

# Ordinance No. 2494

(Amending or Repealing Ordinances)

CFN=786 - SEPA

Passed 10/1/1984

Adopt Sepa Rules & Procedures

Amended by Ord. 3424 (Sec. 11.03 formerly Sec. 12.12A)

Amended by Ord. 3573 (Sec. 11.03.510 formerly Sec. 12.12A.510)

Amended by Ord. 3574 (Sec. 11.03.520 formerly Sec. 12.12A.520)

Amended by Ord. 3746 (Sec. 11.03.510)

Amended by Ord. 3976 (Sec. 11.03.200)

Repealing  
Ord. 1975  
Amended  
by Ord. 2511  
FIRE master plan

ORDINANCE NO. 2494

AN ORDINANCE of the City of Kent, Washington, relating to Environmental Policy, adding a new Chapter 12.12A Kent City Code to adopt SEPA rules and procedures for the City of Kent; repealing Chapter 12.12 KCC (Ordinance 1975).

Amended by  
Ord. 2818

WHEREAS, the State Environment Policy Act (SEPA), Chapter 43.21C RCW, sets forth an environmental policy for Washington State and requires that the environmental impacts of proposals be analyzed and, where appropriate, mitigated; and

WHEREAS, SEPA applies to state agencies, counties, and municipal and public corporations; and

WHEREAS, SEPA has been amended to require the State Department of Ecology to issue new uniform statewide rules for carrying out SEPA; and

WHEREAS, the City is required to adopt SEPA policies and procedures that are consistent with the SEPA Rules adopted by the Department of Ecology in Chapter 197-11 WAC and may adopt by reference any or all of the provisions of those Rules and the model ordinance adopted by the Department of Ecology in Chapter 173-806 WAC; and

WHEREAS, the City has provided public notice and opportunity for public comment as part of the process for adopting its SEPA's procedures and formally designating its SEPA policies; NOW, THEREFORE,

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

Section 1. A new Chapter 12.12A Kent City Code is adopted as follows:

Sec. 11.03.410 A  
(OLD KCC 12.12A.410A)

Sec. 11.03.410(A)(1)  
(OLD KCC 12.12A.410(A)(1))  
Amended by  
Ord. 314

Sec. 12.12A.510  
Amended by  
Ord. 328  
(NEW SEC. 11.03.510)

CHAPTER 12.12A

ENVIRONMENTAL POLICY

12.12A.010. Purpose and Authority. The City of Kent adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904.

Part One: GENERAL REQUIREMENTS

12.12A.100. Purpose of this Part and Adoption by Reference. This part contains the basic requirements that apply to the SEPA process. The City adopts the following sections and subsections of Chapter 197-11 of the Washington Administrative Code (WAC) by reference:

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on action during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.

12.12A.110. Designation of Responsible Official.

A. For those proposals for which the City is the lead agency, the responsible official shall be the Director of the Planning Department, or 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 EIS, 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.

C. 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 RCW.

12.12A.120. 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 WAC 197-11-940; 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 EIS is necessary, shall supervise preparation of the EIS.

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 DNS or the final EIS of the lead agency in making decisions on the proposal. No City department shall prepare or require preparation of a DNS or EIS 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 197-11-600.

D. If the City or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the City must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen day time period. Any such petition on behalf of the City may be initiated by the Director of the Planning Department.

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 197-944: PROVIDED, That 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).

12.12A.130. Timing Considerations: Categorical Exemptions - Threshold Determinations. The following time limits (expressed in calendar days) shall apply when the City processes licenses for all private projects and those governmental proposals submitted to the City by other agencies:

A. Categorical exemptions. The City shall identify whether an action is categorically exempt within seven days of receiving completed applications and site plans for any building or land use permits.

B. Threshold determinations.

1. The City should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen days of the date an applicant's completed checklist and site plans are submitted.

2. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdiction:

a. The City should request such further information within fifteen days of receiving completed environmental checklist and site plans;

b. The City should wait no longer than thirty days for a consulted agency to respond;

c. The responsible official should complete the threshold determination within fifteen days of receiving the required information from the applicant or the consulted agency.

3. When the City must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the City should complete the studies within thirty days of receiving completed checklist and site plans.

4. The City shall complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the checklist, within fifteen days of receiving the completed checklist and site plans.

12.12A.140. Timing Considerations: Submission of DNS, DEIS, FEIS.

A. For nonexempt proposals, the DNS or FEIS for the proposal shall normally accompany the City's staff recommendations to the Planning Commission or Hearing Examiner or Board of Adjustment. The DEIS for a proposal may accompany the City's staff recommendations when a hearing pursuant to WAC 197-11-535 is held.

