
2. Testimony under oath; and
3. A taped or written transcript.

The cost of providing a taped or written transcript shall be borne by an appellant.

Sec. 11.03.540 Notice of action.

A. The city, applicant or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk or the responsible official pursuant to RCW 43.21C.080. An applicant's request for publication shall include payment of the costs associated with such notice.

PART 6. DEFINITIONS

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

197-11-700 Definitions.

197-11-702 Act.

197-11-704 Action.

197-11-706 Addendum.

197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 Environmental impact statement (EIS).
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.

197-11-772 National Environmental Policy Act (NEPA).
197-11-774 Nonproject.
197-11-775 Open record hearing.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 State Environmental Policy Act (SEPA).
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.

Sec. 11.03.610 Additional definitions. In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

Department means any division, subdivision or organizational unit of the city established by ordinance, rule, or order.

State Environmental Policy Act rules means Chapter 197-11 WAC adopted by the State Department of Ecology.

Ordinance means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.

Early notice means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).

Day or calendar day. In computing any period of time prescribed or allowed by this chapter, if the last day falls on a Saturday, Sunday or legal holiday the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

Site plan means a vicinity map and ~~two (2) diagrams, one (1) at the original drawing size, and one (1) not to exceed eight and one-half (8 1/2) inches by fourteen (14) inches,~~ showing north arrow, scale, any significant man-made or natural features such as creeks, wetlands or steep slopes, dimensions of the lot, shape of the lot, location and size of existing and proposed buildings and development, adjacent streets, and points of ingress and egress.

PART 7. AGENCY COMPLIANCE

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

197-11-900 Purpose of this part.

197-11-902 Agency State Environmental Policy Act policies.

197-11-916 Application to ongoing actions.

197-11-920 Agencies with environmental expertise.

197-11-922 Lead agency rules.

197-11-924 Determining the lead agency.

197-11-926 Lead agency for governmental proposals.

197-11-928 Lead agency for public and private proposals.

197-11-930 Lead agency for private projects with one (1) agency with jurisdiction.

197-11-932 Lead agency for private projects requiring licenses from more than one (1) agency, when one (1) of the agencies is a county/city.

197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one (1) or more state agencies.

197-11-936 Lead agency for private projects requiring licenses ~~for~~from more than one (1) state agency.

197-11-938 Lead agencies for specific proposals.

197-11-940 Transfer of lead agency status to a state agency.

197-11-942 Agreements on lead agency status.

197-11-944 Agreements on division of lead agency duties.

197-11-946 DOE resolution of lead agency disputes.

197-11-948 Assumption of lead agency status.

Sec. 11.03.710 Responsibility of agencies - State Environmental Policy Act public information.

A. The city shall retain all documents required by the State Environmental Policy Act rules, Chapter 197-11 WAC, and make them available in accordance with Chapter ~~42.17~~42.56 RCW.

B. The following location constitutes the city State Environmental Policy Act public information center: Planning Economic and Community Development Department, Permit Center

Kent City Hall

Centennial Center

~~4th and~~ 400 West Gowe Street

Kent, WA 98032-5895

Telephone: (206253) 859-3390856-5300

C. All reasonable means will be used to make the existence and location of the city's State Environmental Policy Act public information center known to both the public generally and the employees of the city.

D. The State Environmental Policy Act public information center shall contain the documents and provide the services required by this section.

Sec. 11.03.720 Critical areas. Critical or environmentally sensitive areas, as defined in Ch. 11.06 KCC~~Water quality and hazard area development map and hazard area classifications:~~

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

B. Wetlands, as defined under KCC ~~11.05.020~~11.06.530, the wetlands inventory, the maps filed under KCC ~~15.08.222~~11.06.050, entitled critical areas maps~~water quality and hazard area development map, and hazard area classifications under KCC 15.08.224, and the special flood hazard areas as described in 14.09.060 KCC~~ designate the location of critical areas within the city and are adopted by reference. Within those critical areas, the exemptions of WAC 197-11-800 which are inapplicable are (1), (2)(a) through (h), (3), (6)(a), (2423)(a) through (g). Unidentified exemptions shall continue to apply within critical areas of the city.

