ORDINANCE NO. 3239

AN ORDINANCE of the City Council of the City of Kent, Washington, adding a new chapter to the Kent City Code establishing rules and procedures for implementing the provisions of Initiative 164, Chapter 98 of the Laws of 1995, known as the "Private Property Regulatory Fairness Act" and further declaring an emergency necessary for the protection of public health, safety, property and peace and setting a contingent effective date.

WHEREAS, the Washington State Legislature enacted Initiative 164, Chapter 98 of the Laws of 1995, which is due to take effect on July 23, 1995; and

WHEREAS, Chapter 98 of the Laws of 1995 prohibits certain governmental actions that limit the use or development of private property, unless the government complies with the provisions of Chapter 98 of the Laws of 1995; and

WHEREAS, the City of Kent limits the use or development of private property to protect the public health, safety and welfare; and

Private Property Regulation Administrative Code
WHEREAS, the public health, safety and welfare of the City of Kent would be endangered if the City were unable to regulate the use and development of private property following the effective date of Chapter 98 of the Laws of 1995; and

WHEREAS, the City of Kent has made its best effort to understand and interpret the provisions of Chapter 98 of the Laws of 1995 so as to best comply with its requirements; and

WHEREAS, due to the limited time to prepare for the effective date of Chapter 98 of the Laws of 1995 and due to the ambiguities and vagueness of said Act, the City of Kent is unable to adopt an implementing ordinance; and

WHEREAS, it is in the City's and general public's best interest to enact this public emergency ordinance implementing the provisions of Chapter 98 of the Laws of 1995; NOW, THEREFORE,

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

SECTION 1. There is hereby added a new chapter, Chapter 12.02, to the Kent City Code entitled "Private Property Regulation Administrative Code" as follows:
CHAPTER 12.02. PRIVATE PROPERTY REGULATION ADMINISTRATIVE CODE

Sec. 12.02.010. Purpose.

The purpose of this chapter is to establish rules and procedures for implementation of Initiative 164 adopted by the Washington State Legislature in Chapter 98, Laws of 1995, known as the "Private Property Regulatory Fairness Act" and hereinafter referred to as the "Act".

Sec. 12.02.020. Applicability of code.

The provisions of this chapter shall govern future actions taken by the City, following the effective date of this code, including legislative determinations by the City and permit or approval decisions affecting individual properties.

Sec. 12.02.030. Definitions.

A. Act means Initiative 164, Chapter 98 of the Laws of 1995, known as the "Private Property Regulatory Fairness Act".

B. Determination of Statutory Taking (DST) means a determination of taking pursuant to Section 4 of the Act.

C. Restraint of land use means a regulation of private property or restraint of land use by a governmental entity as defined in the Act.

D. Director means the director of the planning department or other official authorized by the mayor to implement
the provisions of this chapter, including his or her designee.

E. Economic impact analysis (EIA) means a statement containing a full analysis of the total economic impact on private property of a proposed land use regulation or restraint of land use as required by the Act.

Sec. 12.02.040. Administration of code.

The director shall administer the provisions of this chapter and shall establish administrative rules and regulations consistent with this chapter for the purpose of carrying out its provisions and implementing the Act.

Sec. 12.02.050. Prior permit approval required.

Prior to the city processing a development permit application, the applicant shall first take any and all steps possible to obtain any federal or state development permit or approval for the land use determination requested. The City will coordinate its permit processing efforts with other agencies as required by state law.

Sec. 12.02.060. Economic impact analysis (EIA).

A. Notice of EIA.

The director shall perform an EIA as required under the Act. If an EIA is required, notice of the completion and availability of the EIA shall be provided as follows:
1. for legislation subject to this Act, the notice shall be published once in a newspaper of general circulation;

2. for EIAs prepared in conjunction with a specific property, the notice shall be published once in a newspaper of general circulation and shall be mailed or delivered in writing to the applicant. Said notice may be mailed or otherwise provided to any person who, in writing, requests such notice. Said notice shall be given at least thirty (30) days prior to publication of the director’s decision or prior to publication of the director’s report or recommendation for council land use decisions.