B. For any nonexempt proposal, the applicant must submit a

completed environmental checklist, site plans and a description of the proposal as a part of the development plan review process. This should occur prior to the development plan review meeting and prior to the submittal of the permit application and detailed plans and specifications. This provision supercedes WAC 173-806-058, and shall constitute early environmental review.

Part Two: CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

12.12A.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 (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS, and rules applicable to categorical exemptions. The City adopts the following sections by reference, as supplemented in this ordinance:

|            |   |
|------------|---|
| 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.  |
| 197-11-360 | 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.                     |

12.12A.210. Thresholds for Categorical Exemptions.

A. The City establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

1. For residential dwelling units in WAC 197-11-800(1)(b)(i): 12 dwelling units or less.
2. For agricultural structures in WAC 197-11-800(1)(b)(ii): 30,000 square feet or less.

3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): buildings of 12,000 sq. ft. or less and 40 or less parking spaces.

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

5. For fill and excavations in WAC 197-11-800(1)(b)(v): 500 cubic yards or less.

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

#### 12.12A.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 ordinance 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 ordinance, 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 action(s) 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 action(s) were not approved.

12.12A.230. Environmental Checklist.

A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed prior to an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the City and applicant agree an EIS 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.

12.12A.240. Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) 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 DS is likely under WAC 197-11-350. The request must:

1. Follow submission of 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; and
2. Precede submission of a permit application and the development plan review meeting; and



3. Precede the City's actual threshold determination for the proposal.

4. 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.

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

E. 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 within 15 days of receiving the changed or clarified proposal:

1. If the City indicates in writing specific mitigation measures which will allow it to issue a DNS 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). Provided, however, that 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 DNS, the City shall make the threshold determination, issuing a DNS or DS 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 stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200 foot stormwater retention pond at Y location" are adequate.

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

F. Mitigated DNS's issued under WAC 197-11-340(2), require a fifteen day comment period and public notice.

G. Mitigation measures incorporated in the mitigated DNS 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.

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

I. The City's written response under (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 Three: ENVIRONMENTAL IMPACT STATEMENT (EIS)

12.12A.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 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.                            |

12.12A.310. Preparation of EIS - Additional Considerations.

A. Preparation of draft and final EIS's (DEIS and FEIS) and draft and final supplemental EIS's (SEIS's) is the

responsibility of the Planning Department under the direction of the responsible official. Before the City issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and Chapter 197-11 WAC.

B. The draft and final EIS or SEIS shall be prepared by City staff, the applicant, a consultant selected by the City at the applicant's request, or a consultant selected by the applicant with confirmation of the Planning Department. The responsible official shall notify the applicant of the City's procedure for EIS preparation, including approval of the draft and final EIS 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 ordinance or that is being requested from another agency. This does not apply to information the City may request under another ordinance or statute.

12.12A.320. Using Existing Environmental Documents. The rules for using and supplementing existing environmental documents prepared under 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 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 Four: COMMENTING

12.12A.400. Adoption by Reference This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The City adopts the following sections 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.

12.12A.410. Public Notice.

A. Whenever the City issues a DNS under WAC 197-11-340(2), a DS under WAC 197-11-360(3), or any existing environmental document as defined in Part 3, Section 12.12A.330, the City shall give public notice as follows:

1. If public notice is required for a nonexempt action, the notice shall state whether a DS or DNS has been issued and that comments are due within 14 days.

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

a. Posting the property for site specific proposals;  
 b. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located; and

c. Notifying all parties of record, any individual, or group which has appeared at a public hearing or submitted comments on a certain proposal.

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

B. Whenever the City issues a draft EIS under WAC 197-11-455(5) or a supplemental EIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. indicating the availability of the DEIS in any public notice required for a nonexempt license; and the following additional methods:

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 any party of record, any individual or group which has appeared at a public hearing or have 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 permit(s) or approval(s) required for the proposal.

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

12.12A.420. Designation of Official to Perform Consulted Agency Responsibilities for the City.

A. The Director of the Planning Department 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 EIS.

B. The 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 Five: SEPA AND AGENCY DECISIONS

12.12A.500. Purpose of this Part and Adoption by Reference. This part contains the rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The City adopts the following sections by reference:

|            |                                       |
|------------|---------------------------------------|
| 197-11-650 | Purpose of this Part.                 |
| 197-11-655 | Implementation.                       |
| 197-11-660 | Substantive authority and mitigation. |
| 197-11-680 | Appeals.                              |

12.12A.510. Substantive Authority.

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

Kent.