C. The scope of environmental review of actions within these areas shall be limited to:

1. Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and

2. Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.

3. All other categorical exemptions apply whether or not the proposal will be located in a critical area.

Sec. 11.03.730 Fees. The city shall require the following fees for its activities in accordance with the provisions of this chapter:

1. *Threshold determination.* For every environmental checklist the city will review when it is lead agency, the city shall collect a fee as established by the city council from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee, and receipt of the checklist by the planningeconomic and community development department. When the city completes the environmental checklist at the applicant's request, an additional fee shall be collected. This fee shall be based on the actual preparation time and rate of salary and benefits for staff time.

2. *Environmental impact statement.*

a. When the city is the lead agency for a proposal requiring an environmental impact statement and the environmental impact statement is prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the environmental impact statement.

Costs will be determined based upon the costs of staff assigned to the preparation of the environmental impact statement, including hourly salary and benefits. The responsible official shall advise the applicants of the projected costs for the environmental impact statement prior to actual preparation. The applicant shall post bond or otherwise ensure payment of such costs.

b. The city reserves the right under WAC 197-11-420 to contract directly with a consultant for the preparation of an environmental impact statement, or a portion of an environmental impact statement, at the determination of the city. Consultants shall be selected by the city after a call for proposals. Consultant actions in preparing an environmental impact statement or portions thereof shall be exclusively managed and administered by the city to assure that the environmental impact statement is prepared in a professional manner and with appropriate interdisciplinary methodology. The applicant shall post a ~~minimum one-thousand five hundred dollar (\$1,500)~~ deposit with the city, according to the established fee schedule, to ensure payment of consultant costs and the preparation of an environmental impact statement. Further, the costs incurred in the preparation of an environmental impact statement shall be paid by the applicant to the city, who shall then make payment to the consultant.

c. If a proposal is modified so that an environmental impact statement is no longer required, the responsible official shall refund any fees collected under subsection (2)(a) or (2)(b) of this section which remain after incurred costs are paid.

3. *State Environmental Policy Act appeals.* For every appeal filed under KCC 11.03.520, the city shall collect a fee as established by the city council.

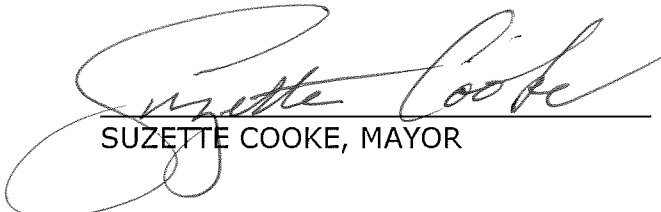
4. The city shall not collect a fee for performing its duties as a consulted agency.

5. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter ~~42.17~~42.56 RCW.

SECTION 2. - *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 3. - *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 4. - *Effective Date.* This ordinance shall take effect and be in force thirty (30) days after its passage and publication, as provided by law.


SUZETTE COOKE, MAYOR

ATTEST:


RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:



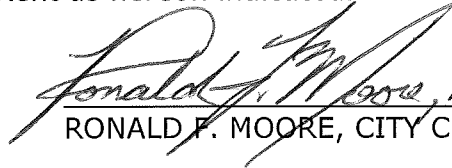
TOM BRUBAKER, CITY ATTORNEY

PASSED: 9th day of December, 2014.

APPROVED: 9th day of December, 2014.

PUBLISHED: 12th day of December, 2014.

I hereby certify that this is a true copy of Ordinance No. 4131 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 (SEAL)

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EXHIBIT A

SEPA Authority by Element of the Environment (from 11.03.510 KCC)	How Addressed by Other Codes/Rules*
Water	<ul style="list-style-type: none"> • Critical Areas Code and Flood Hazard regulations provide for mitigation of impacts to landslide hazards, steep slopes, unstable soils, wetlands, streams, flood prone areas, aquifer recharge areas, and fish/wildlife habitat areas (Chapters 11.06 and 14.09). • Shoreline Master Program contains regulations for preservation and enhancement of shorelines. (Chapter 11.04) • The Stormwater and Drainage ordinances (Chapters 7.02, 7.05, 7.07, and 7.09) include environmental and water quality protections. • Best Management Practices from King County Stormwater Pollution Control Manual and NPDES permitting provide stormwater pollution prevention measures. • State Hydraulic Project Approvals provide protection to freshwater resources.
Plants and Animals	<ul style="list-style-type: none"> • Tree preservation and landscaping regulations provide protections for natural areas and wildlife habitat, and promote use of native plants (15.08.240, 15.07.010, and 15.07.040.Q). • Federal and state regulations provide protection to endangered species (16 U.S.C. §1531 et seq. and Chapter 77.12 RCW).