B. Administrative appeal.

1. A person with standing under the Act may appeal the adequacy of an EIA. The appeal shall be filed with the hearing examiner by 5:00 p.m. on the fifteenth (15th) day following publication or, if mailed, from the date of mailing the notice of the EIA. If no EIA is performed, a person with standing under the Act may appeal the failure to perform an EIA by filing said appeal with the hearing examiner by 5:00 p.m. on the fifteenth (15th) day following the director’s issuance of a land use decision for which the EIA is allegedly required.
2. When the last day of the period so computed is a Saturday, Sunday or holiday, the period shall run until the next business day.

3. The appeal shall be accompanied by a filing fee of One Hundred Fifty Dollars ($150.00).

4. To the extent not inconsistent with this code, the appeal shall be pursuant to Kent City Code Chapter 2.32.

5. Appeal to the hearing examiner shall constitute final administrative review.

C. Appeal to Superior Court.

An appeal of the decision of the hearing examiner must be filed with the Superior Court of King County within twenty-one (21) calendar days of the final administrative decision on the underlying action which is the subject of the EIA. The appeal to Superior Court on the adequacy of the EIA will be combined with and shall be tolled pending final determination of the underlying action, including administrative appeals and appeals under this chapter.

Sec. 12.02.070. Statutory taking.

A. Standing.

1. A determination of statutory taking (DST) may be requested only by the owner of private property, as private property is defined by the Act, whose property is the subject of a development permit or approval application.
2. Once a DST has been requested by the owner of the property, any party to the proceedings that are the subject of the DST, shall have standing to participate in the DST proceedings.

3. As a pre-condition to bringing an appeal under this section, appellant must first have exhausted any city administrative appeal remedies under Section 12.02.060 in the event appellant has filed an appeal under Section 12.02.060.

B. Requests for DST.

1. Any owner of private property, as private property is defined by the Act, who asserts that a decision on a development permit or approval application constitutes a restraint of land use prohibited under the Act without appropriate compensation or waiver, may request a determination of statutory taking (DST) from the hearing examiner.

2. The request for DST shall be in writing and shall state the factual and legal basis for the owner's assertion that the restraint of land use decision will take the owner's property for general public use, as such a taking is defined by the Act, and shall state the amount the owner asserts will be owed as compensation for reduction in value pursuant to the Act.

3. As part of a request for a DST, any owner of private property, as private property is defined under the Act, who asserts that a proposed restraint on the use of his or her property is not the least possible impact which accomplishes the
necessary public purpose, may request a determination of this issue from the hearing examiner.

4. A request shall be filed with the hearing examiner by 5:00 p.m. on the fifteenth (15th) day following:
   a. the issuance of a restraint of land use decision by the director, hearing examiner and/or city council; or
   b. the date of a decision by the hearing examiner or city council on any appeal of a restraint of land use decision, provided that a request for DST filed after the decision of the hearing examiner or council on appeal may only assert a statutory taking resulting from such additional land use restraints as are imposed on appeal by the hearing examiner or the city council;

5. When the last day of the period so computed is a Saturday, Sunday or holiday, the period shall run until the close of the next business day.

6. The request shall be accompanied by payment of a filing fee for the DST which shall be One Hundred Fifty Dollars ($150.00).

7. To the extent not inconsistent with this code, the appeal shall be conducted pursuant to Kent City Code Chapter 2.32.

C. Administrative processing of DST.

1. Any owner requesting a DST shall also apply for and pursue any administrative remedy (e.g., variance) that
could provide relief from the alleged statutory taking or lessen the reduction in value that would result from a statutory taking. The hearing examiner shall not make a DST until all such administrative remedies are exhausted, unless the owner demonstrates that pursuit of such administrative remedies would be futile or the director agrees that no appropriate administrative remedy exists.