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 ordinance; and
2. Such conditions are in writing; and
3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
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 or more laws or regulations as provided in KCC 12.12A and subsection (D) below 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 SEPA 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 EIS or final SEIS prepared pursuant to this ordinance; and

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 or more policies identified in subsection (D) below 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 Washington 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. Kent Citywide Comprehensive Plan (Resolution 817), and its specific components, including, but not limited to the East Hill Plan (Resolution 972), the West Hill Plan (Resolution 1016), the Kent Central Business District Plan (Resolution 764) and the Valley Floor Comprehensive Plan (Resolutions 873 and 924), as amended.

b. Shoreline Master Program (Resolution 907).

c. City of Kent Surface Water and Drainage Plan (KCC 12.14).

d. Electrical or Communications Facilities - Underground Requirements (KCC 7.10).

e. Transportation Master Plan (Resolution 1014).

f. Wastewater Facilities Master Plan (KCC 7.12).

g. Comprehensive Water Plan (Ordinances 2369 and 2329).

h. Construction Standards for Public Works (KCC 4.04).

i. Street Use Permit Requirements (KCC 4.07).

j. Flood Hazard Protection (KCC 14.22).

k. Kent Subdivision Code (KCC 12.04).

l. Kent Mobile Home Park Code (KCC 12.08).

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

n. Noise Control (KCC 9.20).

o. State Building Code, together with the local implementing ordinances (KCC Title 14).

p. State Fire Code, together with the local

implementing ordinances (KCC Title 13).

- q. Kent Zoning Code (KCC Title 15).
- r. Recreational Vehicle Park Code (KCC 12.06).
- s. Water Shortage Emergency Regulations (KCC 9.24).
- t. Kent Comprehensive Park & Recreation System Plan (KCC 4.10 & KCC 4.12).
- u. Kent Public Improvements Ordinance (KCC 4.14 & KCC 4.18)
- v. Storm Drainage Utility (Ordinance 2325).
- w. Storm Drainage Policies (Resolutions 920 and 937).
- x. Six Year Transportation Improvement Plan (Resolution 1020).
- y. Comprehensive Sewerage Plan (Resolution 915).

12.12A.520. Appeals.

A. Administrative Appeals.

1. Procedural Appeals. The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

a. Any agency or person may appeal the City's procedural compliance with Chapter 197-11 WAC for issuance of the following:

i. A final DNS: Appeal of the DNS must be made to the Hearing Examiner within ten days of the date the DNS is final. Notice of the issuance of a final DNS shall be provided in accordance with Section 12.12A.410.A.2.

ii. A DS: The appeal must be made to the Hearing Examiner within ten days of the date the DS is issued. Notice of the issuance of a DS shall be provided in accordance with Section 12.12A.410 A.2.

b. The decision of the Hearing Examiner shall be final, pursuant to RCW 45.21C.075(3)(a). No right to appeal the decision of the Hearing Examiner is granted by this section.

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

2. Substantive Appeals. Except for permits and variances issued pursuant to the City of Kent Shoreline Master Program, Resolution 907, when any proposal or action not requiring a decision of the City Council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the Hearing Examiner. Such appeal shall be pursuant



to Chapter 2.54 KCC. Appeals to the City Council from the Hearing Examiner are governed by KCC 2.54.64.

3. No Other Appeal Provided. Except as provided in subsection 1. and 2., above, or as otherwise provided by law, no right to appeal is created by this section.

B. Judicial Appeals.

1. No right to judicial review or appeal, which does not now exist, is created by this chapter. The decision by the City to issue or deny nonexempt permits or licenses shall be final. A writ of review must be sought within 14 days, if at all, by an aggrieved party or person by application to the Superior Court of King County. Pursuant to RCW 43.21C.075(5) and (6), such a writ application shall include, or be amended within 30 days of the issuance or denial of the permit or license to include, issues relating to this chapter.

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

12.12A.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:

- A. Findings and conclusions;
- B. Testimony under oath; and
- C. A taped or written transcript. The cost of providing a taped or written transcript shall be borne by an appellant.