EXHIBIT A

SEPA Authority by Element of the Environment (from 11.03.510 KCC)	How Addressed by Other Codes/Rules*
Energy and Natural Resources	<ul style="list-style-type: none"> • Energy Codes required by the City and the State mandate high levels of energy efficiency. • Puget Sound Energy provides service to new development. • Solar access setback code encourages preservation of solar access opportunities in residential zones (15.08.230 through .234). • Various City policies, programs and rules address energy conservation (Ord. 3809; 15.07.040.Q and S; 15.08.240; 15.08.400.D.1, .3 and .4; 7.05.130).
Environmental Health	<ul style="list-style-type: none"> • Federal, state and regional regulations, as well as local Fire and Building Codes, are the primary means of mitigating risks associated with hazardous and toxic materials.
Noise	<ul style="list-style-type: none"> • The Noise Control code provides for daytime/nighttime noise level limits, exemptions, variances and public nuisances and authority to mitigate impacts related to exceeding noise level limits and specific noise generating activities. (Chapter 8.05)
Land and Shoreline Use	<ul style="list-style-type: none"> • Green River corridor district regulations (15.08.260) address bulk and scale for properties within 1000 feet of the Green River. • Review criteria for PUDs address height, bulk and scale and require design review (15.08.400.C.14 and 15.08.400.G). • Zoning and Development standards, Shoreline Master Program, Subdivision Code, Design and Construction Standards, and Critical Areas code address the height and scale of development and other aspects related to compatibility, environmental protection and agricultural uses.
Housing	<ul style="list-style-type: none"> • Zoning and development standards provide for a broad

EXHIBIT A

SEPA Authority by Element of the Environment (from 11.03.510 KCC)	How Addressed by Other Codes/Rules*
	<p>range of housing types in the City, zoning for a range of densities, and flexible development standards to achieve the allowable density.</p> <ul style="list-style-type: none"> • Mobile Home Park code provides for continued use of nonconforming parks, as well as requires relocation planning prior to change of use or changes to land use designations (Chapter 12.05).
Aesthetics	<ul style="list-style-type: none"> • The Design Review process applies to downtown, multifamily, mixed-use, PUDs, clustered subdivisions, and residential subdivisions, providing the venue for addressing height, bulk, and scale (15.08.400.C.14, 15.09.045, 15.09.046). • View corridor protection regulations on hillside development mitigate for impacts to views (15.08.060). • View considerations, such as along specific streets, is best addressed during area planning and rezoning efforts. Commonly used approaches include upper-level setbacks incorporated into new zoning.
Light and Glare	<ul style="list-style-type: none"> • Zoning code standards for screening and landscaping, shading of lighting for gasoline service stations, and performance standards related to glare provide mitigation (15.07.040.J; 15.08.020.B.6; 15.08.050.D.3). • Design Review can address this topic as well.
Recreation	<ul style="list-style-type: none"> • Subdivision code addresses open space/recreation needs (12.04.060 through .070; 12.04.263 and .264). • Shoreline Master Program addresses public access to shoreline (Chapter 3.B.7). • PUD approval criteria require common open space and provide a density bonus for active recreational areas (15.08.400.C.5

