Ordinance No. 3320

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Sec. 1.04.050 (now 1.04.080) REPEALED in its entirety by Ord. 3565
Sec. 2.32.160 Amended by Ord. 3574
ORDINANCE NO. 3320

AN ORDINANCE of the City Council of the City of Kent, Washington, relating to judicial appeals of the Hearing Examiner's decisions amending section 1.04.050, and section 2.32.160, of the Kent City Code for consistency with RCW 36.70C.040(3).

WHEREAS, a new, exclusive procedure for judicial appeals of the land use decisions of City's Hearing Examiner has been adopted by the Washington State Legislature as codified in Chapter 36.70C RCW; and

WHEREAS, the Kent City Code must be amended to conform to this new procedure, and therefore the City Council desires to change the period for seeking judicial review of all appeals of the Hearing Examiner decisions to twenty-one days as provided in RCW 36.70C.040(3); NOW, THEREFORE,

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

Hearing Examiner
SECTION 1. Section 1.04.050 of the Kent City Code is hereby amended as follows:

Sec. 1.04.050. Hearing before the hearing examiner.

A. Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days but no more than forty-five (45) days after the notice of civil violation is issued. Extensions may be granted at the discretion of the applicable department director.

B. Prior correction of violation. The hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight (48) hours prior to the scheduled hearing.

C. Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action will correct the violation. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

D. Decision of the hearing examiner.

1. The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violation and shall affirm, vacate, or modify the city’s decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

   a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

   b. The required corrective action;
c. The date and time by which the correction must be completed;

d. The monetary penalties assessed based on the criteria in section 1.04.050 D.3.;

e. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of monetary penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty in section 1.04.040 E.

a. The hearing examiner shall have the following options in assessing monetary penalties:

(1) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(2) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or

(3) Assess less than the established monetary penalty set forth in section 1.04.040 E. based on the criteria of section 1.04.050 D.3.b.

(4) Assess no monetary penalties.

b. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

(1) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

(2) Whether the person failed to appear at the hearing;

(3) Whether the violation was a repeat violation;
Whether the person showed due diligence and/or substantial progress in correcting the violation;

Whether a genuine code interpretation issue exists; and

Any other relevant factors.

c. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations the hearing examiner shall consider the factors set forth in section 1.04.050 D.3.b.

4. Notice of decision. The hearing examiner shall mail a copy of the decision to the person to whom the notice of a civil violation was issued and to the applicable department director within ten (10) working days of the hearing.

E. Failure to appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order with findings pursuant to section 1.04.050 D.2. and assess the appropriate monetary penalty pursuant to section 1.04.050 D.3. The city will enforce the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

F. Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with the Superior Court within thirty (30) twenty-one (21) calendar days of the issuance of the decision, from the date the hearing examiner's decision was personally served upon or was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.

SECTION 2. Section 2.32.160 of the Kent City Code is hereby amended as follows:

Sec. 2.32.160. City council action.

A. Any application requiring action by the city council shall be taken by the adoption of a motion, resolution or ordinance by the city council. When taking any such final action, the city council shall make and enter findings of fact from the record and conclusions therefrom which support its action. The city council may adopt all or portions of the hearing examiner's findings and conclusions.
B. In the case of an ordinance for rezone of property, the ordinance shall not be placed on the city council's agenda until all conditions, restrictions or modifications which may have been stipulated by the city council have been accomplished or provisions for compliance made to the satisfaction of the legal department.

C. The action of the city council, approving, modifying, or rejecting a recommendation or decision of the hearing examiner, shall be final and conclusive, unless within twenty-one (21) calendar days from the date of the city council action, an appeal is filed with the Superior Court by an aggrieved party or person applies for a writ of certiorari to the superior court for the purpose of review of the action taken.

SECTION 3. If any one or more sections, sub-sections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

SECTION 4. This Ordinance shall take effect and be in force thirty (30) days from the time of its final approval and passage as provided by law.

JIM WHITE, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK
APPROVED AS TO FORM:

[Signature]
ROGER A. LUBOVICH, CITY ATTORNEY

PASSED 5th day of November, 1996.
APPROVED 6th day of November, 1996.
PUBLISHED 8th day of November, 1996.

I hereby certify that this is a true copy of Ordinance No. 3320, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
BRENDA JACOBER, CITY CLERK

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