12.12A.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 Six: DEFINITIONS

12.12A.600. Purpose of this Part and Adoption by Reference. This part contains uniform usage and definitions of terms under SEPA. 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.                  |
| 197-11-722 | Consolidated appeal.                    |
| 197-11-724 | Consulted agency.                       |
| 197-11-726 | Cost-benefit analysis.                  |
| 197-11-728 | County/city.                            |
| 197-11-730 | Decisionmaker.                          |
| 197-11-732 | Department.                             |
| 197-11-734 | Determination of nonsignificance (DNS). |
| 197-11-736 | Determination of significance (DS).     |
| 197-11-738 | EIS.                                    |
| 197-11-740 | Environment.                            |
| 197-11-742 | Environmental checklist.                |
| 197-11-744 | Environmental document.                 |
| 197-11-746 | Environmental review.                   |
| 197-11-748 | Environmentally sensitive area.         |
| 197-11-750 | Expanded scoping.                       |
| 197-11-752 | Impacts.                                |
| 197-11-754 | Incorporation by reference.             |
| 197-11-756 | Lands covered by water.                 |
| 197-11-758 | Lead agency.                            |
| 197-11-760 | License.                                |
| 197-11-762 | Local agency.                           |
| 197-11-764 | Major action.                           |
| 197-11-766 | Mitigated DNS.                          |
| 197-11-768 | Mitigation.                             |
| 197-11-770 | Natural environment.                    |
| 197-11-772 | NEPA.                                   |
| 197-11-774 | Nonproject.                             |
| 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 | 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. |

12.12A.610. Additional Definitions. In addition to those definitions contained within WAC 197-11-700 through 799, when used in this ordinance, the following terms shall have the following meanings, unless the context indicates otherwise:

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

B. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

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

D. "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).

E. "Day" or "Calendar Day". In computing any period of time prescribed or allowed by this ordinance, 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.

F. "Site Plans" mean a vicinity map and two diagrams, one at the original drawing size, and one not to exceed 8-1/2" x 14", showing: north arrow; scale; any significant or natural features such as creeks, wetlands, 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 Seven: AGENCY COMPLIANCE

12.12A.700. Purpose of this Part and Adoption by Reference.

This part contains rules for the City's compliance with SEPA, including rules for charging fees, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The City adopts the following sections by reference:

- 197-11-900 Purpose of this Part.
- 197-11-902 Agency SEPA 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 agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one 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 or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses for more than one 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.

12.12A.710. Responsibility of Agencies--SEPA Public Information. 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 RCW.

A. The following location constitutes the Kent's SEPA public information center:

Planning Department  
Kent City Hall  
4th and Gowe Street  
Kent, WA 980321-5895  
Telephone: (206) 872-3390

B. All reasonable means will be used to make the existence and location of the City's SEPA public information center known to both the public generally and the employees of the City.

C. The SEPA public information center shall contain the documents and provide the services required by this section.

12.12A.720. Fees. The City shall require the following fees for its activities in accordance with the provisions of this ordinance:

A. Threshold determination. For every environmental checklist the City will review when it is lead agency, the City shall collect a fee of \$100.00 from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee, and receipt of the checklist by the Planning 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.

B. Environmental impact statement.

1. When the City is the lead agency for a proposal requiring an EIS and the EIS 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 EIS. Costs will be determined based upon the costs of staff assigned to the preparation of the EIS, including hourly salary and benefits. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation. The applicant shall post bond or otherwise ensure payment of such costs.

2. The City may contract directly with a consultant for the preparation of an EIS, or a portion of an EIS, at the request

of an applicant, or the applicant may contract with a consultant. Consultants shall be selected by the City after a call for proposals. Consultants will be selected by the applicant after confirmation with the City.

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

C. The City shall not collect a fee for performing its duties as a consulted agency.

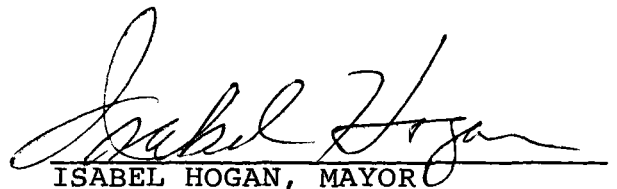
D. The City may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

Section 2. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

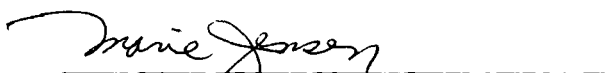
Section 3. Chapter 12.12 KCC (Ordinance No. 1975) is hereby repealed and any ordinance in conflict herewith is hereby superceded by the provisions of this ordinance.

Section 4. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 5. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

  
ISABEL HOGAN, MAYOR

ATTEST:

  
MARIE JENSEN, CITY CLERK

APPROVED AS TO FORM:

P. Stephen DiJulio  
P. STEPHEN DIJULIO, CITY ATTORNEY

PASSED the 1st day of Oct, 1984.

APPROVED the 3rd day of Oct, 1984.

PUBLISHED the 5th day of Oct, 1984.

I hereby certify that this is a true copy of Ordinance No. 2494, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Marie Jensen (SEAL)  
MARIE JENSEN, CITY CLERK

1400-70