EXHIBIT A

SEPA Authority by Element of the Environment (from 11.03.510 KCC)	How Addressed by Other Codes/Rules*
Historic and Cultural Preservation	<p>and .D.2).</p> <ul style="list-style-type: none"> • The Landmark Designation and Preservation code is in place for landmark preservation (Chapter 14.12) • Federal and state regulations address protection of cultural/archaeological resources (Including RCW Chapters 27.34, 27.53, and 27.44 RCW; and WAC Chapter 25.48)
Transportation	<ul style="list-style-type: none"> • Street and Curb Cut and Street Use Permits codes (Chapters 6.06 and 6.07) and Design and Construction Standards include mitigation authority for: access point control, street/ intersection configuration, and signage. • Street and Curb Cut, Street Use Permits, and Traffic Codes (Chapters 6.06, 6.07, and 9.36) contain authority to regulate: <ul style="list-style-type: none"> ○ Pedestrian safety measures, ○ Street and sidewalk closures, ○ Truck traffic timing and haul routes, ○ Any planned use of the street for construction purposes (material, equipment storage). • Transportation impact fees are assessed at the time of building permit or change of use applications. (Chapter 12.14) • Required Infrastructure Improvements code (Chapter 6.02) provides mitigation for impacts to infrastructure, including transportation. • Commute Trip Reduction code (Chapter 6.12) requires affected employers to make a good faith effort to develop and implement a CTR program that will encourage employees to reduce VMT and drive-alone commute trips. • Zoning Code (Chapter 15.05) includes authority to requires or

EXHIBIT A

SEPA Authority by Element of the Environment (from 11.03.510 KCC)	How Addressed by Other Codes/Rules*
	<p>reduce parking requirements according to land use, considering unique circumstances and temporary parking needs.</p>
<p>Public Services/Facilities and Utilities</p>	<ul style="list-style-type: none"> • Authority for requiring utility improvements is identified in rules, codes and policies and applied during permit reviews. This includes water, sewer, storm drain, electrical improvements and communication facilities. (Chapter 6.02, 7.04, 7.05, 7.07, 7.10, and 7.12) • Permit applications not undergoing SEPA review can be referred to other departments for comments, if facilities or services might be affected, such as police or fire protection. (15.08.205) • School impact fees are assessed on behalf of the school districts at the time of permit application. (Chapter 12.13) • Fire codes mitigate impacts of built environment on emergency services (Chapter 13.01). • Solid waste code also addresses recycling and yard waste collection (7.03.040 and 045). • Public service and utility impact analyses to address growth impacts are most appropriately addressed through area planning initiatives in conjunction with supporting area-wide SEPA reviews, as is done for subarea rezones.

*All citations are from the Kent City Code, unless otherwise indicated.
 RCW = Revised Code of Washington. WAC= Washington Administrative Code.

EXHIBIT B

Chapter 12.01 ADMINISTRATION OF DEVELOPMENT REGULATIONS*

Sections:

- 12.01.010 Purpose and applicability.
- 12.01.020 Definitions.
- 12.01.030 Application processes and classification.
- 12.01.040 Project permit application framework.
- 12.01.050 Exemptions from project permit application processing.
- 12.01.055 Fees.
- 12.01.060 Joint public hearings.
- 12.01.070 Process VI legislative actions.
- 12.01.080 Pre-application conference.
- 12.01.090 Project permit applications.
- 12.01.100 Submission and acceptance of application.
- 12.01.105 Application vesting.
- 12.01.110 Procedure for complete but incorrect applications.
- 12.01.115 Procedure for ready-to-issue permits.
- 12.01.120 Referral and review of project permit applications.
- 12.01.125 Notification of proximity to agricultural resource lands.
- 12.01.130 Public notice – Generally.
- 12.01.140 Notice of application.
- 12.01.145 Notice of open record hearing.
- 12.01.147 Notice of city council meetings on project permit applications.
- 12.01.150 Consistency with development regulations and SEPA.
- 12.01.155 Code of conduct.
- 12.01.160 Open record hearings.
- 12.01.170 Notice of decision.
- 12.01.180 Time limitations.
- 12.01.185 Expiration of permits.
- 12.01.190 Open record appeal.

12.01.195 Closed record appeal.

12.01.200 Judicial appeals.

***Editor's note** – Ord. No. 3169, § 3, adopted May 16, 1994, repealed former ch. 12.01, §§ 12.01.010 – 12.01.080, which pertained to the board of adjustment.