2. When an owner requests a DST, the decision which is the basis for the alleged statutory taking shall be stayed until either the hearing examiner determines that no statutory taking will occur or the hearing examiner determines that a statutory taking will occur and the hearing examiner determines the amount of compensation owed, and the city decides whether to pay compensation or not impose the restraint pursuant to Section 4 of the Act.

3. When an owner requests a DST, the hearing examiner shall conduct a hearing to determine whether a statutory taking pursuant to Section 4 of the Act will occur as a result of the restraint of land use decision. If the hearing examiner determines that a statutory taking will occur, the hearing examiner may either a) bifurcate the hearing and schedule a subsequent hearing, or b) continue with the current hearing, to determine and recommend to the city council the amount of compensation that will be paid to the owner for reduction in value if the city chooses to impose the restraint that is the basis for the taking.
D. Council determination.

Following a determination by the hearing examiner that a statutory taking will occur if the restraint is imposed and following the hearing examiner's recommendation of the amount of compensation that would be owed, the director shall submit a recommendation which will be forwarded along with a decision of the hearing examiner to the council. The council shall make the decision whether or not to pay compensation, determine what amount of compensation is appropriate (if applicable) or determine whether or not to impose the restraint of land use at issue. In those case where the council elects to impose the restraint of land use at issue, it shall, pursuant to the Act, adopt the restraint of land use that has the least possible impact on private property and still accomplishes the necessary public purpose. Before making this decision, the council may invite comment by affected persons. All actions by the city council on whether or not to pay compensation and impose the restraint or not to impose the restraint shall be deemed to be final and conclusive. This decision shall be a quasi-judicial decision.

E. Appeal to Superior Court.

Any appeal from the city council's decision must be filed with the Superior Court of King County within thirty (30) calendar days from the date of the decision. The appeal to Superior Court on the request for DST will be combined with and shall be tolled pending final determination of the underlying
action, including administrative appeals and appeals under this chapter.

**SECTION 2. Declaration of Emergency.**

The city council finds that an emergency exists in which it is necessary for the immediate preservation of the public health, safety, property and peace for this ordinance to take effect without delay at the time and on the same date in July of 1995 as Initiative 164, Chapter 98 of the Laws of 1995. The facts creating this emergency and necessity include the fact that Chapter 98 of the Laws of 1995 prohibit some governmental actions that limit the use or development of private property unless the government complies with its provisions; the public health, safety, property and peace, including the economic health of the community and the fiscal integrity of the City of Kent, would be endangered if the City of Kent were unable to limit the use or development of private property after Chapter 98 of the Laws of 1995 take effect; the City of Kent has engaged in a sustained and substantial effort to determine how to comply with the requirements of Chapter 98 of the Laws of 1995, but the City's efforts have been frustrated by the ambiguity and inconsistencies of this new law, making it impossible for the City to adopt an implementing ordinance prior to this date. Enactment of this emergency ordinance would assist the City in complying with Chapter 98 of the Laws of 1995.
SECTION 3. **Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 4. **Effective Date.** This ordinance shall take effect and be in force on the same date that Initiative 164, Chapter 98 of the Laws of 1995, shall take effect, otherwise this ordinance shall be null and void.

Passed by a vote of at least a majority plus one of the whole membership of the council.

[Signature]
JIM WHITE, MAYOR PRO TEM

ATTEST:

[Signature]
BRENDA JACOBER, CITY CLERK
APPROVED AS TO FORM:

[Signature]
ROGER A. LUBOVICH, CITY ATTORNEY

PASSED ___ day of July, 1995.
APPROVED ___ day of July, 1995.
PUBLISHED ___ day of July, 1995.

I hereby certify that this is a true copy of Ordinance No. 3237, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Brenda Jacober (SEAL)]
BRENDA JACOBER, CITY CLERK