12.01.010 Purpose and applicability.

The purpose of this chapter is to establish a set of processes to be used for land use and development proposals subject to review under the following portions of the Kent City Code:

- A. Chapter 2.32 KCC, Office of Hearing Examiner;
- B. Chapter 11.03 KCC, Environmental Policy;
- C. Chapter 12.04 KCC, Subdivisions, Binding Site Plans, and Lot Line Adjustments;
- D. Chapter 14.01 KCC, Building Codes; and
- E. KCC Title 15, Zoning.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01)

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, or 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 3801, § 1, 6-6-06; Ord. No. 4044, § 1, 8-21-12)

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 director shall determine the proper process types for all applications. If there is a question as to the appropriate process type, the planning 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 this 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 3760, § 1, 9-6-05; Ord. No. 4044, § 2, 8-21-12)

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.

	<i>Process I</i>	<i>Process II</i>	<i>Process III</i>	<i>Process IV</i>	<i>Process V</i>	<i>Process VI</i>
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)

	<i>Process I</i>	<i>Process II</i>	<i>Process III</i>	<i>Process IV</i>	<i>Process V</i>	<i>Process VI</i>
	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 director) (7)	Midway design review (1) (7)	Preliminary plat (5) (10)			
	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			

	<i>Process I</i>	<i>Process II</i>	<i>Process III</i>	<i>Process IV</i>	<i>Process V</i>	<i>Process VI</i>
			a change of use			
<p>(1) Final decision made by planning director. (8) Appeal to city council.</p> <p>(2) Final decision by binding site plan committee. (9) Appeal to shoreline hearings board.</p> <p>(3) Final decision made by downtown design review committee. (10) No administrative appeals.</p> <p>(4) Final decision made by short subdivision committee. (11) Final decision made by manager of housing and human services.</p> <p>(5) Final decision made by hearing examiner. (12) Final decision made by economic and community development director.</p> <p>(6) Final decision made by city council.</p> <p>(7) Appeal to hearing examiner.</p>						

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

	<i>Project Permit Applications (Processes I – V)</i>					<i>Legislative</i>
	<i>Process I</i>	<i>Process II</i>	<i>Process III</i>	<i>Process IV</i>	<i>Process V</i>	<i>Process VI</i>
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 director, building official,	Planning director, downtown	Hearing examiner	City council, based upon record made	City council	City council

	<i>Project Permit Applications (Processes I – V)</i>					<i>Legislative</i>
	<i>Process I</i>	<i>Process II</i>	<i>Process III</i>	<i>Process IV</i>	<i>Process V</i>	<i>Process VI</i>
	public works director, economic and community development director, or manager of housing and human services as applicable	design review committee, binding site plan committee, or short subdivision committee, as noted in subsection (A) of this section		before hearing examiner		
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	Only if appealed, then before the	Only if appealed, then before	No	No	No

	<i>Project Permit Applications (Processes I – V)</i>					<i>Legislative</i>
	<i>Process I</i>	<i>Process II</i>	<i>Process III</i>	<i>Process IV</i>	<i>Process V</i>	<i>Process VI</i>
	conditional certificate, then before the city council	shoreline hearings board if applicable	the shoreline hearings board if applicable			
Judicial appeal:	Yes	Yes	Yes	Yes	Yes	Yes

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 3614, § 1, 9-17-02; Ord. No. 3801, § 2, 6-6-06; Ord. No. 4011, § 2, 12-13-11; Ord. No. 4044, § 3, 8-21-12)

12.01.050 Exemptions from project permit application processing.

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

1. Landmark designations.
2. Street vacations.
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, Chapter 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 4, 8-21-12)

12.01.055 Fees.

The city council shall, by resolution, establish the fees to be assessed to implement and operate the regulations adopted in this chapter. The resolution may require that certain fees be pre-paid and/or designated to be nonrefundable because staff time and materials will be expended whether or not the permit applied for is approved by the city or pulled by the applicant. In the event of any conflict or ambiguity regarding any fees authorized under this chapter and established by council resolution, the planning director is authorized to interpret the fee schedule(s) to resolve that conflict or ambiguity.

(Ord. No. 4019, § 11, 12-13-11)

12.01.060 Joint public hearings.

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

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

B. *Applicant's request for a joint 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 5, 8-21-12)

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 procedural 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;
5. Development regulations and zoning text amendments; and
6. Other similar actions that are non-project related.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 6, 8-21-12)

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 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.

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. 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 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 7, 8-21-12)

12.01.090 Project permit applications.

A. *Required materials.* Applications for all project permits shall be submitted upon forms provided by the city.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01)

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.

Acceptance of a project permit application means that the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. Acceptance of a project permit application shall not preclude the city from requesting additional information or studies if new information is required or where there are substantial changes in the proposal.

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

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 8, 8-21-12)

12.01.105 Application vesting.

A project permit application shall vest upon 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(A).

(Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 9, 8-21-12)

12.01.110 Procedure for complete but incorrect applications.

A. Following submittal 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 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;
5. Reason for the applicant's delay; and
6. Applicant's reasonable reliance on an expectation that the application would not expire.

The economic and 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, 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. 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 3914, § 1, 4-21-09; Ord. No. 4044, § 10, 8-21-12)

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 pickup"). The planning director may, in writing, extend the period for permit pickup 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 and community development director may authorize additional time extensions of the period for permit pickup in rare or unique circumstances when the inability of the applicant to comply within the period for permit pickup 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 pickup 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.

(Ord. No. 4044, § 11, 8-21-12)

12.01.120 Referral and review of project permit applications.

Within ten (10) calendar days of accepting a complete application, the planning director shall do the following:

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

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

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 12, 8-21-12)

12.01.125 Notification of proximity to agricultural resource lands.

For all plats, short plats, development permits, and substantial building permits for residential development activities on or within five hundred (500) 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 inform the 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.

(Ord. No. 3720, § 1, 11-2-04; Ord. No. 4044, § 13, 8-21-12)

12.01.130 Public notice – Generally.

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

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01)

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; 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 predecision hearing is required.

C. *Contents.* The notice of application shall include:

1. The case file number(s), the date of 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 by 4:30 p.m. on the last day of the comment period. Comments may be mailed, personally delivered, or sent 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.

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:

i. The site does not abut a public road; or

ii. Additional public notice boards are required under other provisions of the Kent City Code; or

iii. The planning director determines that additional notice boards are necessary to provide adequate public notice.

d. Notice boards shall be:

i. Maintained in good condition by the applicant during the notice period;

ii. In place prior to the start of the public comment period; and

iii. 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 at least seven (7) calendar days prior to the hearing. If the affidavits are not filed as required, any scheduled hearing or date by which the public may comment on the application may be postponed in order to allow compliance with this notice requirement.

g. Notice boards shall be constructed and installed in accordance with specifications determined by the planning director.

h. SEPA information shall be added by the city to the posted sign within applicable deadlines. An affidavit of posting shall be submitted by the planning director.

G. *Published notice of application.* Published notice of application in the city's official newspaper or an appropriate substitute as provided for in Resolution No. 1747 or as subsequently amended 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.* Notice of the application 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 master program.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3511, § 2, 5-16-00; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 14, 8-21-12)

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, 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

c. 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 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. 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 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 subsection (C)(2) of this section, shall contain the project description and the location where the complete file may be reviewed.

D. Time of notice of open record hearing. 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).

(Ord. No. 3574, § 3, 9-18-01; Ord. No. 3801, § 3, 6-6-06; Ord. No. 4044, § 15, 8-21-12)

12.01.147 Notice of city council meetings on project permit applications.

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

(Ord. No. 3801, § 4, 6-6-06; Ord. No. 4044, § 16, 8-21-12)

12.01.150 Consistency with development regulations and SEPA.

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

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

1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density;
3. Availability and adequacy of infrastructure, including public facilities and services identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW; and
4. Characteristics of the development, such as development standards.
5. In deciding whether a project is consistent, the determinations made pursuant to subsection (B) of this section shall be controlling.
6. Nothing in this section limits the city from asking more specific or related questions in subsections (B)(1) through (5) of this section.

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

1. This SEPA analysis shall:

a. Determine whether the applicable federal, state, and local regulations require studies that adequately analyze all of the project permit application's specific probable adverse environmental impacts;

b. Determine if the applicable regulations require measures that adequately address such environmental impacts;

c. Determine whether additional studies are required and/or whether the project permit application should be conditioned with additional mitigation measures; and

d. Provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.

2. In its review of a project permit application, the city may determine that the requirements for environmental analysis, protection, and mitigation measures in the applicable development regulations, comprehensive plan, and/or in other applicable local, state, or federal laws provide adequate analysis of and mitigation for the specific adverse environmental impacts of the application.

3. A comprehensive plan, development regulation or other applicable local, state, or federal law provides adequate analysis of and mitigation for the specific adverse environmental impacts of an application when:

a. The impacts have been avoided or otherwise mitigated; or

b. The city has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by Chapter 36.70A RCW.

4. The city's determination of consistency with the items identified in subsection (B) of this section shall not prohibit the city from denying, conditioning, or mitigating impacts due to other aspects of the project.

5. In its decision whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the city shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the city shall base or condition its project approval on compliance with these other existing rules or laws.

6. Nothing in this section limits the authority of the city in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.

7. The city shall also review the application under Ch. 11.03 KCC, the city's environmental policy provisions.

D. *Categorically exempt actions.* Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the rules adopted by the Department of Ecology (Chapter 197-11 WAC) may not be conditioned or denied under SEPA.

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

1. A "planned action" means one (1) or more types of project action that:

a. Are designated planned actions by an ordinance or resolution adopted by the city;

b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:

i. A comprehensive plan or subarea plan adopted under Chapter 36.70A RCW; or

ii. A fully contained community, a master planned resort, a master planned development, or a phased project;

- c. Are subsequent or implementing projects for the proposals listed in subsection (E)(1)(b) of this section;
- d. Are located within an urban growth area, as defined in RCW 36.70A.030;
- e. Are not essential public facilities, as defined in RCW 36.70A.200;
- f. Are consistent with the city's comprehensive plan adopted under Chapter 36.70A RCW.

2. The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the city, and may limit a planned action to a time period identified in the environmental impact statement or in the ordinance or resolution designating the planned action under RCW 36.70A.040.

3. During project review, the city shall not re-examine alternatives or hear appeals on the items identified in subsection (B) of this section except for issues of code interpretation, the process for which is outlined in KCC 15.09.060.

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

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01)

12.01.155 Code of conduct.

A. *General.* The following shall apply to open record hearings in KCC 12.01.160, open record appeals in KCC 12.01.190, and the closed record appeals in KCC 12.01.195.

B. *Conflict of interest.* The hearing body shall be subject to the code of ethics and prohibitions on conflict of interest as set forth in RCW 35A.42.020 and Chapter 42.23 RCW, as the same now exists or may hereafter be amended.

C. *Ex parte communications.*

1. No member of the hearing body may communicate, directly or indirectly, regarding any issue in a proceeding before him or her, other than to participate in communications necessary to procedural aspects of maintaining an orderly process, unless he or she provides notice and opportunity for all parties to participate; except as provided in this section:

a. The hearing body may receive advice from legal counsel; or

b. The hearing body may communicate with staff members (except where the proceeding relates to a code enforcement investigation or prosecution).

2. If, before serving as the hearing body in a quasi-judicial proceeding, any member of the hearing body receives an ex parte communication of a type that could not properly be received while serving, the member of the hearing body, promptly after starting to serve, shall disclose the communication as described in KCC 12.01.160(D)(3).

3. If the hearing body receives an ex parte communication in violation of this section, he or she shall place on the record:

a. All written communications received;

b. All written responses to the communications;

c. The substance of all oral communications received and all responses made; and

d. The identity of each person from whom the hearing body received any ex parte communication.

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

D. Disqualification.

1. A member of the hearing body who is disqualified may be counted for purposes of forming a quorum. Any member who is disqualified may be counted only by making full disclosure to the audience, abstaining from voting on the disqualification, vacating the seat on the hearing body, and physically leaving the hearing.

2. If all members of the hearing body are disqualified, all members present after stating their reasons for disqualification shall be re-qualified and shall proceed to resolve the issues.

3. Except for Process VI actions, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.

(Ord. No. 3574, § 3, 9-18-01)

12.01.160 Open record hearings.

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

B. *Responsibility of the planning director for hearing.* The planning director shall:

1. Schedule an application for review and public hearing;
2. Give notice (applicant responsible for some of the notice requirements);
3. Prepare the staff report on the application, which shall be a single report stating all of the decisions made as of the date of the report, including recommendations on project permits in the consolidated permit process that do not require an open record predecision 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. 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. 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 17, 8-21-12)

12.01.170 Notice of decision.

A. Following a decision on a project permit by the applicable decision-maker, the city shall provide a notice of decision that also includes a statement of any threshold determination made under SEPA (Chapter 43.21C RCW) and the procedures for appeal.

B. The notice of decision shall be issued within one hundred twenty (120) calendar days, as calculated by KCC 12.01.180, after the city notifies the applicant that the application is complete.

C. The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

D. Notice of the decision shall be provided to the public as set forth in KCC 12.01.145(B)(2)(a) and (c). Affected property owners may request a change in valuation for property tax purposes. The city shall provide notice of the decision to the county assessor's office in which the property is located.

E. Pursuant to RCW 36.70B.140(1), building permits, grading permits, and civil construction permits are exempt from the requirements in subsection (C) and (D) of this section, except for notice to the applicant.

F. If the city is unable to issue its final decision on a project permit application within the time limits provided for in this chapter, it shall provide written notice of this fact to the parties of record. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01)

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 12.01.170 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 required 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 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.

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01; Ord. No. 4044, § 18, 8-21-12)

12.01.185 Expiration of permits.

A. Absent statute or ordinance provisions to the contrary, Process I and II project permit applications listed in KCC 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 KCC 12.01.180.

B. Absent statute or ordinance provisions to the contrary, permits or land use approvals listed in KCC 12.01.040 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 and 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.

(Ord. No. 4044, § 19, 8-21-12)

12.01.190 Open record appeal.

A. This section allows for open record appeals as provided in the framework in KCC 12.01.040. Open record appeals are heard by the hearing examiner.

B. *Consolidated appeals.*

1. All open record appeals on a project permit application decision, other than an appeal of determination of significance (DS), shall be considered together in a consolidated open record appeal.
2. Appeals of environmental determinations under SEPA, Ch. 11.03 KCC, including administrative appeals of a threshold determination, shall proceed as provided in that chapter.

C. *Initiation of appeal.* Only parties of record may initiate an appeal on a project permit application.

D. *Time to file.* An appeal must be filed within fourteen (14) calendar days following issuance of the notice of decision. Appeals must be delivered to the planning services office by mail, personal delivery, or received by fax before 4:30 p.m. on the last business day of the appeal period.

E. *Computation of time.* For the purposes of computing the time for filing an appeal, the day the notice of decision is rendered shall not be included. The last day of the appeal period shall be included unless it is a Saturday, Sunday, a day designated by RCW 1.16.050, or by the city's ordinances as a legal holiday, then it also is excluded and the filing must be completed on the next business day (RCW 35A.28.070).

F. *Content of appeal.* Appeals shall be in writing, be accompanied by an appeal fee as set by the city council, and contain the following information:

1. Appellant's name, address, and phone number;
2. Appellant's statement describing his or her standing to appeal;
3. Identification of the application which is the subject of the appeal;
4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
5. The relief sought, including the specific nature and extent; and
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

G. *Effect.* The timely filing of an appeal shall stay the effective date of the decision until such time as the appeal is adjudicated by the hearing examiner.

H. *Notice of appeal.* Public notice of the appeal shall be given as provided in KCC 12.01.145 (B)(2)(a) and (c).

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

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 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, or 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.

(Ord. No. 3574, § 3, 9-18-01; Ord. No. 3801, § 5, 6-6-06; Ord. No. 4044, § 20, 8-21-12)

12.01.200 Judicial appeals.

A. *Appeal.* The city's final decision or appeal decision on a Process I, II, III, IV, or V application may be appealed by a party of record with standing to file a land use petition in King County superior court.

B. *Petition period.* A land use petition must be filed within twenty-one (21) calendar days of issuance of the notice of decision or appeal decision.

C. *Filing and content of a land use petition.* A land use petition shall be filed according to the procedural standards outlined in Chapter 36.70C RCW, Judicial Review of Land Use Decisions, also known as the "Land Use Petition Act."

(Ord. No. 3424, § 19, 11-17-98; Ord. No. 3574, § 3, 9-18-01)